

LAMPIRAN KORESPONDENSI PUBLIKASI INTERNASIONAL

Nama Jurnal : Bestuur

Publisher : Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

Judul : Reconstructing Village Druwe Land Administration to Protect the
Communal Land in Bali

Reputasi : Terindeks Scopus-Q1

Nama Penulis : Sukirno Sukirno, Muh Afif Mahfud, Muhammad Fahad Malik


Link Artikel : <https://jurnal.uns.ac.id/bestuur/article/view/90365>

Received: July 15, 2024

Revised: November 09, 2024

Accepted: December 28, 2024

WEBSITE SCOPUS



[Author Search](#) [Sources](#)

Source details

[Feedback](#) [Compare sources](#)

Bestuur

[Open Access](#)

Years currently covered by Scopus: from 2019 to 2024

Publisher: Sebelas Maret University Faculty of Law

ISSN: 2302-3783 E-ISSN: 2722-4708

Subject area: [Social Sciences Law](#) [Social Sciences Social Sciences \(miscellaneous\)](#) [Social Sciences Public Administration](#)

Subject area: [Environmental Science Management, Monitoring, Policy and Law](#)

Source type: Journal

[View all documents](#) [Get documents alert](#) [Share to source list](#)

CiteScore 2023

4.7

SJR 2023

0.384

SNIP 2023

0.693

[CiteScore](#) [CiteScore rank & trend](#) [Scopus content coverage](#)

CiteScore 2023

4.7 - 291 Citations 2020 - 2023

62 Documents 2020 - 2023

Calculated on 13 May 2024

CiteScoreTracker 2024

6.6 - 349 Citations to date

52 Documents to date

Last updated on 18 January 2024 - (update pending)

CiteScore rank 2023

Category	Rank	Percentile
Social Sciences Law	#63/625	93-d
Social Sciences Social Sciences (miscellaneous)	#64/604	89th

[View CiteScore methodology](#) [CiteScore FAQ](#) [Add CiteScore to your site](#)

WEBSITE SCIMAGO

SJR

Scimago Journal & Country Rank

Enter Journal Title, ISSN or Publisher Name

[Home](#) [Journal Rankings](#) [Country Rankings](#) [Viz Tools](#) [Help](#) [About Us](#)

bestuur

Q



1-1 of 1

Bestuur

Indonesia

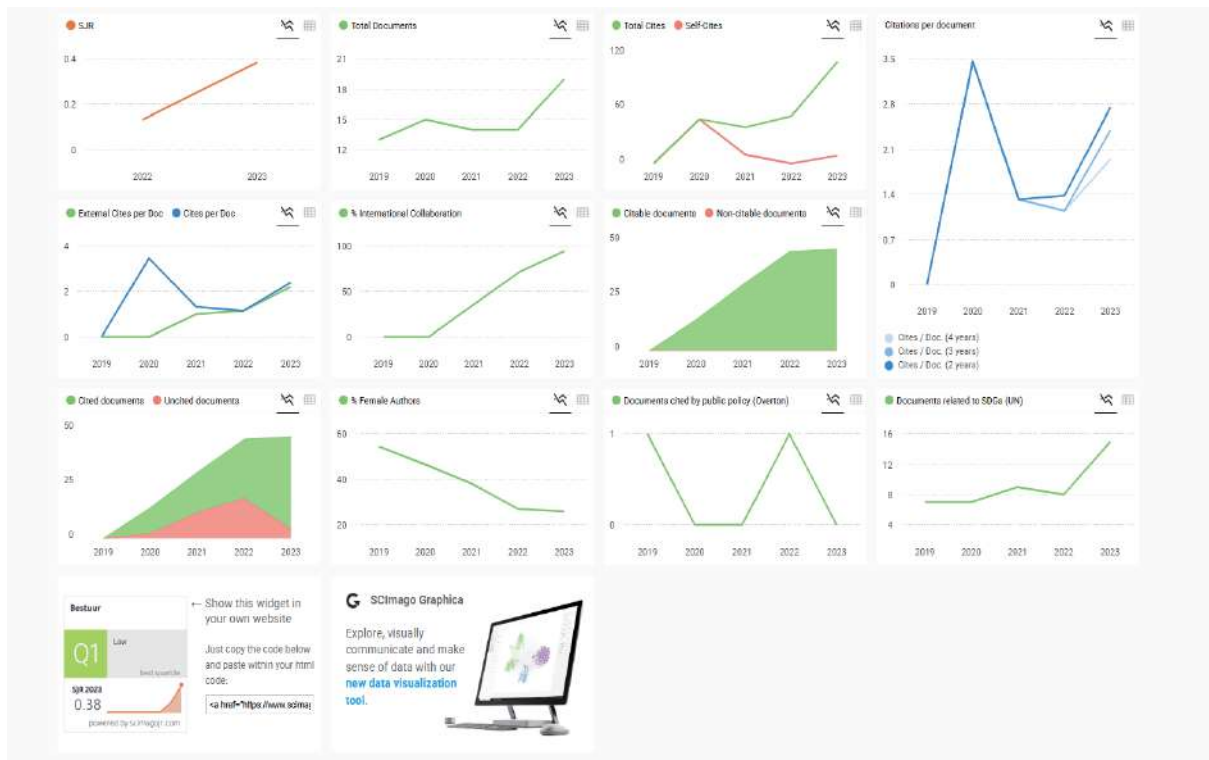
Sebelas Maret University Faculty of Law

Bestuur

COUNTRY	SUBJECT AREA AND CATEGORY	PUBLISHER	H-INDEX
Indonesia <div><div>Universities and research institutions in Indonesia</div><div>Media Ranking in Indonesia</div></div>	<div>Environmental Science</div> <ul style="list-style-type: none">Management, Monitoring, Policy and Law <div>Social Sciences</div> <ul style="list-style-type: none">LawPublic AdministrationSocial Sciences (miscellaneous)	Sebelas Maret University Faculty of Law	9
PUBLICATION TYPE	ISSN	COVERAGE	INFORMATION
Journals	28023783, 27224708	2019-2023	Homepage How to publish in this journal bestuur.journalseditorial@mail.uns.ac.id

SCOPE

Bestuur focuses on administrative law at global, national, regional, and local levels worldwide. The journal addresses specific issues on tax law, consumer protection law, environmental law, medical law, spatial law, labour law, agrarian law, transportation law, mining law, energy law, administrative, and legal justice. Bestuur publishes peer-reviewed while increasing the efficiency of the process. In addition, Bestuur also covers legal research in constitutional law with specific topics such as separation of powers and procedural due process, the structure and workings of the various agencies, procedural requirements for adjudication and rulemaking, enforcement discretion, methods of enforcement, government tort liability, freedom of information, and state finance. The journal warmly welcomes contributions from scholars with related disciplines. Novelty and recency of issues, however, are the priority in publishing.



WEBSITE JURNAL

[Home](#) > **Vol 12, No 2 (2024)**

BESTUUR

Journal title	BESTUUR
Initials	BR
Frequency	Two issues per year
DOI	Prefix 10.20961 by  Crossref
Online ISSN	2722-4708
Print ISSN	2302-3783
Editor-in-chief	Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H., M.M.
Managing Editor	Prof. Dr. Lego Karjoko, S.H., M.H.
Publisher	Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Citation Analysis	Google Scholar Garuda Dimensions Scopus

BESTUUR is a peer-reviewed journal published by **Department of Administrative, Faculty of Law, Universitas Sebelas Maret Surakarta**. It published twice a year (**August and December**). **Bestuur** is an open access and peer-reviewed journal that aims to offer an international academic platform for cross-border legal research in **Administrative Law**, particularly in **developing and emerging countries**.

Bestuur focuses on administrative law at global, national, regional, and local levels worldwide. The journal addresses specific issues on tax law, consumer protection law, environmental law, medical law, spatial law, labour law, agrarian law, transportation law, mining law, energy law, administrative, and legal justice. **Bestuur** publishes peer-reviewed while increasing the efficiency of the process.

In addition, **Bestuur** also covers legal research in constitutional law with specific topics such as separation of powers and procedural due process, the structure and workings of the various agencies, procedural requirements for adjudication and rulemaking, enforcement discretion, methods of enforcement, government tort liability, freedom of information, and state finance.

The journal warmly welcomes contributions from scholars with related disciplines. Novelty and recency of issues, however, are the priority in publishing.

BESTUUR's New Template 2022. Since **Volume 10, Number 2 2022**, **Bestuur** uses a **new template** from now on. It may be subject to modifications, therefore, please download it [here](#) each time you format a paper for submission. If the submitted manuscript does not comply with the guidelines or uses a different format, it will be rejected by the editorial team before being reviewed. The editorial team will only accept a manuscript that meets the specified formatting requirements.

All manuscripts must be submitted by BESTUUR OJS system. We DO NOT accept any submissions via email at all.



Vol 12, No 2 (2024)

Bestuur

DOI: <https://doi.org/10.20961/bestuur.v12i2>

Table of Contents

Articles

Reconstructing Village Druwe Land Administration to Protect the Communal Land in Bali | [PDF](#)
Abstract views : 90 times 104-123
Sukirno Sukirno, Muh Afif Mahfud, Muhammad Fahad Malik
[doihttps://dx.doi.org/10.20961/bestuur.v12i2.90365](https://dx.doi.org/10.20961/bestuur.v12i2.90365)

Unprotected and Unparticipation Mental Health in Regulation Worker | [PDF](#)
Abstract views : 71 times 124-150
I Wayan Gde Wiryawan, Gede Agung Wirawan Nusantara, I Wayan Eka Artajaya, Rizozoda Tura Rabbim
[doihttps://dx.doi.org/10.20961/bestuur.v12i2.94378](https://dx.doi.org/10.20961/bestuur.v12i2.94378)

Halal Food on Airplanes in Indonesia: Does it Provide Optimal Information? | [PDF](#)
Abstract views : 47 times 151-171
Annalisa Yahanan, Sri Turatmiyah, Hamonangan Albariansyah, Febrian Febrian, Nurhidayatuloh Nurhidayatuloh
[doihttps://dx.doi.org/10.20961/bestuur.v12i2.93620](https://dx.doi.org/10.20961/bestuur.v12i2.93620)

Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia | [PDF](#)
Abstract views : 656 times 172-190
Chairul Fahmi, Peter-Tobias Stoll
[doihttps://dx.doi.org/10.20961/bestuur.v12i2.94203](https://dx.doi.org/10.20961/bestuur.v12i2.94203)

Regulation of working time in the context of the global transition to flexible forms of work |
Abstract views : 69 times
Anatolii P. Getman, Vladyslav S. Tkachenko, Ehor S. Nazymko, Olena Lutsenko
[doihttps://dx.doi.org/10.20961/bestuur.v12i2.94072](https://dx.doi.org/10.20961/bestuur.v12i2.94072)

BUKTI PENYERAHAN ARTIKEL



sukirno mardjono <kirno9undip@gmail.com>

[BESTUUR] Submission Acknowledgement

1 pesan

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H.,M.M. <jurnal@mail.uns.ac.id>

15 Juli 2024

pukul 15.09

Kepada: Mr Sukirno Sukirno <kirno9undip@gmail.com>

bestuurlaw@gmail.com

[mail.com](mailto:bestuurlaw@gmail.com) Mr

Sukirno

Sukirno:

Thank you for submitting the manuscript,
"Reconstructing Village Druwe Land
Administration in Bali to Prevent Disputes"
to BESTUUR. With the online
journal management system that we are
using, you will be able to track its
progress through the editorial process by
logging in to the journal web site:

Manuscript URL:

<https://jurnal.uns.ac.id/bestuur/author/submission/90365> Username: sukirno9fhundip

If you have any questions, please contact
me. Thank you for considering this journal
as a venue for your work.

Prof. Dr. I Gusti Ayu Ketut
Rachmi Handayani, S.H.,M.M.

BESTUUR
Administrative Law Department Faculty of Law Universitas Sebelas Maret

Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes

Sukirno ^{a,1,*}, Muh.Afif Mahfud ^{b,2}, Muhammad Fahad Malik ^{c,3}

^a Faculty of Law, Diponegoro University, Indonesia

^b Faculty of Law, Diponegoro University, Indonesia

^c Department of Law, Khwaja Fareed University of Engineering and Information Technology, Pakistan

¹kirno9undip*; ²afifmahfud4@gmail.com ³fahadmalikawan98@gmail.com

* corresponding author

ARTICLE INFO

Article history

Received:

Revised:

Accepted:

Keywords

Bali

Dispute

Land Administration

Legal Certainty

Village Druwe Land

ABSTRACT

This research was conducted based on the condition of the existence of *village druwe* land (customary land of indigenous villages in Bali) which is increasingly eroded by the perception of some villagers who consider village yard land as private property that is passed down from generation to generation. This situation has sparked various disputes between indigenous villagers and village officials. The main objective of this study is to uncover the weakness of village land administration as well as offering measures to prevent future disputes. The research used a socio-legal approach, involving interviews with *Kelian Adat* (traditional village leaders) or traditional village officials responsible for the administration of *village druwe* land. The results show that there are various weaknesses in the current administration of customary land in Bali, namely (a) the administration of customary land through complete systematic land registration emphasizes the active role of the government whereas the administration of customary land should emphasize the active role of customary law communities; (b) the current administration of customary land in Bali is not detailed, creating legal uncertainty. These weaknesses can be overcome by the principle of integral and participatory customary land administration. In the realm of practice, this is implemented by making four land books containing land history, land maps, land mutation data and spatial planning, land use and water use.



This is an open access article under the [CC-BY 4.0](#) license.



1. Introduction

The fulfillment of indigenous peoples' rights to their land needs attention because 5% of the world's current population or around 370 million people are indigenous peoples spread across 70 countries.¹ In Indonesia, there are still lands controlled by indigenous people named customary land. Customary rights are the authority possessed by the community to control, regulate and manage land for the benefit of its citizens. The existence of customary land rights is mostly found in areas outside Java. In

¹ Peter Bille Larsen dan Jérémie Gilbert, "Indigenous rights and ILO Convention 169: learning from the past and challenging the future*," *International Journal of Human Rights*, 24:2–3 (2020), 83–93 <<https://doi.org/10.1080/13642987.2019.1677615>>.

Bali, there are still communities called adat villages (formerly called pakraman villages) that control customary lands, including village yards, land for temples, cemetery land, field land, land for public facilities such as markets and schools. All land controlled by an adat village is referred to as village druwe land or village-owned land.

This traditional village in Bali has existed since the 8th century AD, precisely after the arrival of *Mahayogi Markandya* to spread religion and build Kahyangan Desa. Then *Mahayogi Markandya's* successor, Mpu Kuturan, in 1001 AD held a Grand Meeting with community leaders in Batanyar and made five main decisions. One of the main decisions stated that all yard lands and lands located around the traditional village as well as the lands of *Kahyangan Tiga* belonged to the traditional village and these lands could not be traded.² So it is clear that according to customary law in Bali, village-owned land (*druwe land*) is not an individual property but a communal property (*desa adat*) which until now has not been allowed to be sold. Even though this is used by individual but this remains village ownership.

However, the existence of *village druwe* land as customary land is negated by national law, with the issuance of Law No.5 of 1960 on Basic Agrarian Law (here in after BAL), especially Article II Conversion Provisions which states that druwe land is converted into property rights. Because druwe land becomes freehold land, the owner can carry out any legal action without permission from the adat village apparatus, such as inheriting, leasing, pledging, and buying and selling. This individualization of land owned by customary law communities is clearly a form of inconsistency with the protection of customary land ownership in Balinese society and is not in line with the *Pasamuan Tiga* Decision. Ironically, the reduction of the communalistic nature of customary land is also caused by legislation that makes customary land the object of land registration and certificates can be issued for the land. This clearly reduces customary land rights to land rights, even though these rights actually have a higher position in the hierarchy of land tenure rights. It means there is contradiction between national law and Bali customary law regarding to druwe land status. This regulation also contradicts with Article 58 paragraph (1) of Bali Province Regional Regulation No. 4/2019 which states that land owned by customary villages is registered on behalf of the customary village. Therefore, the customary land registration uses the name of the customary village as the right holder.

The conflict between Balinese customary law and national law triggered a dispute between the village krama (villagers) and the traditional village apparatus headed by *Kelian Adat*. Land ownership in Balinese customary law communities is strongly tied to its religious communalistic characteristics. However, in its development, there are elements of the *village krama* (villagers) who use customary land and then register the land as individual ownership. This condition mainly occurs in tourism territory.

As a result, disputes between villagers and customary villages have been brought to court, for example the Bangli District Court Decision No.20/Pdt.G/2008/PN.Bli which confirmed that villagers have property rights over PKD. This Bangli District Court decision was also upheld by the CA and Supreme Court decision No.622 K/Pdt/2012. The same thing also happened in Gianyar Regency, where the Lembeng Customary Village lost its case against the villagers with the Denpasar District Court Decision No.4/PDT/2016/PT.DPS. This condition shows that the process of certification (land registration) of customary land in Bali on behalf of the village krama is something that needs to be examined because it has a negative impact on the existence of customary law communities as an entity that needs to be respected and protected.

The Faculty of Law team of Gadjah Mada University in collaboration with the Ministry of Agrarian Spatial Planning / National Land Agency found that the transfer of customary land through three ways, namely: (1) individualization of customary land into individual land that has occurred since 1980. This also arose when massive land registration was implemented; (2) the release of customary land for the construction of public facilities; (3) transfers because residents sold village yard land to other

² M. Suasthawa D, *Status dan Fungsi tanah Adat Bali Setelah Berlakunya UUPA*. (Denpasar: CV. Kayumas Agung, 1987).

people.³ This condition clearly shows that customary land administration policies in Indonesia need improvement.

The customary land administration policy is caused by land policies that are not integrative and participatory. The government makes itself the main actor in the administration of customary land rights of indigenous peoples even though the constitution and international conventions have stated that indigenous peoples have the right of self-determination so that they are authorized to carry out land administration based on the unique social and cultural conditions of Balinese indigenous peoples. This has led to the absence of an accurate inventory and mapping of customary land in Bali's indigenous communities. Based on these conditions, this article will elaborate on the condition of customary land administration in Bali and the concept of integral and participatory customary land administration.

2. Research Method

The approach used in this research is socio-legal research, namely legal research that conceptualizes law as symbolic meanings. Primary data in this research was obtained in direct research in the field using in depth interview and participant observation methods. The data that has been collected is analyzed qualitatively based on inductive thinking.

3. Results and Discussion

3.1 Weak Legal Pluralism and Inaccurate Administration of Customary Land in Bali

Legal pluralism is a reality that always covers humans because humans are actually not only bound by state law but also various other orders of life.⁴ Griffith defines legal pluralism as a condition where there are two laws that exist simultaneously in the same space, object and time. According to him, legal pluralism can be divided into two, namely: (1) weak legal pluralism which is a condition where customary law is subordinate to state law and (2) strong legal pluralism which is a situation where customary law is in an equal position with state law.⁵ Indonesia applies weak legal pluralism because the recognition, respect and protection of indigenous peoples are highly dependent on the will, goodness and policies of the state.⁶ Weak customary law pluralism is also found in the 1945 Constitution which is also still conditional because it must be in accordance with the laws and regulations made by the state.⁷ This has caused many problems regarding the protection of indigenous peoples in Indonesia, such as the uncertainty of the *legal standing* of these communities, the takeover of customary land by the government or the private sector and various other complex problems.⁸

In these conditions, there can be contestation between the two and when this happens, customary law has the potential to be overridden by state law. This causes the application of state law to

³ Kementerian ATR BPN, *Laporan Akhir Inventarisasi dan Identifikasi tanah Ulayat di Provinsi Bali dan Nusa Tenggara Timur* (Yogyakarta, 2021).

⁴ Brian Z. Tamanaha, *Legal pluralism explained: History, theory, consequences, Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>.

⁵ John Griffiths, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56.

⁶ Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>.

⁷ Gde Made Swardhana dan Suviwat Jenvitchuwong, "The Participation within Indigenous Land management: Developments and Challenges of Indigenous Communities Protection," *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>.

⁸ Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>.

customary law to be scrutinized so that the negation of the uniqueness and rights of these communities is not sidelined in policy making.⁹

This weak legal pluralism affects the pattern of policy making and formation in the land sector in Indonesia, which places the state as the main actor in administering the customary land of indigenous peoples. Based on this authority, the state has formed various laws and regulations including the Regulation of the Minister of Agrarian Affairs No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas. Based on this regulation, the state conducts land registration of indigenous peoples which will result in land certificates in the form of land ownership rights to indigenous peoples.

The granting of land rights in the last two regulations has actually reduced the ulayat rights of customary law communities to land rights. This is clearly not appropriate because in the hierarchy of land tenure in Indonesia it is clear that customary rights have a higher position than land rights. The hierarchy of land tenure rights is:¹⁰

- a. Indonesian rights to land;
- b. State control over land;
- c. The customary rights of customary law communities;
- d. Individual rights

In this regard, it is important to understand that only individual land rights are subject to land registration that can be owned individually or collectively. Through such land rights, the right holder has access to or use of the land and exclusivity or excludes others from using the land. This condition shows that the aspect of individual authority becomes the focal point in land rights. This has led to the individualization of land rights. In fact, in our research there are land rights that are certified in the name of an individual rather than on behalf of indigenous community.

I Made Suwitra states that the highest right of control over customary land is in the customary village in form of right to manage, to regulate, to use and to utilize. This right of control is basically still based on a religious communalistic nature that is autonomously governed by customary law. One example occurs in Panglipuran Village where the use of land such as the change in the number of cultivators of customary land from 45 to 78 was decided by Customary Council.¹¹ The Customary Council has the authority to manage: (1) land owned by the Customary Village; (2) communal or individual land for use. Land for use has customary, religious, traditional, cultural and economic functions for the owner while still paying attention to the social function of land rights.

Historically, land ownership in Bali cannot be separated from the history of the *Pasamuan Tiga* Decree chaired by Mpu Kuturan which clearly states that all land within the village area including *Kahyangan Tiga* land belongs to the customary village, cannot be traded and there is no individual ownership. Basically, every villager who utilize a patch of land is obliged to carry out village ayahan

⁹ Thaddeus Arkum Aasoglenang, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>.

¹⁰ King Faisal Sulaiman, "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012," *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>.

¹¹ I Made Suwitra, "Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional" (Universitas Brawijaya, 2009).

in the form of both labor and material.¹² The customary council should carry out the administration of customary land including maintaining the continuity of the status of *Padruwen* land rights of the Customary Village, maintaining the sanctity, preservation, cleanliness, and orderly use of the property of the customary law community. In connection with this journal, the author needs to elaborate on the definitions and differences between customary village land, village yard land (PKD) and village land (AYDS) as in the following table:

Customary Village Land	Village Yard Land	Tanah Ayahan Village
Land owned by the Desa Adat, both those directly managed by the Desa Adat, such as: setra land (cemetery), palaba land (temple interests), market land (tnten), etc., as well as those handed over to the Krama Desa Adat for management, such as Desa Adat pakarangan land and Desa Adat ayahan land.	land which is utilized by <i>krama</i> (villagers) to live.	village land cultivated by <i>krama</i> for agriculture and others

Given that PKD and AYDS land is customary village land, each village *krama* may not transfer of rights to the land to other parties. However, empirically, under the pretext of conversion regulations in the BAL, the village *krama* can convert their land into freehold land ignoring the customary law that applies to the village land they control. In the end, conflicts occurred between the village *krama* and the Bendesa Desa Adat in various regions in Bali. The current ignorance of the reality of the communal nature of land and the role of customary council in the management process has led to the loss of the right of customary law communities to manage their own territories, including land as a resource governed by the tools or structures of the customary law community.

The reduction of customary rights to land rights and the disrespect for the authority of these communities to manage their own territories violates the state's obligation to protect the rights of indigenous peoples.¹³ This obligation is contained in Article 6 of the *Indigenous and Tribal Peoples Convention* 1989 which states that the government must consult indigenous peoples on policies that can affect their lives. In the convention, there is the principle of *prior, free and informed consultation* which should be the basis for the government in making policies in the land sector.¹⁴ Fergus MacKay's research shows that the non-ratification of this convention has a negative impact on the protection of indigenous peoples, including the Toba Batak community which is the focus of his research.¹⁵ Experts in the field of indigenous peoples currently question the government's attention

¹² Ida Bagus Putu Eka Suadnyana, "Desa Pakraman sebagai Lembaga Adat dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu di Bali," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>.

¹³ Bertus de Villiers, "Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?," *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>.

¹⁴ Tanya Hayes dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>.

¹⁵ Live Danbolt Drange, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>.

and policies towards indigenous peoples. This is due to the lack of countries that have ratified the *Indigenous and Tribal Peoples Convention* and the many violations of the rights of indigenous peoples in the world.¹⁶

The implementation of customary land administration is not in accordance with these obligations because it has reduced the customary land rights of indigenous peoples to individual rights, does not involve indigenous peoples and applies the *prior informed* and *consent principle*. This condition contrasts with the wave of fulfillment and strengthening of indigenous peoples' rights to land in other countries such as Scandinavia. In fact, in 1832, the United States Supreme Court had issued a decision recognizing the rights of Indian Tribes as independent community entities that have the right to regulate and manage their own territory.¹⁷ The same thing happened to the Sami indigenous people in Norway who even have their own parliament to guarantee their interests called Sámediggi which has existed since 1989.¹⁸

The conditions of indigenous peoples in the countries above are very different from those in Indonesia because the government still uses a partial, non-integral - participatory approach in land administration because it does not involve indigenous peoples in the process.¹⁹ This will lead to various conflicts.²⁰ This is because customary law communities have their own order that must be considered and government policies that ignore this will be opposed by the community. This is what Ran Hirschl and Alexander Hudson call participation determining legitimacy. They state that participation has three characteristics: transparency, substantive and community involvement.²¹

3.2 Administration of Customary Land and its Problems

Problems arise because there is land registration carried out in traditional villages in Bali with the issuance of certificates as proof of ownership of land rights through the Complete Systematic Land Registration (here in after referred to CSLR) program. This land registration of customary lands was mainly carried out in 2018 so that many customary lands were then certified in the program. The inclusion of customary land in Bali as an object of Systematic and Complete Land Registration has clearly reduced customary land rights to land rights. Through this CSLR, there will be two problems that can arise, namely that the land will become a land right that can be easily claimed by individuals,

¹⁶ Thomas Christiansen, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>.

¹⁷ Anna J. Willow, "Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination," *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>.

¹⁸ Per Selle dan Kristin Strømsnes, "Indigenous People's Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi," *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>.

¹⁹ Geoffrey Swenson, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/isr/vix060>>.

²⁰ Mohamad Jamin, Sapto Hermawan, dan Mulyanto Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.3 (2023), 346–66 <<https://doi.org/10.22304/pjih.v10n3.a3>>.

²¹ Ran Hirschl dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>.

including being transferred and potentially becoming an object of collateral with a mortgage. Some examples of problems with CSLR implementation in Bali is there are indigenous villagers who get Free Hold Certificate on behalf of individual.

This condition is also inseparable from the faulty conversion provisions in national land law. Article 2 paragraph (1) of the BAL Conversion Provision states that *druwe* land can be converted into free hold land. Made Oka Cahyadi Wiguna stated that the substance of the provision that converts village *druwe* rights into individual property rights is not appropriate because the land is actually communal land of the customary law community concerned.²² Because the land is made into property rights, it will be easier to transfer to other parties, does not show respect for the authority of customary structures and emphasizes individual aspects. Conversion of Village Courtyard Land and Ayahan Land into full private or individual land so that it will eliminate the communalistic nature of *druwe* land into individual private land. This case occurred in Lemukih Pakraman Village (Buleleng Regency), Culik Pakraman Village (Karangasem Regency),¹⁴ Belancan Village, Bukih Village and Manikliyu Village (Bangli Regency). There were 25 cases of land certification of village *druwe* into private land in Belancan Village and 10 certifications in Bukih Village, while in Manikliyu Village there was private land acquisition by residents without being bound by ayahan.

Individual free hold certificate over *druwe* land (*village land*) not only degrade the position of customary rights but also cause this land can easily transferred. This condition further jeopardizes the position of customary land. Moreover, based on the results of the author's research, there are various examples that show the conversion of customary rights into private property rights in Balinese customary law communities.

The individualization of customary land into freehold land is also caused by poor inventory of customary land, starting with the absence of land boundaries, which can lead to conflicts between land users and between customary villages. Data on the mutation of land use is unknown so that the use of customary land by individuals cannot be monitored by the customary council and transferred to other parties. At this point, indigenous peoples and the government should jointly conduct customary land mapping. The involvement of indigenous peoples in the administration of customary land is actually a very good event also to make proper land mapping because what is desired in the legislation is land mapping, not land registration, which reduces the communalistic aspects of the community. The mapping of customary land should clearly determine the boundaries of customary land areas, land assets owned by customary law communities, the boundaries of land used by the community, the boundaries of agricultural land and various other aspects. This can be done because the customary law community has customary law named *awig-awig* which is the basis for customary land tenure. If this is not done through community involvement and based on *awig-awig*, the boundaries determined will not be precise and will even cause conflict and instability in the community.

I Made Suwirta in his dissertation research found that customary lands in each customary village have not been inventoried and mapped so that it cannot provide accurate information on the extent of customary lands controlled and owned by customary villages. Boundary disputes between

²² Made Oka Cahyadi Wiguna, "Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali," *Jurnal Hukum Novelty*, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>.

indigenous villages have recently colored the lives of indigenous communities in Bali, such as those between the indigenous villages of Ulakan and Antiga, between the indigenous villages of Macang and Ngis in Karangasem. There have also been cases between the villages of Gunaksa and Kusamba Dawan Klungkung, between the villages of Pengosekan and Padangtegal Ubud Gianyar, and between the villages of Cekik and Gablogan in Tabanan. Therefore, the Pakraman Village Council needs to take the initiative to urge local governments in cities, regencies and provinces to conduct a holistic inventory and mapping of customary village with the aim of providing a complete picture of the existence of control and ownership rights over customary lands in each customary village with all its cultural activities, so that studies, guidance and empowerment will be effective and valuable. Finally, boundary disputes can be minimized.

Basically, there are several weaknesses in the current administration of customary land in Bali, namely:

1. The reduction of *druwe* land (*customary* land) in Bali to land rights, which are lower in the hierarchy of land tenure rights;
2. Land rights emphasize aspects of individual authority that are not in line with customary rights that have a public dimension or emphasize communal aspects or togetherness.
3. The takeover of customary land administration from customary law communities that should be respected into land registration through the CSLR Program, which is a systematic land registration that emphasizes the role of the government.
4. The existence of customary land registration programming in Bali Province through the CSLR program has weaknesses because this program prioritizes the aspect of quantity not quality. Whereas customary land is very qualitative in nature in which there are social, cultural and spiritual relations. Windia, Professor of the Faculty of Law Udayana, stated that the implementation of CSLR uses the principle of generalization which ignores the cultural diversity of each customary law community in Bali.
5. There is no good mechanism in the management of customary land in Bali so that legal certainty has not been created. Customary law communities do not yet have administrative mechanisms to determine land boundaries, land mutations, land ownership history and spatial stewardship and water use, which are elementary data in land management. The mechanism developed must be in line with the concept of public participation or participation from the customary law community concerned so that it is in line with the values and legal culture of the community.

3.3 Integral-Participatory Administration of Land of Indigenous Peoples

The problem of integrated policies in the land sector is an urgent problem both in developed countries, developing countries and under developing countries. Integrated land management is a strategy to optimize planning and implementation so that goals can be achieved. An integrated policy involves various actors to solve a problem.²³ A participatory approach is an approach that involves

²³ Jeremy Rayner dan Michael Howlett, "Introduction: Understanding integrated policy strategies and their evolution," *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>.

all parties.²⁴ The establishment of integrated and participatory policies has become Chapter X of Agenda 21 at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. This report states that to create an integrated land policy, parties must have a common goal, recognition of community rights, awareness of *mutual dependency*, involvement of all parties, transparent processes and consensus-based decision-making.²⁵

In this case, customary land management is actually based on the values embraced by the customary law community, including in the context of administering the land. One example is Panglipuran Village where the spatial layout is directed at the position of the rising sun and also the mountain at that location. In Panglipuran Village, which has an area of 112 acres, there is also a rule that it is not allowed to sell customary village land to people outside the village. The government should be present to support the existence and also ensure the implementation of the authority and rules of the customary law community. Instead of reducing the land of the customary law community from customary land to land rights as happened through the CSLR program and also making generalizations that do not respect the culture of the community.

The existence of various weaknesses in land administration certainly requires a new reconstruction that not only prioritizes quality aspects and makes the interests of indigenous peoples in Bali the main thing. Prioritizing the institutionalized authority of indigenous peoples and the participation of all indigenous peoples in Bali. There are several steps that must be taken in managing customary land in Bali, namely conducting an inventory of customary village lands, both those that become public facilities and customary village lands controlled by each village resident. Currently, based on the author's research, there has been an inventory of customary land in the community but it has not been fully implemented. This has been done in Mengwi village, for example. Based on data held by the Mengwi Village Clerk, I Putu Gede, there are several facilities in this traditional village spread across several Banjar, including in Banjar Mengwi, Banjar Pangean, Banjar Batu, Banjar Gampang, Banjar Pande, Banjar Alam Kajeng, Banjar Paseng. In addition, there are also burial grounds consisting of four, namely Setra Ageng, Setra Brahmana, Setra Pendeta and Setra Bebanjangan. In addition, there are also village lands that are currently used as rice fields consisting of Subak Tungku Mengwi and Subak Bulan. In addition, there are also several public facilities located on the dry land of this traditional village, namely markets, auxiliary health center posts, schools, museums, official houses, perbekel offices and field land. The other use of village land is village yard land which is land used by the village krama.

The discussion of subject certainty and object certainty is the basis for constructing the ideal administration of customary land in Bali Province. The author outlines the basic principles of integral participatory customary village administration, namely:

1. Respect for customary law

This means that the basis of the ideal land administration in Balinese traditional villages is to use customary law. This is also in line with the principle in Article 5 of the BAL that customary law is the basis of national agrarian law. In order to realize this, there needs to be an affirmation in the

²⁴ Sareh Moosavi dan Geoffrey R. Brown, "Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation," *Cities*, 111, January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>.

²⁵ C Kwakernaak, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED ' s Agenda 21* (The Netherlands, 1995).

national agrarian law and specifically in the Balinese regional regulation which confirms that the administration of customary land including customary land in Bali is based on customary law both written in awig-awig and pararem which is a *living law* in Balinese society. For example, in Tenganan Village it was found that newlyweds can apply to the customary village for land including cutting down trees. Both rules are based on Catur Dresta which is imbued with Balinese Hindu teachings. Windia stated that until now there has been no special regulation regarding the administration of customary land in Bali. This is a weakness in terms of substance when examined from the legal system proposed by Lawrence M. Friedmann.

2. Community participation in land administration

The word integration indicates that the administration of customary land in Bali must involve the community, academics and the government. In this case, the party with the most important role is the customary law community. This is important to ensure that the land administration process is in line with the values of the customary law community. This shows that community participation in land administration is genuine participation where the community determines the substance of land administration policies. Using Sherly Arnstein's ladder of participation, public participation in land administration should reach the level of *citizen control* so that it is the community that controls the decision-making.

3. The Importance of an Interdisciplinary Approach

In order to create this participation, there must be a change in the perspective of the government and a change in the power structure that gives more space to the community in making decisions. For public participation to be successful, there are several conditions that must be met, namely human resources, knowledge, finance and expertise. With regard to finance, public participation can reduce the costs of land administration and achieve greater benefits.²⁶ Among these resources, the most important is expertise, which makes an interdisciplinary approach very important. In this case, anthropology, sociology, law and geodesy need to be used so that land administration is based on holistic and comprehensive thinking.²⁷ The effectiveness of combining interdisciplinary, participatory and socio-legal approaches in dealing with indigenous peoples has been demonstrated by Michael Stauffacher in shaping and implementing sustainable policies in Switzerland.²⁸

At a technical level, the administration of customary land in Bali must be seen in three stages, namely planning, implementation and supervision. In the context of planning, the administration of customary land in Bali, which emphasizes public participation, discusses the land objects that will be the target of this activity, including the boundaries between customary villages so that communication with other customary villages is also necessary, the lands of public facilities that belong to and are used for the benefit of customary villages and customary village lands controlled by the village krama. This relates to the inventory aspect of customary village land.

²⁶ Hayes dan Murtinho.

²⁷ Kaisa Kurkela et al., "Citizen participation as an organisational challenge in local government," *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>.

²⁸ Michael Stauffacher et al., "Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region," *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>.

3.4 Construction of Village Druwe Land Administration in Bali that Guarantees Legal Certainty

Currently, there is no ideal inventory of Desa Adat land in Bali, although the administration is more advanced than in other areas because of block maps and set books. The block map contains the map and block numbers of the land and is accompanied by a set book that contains the names of participants corresponding to the numbers on the map. This book was the basis for tax payments in the past so it is not a special administration that the adat village has over land tenure in the village.

The current administration of customary village land in Bali still has various weaknesses, including that the administration only addresses the name of the owner of the land parcel and also the size of the land. This data is not detailed because not include clear land boundaries, no land parcel maps and no history of land tenure so that the user can be clearly determined, no clear information about mutations to land and no specific guidelines regarding spatial planning, land stewardship, building and water use. The absence of information on these matters clearly means that the value of legal certainty will not be achieved. In Humberto Avila's view, one form of legal certainty is certainty because of the law, namely the existence of clear and complete evidence for rights holders, which in this case is the Balinese customary law community. Certainty because the law itself is very important to provide protection and security for these customary law communities and prevent land ownership disputes.²⁹

It is also clear that the certainty of the object of the right, the certainty of the subject of the right and the certainty of the legal status of the land will not be achieved. Certainty of the object of the right will not be achieved because there is no certainty of the boundaries of the land associated with the existence of land maps and measurement letters and the existence of a clear spatial map. On the other hand, the certainty of the subject of the right also cannot be fully guaranteed because the owner is not clearly known because it is not supported by the history of land ownership and there is no clear evidence of land mutation. The lack of certainty of the subject of the right and the object of the right will certainly affect the certainty of the legal status of the land.³⁰

A more in-depth and technical review shows that the weakness of this inventory of indigenous villages is that there is no specific administration of land tenure and use in indigenous villages, both related to land history; Land Parcel Maps; Records of Land Mutations and Problems and contains Spatial Planning, Land Stewardship, Building Planning and Water Use. To overcome these problems, it is necessary to reconstruct the land administration by dividing the land administration into four books consisting of:

Book A				Book B				Book C				Book D			
Land History				Land Map				Land Mutation Data				Spatial Planning, Land Use And Water Use			
Land	history	is		The purpose of Book B				Land	mutation	data		Book D is one of the most			
important	so	that	the	is to create certainty of the				plays an important role in				important and fundamental			

²⁹ Katharina Pistor, "The value of law," *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>.

³⁰ Robert B Keiter dan Matthew Mckinney, "Public land and resources law in the American West," *Environmental Law*, 49.1 (2019), 1–72.

<p>history of land tenure and use can be known so that the subject of the right can be known with certainty. This book can describe the name of the party using the land, the basis of the land tenure and the use of the land. This also applies to land controlled by groups of indigenous people together for public purposes such as land for temples, markets and various other activities. The existence of this book will make it easier for indigenous peoples to prove the existence of control and ownership of the land from the claims of other parties.</p>	<p>object of the right because it contains physical land data. This book determines the size of land parcels and the boundaries of land parcels controlled by customary law communities, including land parcels controlled by villagers. The existence of this book is also to clearly define the boundaries of the customary village so that conflicts over land boundaries between customary villages can be prevented. It is also important to determine the boundaries of land for public facilities such as cemeteries, schools, official houses, perbekel offices, temples and others so that the boundaries are clear. Included in what needs to be properly inventoried are the clear boundaries of land parcels so that conflicts between village krama do not occur and there is no conflict between adat structures with structures (bendesa) and village krama. In practice, the determination of land boundaries needs to involve the village or the bordering landowner.</p>	<p>realizing legal certainty for customary village land because it can identify changes in the list of users so that it can be <i>updated</i> from time to time. The author needs to state the user of land because this land is still juridically indigenous village land but is physically used by the village krama. The existence of this data is also important to serve as evidence to avoid claims from irresponsible parties. The land mutation data above is also very important to prevent the transfer of land to people outside the customary village and the pledging of customary village land. This is because both of these are prohibited in the Balinese customary law community and sanctions will be imposed on the perpetrators. This happened in the Tenganan indigenous community in 1985 and the person was penalized to pay twice the price of the land at the time.</p>	<p>books in the administration of customary land in Bali because it determines the designation of land parcels such as land intended for village settlements (krama), land for agriculture, land for engagement and other interests. This causes the use of land to be adjusted to the potential of the land and to prevent problems in the future</p>
--	--	---	--

The creation of the four books above can be done through a program that emphasizes the authority of Balinese customary law communities in administering their land. This will lead to various benefits, namely: (1) it is a form of respect for customary law communities in managing their territories; (2) it prevents the transfer of customary land to other parties; (3) it increases legal certainty in the land sector; and (4) it prevents conflicts in the land sector, both conflicts between fellow village krama and between customary villages.

4. Conclusion

There are several weaknesses of customary land administration in Balinese customary law communities, namely: (1) customary land rights are reduced to land rights; (2) land rights emphasize individual aspects while customary land rights emphasize communalism; (3) customary land

administration through complete systematic land registration emphasizes the active role of the government while customary land administration should emphasize the active role of customary law communities; (4) There is no good mechanism in the management of customary land in Bali so that legal certainty has not been created. These weaknesses can be overcome by the principle of integral and participatory customary land administration. In the realm of practice, this is implemented by making four books, namely: (1) book A containing land history; (b) book B containing land maps; (c) book C containing land mutation data; (d) book D containing spatial planning, land use and water use. This idea will create legal certainty and prevent land conflicts.

References

- Aasoglenang, Thaddeus Arkum, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>
- Christiansen, Thomas, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>
- Drange, Live Danbolt, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>
- Eka Suadnyana, Ida Bagus Putu, "DESA PAKRAMAN SEBAGAI LEMBAGA ADAT DAN LEMBAGA AGAMA BAGI KEHIDUPAN MASYARAKAT HINDU DI BALI," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>
- Griffiths, John, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56
- Hamida, Nilna Aliyan, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>
- Hayes, Tanya, dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>
- Hirschl, Ran, dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>
- Jamin, Mohamad, Sapto Hermawan, dan Mulyanto Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.3 (2023), 346–66 <<https://doi.org/10.22304/pjih.v10n3.a3>>
- Jayus, Jaja Ahmad, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>
- Keiter, Robert B, dan Matthew McKinney, "Public land and resources law in the American West," *Environmental Law*, 49.1 (2019), 1–72
- Kementerian ATR BPN, *Laporan Akhir Inventarisasi dan Identifikasi tanah Ulayat di Provinsi Bali dan Nusa Tenggara Timur* (Yogyakarta, 2021)

- Kurkela, Kaisa, Anna–Aurora A. Kork, Anni Jäntti, dan Henna Paananen, “Citizen participation as an organisational challenge in local government,” *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>
- Kwakernaak, C, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED 's Agenda 21* (The Netherlands, 1995)
- Larsen, Peter Bille, dan Jérémie Gilbert, “Indigenous rights and ILO Convention 169: learning from the past and challenging the future*,” *International Journal of Human Rights*, 24.2–3 (2020), 83–93 <<https://doi.org/10.1080/13642987.2019.1677615>>
- M. Suasthawa D, *Status dan Fungsi tanah Adat Bali Setelah Berlakunya UUPA*. (Denpasar: CV. Kayumas Agung, 1987)
- Moosavi, Sareh, dan Geoffrey R. Brown, “Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation,” *Cities*, 111.January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>
- Pistor, Katharina, “The value of law,” *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>
- Rayner, Jeremy, dan Michael Howlett, “Introduction: Understanding integrated policy strategies and their evolution,” *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>
- Selle, Per, dan Kristin Strømsnes, “Indigenous People’s Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi,” *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>
- Stauffacher, Michael, Thomas Flüeler, Pius Krütli, dan Roland W. Scholz, “Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region,” *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>
- Sulaiman, King Faisal, “Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012,” *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>
- Suwitra, I Made, “Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional” (Universitas Brawijaya, 2009)
- Swardhana, Gde Made, dan Suwiat Jenvitchuwong, “The Participation within Indigenous Land management: Developments and Challenges of Indigenous Communities Protection,” *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>
- Swenson, Geoffrey, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/isr/vix060>>
- Tamanaha, Brian Z., *Legal pluralism explained: History, theory, consequences, Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>
- de Villiers, Bertus, “Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?,” *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>
- Wiguna, Made Oka Cahyadi, “Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali,” *Jurnal Hukum*

Novelty, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>

Willow, Anna J., “Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination,” *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>



REVIEW

sukirno mardjono <kirno9undip@gmail.com>

[BESTUUR] Editor Decision

4 pesan

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H.,M.M. <jurnal@mail.uns.ac.id>

26 Oktober 2024

pukul 13.02

Balas Ke: Lego Karjoko

<bestuurlaw@gmail.com>

Kepada: Mr Sukirno Sukirno

<kirno9undip@gmail.com>

bestuurlaw@gmail.com

Mr

Sukirno

Sukirno:

We have reached a decision regarding your submission to BESTUUR, "Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes".

Our decision is:

Revisions Required


Lego Karjoko

Scopus ID: 57211444511, Faculty of Law Universitas Sebelas Maret Surakarta, Indonesia

bestuurlaw@gmail.com

[mail.com](mailto:bestuurlaw@gmail.com)

Administrative Law Department Faculty of Law Universitas Sebelas Maret

 **90365-258792-1-RV.docx**

3700K

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H.,M.M. <jurnal@mail.uns.ac.id>

26 Oktober 2024

pukul 13.03


Balas Ke: Lego Karjoko

<bestuurlaw@gmail.com>

Kepada: Mr Sukirno Sukirno

<kirno9undip@gmail.com>

[Kutipan teks disembunyikan]

 **90365-258792-1-RV.docx**

3700K

sukirno mardjono <kirno9undip@gmail.com>

30 Oktober 2024

pukul 09.29

Kepada: Lego Karjoko

<bestuurlaw@gmail.com>

Dear Editor Bestuur

I would like to say thanks for your review. We will do the revision soon according to the review comment.

Author

Dr. Sukirno, S.H., M.Si

[Kutipan teks disembunyikan]

sukirno mardjono <kirno9undip@gmail.com>
pukul 09.30
Kepada: Lego Karjoko

30 Oktober 2024

<bestuurlaw@gmail.com>

Dear Editor in Chief

Bestuur

I would like to say thanks for your review. We will do the revision soon according to the review comment.

Author

Dr. Sukirno, S.H., M.Si

Pada Sab, 26 Okt 2024 pukul 13.03 Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H.,M.M. <jurnal@mail.uns.ac.id> menulis:
[Kutipan teks disembunyikan]



Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes

Sukirno^{a,1,*}, Muh.Afif Mahfud^{b,2}, Muhammad Fahad Malik^{c,3}

^a Faculty of Law, Diponegoro University, Indonesia

^b Faculty of Law, Diponegoro University, Indonesia

^c Department of Law, Khwaja Fareed University of Engineering and Information Technology, Pakistan

¹ kirno9undip@gmail.com*; ² afifmahfud4@gmail.com ³ fahadmalikawan98@gmail.com

* corresponding author

Commented [ap1]: 1.The author is from Pakistan. Can you explain how the author contributed to this research?
2. There has been a lot of research and writing about this. Can you write something more interesting than some of the existing titles? (https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Reconstructing+Village+Druwe+Land+Administration+in+Bali+to+Prevent+Disputes+&btnG=)

Commented [ap2]: The author is from Pakistan. Can you explain how the author contributed to this research?

ARTICLE INFO

Article history

Received:

Revised:

Accepted:

Keywords

Bali

Dispute

Land Administration

Legal Certainty

Village Druwe Land

ABSTRACT

This research was conducted based on the condition of the existence of *village druwe* land (customary land of indigenous villages in Bali) which is increasingly eroded by the perception of some villagers who consider village yard land as private property that is passed down from generation to generation. This situation has sparked various disputes between indigenous villagers and village officials. The main objective of this study is to uncover the weakness of village land administration as well as offering measures to prevent future disputes. The research used a socio-legal approach, involving interviews with *Kelian Adat* (traditional village leaders) or traditional village officials responsible for the administration of *village druwe* land. The results show that there are various weaknesses in the current administration of customary land in Bali, namely (a) the administration of customary land through complete systematic land registration emphasizes the active role of the government whereas the administration of customary land should emphasize the active role of customary law communities; (b) the current administration of customary land in Bali is not detailed, creating legal uncertainty. These weaknesses can be overcome by the principle of integral and participatory customary land administration. In the realm of practice, this is implemented by making four land books containing land history, land maps, land mutation data and spatial planning, land use and water use.



This is an open access article under the [CC-BY 4.0](https://creativecommons.org/licenses/by/4.0/) license.



Commented [ap3]: This is not a research problem, it is just the author's opinion and is very long

Commented [ap4]: This section confirms that this research does not provide an in-depth analysis of the findings, only general opinions commonly found in various existing writings.

1. Introduction

The fulfillment of indigenous peoples' rights to their land needs attention because 5% of the world's current population or around 370 million people are indigenous peoples spread across 70 countries.¹ In Indonesia, there are still lands controlled by indigenous people named customary land. Customary rights are the authority possessed by the community to control, regulate and

¹ Peter Bille Larsen dan Jérémie Gilbert, "Indigenous rights and ILO Convention 169: learning from the past and challenging the future*," *International Journal of Human Rights*, 24.2-3 (2020), 83-93 <<https://doi.org/10.1080/13642987.2019.1677615>>.

manage land for the benefit of its citizens. The existence of customary land rights is mostly found in areas outside Java. In Bali, there are still communities called adat villages (formerly called pakraman villages) that control customary lands, including village yards, land for temples, cemetery land, field land, land for public facilities such as markets and schools. All land controlled by an adat village is referred to as village *druwe* land or village-owned land.

This traditional village in Bali has existed since the 8th century AD, precisely after the arrival of *Mahayogi Markandya* to spread religion and build *Kahyangan Desa*. Then *Mahayogi Markandya's* successor, Mpu Kuturan, in 1001 AD held a Grand Meeting with community leaders in Batanyar and made five main decisions. One of the main decisions stated that all yard lands and lands located around the traditional village as well as the lands of *Kahyangan Tiga* belonged to the traditional village and these lands could not be traded.² So it is clear that according to customary law in Bali, village-owned land (*druwe land*) is not an individual property but a communal property (*desa adat*) which until now has not been allowed to be sold. Even though this is used by individual but this remains village ownership.

However, the existence of *village druwe* land as customary land is negated by national law, with the issuance of Law No.5 of 1960 on Basic Agrarian Law (here in after BAL), especially Article II Conversion Provisions which states that *druwe* land is converted into property rights. Because *druwe* land becomes freehold land, the owner can carry out any legal action without permission from the adat village apparatus, such as inheriting, leasing, pledging, and buying and selling. This individualization of land owned by customary law communities is clearly a form of inconsistency with the protection of customary land ownership in Balinese society and is not in line with the *Pasamuhan Tiga* Decision. Ironically, the reduction of the communalistic nature of customary land is also caused by legislation that makes customary land the object of land registration and certificates can be issued for the land. This clearly reduces customary land rights to land rights, even though these rights actually have a higher position in the hierarchy of land tenure rights. It means there is contradiction between national law and Bali customary law regarding to *druwe* land status. This regulation also contradicts with Article 58 paragraph (1) of Bali Province Regional Regulation No. 4/2019 which states that land owned by customary villages is registered on behalf of the customary village. Therefore, the customary land registration uses the name of the customary village as the right holder.

The conflict between Balinese customary law and national law triggered a dispute between the village *krama* (villagers) and the traditional village apparatus headed by *Kelian Adat*. Land ownership in Balinese customary law communities is strongly tied to its religious communalistic characteristics. However, in its development, there are elements of the *village krama* (villagers) who use customary land and then register the land as individual ownership. This condition mainly occurs in tourism territory.

As a result, disputes between villagers and customary villages have been brought to court, for example the Bangli District Court Decision No.20/Pdt.G/2008/PN.Bli which confirmed that villagers have property rights over PKD. This Bangli District Court decision was also upheld by the CA and Supreme Court decision No.622 K/Pdt/2012. The same thing also happened in Gianyar Regency, where the Lembeng Customary Village lost its case against the villagers with the Denpasar District Court Decision No.4/PDT/2016/PT.DPS. This condition shows that the process of certification (land registration) of customary land in Bali on behalf of the village *krama* is something that needs to be examined because it has a negative impact on the existence of customary law communities as an entity that needs to be respected and protected.

The Faculty of Law team of Gadjah Mada University in collaboration with the Ministry of Agrarian Spatial Planning / National Land Agency found that the transfer of customary land through three ways, namely: (1) individualization of customary land into individual land that has occurred since 1980. This also arose when massive land registration was implemented; (2) the release of

² M. Suasthawa D, *Status dan Fungsi tanah Adat Bali Setelah Berlakunya UUPA*. (Denpasar: CV. Kayumas Agung, 1987).

customary land for the construction of public facilities; (3) transfers because residents sold village yard land to other people.³ This condition clearly shows that customary land administration policies in Indonesia need improvement.

The customary land administration policy is caused by land policies that are not integrative and participatory. The government makes itself the main actor in the administration of customary land rights of indigenous peoples even though the constitution and international conventions have stated that indigenous peoples have the right of self-determination so that they are authorized to carry out land administration based on the unique social and cultural conditions of Balinese indigenous peoples. This has led to the absence of an accurate inventory and mapping of customary land in Bali's indigenous communities. Based on these conditions, this article will elaborate on the condition of customary land administration in Bali and the concept of integral and participatory customary land administration.

2. Research Method

The approach used in this research is socio-legal research, namely legal research that conceptualizes law as symbolic meanings. Primary data in this research was obtained in direct research in the field using in depth interview and participant observation methods. The data that has been collected is analyzed qualitatively based on inductive thinking.

3. Results and Discussion

3.1 Weak Legal Pluralism and Inaccurate Administration of Customary Land in Bali

Legal pluralism is a reality that always covers humans because humans are actually not only bound by state law but also various other orders of life.⁴ Griffith defines legal pluralism as a condition where there are two laws that exist simultaneously in the same space, object and time. According to him, legal pluralism can be divided into two, namely: (1) weak legal pluralism which is a condition where customary law is subordinate to state law and (2) strong legal pluralism which is a situation where customary law is in an equal position with state law.⁵ Indonesia applies weak legal pluralism because the recognition, respect and protection of indigenous peoples are highly dependent on the will, goodness and policies of the state.⁶ Weak customary law pluralism is also found in the 1945 Constitution which is also still conditional because it must be in accordance with the laws and regulations made by the state.⁷ This has caused many problems regarding the protection of indigenous peoples in Indonesia, such as the uncertainty of the *legal standing* of these communities, the takeover of customary land by the government or the private sector and various other complex problems.⁸

Commented [ap5]: 1. Please clarify and emphasize the legal issue of this research, at this time it is similar to reading a newspaper, there is no visible problem at all.
2. Please also emphasize the importance of conducting research.
3. Please update this research by making comparisons with previous studies.
4. The author states the title is "Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes", but it does not relate to what is being discussed.
5. Can the author tell us the conflict's economic impact and please support it with statistical data from the last 5 years?

Commented [ap6]: You are required to mention the Research design, research tools (data collection methods), procedure and Data analyses. Add what is missing, not only saying that the research is socio-legal research but not mentioning how many sources and respondents and who

Commented [ap7]: 1. As a result, it still needs to meet the standards; because it only describes the law, the author should have explained the regulatory issues, which were elaborated with legal theory.
2. Result but the material is Literature review
3. The discussion material for this article is out of standar
4. You should discuss why Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes is necessary and the problems and challenges. Please support it with accurate data because this is socio-legal research.

³ Kementerian ATR BPN, *Laporan Akhir Inventarisasi dan Identifikasi tanah Ulayat di Provinsi Bali dan Nusa Tenggara Timur* (Yogyakarta, 2021).

⁴ Brian Z. Tamanaha, *Legal pluralism explained: History, theory, consequences*, *Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>.

⁵ John Griffiths, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56.

⁶ Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>.

⁷ Gde Made Swardhana dan Suviwat Jenvichuwong, "The Participation within Indigenous Land management: Developments and Challenges of Indigenous Communities Protection," *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>.

⁸ Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>.

In these conditions, there can be contestation between the two and when this happens, customary law has the potential to be overridden by state law. This causes the application of state law to customary law to be scrutinized so that the negation of the uniqueness and rights of these communities is not sidelined in policy making.⁹

This weak legal pluralism affects the pattern of policy making and formation in the land sector in Indonesia, which places the state as the main actor in administering the customary land of indigenous peoples. Based on this authority, the state has formed various laws and regulations including the Regulation of the Minister of Agrarian Affairs No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas. Based on this regulation, the state conducts land registration of indigenous peoples which will result in land certificates in the form of land ownership rights to indigenous peoples.

The granting of land rights in the last two regulations has actually reduced the ulayat rights of customary law communities to land rights. This is clearly not appropriate because in the hierarchy of land tenure in Indonesia it is clear that customary rights have a higher position than land rights. The hierarchy of land tenure rights is:¹⁰

- a. Indonesian rights to land;
- b. State control over land;
- c. The customary rights of customary law communities;
- d. Individual rights

In this regard, it is important to understand that only individual land rights are subject to land registration that can be owned individually or collectively. Through such land rights, the right holder has access to or use of the land and exclusivity or excludes others from using the land. This condition shows that the aspect of individual authority becomes the focal point in land rights. This has led to the individualization of land rights. In fact, in our research there are land rights that are certified in the name of an individual rather than on behalf of indigenous community.

I Made Suwitra states that the highest right of control over customary land is in the customary village in form of right to manage, to regulate, to use and to utilize. This right of control is basically still based on a religious communalistic nature that is autonomously governed by customary law. One example occurs in Panglipuran Village where the use of land such as the change in the number of cultivators of customary land from 45 to 78 was decided by Customary Council.¹¹ The Customary Council has the authority to manage: (1) land owned by the Customary Village; (2) communal or individual land for use. Land for use has customary, religious, traditional, cultural and economic functions for the owner while still paying attention to the social function of land rights.

Historically, land ownership in Bali cannot be separated from the history of the *Pasamuan Tiga* Decree chaired by Mpu Kuturan which clearly states that all land within the village area including

⁹ Thaddeus Arkum Aasoglenang, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>.

¹⁰ King Faisal Sulaiman, "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012," *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>.

¹¹ I Made Suwitra, "Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional" (Universitas Brawijaya, 2009).

Commented [ap8]: Never display it like this because it is just like copying and pasting; please narrate it into a paragraph according to your needs.

Kahyangan Tiga land belongs to the customary village, cannot be traded and there is no individual ownership. Basically, every villager who utilize a patch of land is obliged to carry out village ayahan in the form of both labor and material.¹² The customary council should carry out the administration of customary land including maintaining the continuity of the status of *Padruwen* land rights of the Customary Village, maintaining the sanctity, preservation, cleanliness, and orderly use of the property of the customary law community. In connection with this journal, the author needs to elaborate on the definitions and differences between customary village land, village yard land (PKD) and village land (AYDS) as in the following table:

Customary Village Land	Village Yard Land	Tanah Ayahan Village
Land owned by the Desa Adat, both those directly managed by the Desa Adat, such as: setra land (cemetery), palaba land (temple interests), market land (tanten), etc., as well as those handed over to the Krama Desa Adat for management, such as Desa Adat pakarangan land and Desa Adat ayahan land.	land which is utilized by <i>krama</i> (villagers) to live.	village land cultivated by <i>krama</i> for agriculture and others

Commented [ap9]: ???
??

Given that PKD and AYDS land is customary village land, each village *krama* may not transfer of rights to the land to other parties. However, empirically, under the pretext of conversion regulations in the BAL, the village *krama* can convert their land into freehold land ignoring the customary law that applies to the village land they control. In the end, conflicts occurred between the village *krama* and the Bendesa Desa Adat in various regions in Bali. The current ignorance of the reality of the communal nature of land and the role of customary council in the management process has led to the loss of the right of customary law communities to manage their own territories, including land as a resource governed by the tools or structures of the customary law community.

The reduction of customary rights to land rights and the disrespect for the authority of these communities to manage their own territories violates the state's obligation to protect the rights of indigenous peoples.¹³ This obligation is contained in Article 6 of the *Indigenous and Tribal Peoples Convention* 1989 which states that the government must consult indigenous peoples on policies that can affect their lives. In the convention, there is the principle of *prior, free* and *informed consultation* which should be the basis for the government in making policies in the land sector.¹⁴ Fergus MacKay's research shows that the non-ratification of this convention has a negative impact on the protection of indigenous peoples, including the Toba Batak community

¹² Ida Bagus Putu Eka Suadnyana, "Desa Pakraman sebagai Lembaga Adat dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu di Bali," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>.

¹³ Bertus de Villiers, "Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?," *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>.

¹⁴ Tanya Hayes dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>.

which is the focus of his research.¹⁵ Experts in the field of indigenous peoples currently question the government's attention and policies towards indigenous peoples. This is due to the lack of countries that have ratified the *Indigenous and Tribal Peoples Convention* and the many violations of the rights of indigenous peoples in the world.¹⁶

The implementation of customary land administration is not in accordance with these obligations because it has reduced the customary land rights of indigenous peoples to individual rights, does not involve indigenous peoples and applies the *prior informed* and *consent principle*. This condition contrasts with the wave of fulfillment and strengthening of indigenous peoples' rights to land in other countries such as Scandinavia. In fact, in 1832, the United States Supreme Court had issued a decision recognizing the rights of Indian Tribes as independent community entities that have the right to regulate and manage their own territory.¹⁷ The same thing happened to the Sami indigenous people in Norway who even have their own parliament to guarantee their interests called Sámediggi which has existed since 1989.¹⁸

The conditions of indigenous peoples in the countries above are very different from those in Indonesia because the government still uses a partial, non-integral - participatory approach in land administration because it does not involve indigenous peoples in the process.¹⁹ This will lead to various conflicts.²⁰ This is because customary law communities have their own order that must be considered and government policies that ignore this will be opposed by the community. This is what Ran Hirschl and Alexander Hudson call participation determining legitimacy. They state that participation has three characteristics: transparency, substantive and community involvement.²¹

3.2 Administration of Customary Land and its Problems

Problems arise because there is land registration carried out in traditional villages in Bali with the issuance of certificates as proof of ownership of land rights through the Complete Systematic Land Registration (here in after referred to CSLR) program. This land registration of customary lands was mainly carried out in 2018 so that many customary lands were then certified in the

¹⁵ Live Danbolt Drange, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>.

¹⁶ Thomas Christiansen, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>.

¹⁷ Anna J. Willow, "Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination," *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>.

¹⁸ Per Selle dan Kristin Strømsnes, "Indigenous People's Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi," *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>.

¹⁹ Geoffrey Swenson, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/isr/vix060>>.

²⁰ Mohamad Jamin, Sapto Hermawan, dan Mulyanto Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.3 (2023), 346–66 <<https://doi.org/10.22304/pjih.v10n3.a3>>.

²¹ Ran Hirschl dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>.

program. The inclusion of customary land in Bali as an object of Systematic and Complete Land Registration has clearly reduced customary land rights to land rights. Through this CSLR, there will be two problems that can arise, namely that the land will become a land right that can be easily claimed by individuals, including being transferred and potentially becoming an object of collateral with a mortgage. Some examples of problems with CSLR implementation in Bali is there are indigenous villagers who get Free Hold Certificate on behalf of individual.

This condition is also inseparable from the faulty conversion provisions in national land law. Article 2 paragraph (1) of the BAL Conversion Provision states that *druwe* land can be converted into free hold land. Made Oka Cahyadi Wiguna stated that the substance of the provision that converts village *druwe* rights into individual property rights is not appropriate because the land is actually communal land of the customary law community concerned.²² Because the land is made into property rights, it will be easier to transfer to other parties, does not show respect for the authority of customary structures and emphasizes individual aspects. Conversion of Village Courtyard Land and Ayahan Land into full private or individual land so that it will eliminate the communalistic nature of *druwe* land into individual private land. This case occurred in Lemukih Pakraman Village (Buleleng Regency), Culik Pakraman Village (Karangasem Regency),¹⁴ Belancan Village, Bukih Village and Manikliyu Village (Bangli Regency). There were 25 cases of land certification of village *druwe* into private land in Belancan Village and 10 certifications in Bukih Village, while in Manikliyu Village there was private land acquisition by residents without being bound by ayahan.

Individual free hold certificate over *druwe land* (*village land*) not only degrade the position of customary rights but also cause this land can easily transferred. This condition further jeopardizes the position of customary land. Moreover, based on the results of the author's research, there are various examples that show the conversion of customary rights into private property rights in Balinese customary law communities.

The individualization of customary land into freehold land is also caused by poor inventory of customary land, starting with the absence of land boundaries, which can lead to conflicts between land users and between customary villages. Data on the mutation of land use is unknown so that the use of customary land by individuals cannot be monitored by the customary council and transferred to other parties. At this point, indigenous peoples and the government should jointly conduct customary land mapping. The involvement of indigenous peoples in the administration of customary land is actually a very good event also to make proper land mapping because what is desired in the legislation is land mapping, not land registration, which reduces the communalistic aspects of the community. The mapping of customary land should clearly determine the boundaries of customary land areas, land assets owned by customary law communities, the boundaries of land used by the community, the boundaries of agricultural land and various other aspects. This can be done because the customary law community has customary law named *awig-awig* which is the basis for customary land tenure. If this is not done through community involvement and based on *awig-awig*, the boundaries determined will not be precise and will even cause conflict and instability in the community.

²² Made Oka Cahyadi Wiguna, "Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali," *Jurnal Hukum Novelty*, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>.

I Made Suwirta in his dissertation research found that customary lands in each customary village have not been inventoried and mapped so that it cannot provide accurate information on the extent of customary lands controlled and owned by customary villages. Boundary disputes between indigenous villages have recently colored the lives of indigenous communities in Bali, such as those between the indigenous villages of Ulakan and Antiga, between the indigenous villages of Macang and Ngis in Karangasem. There have also been cases between the villages of Gunaksa and Kusamba Dawan Klungkung, between the villages of Pengosekan and Padangtegal Ubud Gianyar, and between the villages of Cekik and Gablogan in Tabanan. Therefore, the Pakraman Village Council needs to take the initiative to urge local governments in cities, regencies and provinces to conduct a holistic inventory and mapping of customary village with the aim of providing a complete picture of the existence of control and ownership rights over customary lands in each customary village with all its cultural activities, so that studies, guidance and empowerment will be effective and valuable. Finally, boundary disputes can be minimized.

Basically, there are several weaknesses in the current administration of customary land in Bali, namely:

1. The reduction of *druwe* land (*customary* land) in Bali to land rights, which are lower in the hierarchy of land tenure rights;
2. Land rights emphasize aspects of individual authority that are not in line with customary rights that have a public dimension or emphasize communal aspects or togetherness.
3. The takeover of customary land administration from customary law communities that should be respected into land registration through the CSLR Program, which is a systematic land registration that emphasizes the role of the government.
4. The existence of customary land registration programming in Bali Province through the CSLR program has weaknesses because this program prioritizes the aspect of quantity not quality. Whereas customary land is very qualitative in nature in which there are social, cultural and spiritual relations. Windia, Professor of the Faculty of Law Udayana, stated that the implementation of CSLR uses the principle of generalization which ignores the cultural diversity of each customary law community in Bali.
5. There is no good mechanism in the management of customary land in Bali so that legal certainty has not been created. Customary law communities do not yet have administrative mechanisms to determine land boundaries, land mutations, land ownership history and spatial stewardship and water use, which are elementary data in land management. The mechanism developed must be in line with the concept of public participation or participation from the customary law community concerned so that it is in line with the values and legal culture of the community.

3.3 Integral-Participatory Administration of Land of Indigenous Peoples

The problem of integrated policies in the land sector is an urgent problem both in developed countries, developing countries and under developing countries. Integrated land management is a strategy to optimize planning and implementation so that goals can be achieved. An integrated

Commented [ap10]: Never display it like this because it is just like copying and pasting; please narrate it into a paragraph according to your needs.

policy involves various actors to solve a problem.²³ A participatory approach is an approach that involves all parties.²⁴ The establishment of integrated and participatory policies has become Chapter X of Agenda 21 at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. This report states that to create an integrated land policy, parties must have a common goal, recognition of community rights, awareness of *mutual dependency*, involvement of all parties, transparent processes and consensus-based decision-making.²⁵

In this case, customary land management is actually based on the values embraced by the customary law community, including in the context of administering the land. One example is Panglipuran Village where the spatial layout is directed at the position of the rising sun and also the mountain at that location. In Panglipuran Village, which has an area of 112 acres, there is also a rule that it is not allowed to sell customary village land to people outside the village. The government should be present to support the existence and also ensure the implementation of the authority and rules of the customary law community. Instead of reducing the land of the customary law community from customary land to land rights as happened through the CSLR program and also making generalizations that do not respect the culture of the community.

The existence of various weaknesses in land administration certainly requires a new reconstruction that not only prioritizes quality aspects and makes the interests of indigenous peoples in Bali the main thing. Prioritizing the institutionalized authority of indigenous peoples and the participation of all indigenous peoples in Bali. There are several steps that must be taken in managing customary land in Bali, namely conducting an inventory of customary village lands, both those that become public facilities and customary village lands controlled by each village resident. Currently, based on the author's research, there has been an inventory of customary land in the community but it has not been fully implemented. This has been done in Mengwi village, for example. Based on data held by the Mengwi Village Clerk, I Putu Gede, there are several facilities in this traditional village spread across several Banjar, including in Banjar Mengwi, Banjar Pangean, Banjar Batu, Banjar Gampang, Banjar Pande, Banjar Alam Kajeng, Banjar Paseng. In addition, there are also burial grounds consisting of four, namely Setra Ageng, Setra Brahmana, Setra Pendeta and Setra Bebanjangan. In addition, there are also village lands that are currently used as rice fields consisting of Subak Tungku Mengwi and Subak Bulan. In addition, there are also several public facilities located on the dry land of this traditional village, namely markets, auxiliary health center posts, schools, museums, official houses, perbekel offices and field land. The other use of village land is village yard land which is land used by the village krama.

The discussion of subject certainty and object certainty is the basis for constructing the ideal administration of customary land in Bali Province. The author outlines the basic principles of integral participatory customary village administration, namely:

1. Respect for customary law

²³ Jeremy Rayner dan Michael Howlett, "Introduction: Understanding integrated policy strategies and their evolution," *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>.

²⁴ Sareh Moosavi dan Geoffrey R. Brown, "Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation," *Cities*, 111, January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>.

²⁵ C Kwakernaak, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED 's Agenda 21* (The Netherlands, 1995).

This means that the basis of the ideal land administration in Balinese traditional villages is to use customary law. This is also in line with the principle in Article 5 of the BAL that customary law is the basis of national agrarian law. In order to realize this, there needs to be an affirmation in the national agrarian law and specifically in the Balinese regional regulation which confirms that the administration of customary land including customary land in Bali is based on customary law both written in *awig-awig* and *pararem* which is a *living law* in Balinese society. For example, in Tenganan Village it was found that newlyweds can apply to the customary village for land including cutting down trees. Both rules are based on Catur Dresta which is imbued with Balinese Hindu teachings. Windia stated that until now there has been no special regulation regarding the administration of customary land in Bali. This is a weakness in terms of substance when examined from the legal system proposed by Lawrence M. Friedmann.

2. Community participation in land administration

The word integration indicates that the administration of customary land in Bali must involve the community, academics and the government. In this case, the party with the most important role is the customary law community. This is important to ensure that the land administration process is in line with the values of the customary law community. This shows that community participation in land administration is genuine participation where the community determines the substance of land administration policies. Using Sherly Arnstein's ladder of participation, public participation in land administration should reach the level of *citizen control* so that it is the community that controls the decision-making.

3. The Importance of an Interdisciplinary Approach

In order to create this participation, there must be a change in the perspective of the government and a change in the power structure that gives more space to the community in making decisions. For public participation to be successful, there are several conditions that must be met, namely human resources, knowledge, finance and expertise. With regard to finance, public participation can reduce the costs of land administration and achieve greater benefits.²⁶ Among these resources, the most important is expertise, which makes an interdisciplinary approach very important. In this case, anthropology, sociology, law and geodesy need to be used so that land administration is based on holistic and comprehensive thinking.²⁷ The effectiveness of combining interdisciplinary, participatory and socio-legal approaches in dealing with indigenous peoples has been demonstrated by Michael Stauffacher in shaping and implementing sustainable policies in Switzerland.²⁸

At a technical level, the administration of customary land in Bali must be seen in three stages, namely planning, implementation and supervision. In the context of planning, the administration of customary land in Bali, which emphasizes public participation, discusses the land objects that will be the target of this activity, including the boundaries between customary villages so that communication with other customary villages is also necessary, the lands of public facilities that

Commented [ap11]: Never display it like this because it is just like copying and pasting; please narrate it into a paragraph according to your needs.

²⁶ Hayes dan Murtinho.

²⁷ Kaisa Kurkela et al., "Citizen participation as an organisational challenge in local government," *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>.

²⁸ Michael Stauffacher et al., "Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region," *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>.

belong to and are used for the benefit of customary villages and customary village lands controlled by the village krama. This relates to the inventory aspect of customary village land.

3.4 Construction of Village Druwe Land Administration in Bali that Guarantees Legal Certainty

Currently, there is no ideal inventory of Desa Adat land in Bali, although the administration is more advanced than in other areas because of block maps and set books. The block map contains the map and block numbers of the land and is accompanied by a set book that contains the names of participants corresponding to the numbers on the map. This book was the basis for tax payments in the past so it is not a special administration that the adat village has over land tenure in the village.

The current administration of customary village land in Bali still has various weaknesses, including that the administration only addresses the name of the owner of the land parcel and also the size of the land. This data is not detailed because not include clear land boundaries, no land parcel maps and no history of land tenure so that the user can be clearly determined, no clear information about mutations to land and no specific guidelines regarding spatial planning, land stewardship, building and water use. The absence of information on these matters clearly means that the value of legal certainty will not be achieved. In Humberto Avila's view, one form of legal certainty is certainty because of the law, namely the existence of clear and complete evidence for rights holders, which in this case is the Balinese customary law community. Certainty because the law itself is very important to provide protection and security for these customary law communities and prevent land ownership disputes.²⁹

It is also clear that the certainty of the object of the right, the certainty of the subject of the right and the certainty of the legal status of the land will not be achieved. Certainty of the object of the right will not be achieved because there is no certainty of the boundaries of the land associated with the existence of land maps and measurement letters and the existence of a clear spatial map. On the other hand, the certainty of the subject of the right also cannot be fully guaranteed because the owner is not clearly known because it is not supported by the history of land ownership and there is no clear evidence of land mutation. The lack of certainty of the subject of the right and the object of the right will certainly affect the certainty of the legal status of the land.³⁰

A more in-depth and technical review shows that the weakness of this inventory of indigenous villages is that there is no specific administration of land tenure and use in indigenous villages, both related to land history; Land Parcel Maps; Records of Land Mutations and Problems and contains Spatial Planning, Land Stewardship, Building Planning and Water Use. To overcome these problems, it is necessary to reconstruct the land administration by dividing the land administration into four books consisting of:

Book A	Book B	Book C	Book D

²⁹ Katharina Pistor, "The value of law," *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>.

³⁰ Robert B Keiter dan Matthew Mckinney, "Public land and resources law in the American West," *Environmental Law*, 49.1 (2019), 1–72.

Land History	Land Map	Land Mutation Data	Spatial Planning, Land Use And Water Use
Land history is important so that the history of land tenure and use can be known so that the subject of the right can be known with certainty. This book can describe the name of the party using the land, the basis of the land tenure and the use of the land. This also applies to land controlled by groups of indigenous people together for public purposes such as land for temples, markets and various other activities. The existence of this book will make it easier for indigenous peoples to prove the existence of control and ownership of the land from the claims of other parties.	The purpose of Book B is to create certainty of the object of the right because it contains physical land data. This book determines the size of land parcels and the boundaries of land parcels controlled by customary law communities, including land parcels controlled by villagers. The existence of this book is also to clearly define the boundaries of the customary village so that conflicts over land boundaries between customary villages can be prevented. It is also important to determine the boundaries of land for public facilities such as cemeteries, schools, official houses, perbekel offices, temples and others so that the boundaries are clear. Included in what needs to be properly inventoried are the clear boundaries of land parcels so that conflicts between village krama do not occur and there is no conflict between adat structures with structures (bendesa) and village krama. In practice, the determination of land boundaries needs to involve the village or the bordering landowner.	Land mutation data plays an important role in realizing legal certainty for customary village land because it can identify changes in the list of users so that it can be <i>updated</i> from time to time. The author needs to state the user of land because this land is still juridically indigenous village land but is physically used by the village krama. The existence of this data is also important to serve as evidence to avoid claims from irresponsible parties. The land mutation data above is also very important to prevent the transfer of land to people outside the customary village and the pledging of customary village land. This is because both of these are prohibited in the Balinese customary law community and sanctions will be imposed on the perpetrators. This happened in the Tenganan indigenous community in 1985 and the person was penalized to pay twice the price of the land at the time.	Book D is one of the most important and fundamental books in the administration of customary land in Bali because it determines the designation of land parcels such as land intended for village settlements (krama), land for agriculture, land for engagement and other interests. This causes the use of land to be adjusted to the potential of the land and to prevent problems in the future

The creation of the four books above can be done through a program that emphasizes the authority of Balinese customary law communities in administering their land. This will lead to various benefits, namely: (1) it is a form of respect for customary law communities in managing their territories; (2) it prevents the transfer of customary land to other parties; (3) it increases legal certainty in the land sector; and (4) it prevents conflicts in the land sector, both conflicts between fellow village krama and between customary villages.

4. Conclusion

There are several weaknesses of customary land administration in Balinese customary law communities, namely: (1) customary land rights are reduced to land rights; (2) land rights emphasize individual aspects while customary land rights emphasize communalism; (3) customary land administration through complete systematic land registration emphasizes the active role of the government while customary land administration should emphasize the active role of customary law communities; (4) There is no good mechanism in the management of customary land in Bali so that legal certainty has not been created. These weaknesses can be overcome by the principle of integral and participatory customary land administration. In the realm of practice, this is implemented by making four books, namely: (1) book A containing land history; (b) book B containing land maps; (c) book C containing land mutation data; (d) book D containing spatial planning, land use and water use. This idea will create legal certainty and prevent land conflicts.

References

- Aasoglenang, Thaddeus Arkum, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>
- Christiansen, Thomas, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>
- Drange, Live Danbolt, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>
- Eka Suadnyana, Ida Bagus Putu, "DESA PAKRAMAN SEBAGAI LEMBAGA ADAT DAN LEMBAGA AGAMA BAGI KEHIDUPAN MASYARAKAT HINDU DI BALI," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>
- Griffiths, John, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56
- Hamida, Nilna Aliyan, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>
- Hayes, Tanya, dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>
- Hirschl, Ran, dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>
- Jamin, Mohamad, Sapto Hermawan, dan Mulyanto Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to the Indonesian Development: Lessons Learned from New Zealand," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.3 (2023), 346–66 <<https://doi.org/10.22304/pjih.v10n3.a3>>
- Jayus, Jaja Ahmad, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>
- Keiter, Robert B, dan Matthew Mckinney, "Public land and resources law in the American West,"

Commented [ap12]: 1. Use of a tool such as Mendeley for reference management and formatting, and choose style modern humanities research association 3rd edition style.
2. All references must come from <https://www.sciencedirect.com/>
3. Reference only from the journal, Reference must be a reputable journal, DOI must exist.
4. Minimum 60 references

- Environmental Law*, 49.1 (2019), 1–72
- Kementerian ATR BPN, *Laporan Akhir Inventarisasi dan Identifikasi tanah Ulayat di Provinsi Bali dan Nusa Tenggara Timur* (Yogyakarta, 2021)
- Kurkela, Kaisa, Anna–Aurora A. Kork, Anni Jäntti, dan Henna Paananen, “Citizen participation as an organisational challenge in local government,” *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>
- Kwakernaak, C, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED 's Agenda 21* (The Netherlands, 1995)
- Larsen, Peter Bille, dan Jérémie Gilbert, “Indigenous rights and ILO Convention 169: learning from the past and challenging the future*,” *International Journal of Human Rights*, 24.2–3 (2020), 83–93 <<https://doi.org/10.1080/13642987.2019.1677615>>
- M. Suasthawa D, *Status dan Fungsi tanah Adat Bali Setelah Berlakunya UUPA*. (Denpasar: CV. Kayumas Agung, 1987)
- Moosavi, Sareh, dan Geoffrey R. Brown, “Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation,” *Cities*, 111.January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>
- Pistor, Katharina, “The value of law,” *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>
- Rayner, Jeremy, dan Michael Howlett, “Introduction: Understanding integrated policy strategies and their evolution,” *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>
- Selle, Per, dan Kristin Strømsnes, “Indigenous People’s Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi,” *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>
- Stauffacher, Michael, Thomas Flüeler, Pius Krütli, dan Roland W. Scholz, “Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region,” *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>
- Sulaiman, King Faisal, “Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012,” *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>
- Suwitra, I Made, “Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional” (Universitas Brawijaya, 2009)
- Swardhana, Gde Made, dan Suviwat Jenvitchuwong, “The Participation within Indigenous Land management: Developments and Challenges of Indigenous Communities Protection,” *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>
- Swenson, Geoffrey, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/isr/vix060>>
- Tamanaha, Brian Z., *Legal pluralism explained: History, theory, consequences, Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>
- de Villiers, Bertus, “Dithering Between Consultation and Consensus – Whereto with Advisory

Bodies for Indigenous Peoples?,” *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>

Wiguna, Made Oka Cahyadi, “Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali,” *Jurnal Hukum Novelty*, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>

Willow, Anna J., “Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination,” *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>



Reconstructing Village Druwe Land Administration to Protect the Communal Land in Bali

Sukirno ^{a,1,*}, Muh.Afif Mahfud ^{b,2}, Muhammad Fahad Malik ^{c,3}

^a Faculty of Law, Diponegoro University, Indonesia

^b Faculty of Law, Diponegoro University, Indonesia

^c Department of Law, Khwaja Fareed University of Engineering and Information Technology, Pakistan

¹kirno9undip@gmail.com*; ²afifmahfud4@gmail.com ³fahadmalikawan98@gmail.com

* corresponding author

Commented [ap1]: The author is from Pakistan. Can you explain how the author contributed to this research?

Commented [A2R1]: Mr. Malik is a law lecturer at Khwaja Fareed University of Engineering and Information Technology in Pakistan. In this research article, he was extensively involved in the analysis of data, as well as the preparation of the article itself.

Thank you.

ARTICLE INFO

Article history

Received:

Revised:

Accepted:

Keywords

Bali

Dispute

Land Administration

Legal Certainty

Village Druwe Land

ABSTRACT

The phenomenon of individualization of customary land, which is communal land, occurs in many customary law communities in Bali, such as those in Bangli and Lembang. The reason for this phenomenon is that the land administration in Bali's customary law communities only includes the names of the people who control the customary land. This makes it difficult for indigenous villages in Bali to prove their rights to the land. This research aims to analyze the weaknesses in the administration of customary land in customary law communities in Bali and also to construct an ideal customary land administration to protect the communal rights of customary law communities over their land. This research is a non-doctrinal (socio-legal) research that examines the administration of customary land in reality and the understanding of indigenous peoples regarding this matter. This research is a prescriptive research that uses primary data obtained through in-depth interviews and analyzed qualitatively. This research identifies three primary weaknesses in the administration of customary land in Bali, namely weak legal pluralism, insufficiently participatory land policies, and the existence of land administration that is not detailed. Therefore, the ideal construction of customary land administration in Bali is a change in legal politics to strong legal pluralism including changes in the conversion provisions of the Basic Agrarian Law which convert customary land to property rights, participatory land administration even up to the stage of citizen control and also detailed land administration including land history, land mutation, land boundaries and land stewardship.



This is an open access article under the CC-BY 4.0 license.



1. Introduction

The fulfillment of indigenous peoples' rights to their land needs attention because 5% of the world's current population or around 370 million people are indigenous peoples spread across 70 countries.¹

¹ Peter Bille Larsen dan Jérémie Gilbert, "Indigenous rights and ILO Convention 169: learning from the past and challenging the future," *International Journal of Human Rights*, 24.2-3 (2020), 83-93 <<https://doi.org/10.1080/13642987.2019.1677615>>.



In Indonesia, there are still lands controlled by indigenous people named customary land. Customary rights are the authority possessed community to control, regulate, and manage land for the benefit of its citizens. Customary land rights are mostly found in areas outside Java. In Bali, there are still communities called adat villages (formerly called *Pakraman* villages) that control customary lands, including village yards, land for temples, cemetery land, field land, and public facilities such as markets and schools. All land controlled by an adat village is called village *druwe* or village-owned land. However, there are weaknesses in the administration of *druwe* village land in Bali. This is because the administration solely addresses the name of the proprietor of the land parcel and the dimensions of the land.² This information is insufficient for providing a detailed measure of the land parcel in question. The lack of clearly defined boundaries and detailed mapping of the land, as well as the absence of a history of land tenure, makes it impossible to determine the owner with certainty. Furthermore, there is a dearth of data pertaining to land mutations and a paucity of detailed guidelines on spatial planning, land stewardship, construction, and water usage. These issues give rise to legal uncertainty, as there is a lack of clarity regarding the extent and boundaries of customary land under the control of individuals. This results in a lack of effective control over the community's use of the land.

The consequence of this weakness in land administration is that customary lands controlled by the community are then individualized, that is, registered as individual rights with the land office. This problem is escalated by the Complete Systematic Land Registration (CSLR) policy that accommodates the individualization and privatization of land ownership through land certification, which presents inequality and injustice to Indigenous peoples due to its top-down and liberal-capitalistic nature.³ In fact, the position of the individual should only be the ruler or user of customary land, not the owner, because the land is communal land. Its registration as an individual right clearly contradicts the concept of customary land which emphasizes communal rights.⁴

The existence of village *druwe* land as customary land is also reduced by national law, with the issuance of Law No. 5/1960 on the Basic Regulation of Agrarian Law (BAL), especially Article II of the Conversion Provision which states that land rights over *druwe* village are converted into property rights. This is different from the legal awareness of the Balinese people who consider *druwe* desa land as village-owned land, not individualized land as property rights in national law. The top-down determination of national law in presenting individualization, privatization, and negation of the communalistic nature of customary land is inconsistent with the protection of customary land ownership and village *druwe* land.⁵ Customary land is placed as an object of land registration and certificates can be issued for the land. This clearly reduces customary land rights to land rights when these rights actually have a higher position in the hierarchy of land tenure rights. In fact, a legal policy in a democratic country, especially in land law, should prioritize integration and participation for the widest possible community, especially for indigenous peoples.⁶ This reality clearly contradicts the

² Muhamad Iko Kersapati, "Spatio-historical data enrichment for toponomastics in Bali, The Island of Gods," *GeoJournal*, 88.5 (2023), 5489–5510 <<https://doi.org/10.1007/s10708-023-10932-4>>.

³ Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Constitutionality of Simultaneous Extension and Renewal of Land Rights," *Jurnal IUS Kajian Hukum dan Keadilan*, 12.1 (2024), 159–76 <<https://doi.org/10.29303/ius.v12i1.1360>>.

⁴ Etika Rahmawati, Esmi Warassih Pudji Rahayu, and Sukirno, "State Actors in Agrarian Conflicts: A Judicial Review in Rule of Law Perspective," *Journal of Southeast Asian Human Rights*, 7.2 (2023), 276-98 <<https://doi.org/10.19184/jseahr.v7i2.43798>>.

⁵ Sukirno Sukirno dan Muh. Afif Mahfud, "Relational Dynamics of State Law and Customary Law: a Study of the Ulayat Land Rights Recognition," *Kanun Jurnal Ilmu Hukum*, 24.3 (2022), 309–25 <<https://doi.org/10.24815/kanun.v24i3.25367>>.

⁶ Muh Afif Mahfud, Naufal Hasanuddin Djohan, dan Muhammad Fahad Malik, "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review*, 6.2 (2024), 240–63 <<https://doi.org/10.33756/jlr.v6i2.24166>>.

right of Indigenous peoples to regulate their own territory as contained in the United Nations Declaration on the Rights of Indigenous People.⁷

This situation certainly affects the existing law enforcement process, namely when there is a lawsuit over individualized village druwe land, the judge will give a decision in favor of the individualized land because after all, national legal provisions do not protect the land of indigenous peoples as communal rights. This happened in the following decisions: the Bangli District Court Decision No.20/Pdt.G/2008/PN.Bli which confirmed that villagers have property rights over PKD. This Bangli District Court decision was also upheld by the CA and Supreme Court decision No.622 K/Pdt/2012. The same thing also happened in Gianyar Regency, where the Lembeng Customary Village lost its case against the villagers with the Denpasar District Court Decision No.4/PDT/2016/PT.DPS.

The situation above shows the lack of protection of customary land as common land of indigenous peoples. This leads to a condition of weak legal pluralism that shows the protection and recognition of customary law which is limited by the interests of the state and the provisions of laws and regulations.⁸ The current condition shows that there is inconsistency and lack of participation in the druwe land administration policy due to land policies that are not integrative and participatory. Based on this, it can be further found if there is a systematic error that causes the joint ownership of customary land of indigenous peoples to be reduced to individual rights. This reality clearly contradicts the concept of the thickest substantive rule of law put forward by Brian Z Tamanaha which requires the protection of cultural rights including the common land owned by indigenous peoples.⁹

These conditions underscore the necessity of reconstructing Bali's customary land administration. This is an effort to make radical changes in the context of customary land administration so that there is clarity regarding the boundaries of customary land, the existence of an appropriate land stewardship model, and clarity regarding legal actions on land through land mutation data. A comprehensive construction is needed because along with changes in land administration, it is also necessary to change the politics of land law from weak legal pluralism to strong legal pluralism. This change also provides space to implement contextual policies which in Tamanaha's view reflect four things namely morality, rationality, customs, and things approved by the community.¹⁰ Starting from this, the existence of inductive and integrated policies involving all parties is a must to realize the protection of customary rights of indigenous peoples.

This article is organized in the following order: starting with a critique of the weak enforcement of legal pluralism in Indonesia, proposing the importance of integrated and contextual policies, and at the end outlining the weaknesses of the current land administration and the idea of a new land construction oriented towards achieving substantive justice.

This research is different from the research of Mataram, Sukandia, and Utama which shows the effectiveness of CSLR in Singakerta village in Gianyar which shows that there is privatization and the position of the state as the main actor for the administration of druwe village land.¹¹ In addition, this

⁷ Dorothée Cambou, "The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective," *International Journal of Human Rights*, 23.1-2 (2019), 34-50 <<https://doi.org/10.1080/13642987.2019.1585345>>.

⁸ Hanisah Binte Abdullah Sani, "State Law and Legal Pluralism: Towards an Appraisal," *Journal of Legal Pluralism and Unofficial Law*, 52.1 (2020), 82-109 <<https://doi.org/10.1080/07329113.2020.1727726>>.

⁹ Brian Z. Tamanaha, "Tempering Arbitrary Power: A Moral Theory of the Rule of Law," *Washington University in St. Louis Legal Studies Research Paper/Legal Studies Research Paper Series*, 24.March (2024).

¹⁰ Brian Z. Tamanaha, "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences," *Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021), 168-205 <<https://doi.org/10.1080/07329113.2021.1942606>>.

¹¹ I Nyoman Sukandia dan I Wayan Kartika Jaya Utama I Gede Arie Mataram, "Effectiveness of Implementing Complete Systematic Land Registration on Village Lands in Singakerta Village, Gianyar District," *Protection: Journal of Land and Environmental Law*, 2.1 (2024), 11-20.

study also differs from Wardana's research on land policy in pluralistic institutions in Bali.¹² The most fundamental difference of this research from the two previous studies is the discussion of the urgency of reconstructing the Druwe village land administration by prioritizing an integrative-participatory approach through the construction of a new land administration by introducing four books. In addition, this research uses the socio-legal method as an analytical tool in finding the symbolic meanings of customary law communities.

2. Research Method

This research is a non-doctrinal, socio-legal study in which the concept of law is understood as inherently contextual, embedded within the socio-cultural framework of the society.¹³ This research project is specifically designed to examine the legal culture of the Balinese indigenous communities concerning the management and administration of druwe village land in Bali. This prescriptive study employs critical analysis to assess pertinent issues and proposes new insights and solutions by applying relevant theories and concepts to examine and address the complexities surrounding the administration of druwe village land. The objective of this approach is to promote legal protection, legal certainty, and justice.

To investigate these objectives, primary data were collected through in-depth interviews with customary leaders from three Balinese indigenous villages. The research was conducted in three Balinese indigenous villages: *Desa Adat Mengwi*, *Desa Adat Panglipuran*, and *Desa Adat Tenganan*. Additionally, participant observation was employed to gain a nuanced understanding of the social and cultural dynamics within these communities.¹⁴ The collected data underwent a structured analytical process comprising several stages: data collection, the establishment of a coding framework, thematic coding, in-depth data analysis, and, finally, the systematic organization of findings into an academic article.¹⁵

3. Results and Discussion

3.1 Weak Legal Pluralism and Inaccurate Administration of Customary Land in Bali

Legal pluralism is a reality that always covers humans because humans are actually not only bound by state law but also various other orders of life.¹⁶ Griffith defines legal pluralism as a condition where two laws exist simultaneously in the same space, object, and time. According to him, legal pluralism can be divided into two, namely: (1) weak legal pluralism which is a condition where customary law is subordinate to state law, and (2) strong legal pluralism which is a situation where customary law is in an equal position with state law.¹⁷ Indonesia applies weak legal pluralism because the recognition, respect, and protection of indigenous peoples are highly dependent on the will, goodness, and policies of the state.¹⁸ Weak legal pluralism is also found in the 1945 Constitution which is also still conditional because it must be following the laws and regulations made by the

Commented [ap3]: 1. As a result, it still needs to meet the standards; because it only describes the law, the author should have explained the regulatory issues, which were elaborated with legal theory.
2. Result but the materi is Literature review
3. The discussion material for this article is out of standar
4. You should discuss why Reconstructing Village Druwe Land Administration in Bali to Prevent Disputes is necessary and the problems and challenges. Please support it with accurate data because this is socio-legal research.

¹² Agung Wardana, "Debating Spatial Governance in the Pluralistic Institutional and Legal Setting of Bali," *Asia Pacific Journal of Anthropology*, 16.2 (2015), 106–22 <<https://doi.org/10.1080/14442213.2014.997276>>.

¹³ Naomi Creutzfeldt, Marc Mason, dan Kirsten Mc Connachie, *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge (London: Routledge, 2020) <<https://doi.org/10.4324/9780429952814-1>>.

¹⁴ Naomi Creutzfeldt, "Traditions of Studying the Social and the Legal," *Routledge Handbook of Socio-Legal Theory and Methods*, 2019, 9–34 <<https://doi.org/10.4324/9780429952814-2>>.

¹⁵ Creutzfeldt, Mason, dan Mc Connachie.

¹⁶ Brian Z. Tamanaha, *Legal pluralism explained: History, theory, consequences*, *Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>.

¹⁷ John Griffiths, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56.

¹⁸ Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>.

state.¹⁹ This has caused many problems regarding the protection of indigenous peoples in Indonesia, such as the uncertainty of the legal standing of these communities, the takeover of customary land by the government or the private sector, and various other complex problems.²⁰

At a philosophical level, this is incongruent with the values of justice and legal certainty that underpin customary land management. This is not consistent with the value of justice because it will eliminate the cultural rights of customary law communities that have been hereditary.²¹ Based on the theory of justice put forward by Ronald Dworkin, there are two measures to create justice, namely political preference and personal preference.²²

Political preference, namely the protection of indigenous peoples who have been seen as weak in defending their communal rights. In addition, the politics of law in Indonesia, as contained in Article 18 B paragraph (2) and Article 3 of the Basic Agrarian Law, which embraces legal pluralism that is weak in protecting indigenous peoples, also causes the interests of indigenous peoples to be sidelined. This legal politics ultimately makes it difficult for indigenous peoples to defend their interests both politically and legally. This is the case in the land management of Indigenous peoples in Bali as the communal lands of indigenous peoples have been lost due to the individualization of land and the weak legal protection of indigenous people's lands. One of the reasons for the weak protection of Indigenous peoples' land is the administrative weakness of the customary village, which does not clearly define the boundaries of the land, including the absence of a land history that facilitates the process of individualization.

In personal preference, the realization of justice must pay attention to the social and cultural conditions of the community concerned. This means that the realization of justice must reflect the social conditions, culture, and values of the community concerned.²³ In this case, the individualization of Indigenous peoples by national law through court decisions legitimizing the conversion of communal rights into individual rights is clearly not in line with the communalist view of Indigenous peoples. This means that the current law is unable to reflect the values, rationality and customs of these indigenous peoples.

The two indicators put forward by Ronald Dworkin above are clearly not met in the case of customary land for indigenous peoples in Bali. The non-fulfillment of justice certainly cannot be justified in the Indonesian context because all people including indigenous peoples are entitled to justice because the goal of the nation is to protect the entire Indonesian nation and realize all Indonesian people including indigenous peoples.²⁴

¹⁹ Gde Made Swardhana dan Suviwat Jenvitchuwong, "The Participation within Indigenous Land management: Developments and Challenges of Indigenous Communities Protection," *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>.

²⁰ Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>.

²¹ I Gede Arie Mataram.

²² David Roth-Isigkeit, *The Plurality Trilemma: The Contingent Geometry of Global Legal Thought*, *The Plurality Trilemma*, 2018 <https://doi.org/10.1007/978-3-319-72856-8_6>.

²³ Muh. Afif Mahfud, "The Relevance of Ronald Dworkin's Theory for Creating Agrarian Justice in Indonesia," *Yustisia Jurnal Hukum*, 8.3 (2020), 389 <<https://doi.org/10.20961/yustisia.v8i3.27386>>.

²⁴ Hilaire Tegnan, "Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure," *Journal of Legal Pluralism and Unofficial Law*, 47.2 (2015), 312–23 <<https://doi.org/10.1080/07329113.2015.1072386>>.

In these conditions, there can be contestation between the two and when this happens, customary law has the potential to be overridden by state law.²⁵ This causes the application of state law to customary law to be scrutinized so that the negation of the uniqueness and rights of these communities is not sidelined in policy making.²⁶

This weak legal pluralism affects the pattern of policy-making and formation in the land sector in Indonesia, which places the state as the main actor in administering the customary land of indigenous peoples. Based on this authority, the state has formed various laws and regulations including the Regulation of the Minister of Agrarian Affairs No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas. Based on this regulation, the state conducts land registration of indigenous peoples which will result in land certificates in the form of land ownership rights to indigenous peoples.

The granting of land rights in the last two regulations has reduced the ulayat rights of customary law communities to land rights. This is not appropriate because in the hierarchy of land tenure in Indonesia it is clear that customary rights have a higher position than land rights. The hierarchy of land tenure rights is:²⁷ Indonesian rights to land, State control over land, the customary rights of customary law communities, and Individual rights.

In this regard, it is important to understand that only individual land rights are subject to land registration that can be owned individually or collectively. Through such land rights, the right holder has access to or use of the land and exclusivity or excludes others from using the land. This condition shows that the aspect of individual authority becomes the focal point in land rights. This has led to the individualization of land rights. In fact, in our research there are land rights that are certified in the name of an individual rather than on behalf of indigenous community.

I Made Suwitra states that the highest right of control over customary land is in the customary village in form of the right to manage, to regulate, to use, and to utilize. This right of control is basically still based on a religious communalistic nature that is autonomously governed by customary law. One example occurs in Panglipuran Village where the use of land such as the change in the number of cultivators of customary land from 45 to 78 was decided by the Customary Council.²⁸ The Customary Council has the authority to manage: (1) land owned by the Customary Village; (2) communal or individual land for use. Land for use has customary, religious, traditional, cultural, and economic functions for the owner while still paying attention to the social function of land rights.²⁹

²⁵ Sartika Intaning Pradhani dan Almonika Cindy Fatika Sari, "Penerapan Pendekatan Positivistik Dalam Penelitian Hukum Adat," *Masalah-Masalah Hukum*, 51.3 (2022), 235–49 <<https://doi.org/10.14710/mmh.51.3.2022.235-249>>.

²⁶ Thaddeus Arkum Aasoglenang, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>.

²⁷ King Faisal Sulaiman, "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012," *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>.

²⁸ I Made Suwitra, "Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional" (Universitas Brawijaya, 2009).

²⁹ Rebecca Meckelburg dan Agung Wardana, "The political economy of land acquisition for development in the public interest: The case of Indonesia," *Land Use Policy*, 137.1 (2024), 107017 <<https://doi.org/10.1016/j.landusepol.2023.107017>>.

Historically, land ownership in Bali cannot be separated from the history of the *Pasamuhan Tiga* Decree chaired by Mpu Kuturan which clearly states that all land within the village area including *Kahyangan Tiga* land belongs to the customary village, cannot be traded and there is no individual ownership. Basically, every villager who utilizes a patch of land is obliged to carry out village ayahan in the form of both labor and material.³⁰ The customary council should carry out the administration of customary land including maintaining the continuity of the status of *Padruwen* land rights of the Customary Village, and maintaining the sanctity, preservation, cleanliness, and orderly use of the property of the customary law community. In order to facilitate a comprehensive understanding of the subject matter, it is essential to delineate the distinctions between the various categories of land tenure within the context of a customary village. These include Customary Village Land, Village Yard Land, and Village Ayahan Land. Customary Village Land is defined as land owned by the Customary Village. This land may be directly managed by the Customary Village, such as setra (cemetery) land, palaba (temple interest) land, market (tegal) land, and so forth. Alternatively, it may be handed over to the Customary Village krama for management purposes, including Customary Village yard land and Customary Village ayahan land. In addition, PKD represents land utilized by the krama (villagers) for residential purposes. Finally, AYDS denotes village land cultivated by the krama for agricultural purposes and other activities.

Given that PKD and AYDS land is customary village land, each village *krama* may not transfer rights to the land to other parties. However, empirically, under the pretext of conversion regulations in the BAL, the village krama can convert their land into freehold land ignoring the customary law that applies to the village land they control. In the end, conflicts occurred between the village of *krama* and the Bendesa Desa Adat in various regions of Bali. The current ignorance of the reality of the communal nature of the land and the role of customary council in the management process has led to the loss of the right of customary law communities to manage their territories, including land as a resource governed by the tools or structures of the customary law community.

The reduction of customary rights to land rights and the disrespect for the authority of these communities to manage their territories violates the state's obligation to protect the rights of indigenous peoples.³¹ This obligation is contained in Article 6 of the Indigenous and Tribal Peoples Convention 1989 which states that the government must consult indigenous peoples on policies that can affect their lives. In the convention, there is the principle of prior, free, and informed consultation which should be the basis for the government in making policies in the land sector.³² Fergus MacKay's research shows that the non-ratification of this convention harms the protection of Indigenous peoples, including the Toba Batak community which is the focus of his research.³³

³⁰ Ida Bagus Putu Eka Suadnyana, "Desa Pakraman sebagai Lembaga Adat dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu di Bali," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>.

³¹ Bertus de Villiers, "Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?," *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>.

³² Tanya Hayes dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>.

³³ Live Danbolt Drange, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>.

Experts in the field of indigenous peoples currently question the government's attention and policies towards indigenous peoples. This is due to the lack of countries that have ratified the Indigenous and Tribal Peoples Convention and the many violations of the rights of indigenous peoples in the world.³⁴

The implementation of customary land administration is not following these obligations because it has reduced the customary land rights of indigenous peoples to individual rights, does not involve indigenous peoples, and applies the prior informed and consent principle. This condition contrasts with the wave of fulfillment and strengthening of indigenous peoples' rights to land in other countries such as Scandinavia. In fact, in 1832, the United States Supreme Court issued a decision recognizing the rights of Indian Tribes as independent community entities that have the right to regulate and manage their own territory.³⁵ The same thing happened to the Sami indigenous people in Norway who even have their own parliament to guarantee their interests called Sámediggi which has existed since 1989.³⁶

The conditions of Indigenous peoples in the countries above are very different from those in Indonesia because the government still uses a partial, non-integral-participatory approach in land administration. After all, it does not involve indigenous peoples in the process.³⁷ This will lead to various conflicts. This is because customary law communities have their order that must be considered and government policies that ignore this will be opposed by the community. This is what Ran Hirschl and Alexander Hudson call participation determining legitimacy. They state that participation has three characteristics: transparency, substantive, and community involvement.³⁸

3.2 Administration of Customary Land and its Problems

Problems arise because there is land registration carried out in traditional villages in Bali with the issuance of certificates as proof of ownership of land rights through the Complete Systematic Land Registration program.³⁹ This land registration of customary lands was mainly carried out in 2018 so that many customary lands were then certified in the program. The inclusion of customary land in Bali as an object of Systematic and Complete Land Registration has reduced customary land rights to individual land rights. Through this CSLR, there will be two problems that can arise, namely that the land will become a land right that can be easily claimed by individuals, including being transferred and potentially becoming an object of collateral with a mortgage. Some examples of

³⁴ Thomas Christiansen, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>.

³⁵ Anna J. Willow, "Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination," *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>.

³⁶ Per Selle dan Kristin Strømsnes, "Indigenous People's Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi," *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>.

³⁷ Geoffrey Swenson, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/isr/vix060>>.

³⁸ Ran Hirschl dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>.

³⁹ Rindiana Larasati et al., "Construct Integrated Agrarian Reforms Based On Justice," *International Journal of Innovation, Creativity and Change*, 14.2 (2020), 909–28.

problems with CSLR implementation in Bali is there are indigenous villagers who get Free Hold Certificates on behalf of individuals.

This condition is also inseparable from the faulty conversion provisions in national land law. Article 2 paragraph (1) of the BAL Conversion Provision states that druwe land can be converted into freehold land. Made Oka Cahyadi Wiguna stated that the substance of the provision that converts village druwe rights into individual property rights is not appropriate because the land is communal land of the customary law community concerned.⁴⁰ Because the land is made into property rights, it will be easier to transfer to other parties, does not show respect for the authority of customary structures and emphasizes individual aspects. Conversion of Village Courtyard Land and Ayahan Land into full private or individual land so that it will eliminate the communalistic nature of druwe land into individual private land. This case occurred in Lemukih Pakraman Village (Buleleng Regency), Culik Pakraman Village (Karangasem Regency),¹⁴ Belancan Village, Bukih Village and Manikliyu Village (Bangli Regency). There were 25 cases of land certification of village druwe into private land in Belancan Village and 10 certifications in Bukih Village, while in Manikliyu Village there was private land acquisition by residents without being bound by ayahan.

Individual free hold certificate over druwe land (village land) not only degrade the position of customary rights but also cause this land can easily transferred. This condition further jeopardizes the position of customary land.⁴¹ Moreover, based on the results of the author's research, there are various examples that show the conversion of customary rights into private property rights in Balinese customary law communities.

The individualization of customary land into freehold land is also caused by poor inventory of customary land, starting with the absence of land boundaries, which can lead to conflicts between land users and between customary villages. Data on the mutation of land use is unknown so that the use of customary land by individuals cannot be monitored by the customary council and transferred to other parties. At this point, indigenous peoples and the government should jointly conduct customary land mapping. The involvement of indigenous peoples in the administration of customary land is actually a very good event also to make proper land mapping because what is desired in the legislation is land mapping, not land registration, which reduces the communalistic aspects of the community. The mapping of customary land should clearly determine the boundaries of customary land areas, land assets owned by customary law communities, the boundaries of land used by the community, the boundaries of agricultural land and various other aspects. This can be done because the customary law community has customary law named *awig-awig* which is the basis for customary land tenure.⁴² If this is not done through community involvement and based on *awig-awig*, the

⁴⁰ Made Oka Cahyadi Wiguna, "Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali," *Jurnal Hukum Novelty*, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>.

⁴¹ Franklin Obeng-Odoom and Anne Haila, "The Power of Uncertified Urban Land," *International Journal of Urban and Regional Research*, 48.5 (2024) <<https://doi.org/10.1111/1468-2427.13244>>.

⁴² Wiwin Yulianingsih, Frans Simangunsong, dan Muh. Arief Syahroni, "Awig-Awig Management of Marine and Fisheries Resources West Lombok," *International Journal Of Community Service*, 2.4 SE-Articles (2022), 460–64 <<https://doi.org/10.51601/ijcs.v2i4.152>>.

boundaries determined will not be precise and will even cause conflict and instability in the community.⁴³

At a practical level, currently in the context of customary land management of Balinese customary law communities there is still no legal certainty, especially land law that provides legal protection to the real owner.⁴⁴ In this case, the land as the object of rights must be clear so that legal certainty can be realized. However, until now there is no land administration in the customary law community that clearly records the boundaries of land tenure and clear land mutations. The absence of a record of land mutations in the customary law community means that changes in the control of the land of the customary law community in Bali by its members cannot be known.⁴⁵ The absence of land mutation records has two implications: no monitoring of indigenous peoples' land tenure and a lack of evidence for indigenous peoples to defend their communal customary land.

The weakness in the protection of the village *druwe* land of the customary law community, which ended with the individualization of land, occurred due to at least five factors, namely: (1) the development of individualism; (2) the very high economic value of land; (3) weak legal pluralism; (4) land policies that are not integrated and integrative; and (5) the absence of good land administration in indigenous communities.

The development of individualism and capitalism has led individuals to want to control resources, including land, which has a high value because Bali is a world-class tourist spot, causing the demand for land to increase and the price of land to rise.⁴⁶ The individualization of land ownership is also ironic because Indonesia has a weak legal pluralism that does not strongly protect the authority and rights of customary law communities to manage their territories. Moreover, the pattern of formation and implementation of regulations related to the customary rights of indigenous peoples is also clearly not in accordance with the socio-cultural conditions of indigenous peoples.⁴⁷ This is also further exacerbated because indigenous peoples also do not have complete administration.

I Made Suwirta in his dissertation research found that customary lands in each customary village have not been inventoried and mapped so that it cannot provide accurate information on the extent of customary lands controlled and owned by customary villages. Boundary disputes between indigenous villages have recently colored the lives of indigenous communities in Bali, such as those between the indigenous villages of Ulakan and Antiga, between the indigenous villages of Macang and Ngis in Karangasem. There have also been cases between the villages of Gunaksa and Kusamba Dawan Klungkung, between the villages of Pengosekan and Padangtegal Ubud Gianyar, and between the villages of Cekik and Gablogan in Tabanan. Therefore, the Pakraman Village Council needs to take the initiative to urge local governments in cities, regencies and provinces to conduct a holistic

⁴³ Arya Pageh Wibawa et al., "Phenomenology : Adaptation of Poleng Motifs in Facing Bali Tourism," *KnE Social Sciences*, 2023.1 (2021), 259–65 <<https://doi.org/10.18502/kss.v8i2.12769>>.

⁴⁴ Novyta Uktolseja dan Agustina Balik, "The Existence of Customary Rights in Modern Society," *Journal of Law, Policy and Globalization*, 93 (2020), 154–68 <<https://doi.org/10.7176/jlpg/93-17>>.

⁴⁵ Gusti Ayu Made Suartika dan Alexander R. Cuthbert, "Sleight of Hand: The Expropriation of Balinese Culture," *Space and Culture*, 25.4 (2022), 758–78 <<https://doi.org/10.1177/1206331220902973>>.

⁴⁶ Nyoman Utari Vipriyanti, Ni Kadek Sri Arini, dan Ernan Rustiadi, "Land-use problem and controlling for sustainable coastal development in South Bali," *GeoJournal*, 89.2 (2024), 45 <<https://doi.org/10.1007/s10708-024-11042-5>>.

⁴⁷ John F. McCarthy et al., "Land reform rationalities and their governance effects in Indonesia: Provoking land politics or addressing adverse formalisation?," *Geoforum*, 132.April (2022), 92–102 <<https://doi.org/10.1016/j.geoforum.2022.04.008>>.

inventory and mapping of customary village with the aim of providing a complete picture of the existence of control and ownership rights over customary lands in each customary village with all its cultural activities, so that studies, guidance and empowerment will be effective and valuable. Finally, boundary disputes can be minimized.

It can be argued that there are a number of inherent weaknesses in the current administration of customary land in Bali. The initial issue pertains to the reduction of *druwe* land (customary land) in Bali to land rights, which occupy a subordinate position within the hierarchy of land tenure rights. Subsequently, the second point that requires attention is that land rights place an emphasis on aspects of individual authority that are not consistent with the customary rights, which are oriented towards the collective or communal aspects of life. The third point pertains to the transfer of authority over customary land administration from customary law communities, which are entitled to respect, to the CSLR Program, which is a systematic land registration process that places the onus on the government. The fourth point is that the CSLR program in Bali Province has shortcomings due to its focus on quantity over quality in the context of customary land registration. Customary land is of a qualitative nature, encompassing social, cultural, and spiritual relations. Windia, a professor of law at Udayana University, has asserted that the implementation of the CSLR program employs a principle of generalization that fails to account for the cultural diversity of each customary law community in Bali.⁴⁸ Ultimately, there is a dearth of efficacious mechanisms for the administration of customary land in Bali, which has resulted in a lack of legal certainty. The lack of administrative mechanisms to determine land boundaries, land mutations, land ownership history, and spatial stewardship and water use among customary law communities represents a significant gap in the data necessary for effective land management. The mechanism developed must align with the principles of public participation, or participation from the customary law community concerned, in order to reflect the values and legal culture of the community.

3.3 Integral-Participatory Administration of Land of Indigenous Peoples

The problem of integrated policies in the land sector is an urgent problem both in developed countries, developing countries and under developing countries. Integrated land management is a strategy to optimize planning and implementation so that goals can be achieved. An integrated policy involves various actors to solve a problem.⁴⁹ A participatory approach is an approach that involves all parties.⁵⁰ The establishment of integrated and participatory policies has become Chapter X of Agenda 21 at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. This report states that to create an integrated land policy, parties must have a common goal,

⁴⁸ Shri I Gusti Ngurah WiraWedawitry WP I Putu Gelgel, I Wayan P.Windia, & Ngakan Dwijendra, "Philosophical Meanings Behind Differences in Population Status Domiciled in Traditional Villages (Desa Adat) in Bali, Indonesia," *Law and Humanities Quarterly Reviews*, 1.3 (2022) <<https://doi.org/10.31014/aior.1996.01.03.21>>.

⁴⁹ Jeremy Rayner dan Michael Howlett, "Introduction: Understanding integrated policy strategies and their evolution," *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>.

⁵⁰ Sareh Moosavi dan Geoffrey R. Brown, "Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation," *Cities*, 111.January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>.

recognition of community rights, awareness of mutual dependency, involvement of all parties, transparent processes and consensus-based decision-making.⁵¹

In this case, customary land management is actually based on the values embraced by the customary law community, including in the context of administering the land. One example is Panglipuran Village where the spatial layout is directed at the position of the rising sun and also the mountain at that location. In Panglipuran Village, which has an area of 112 acres, there is also a rule that it is not allowed to sell customary village land to people outside the village. The government should be present to support the existence and also ensure the implementation of the authority and rules of the customary law community. Instead of reducing the land of the customary law community from customary land to land rights as happened through the CSLR program and also making generalizations that do not respect the culture of the community.

The existence of various weaknesses in land administration certainly requires a new reconstruction that not only prioritizes quality aspects but makes the interests of indigenous peoples in Bali the main thing. Prioritizing the institutionalized authority of indigenous peoples and the participation of all indigenous peoples in Bali. Several steps must be taken in managing customary land in Bali, namely conducting an inventory of customary village lands, both those that become public facilities and customary village lands controlled by each village resident. Currently, based on the author's research, there has been an inventory of customary land in the community but it has not been fully implemented. This has been done in Mengwi village, for example. Based on data held by the Mengwi Village Clerk, I Putu Gede, there are several facilities in this traditional village spread across several Banjar, including in Banjar Mengwi, Banjar Pangean, Banjar Batu, Banjar Gampang, Banjar Pande, Banjar Alam Kajeng, Banjar Paseng. In addition, there are also burial grounds consisting of four, namely Setra Ageng, Setra Brahmana, Setra Pendeta and Setra Bebanjangan. In addition, there are also village lands that are currently used as rice fields consisting of Subak Tungku Mengwi and Subak Bulan. In addition, there are also several public facilities located on the dry land of this traditional village, namely markets, auxiliary health center posts, schools, museums, official houses, perbekel offices and field land. The other use of village land is village yard land which is land used by the village krama.

The discussion of subject certainty and object certainty is the basis for constructing the ideal administration of customary land in Bali Province. The author outlines the three basic principles of integral participatory customary village administration, namely: (1) Respect for customary law; (2) Community participation in land administration; and (3) The Importance of interdisciplinary approach.

The first principle is respect for customary law.⁵² This means that the basis of the ideal land administration in Balinese traditional villages is to use customary law. This is also in line with the principle in Article 5 of the BAL that customary law is the basis of national agrarian law. In order to realize this, there needs to be an affirmation in the national agrarian law and specifically in the Balinese regional regulation which confirms that the administration of customary land including

⁵¹ C Kwakernaak, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED 's Agenda 21* (The Netherlands, 1995).

⁵² Damai Siallagan, "Hukum Adat as Embodied Law : Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia," *Canadian Law Review*, 3.12 (2024) <<https://doi.org/https://dx.doi.org/10.2139/ssrn.4986123>>.

customary land in Bali is based on customary law both written in awig-awig and pararem which is a *living law* in Balinese society. For example, in Tenganan Village it was found that newlyweds can apply to the customary village for land including cutting down trees. Both rules are based on Catur Dresta which is imbued with Balinese Hindu teachings. Windia stated that until now there has been no special regulation regarding the administration of customary land in Bali. This is a weakness in terms of substance when examined from the legal system proposed by Lawrence M. Friedmann.

The second principle is the participation of the community in the administration and management of land. The word of participation indicates that the administration of customary land in Bali must involve the community, academics and the government. In this case, the party with the most important role is the customary law community. This is important to ensure that the land administration process is in line with the values of the customary law community. This shows that community participation in land administration is genuine participation where the community determines the substance of land administration policies. Using Sherry Arnstein's ladder of participation, public participation in land administration should reach the level of citizen control so that it is the community that controls the decision-making.⁵³

The third one is the importance of an interdisciplinary approach. In order to create this participation, there must be a change in the perspective of the government and a change in the power structure that gives more space to the community in making decisions. For public participation to be successful, there are several conditions that must be met, namely human resources, knowledge, finance and expertise. With regard to finance, public participation can reduce the costs of land administration and achieve greater benefits.⁵⁴ Among these resources, the most important is expertise, which makes an interdisciplinary approach very important. In this case, anthropology, sociology, law and geodesy need to be used so that land administration is based on holistic and comprehensive thinking.⁵⁵ The effectiveness of combining interdisciplinary, participatory and socio-legal approaches in dealing with indigenous peoples has been demonstrated by Michael Stauffacher in shaping and implementing sustainable policies in Switzerland.⁵⁶

At a technical level, the administration of customary land in Bali must be seen in three stages, namely planning, implementation and supervision.⁵⁷ In the context of planning, the administration of customary land in Bali, which emphasizes public participation, discusses the land objects that will be the target of this activity, including the boundaries between customary villages so that communication with other customary villages is also necessary, the lands of public facilities that belong to and are used for the benefit of customary villages and customary village lands controlled by the village krama. This relates to the inventory aspect of customary village land.

⁵³ Sherry R. Arnstein, "A Ladder of Citizen Participation," *Journal of the American Planning Association*, 85.1 (2019), 24–34 <<https://doi.org/10.1080/01944363.2018.1559388>>.

⁵⁴ Hayes dan Murtinho.

⁵⁵ Kaisa Kurkela et al., "Citizen participation as an organisational challenge in local government," *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>.

⁵⁶ Michael Stauffacher et al., "Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region," *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>.

⁵⁷ Putu Devi Rosalina et al., "Rural tourism in Bali: towards a conflict-based tourism resource typology and management," *Tourism Recreation Research*, 1–16 <<https://doi.org/10.1080/02508281.2023.2223076>>.

3.4 Construction of Village Druwe Land Administration in Bali that Guarantees Legal Certainty

The construction of village druwe land administration in Balinese customary law communities is certainly based on the value of justice which aligns with respecting cultural rights. In addition, it is also intended to create legal certainty so that indigenous peoples can easily prove ownership of their land and prevent the takeover of customary land by individuals or other parties. To achieve this legal certainty, an ideal and comprehensive administrative model for indigenous peoples is needed. In this context, the current land administration in Balinese indigenous communities and the new construction will be described:

Indicator	Current Land Administration	Future Land Administration
Land administration by Desa Adat	Only limited to the name of the community that controls the land	Land administration by Desa Adat includes: 1. Land use and spatial planning of Indigenous villages 2. Land boundary data 3. Land Mutation Data 4. Land History Data
Impact	1. The realization of legal certainty and protection of customary land has not been achieved. 2. Does not realize justice for Indigenous peoples because they have the potential to lose their communal land 3. Numerous conflicts over land boundaries between traditional villages 4. Conversion of customary village land into individual freehold land 5. Unclear control and use of village land	1. Legal certainty and protection of customary land 2. Realizing justice for Indigenous peoples 3. Realization of orderly land administration in Indigenous villages 4. Customary villages can easily prove their land ownership due to organized administration 5. Land conflicts can be avoided
Government	Intervene by carrying out Systematic and Complete Land Registration of customary land in Bali which has not taken into account the social and cultural conditions of the Balinese people and administrative errors on Balinese customary land. Based on weak legal pluralism Not yet participatory	Customary land administration is the basis for implementing land registration and mapping in Bali's indigenous peoples, ensuring that the government's administration of customary land is in line with its recognition and respect for indigenous peoples. Based on strong legal pluralism Highly participatory even at the top stage of citizen control in Sherry Arnstein's ladder of participation

The table above shows that there are very significant changes and differences between the current construction of customary village land administration which is still very simple and has not yet realized legal certainty. Therefore, a fundamental change is needed by creating a more detailed and comprehensive land administration in customary villages based on the principle of communalism of Balinese customary law communities. The main actor responsible for the implementation of customary land administration in Bali is the structure of the customary village in Bali, which knows the pattern of land tenure and its principles. This also confirms the existence of strong legal pluralism because it recognizes, appreciates and respects the rights of customary law communities in managing

their land. The existence of clear customary land administration as we offer will provide legal protection to customary law communities over their land because the land/*lebensraum* is a shared or social space for these communities.

Currently, there is no ideal inventory of Desa Adat land in Bali, although the administration is more advanced than in other areas because of block maps and set books. The block map contains the map and block numbers of the land and is accompanied by a set book that contains the names of participants corresponding to the numbers on the map. This book was the basis for tax payments in the past so it is not a special administration that the adat village has over land tenure in the village.

The current administration of customary village land in Bali still has various weaknesses, including that the administration only addresses the name of the owner of the land parcel and also the size of the land. This data is not detailed because not include clear land boundaries, no land parcel maps and no history of land tenure so that the user can be clearly determined, no clear information about mutations to land and no specific guidelines regarding spatial planning, land stewardship, building and water use.⁵⁸ The absence of information on these matters clearly means that the value of legal certainty will not be achieved. In Humberto Avila's view, one form of legal certainty is certainty because of the law, namely the existence of clear and complete evidence for rights holders, which in this case is the Balinese customary law community. Certainty because the law itself is very important to provide protection and security for these customary law communities and prevent land ownership disputes.⁵⁹

It is also clear that the certainty of the object of the right, the certainty of the subject of the right and the certainty of the legal status of the land will not be achieved. Certainty of the object of the right will not be achieved because there is no certainty of the boundaries of the land associated with the existence of land maps and measurement letters and the existence of a clear spatial map. On the other hand, the certainty of the subject of the right also cannot be fully guaranteed because the owner is not clearly known because it is not supported by the history of land ownership and there is no clear evidence of land mutation. The lack of certainty of the subject of the right and the object of the right will certainly affect the certainty of the legal status of the land.⁶⁰

A more in-depth and technical review shows that the weakness of this inventory of indigenous villages is that there is no specific administration of land tenure and use in indigenous villages, both related to land history; Land Parcel Maps; Records of Land Mutations and Problems and contains Spatial Planning, Land Stewardship, Building Planning, and Water Use. To overcome these problems, it is necessary to reconstruct the land administration by dividing the land administration into four books consisting of:

Book A Land History	Book B Land Map	Book C Land Mutation Data	Book D Spatial Planning, Land Use, And Water Use
Land history is important so that the	The purpose of Book B is to create certainty of the	Land mutation data plays an important role in	Book D is one of the most important and fundamental

⁵⁸ Wardana.

⁵⁹ Katharina Pistor, "The value of law," *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>.

⁶⁰ Robert B Keiter dan Matthew Mckinney, "Public land and resources law in the American West," *Environmental Law*, 49.1 (2019), 1–72.

history of land tenure and use can be known so that the subject of the right can be known with certainty. This book can describe the name of the party using the land, the basis of the land tenure, and the use of the land. This also applies to land controlled by groups of indigenous people together for public purposes such as land for temples, markets, and various other activities. The existence of this book will make it easier for indigenous peoples to prove the existence of control and ownership of the land from the claims of other parties.

object of the right because it contains physical land data. This book determines the size of land parcels and the boundaries of land parcels controlled by customary law communities, including land parcels controlled by villagers. The existence of this book is also to clearly define the boundaries of the customary village so that conflicts over land boundaries between customary villages can be prevented. It is also important to determine the boundaries of land for public facilities such as cemeteries, schools, official houses, perbekel offices, temples, and others so that the boundaries are clear. Included in what needs to be properly inventoried are the clear boundaries of land parcels so that conflicts between village krama do not occur and there is no conflict between adat structures with structures (bendesa) and village krama. In practice, the determination of land boundaries needs to involve the village or the bordering landowner.

realizing legal certainty for customary village land because it can identify changes in the list of users so that it can be *updated* from time to time. The author needs to state the user of the land because this land is still juridically indigenous village land but is physically used by the village krama. The existence of this data is also important to serve as evidence to avoid claims from irresponsible parties. The land mutation data above is also very important to prevent the transfer of land to people outside the customary village and the pledging of customary village land. This is because both of these are prohibited in the Balinese customary law community and sanctions will be imposed on the perpetrators. This happened in the Tenganan indigenous community in 1985 and the person was penalized to pay twice the price of the land at the time.

books in the administration of customary land in Bali because it determines the designation of land parcels such as land intended for village settlements (krama), land for agriculture, land for engagement, and other interests. This causes the use of land to be adjusted to the potential of the land and to prevent problems in the future.

The creation of the four books above can be done through a program that emphasizes the authority of Balinese customary law communities in administering their land. This will lead to various benefits, namely: (1) it is a form of respect for customary law communities in managing their territories; (2) it prevents the transfer of customary land to other parties; (3) it increases legal certainty in the land sector; and (4) it prevents conflicts in the land sector, both conflicts between fellow village krama and between customary villages.

4. Conclusion

The current land administration of Balinese Indigenous peoples still has various weaknesses, namely: (1) Current practices stem from weak legal pluralism that contained in various laws and court decisions that do not prioritize respect and protection of the rights of indigenous peoples to their land; (2) land administration policies are insufficiently participatory so that they only emphasize the role of the government and do not fully reflect the socio-cultural conditions of indigenous peoples; (3) the existence of land administration that is not detailed in indigenous peoples because it is only in the form of the names of people who are users of customary land so that it does not include land boundaries, the absence of land stewardship and also the absence of land data mutation. These weaknesses have led to customary law community land being transferred to individual property and conflicts over land boundaries. Therefore, this research proposes changes in the land administration

of indigenous peoples in Bali, namely changes in the political side of the law from weak legal pluralism to strong legal pluralism that respects and protects the customary land of Indigenous peoples, an integrative-participatory land administration policy so that the involvement of Indigenous peoples becomes essential and structuring the administration of customary lands so that it is more detailed and comprehensive. This can be done through the creation of four land administration books, namely: (1) book A containing land history; (b) book B containing land maps; (c) book C containing land mutation data; (d) book D containing spatial planning, land use and water use. The clear and detailed land administration of Indigenous peoples can be the basis for the government to conduct land registration and mapping.

References

- Aasoglenang, Thaddeus Arkum, "Legal pluralism and indigenous conflict adjudicatory mechanisms: the theory and practice in North-Western Ghana," *SN Social Sciences*, 3.10 (2023), 1–28 <<https://doi.org/10.1007/s43545-023-00764-x>>
- Arnstein, Sherry R., "A Ladder of Citizen Participation," *Journal of the American Planning Association*, 85.1 (2019), 24–34 <<https://doi.org/10.1080/01944363.2018.1559388>>
- Cambou, Dorothée, "The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective," *International Journal of Human Rights*, 23.1–2 (2019), 34–50 <<https://doi.org/10.1080/13642987.2019.1585345>>
- Christiansen, Thomas, "When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law," *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <<https://doi.org/10.2478/slgr-2020-0044>>
- Creutzfeldt, Naomi, "Traditions of Studying the Social and the Legal," *Routledge Handbook of Socio-Legal Theory and Methods*, 2019, 9–34 <<https://doi.org/10.4324/9780429952814-2>>
- Creutzfeldt, Naomi, Marc Mason, dan Kirsten Mc Connachie, *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge (London: Routledge, 2020) <<https://doi.org/10.4324/9780429952814-1>>
- Drange, Live Danbolt, "Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?," *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <<https://doi.org/10.1080/19452829.2021.1953965>>
- Eka Suadnyana, Ida Bagus Putu, "Desa Pakraman Sebagai Lembaga Adat dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu di Bali," *Dharma Duta*, 18.1 (2020), 21–32 <<https://doi.org/10.33363/dd.v18i1.446>>
- Franklin Obeng-Odoom and Anne Haila, "The Power of Uncertified Urban Land," *International Journal of Urban and Regional Research*, 48.5 (2024) <<https://doi.org/10.1111/1468-2427.13244>>
- Griffiths, John, "What is Legal Pluralism?," *Legal Pluralism & Unofficial L.* 1 1986, 1986, 1–56
- Hamida, Nilna Aliyan, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <<https://doi.org/10.19184/ijls.v3i1.26752>>
- Hayes, Tanya, dan Felipe Murtinho, "Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador," *International Journal of the Commons*, 17.1 (2023), 37–53 <<https://doi.org/10.5334/ijc.1200>>

Commented [ap5]: 1. Use of a tool such as Mendeley for reference management and formatting, and choose style modern humanities research association 3rd edition style.
2. All references must come from <https://www.sciencedirect.com/>
3. Reference only from the journal, Reference must be a reputable journal, DOI must exist.
4. Minimum 60 references

- Hirschl, Ran, dan Alexander Hudson, "A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy," *Law and Social Inquiry*, 00.00 (2024), 1–28 <<https://doi.org/10.1017/lsi.2023.82>>
- I Gede Arie Mataram, I Nyoman Sukandia dan I Wayan Kartika Jaya Utama, "Effectiveness of Implementing Complete Systematic Land Registration on Village Lands in Singakerta Village, Gianyar District," *Protection: Journal of Land and Environmental Law*, 2.1 (2024), 11–20
- I Putu Gelgel, I Wayan P.Windia, & Ngakan Dwijendra, Shri I Gusti Ngurah WiraWedawitry WP, "Philosophical Meanings Behind Differences in Population Status Domiciled in Traditional Villages (Desa Adat) in Bali, Indonesia," *Law and Humanities Quarterly Reviews*, 1.3 (2022) <<https://doi.org/10.31014/aior.1996.01.03.21>>
- Jayus, Jaja Ahmad, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum*, 27.1 (2020), 79–98 <<https://doi.org/10.18196/jmh.20200144>>
- Keiter, Robert B, dan Matthew Mckinney, "Public land and resources law in the American West," *Environmental Law*, 49.1 (2019), 1–72
- Kersapati, Muhamad Iko, "Spatio-historical data enrichment for toponomastics in Bali, The Island of Gods," *GeoJournal*, 88.5 (2023), 5489–5510 <<https://doi.org/10.1007/s10708-023-10932-4>>
- Kurkela, Kaisa, Anna–Aurora A. Kork, Anni Jäntti, dan Henna Paananen, "Citizen participation as an organisational challenge in local government," *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <<https://doi.org/10.1108/IJPSM-08-2022-0179>>
- Kwakernaak, C, *Integrated approach to planning and management of land : operationalization of Chapter 10 of UNCED 's Agenda 21* (The Netherlands, 1995)
- Larasati, Rindiana, Retno Saraswati, Lita Tyesta A L W, dan Muh Afif, "Construct Integrated Agrarian Reforms Based On Justice," *International Journal of Innovation, Creativity and Change*, 14.2 (2020), 909–28
- Larsen, Peter Bille, dan Jérémie Gilbert, "Indigenous rights and ILO Convention 169: learning from the past and challenging the future*," *International Journal of Human Rights*, 24.2–3 (2020), 83–93 <<https://doi.org/10.1080/13642987.2019.1677615>>
- Mahfud, Muh. Afif, "The Relevance of Ronald Dworkin's Theory for Creating Agrarian Justice in Indonesia," *Yustisia Jurnal Hukum*, 8.3 (2020), 389 <<https://doi.org/10.20961/yustisia.v8i3.27386>>
- Mahfud, Muh Afif, Naufal Hasanuddin Djohan, dan Muhammad Fahad Malik, "Constitutionality of Simultaneous Extension and Renewal of Land Rights," *Jurnal IUS Kajian Hukum dan Keadilan*, 12.1 (2024), 159–76 <<https://doi.org/10.29303/ius.v12i1.1360>>
- , "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review*, 6.2 (2024), 240–63 <<https://doi.org/10.33756/jlr.v6i2.24166>>
- McCarthy, John F., Ahmad Dhiaulhaq, Suraya Afiff, dan Kathryn Robinson, "Land reform rationalities and their governance effects in Indonesia: Provoking land politics or addressing adverse formalisation?," *Geoforum*, 132.April (2022), 92–102 <<https://doi.org/10.1016/j.geoforum.2022.04.008>>
- Meckelburg, Rebecca, dan Agung Wardana, "The political economy of land acquisition for development in the public interest: The case of Indonesia," *Land Use Policy*, 137.1 (2024), 107017 <<https://doi.org/10.1016/j.landusepol.2023.107017>>

- Moosavi, Sareh, dan Geoffrey R. Brown, "Advancing the Adaptive, Participatory and Transdisciplinary decision-making framework: The case of a coastal brownfield transformation," *Cities*, 111.January (2021) <<https://doi.org/10.1016/j.cities.2021.103106>>
- Pistor, Katharina, "The value of law," *Theory and Society*, 49.2 (2020), 165–86 <<https://doi.org/10.1007/s11186-020-09388-z>>
- Pradhani, Sartika Intaning, dan Almonika Cindy Fatika Sari, "Penerapan Pendekatan Positivistik Dalam Penelitian Hukum Adat," *Masalah-Masalah Hukum*, 51.3 (2022), 235–49 <<https://doi.org/10.14710/mmh.51.3.2022.235-249>>
- Rahmawati, Etika, Esmi Warassih Pudji Rahayu, dan Sukirno, "State Actors in Agrarian Conflicts: A Judicial Review in Rule of Law Perspective," *Journal of Southeast Asian Human Rights*, 7.2 (2023), 276–98 <<https://doi.org/10.19184/jseahr.v7i2.43798>>
- Rayner, Jeremy, dan Michael Howlett, "Introduction: Understanding integrated policy strategies and their evolution," *Policy and Society*, 28.2 (2009), 99–109 <<https://doi.org/10.1016/j.polsoc.2009.05.001>>
- Rosalina, Putu Devi, Ying Wang, Karine Dupre, I Nyoman Darma Putra, dan Xin Jin, "Rural tourism in Bali: towards a conflict-based tourism resource typology and management," *Tourism Recreation Research*, 1–16 <<https://doi.org/10.1080/02508281.2023.2223076>>
- Roth-Isigkeit, David, *The Plurality Trilemma: The Contingent Geometry of Global Legal Thought*, *The Plurality Trilemma*, 2018 <https://doi.org/10.1007/978-3-319-72856-8_6>
- Sani, Hanisah Binte Abdullah, "State Law and Legal Pluralism: Towards an Appraisal," *Journal of Legal Pluralism and Unofficial Law*, 52.1 (2020), 82–109 <<https://doi.org/10.1080/07329113.2020.1727726>>
- Selle, Per, dan Kristin Strømsnes, "Indigenous People's Self-governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi," *Ethnopolitics*, 0.0 (2023), 1–20 <<https://doi.org/10.1080/17449057.2023.2286780>>
- Siallagan, Damai, "Hukum Adat as Embodied Law : Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia," *Canadian Law Review*, 3.12 (2024) <<https://doi.org/https://dx.doi.org/10.2139/ssrn.4986123>>
- Stauffacher, Michael, Thomas Flüeler, Pius Krütli, dan Roland W. Scholz, "Analytic and dynamic approach to collaboration: A transdisciplinary case study on sustainable landscape development in a swiss prealpine region," *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <<https://doi.org/10.1007/s11213-008-9107-7>>
- Suartika, Gusti Ayu Made, dan Alexander R. Cuthbert, "Sleight of Hand: The Expropriation of Balinese Culture," *Space and Culture*, 25.4 (2022), 758–78 <<https://doi.org/10.1177/1206331220902973>>
- Sukirno, Sukirno, dan Muh. Afif Mahfud, "Relational Dynamics of State Law and Customary Law: a Study of the Ulayat Land Rights Recognition," *Kanun Jurnal Ilmu Hukum*, 24.3 (2022), 309–25 <<https://doi.org/10.24815/kanun.v24i3.25367>>
- Sulaiman, King Faisal, "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012," *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>
- Suwitra, I Made, "Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional" (Universitas Brawijaya, 2009)
- Swardhana, Gde Made, dan Suwiat Jenvitchuwong, "The Participation within Indigenous Land

- management: Developments and Challenges of Indigenous Communities Protection,” *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <<https://doi.org/10.53955/jhcls.v3i1.72>>
- Swenson, Geoffrey, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <<https://doi.org/10.1093/istr/vix060>>
- Tamanaha, Brian Z., “Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences,” *Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021), 168–205 <<https://doi.org/10.1080/07329113.2021.1942606>>
- , *Legal pluralism explained: History, theory, consequences, Legal Pluralism Explained: History, Theory, Consequences*, 2021 <<https://doi.org/10.1093/oso/9780190861551.001.0001>>
- , “Tempering Arbitrary Power: A Moral Theory of the Rule of Law,” *Washington University in St. Louis Legal Studies Research Paper Legal Studies Research Paper Series*, 24.March (2024)
- Tegnan, Hilaire, “Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure,” *Journal of Legal Pluralism and Unofficial Law*, 47.2 (2015), 312–23 <<https://doi.org/10.1080/07329113.2015.1072386>>
- Uktolseja, Novyta, dan Agustina Balik, “The Existence of Customary Rights in Modern Society,” *Journal of Law, Policy and Globalization*, 93 (2020), 154–68 <<https://doi.org/10.7176/jlpg/93-17>>
- de Villiers, Bertus, “Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?,” *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <<https://doi.org/10.53779/HBKA3992>>
- Vipriyanti, Nyoman Utari, Ni Kadek Sri Arini, dan Ernan Rustiadi, “Land-use problem and controlling for sustainable coastal development in South Bali,” *GeoJournal*, 89.2 (2024), 45 <<https://doi.org/10.1007/s10708-024-11042-5>>
- Wardana, Agung, “Debating Spatial Governance in the Pluralistic Institutional and Legal Setting of Bali,” *Asia Pacific Journal of Anthropology*, 16.2 (2015), 106–22 <<https://doi.org/10.1080/14442213.2014.997276>>
- Wibawa, Arya Pageh, Imam Santosa, Setiawan Sabana, dan Achmad Haldani, “Phenomenology : Adaptation of Poleng Motifs in Facing Bali Tourism,” *KnE Social Sciences*, 2023.1 (2021), 259–65 <<https://doi.org/10.18502/kss.v8i2.12769>>
- Wiguna, Made Oka Cahyadi, “Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius di Bali,” *Jurnal Hukum Novelty*, 7.2 (2016), 182 <<https://doi.org/10.26555/novelty.v7i2.a5466>>
- Willow, Anna J., “Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination,” *Human Ecology*, 41.6 (2013), 871–84 <<https://doi.org/10.1007/s10745-013-9593-9>>
- Yulianingsih, Wiwin, Frans Simangunsong, dan Muh. Arief Syahroni, “Awig-Awig Management of Marine and Fisheries Resources West Lombok,” *International Journal Of Community Service*, 2.4 SE-Articles (2022), 460–64 <<https://doi.org/10.51601/ijcs.v2i4.152>>

Accept Submission



sukirno mardjono <kirno9undip@gmail.com>

[BESTUUR] Editor Decision

1 pesan

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H.,M.M. <jurnal@mail.uns.ac.id>

4 Januari 2025

pukul 10.49

Balas Ke: Lego Karjoko

<bestuurlaw@gmail.com>

Kepada: Mr Sukirno Sukirno

<kirno9undip@gmail.com>

bestuurlaw@gmail.com

Mr

Sukirno

Sukirno:

We have reached a decision regarding your submission to BESTUUR, "Reconstructing Village Druwe Land Administration to Protect the Communal Land in Bali".

Our decision is to:

Accept Submission

Lego Karjoko

Scopus ID: 57211444511, Faculty of Law Universitas Sebelas Maret Surakarta, Indonesia

bestuurlaw@gmail.com

[mail.com](mailto:bestuurlaw@gmail.com)

Administrative Law Department Faculty of Law Universitas Sebelas Maret

Reconstructing Village Druwe Land Administration to Protect the Communal Land in Bali

Sukirno ^{a,1,*}, Muh.Afif Mahfud ^{a,2}, Muhammad Fahad Malik ^{b,3}

^a Faculty of Law, Universitas Diponegoro, Semarang, Indonesia.

^b Department of Law, Khwaja Fareed University of Engineering and Information Technology, Pakistan

¹kirno9undip@gmail.com * ²afifmahfud4@gmail.com ³fahadmalikawan98@gmail.com.

*Corresponding Author

ARTICLE INFO

Article history

Received: July 15, 2024

Revised: November 09, 2024

Accepted: December 28, 2024

Keywords

Bali;
Dispute;
Land Administration;
Legal Certainty;
Village Druwe Land;

ABSTRACT

The phenomenon of individualization of customary land, which is communal land, occurs in many customary law communities in Bali, such as those in Bangli and Lembang. The reason for this phenomenon is that the land administration in Bali's customary law communities only includes the names of the people who control the customary land. This makes it difficult for indigenous villages in Bali to prove their rights to the land. This research aims to analyze the weaknesses in the administration of customary land in customary law communities in Bali and also to construct an ideal customary land administration to protect the communal rights of customary law communities over their land. This research is a non-doctrinal (socio-legal) research that examines the administration of customary land in reality and the understanding of indigenous peoples regarding this matter. This research is a prescriptive research that uses primary data obtained through in-depth interviews and analyzed qualitatively. This research identifies three primary weaknesses in the administration of customary land in Bali, namely weak legal pluralism, insufficiently participatory land policies, and the existence of land administration that is not detailed. Therefore, the ideal construction of customary land administration in Bali is a change in legal politics to strong legal pluralism including changes in the conversion provisions of the Basic Agrarian Law which convert customary land to property rights, participatory land administration even up to the stage of citizen control and also detailed land administration including land history, land mutation, land boundaries and land stewardship.



This is an open access article under the CC-BY 4.0 license.



1. Introduction

The fulfillment of indigenous peoples' rights to their land needs attention because 5% of the world's current population or around 370 million people are indigenous peoples spread across 70 countries.¹ In Indonesia, there are still lands controlled by indigenous people

¹ Peter Bille Larsen dan Jérémie Gilbert, "Indigenous rights and ILO Convention 169: learning from the past and challenging the future," *International Journal of Human Rights*, 24.2-3 (2020), 83-93 <https://doi.org/10.1080/13642987.2019.1677615>

named customary land. Customary rights are the authority possessed community to control, regulate, and manage land for the benefit of its citizens. Customary land rights are mostly found in areas outside Java. In Bali, there are still communities called *adat* villages (formerly called *Pakraman* villages) that control customary lands, including village yards, land for temples, cemetery land, field land, and public facilities such as markets and schools. All land controlled by an *adat* village is called village *druwe* or village-owned land. However, there are weaknesses in the administration of *druwe* village land in Bali. This is because the administration solely addresses the name of the proprietor of the land parcel and the dimensions of the land.²

This information is insufficient for providing a detailed measure of the land parcel in question. The lack of clearly defined boundaries and detailed mapping of the land, as well as the absence of a history of land tenure, makes it impossible to determine the owner with certainty. Furthermore, there is a dearth of data pertaining to land mutations and a paucity of detailed guidelines on spatial planning, land stewardship, construction, and water usage. These issues give rise to legal uncertainty, as there is a lack of clarity regarding the extent and boundaries of customary land under the control of individuals. This results in a lack of effective control over the community's use of the land.³

The consequence of this weakness in land administration is that customary lands controlled by the community are then individualized, that is, registered as individual rights with the land office. This problem is escalated by the Complete Systematic Land Registration (CSLR) policy that accommodates the individualization and privatization of land ownership through land certification, which presents inequality and injustice to Indigenous peoples due to its top-down and liberal-capitalistic nature.⁴ In fact, the position of the individual should only be the ruler or user of customary land, not the owner, because the land is communal land. Its registration as an individual right clearly contradicts the concept of customary land which emphasizes communal rights.⁵

The existence of village *druwe* land as customary land is also reduced by national law, with the issuance of Law No. 5/1960 on the Basic Regulation of Agrarian Law (BAL), especially Article II of the Conversion Provision which states that land rights over *druwe* village are converted into property rights. This is different from the legal awareness of the Balinese people who consider *druwe* village land as village-owned land, not individualized land as property rights in national law. The top-down determination of national law in presenting individualization, privatization, and negation of the communalistic nature of customary land is inconsistent with the protection of customary land ownership and village *druwe* land.⁶ Customary land is placed as an object of land registration and certificates can

² Muhamad Iko Kersapati, 'Spatio-Historical Data Enrichment for Toponomastics in Bali, The Island of Gods', *GeoJournal*, 88.5 (2023), 5489–5510 <https://doi.org/10.1007/s10708-023-10932-4>

³ Ponco Hartanto and others, 'Corruption Policy Challenges in Combating Land Mafia: Experiences from Several Countries', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 521–654 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.233>

⁴ Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Constitutionality of Simultaneous Extension and Renewal of Land Rights," *Jurnal IUS Kajian Hukum dan Keadilan*, 12.1 (2024), 159–76 <https://doi.org/10.29303/ius.v12i1.1360>

⁵ Etika Rahmawati, Esmi Warassih Pudji Rahayu, and Sukirno, "State Actors in Agrarian Conflicts: A Judicial Review in Rule of Law Perspective," *Journal of Southeast Asian Human Rights*, 7.2 (2023), 276–98 <https://doi.org/10.19184/jseahr.v7i2.43798>

⁶ Sukirno Sukirno and Muh. Afif Mahfud, 'Relational Dynamics of State Law and Customary Law: A Study of the Ulayat Land Rights Recognition', *Kanun Jurnal Ilmu Hukum*, 24.3 (2022), 309–25 <https://doi.org/10.24815/kanun.v24i3.25367>

be issued for the land. This clearly reduces customary land rights to land rights when these rights actually have a higher position in the hierarchy of land tenure rights. In fact, a legal policy in a democratic country, especially in land law, should prioritize integration and participation for the widest possible community, especially for indigenous peoples.⁷ This reality clearly contradicts the right of Indigenous peoples to regulate their own territory as contained in the United Nations Declaration on the Rights of Indigenous People.⁸

This situation certainly affects the existing law enforcement process, namely when there is a lawsuit over individualized village druwe land, the judge will give a decision in favor of the individualized land because after all, national legal provisions do not protect the land of indigenous peoples as communal rights. This happened in the following decisions: the Bangli District Court Decision No.20/Pdt.G/2008/PN.Bli which confirmed that villagers have property rights over PKD. This Bangli District Court decision was also upheld by the CA and Supreme Court decision No.622 K/Pdt/2012. The same thing also happened in Gianyar Regency, where the Lembeng Customary Village lost its case against the villagers with the Denpasar District Court Decision No.4/PDT/2016/PT.DPS.

The situation above shows the lack of protection of customary land as common land of indigenous peoples. This leads to a condition of weak legal pluralism that shows the protection and recognition of customary law which is limited by the interests of the state and the provisions of laws and regulations.⁹ The current condition shows that there is inconsistency and lack of participation in the druwe land administration policy due to land policies that are not integrative and participatory. Based on this, it can be further found if there is a systematic error that causes the joint ownership of customary land of indigenous peoples to be reduced to individual rights. This reality clearly contradicts the concept of the thickest substantive rule of law put forward by Brian Z Tamanaha which requires the protection of cultural rights including the common land owned by indigenous peoples.¹⁰

These conditions underscore the necessity of reconstructing Bali's customary land administration. This is an effort to make radical changes in the context of customary land administration so that there is clarity regarding the boundaries of customary land, the existence of an appropriate land stewardship model, and clarity regarding legal actions on land through land mutation data. A comprehensive construction is needed because along with changes in land administration, it is also necessary to change the politics of land law from weak legal pluralism to strong legal pluralism. This change also provides space to implement contextual policies which in Tamanaha's view reflect four things namely morality, rationality, customs, and things approved by the community.¹¹ Starting from this,

⁷ Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, 'Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice', *Jambura Law Review*, 6.2 (2024), 240–63 <https://doi.org/10.33756/jlr.v6i2.24166>

⁸ Dorothée Cambou, 'The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective', *International Journal of Human Rights*, 23.1–2 (2019), 34–50 <https://doi.org/10.1080/13642987.2019.1585345>

⁹ Hanisah Binte Abdullah Sani, 'State Law and Legal Pluralism: Towards an Appraisal', *Journal of Legal Pluralism and Unofficial Law*, 52.1 (2020), 82–109 <https://doi.org/10.1080/07329113.2020.1727726>

¹⁰ Brian Z. Tamanaha, 'Tempering Arbitrary Power: A Moral Theory of the Rule of Law', *Washington University in St. Louis Legal Studies Research Paper/Legal Studies Research Paper Series*, 24.March (2024).

¹¹ Brian Z. Tamanaha, 'Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences', *Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021), 168–205 <https://doi.org/10.1080/07329113.2021.1942606>

the existence of inductive and integrated policies involving all parties is a must to realize the protection of customary rights of indigenous peoples.¹²

This article is organized in the following order: starting with a critique of the weak enforcement of legal pluralism in Indonesia, proposing the importance of integrated and contextual policies, and at the end outlining the weaknesses of the current land administration and the idea of a new land construction oriented towards achieving substantive justice. This research is different from the research of Mataram, Sukandia, and Utama which shows the effectiveness of CSLR in Singakerta village in Gianyar which shows that there is privatization and the position of the state as the main actor for the administration of druwe village land. In addition, this study also differs from Wardana's research on land policy in pluralistic institutions in Bali.¹³ The most fundamental difference of this research from the two previous studies is the discussion of the urgency of reconstructing the Druwe village land administration by prioritizing an integrative-participatory approach through the construction of a new land administration by introducing four books. In addition, this research uses the socio-legal method as an analytical tool in finding the symbolic meanings of customary law communities.

2. Research Method

This research is a non-doctrinal, socio-legal study in which the concept of law is understood as inherently contextual, embedded within the socio-cultural framework of the society.¹⁴ This research project is specifically designed to examine the legal culture of the Balinese indigenous communities concerning the management and administration of druwe village land in Bali. This prescriptive study employs critical analysis to assess pertinent issues and proposes new insights and solutions by applying relevant theories and concepts to examine and address the complexities surrounding the administration of druwe village land. The objective of this approach is to promote legal protection, legal certainty, and justice. To investigate these objectives, primary data were collected through in-depth interviews with customary leaders from three Balinese indigenous villages. The research was conducted in three Balinese indigenous villages: *Desa Adat Mengwi*, *Desa Adat Panglipuran*, and *Desa Adat Tenganan*. Additionally, participant observation was employed to gain a nuanced understanding of the social and cultural dynamics within these communities.¹⁵ The collected data underwent a structured analytical process comprising several stages: data collection, the establishment of a coding framework, thematic coding, in-depth data analysis, and, finally, the systematic organization of findings into an academic article.¹⁶

¹² Ni Luh Gede Astariyani, Mariko Hattori, and Willy Naresta Hanum, 'The Validity of Sanctions Arrangements in Regional Regulations', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 682–705 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.313>

¹³ Agung Wardana, 'Debating Spatial Governance in the Pluralistic Institutional and Legal Setting of Bali', *Asia Pacific Journal of Anthropology*, 16.2 (2015), 106–22 <https://doi.org/10.1080/14442213.2014.997276>

¹⁴ Naomi Creutzfeldt, Marc Mason, and Kirsten Mc Connachie, *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge (London: Routledge, 2020) <https://doi.org/10.4324/9780429952814-1>

¹⁵ Naomi Creutzfeldt, 'Traditions of Studying the Social and the Legal', *Routledge Handbook of Socio-Legal Theory and Methods*, 2019, 9–34 <https://doi.org/10.4324/9780429952814-2>

¹⁶ Creutzfeldt, Mason, and Mc Connachie.

3. Results and Discussion

3.1 Weak Legal Pluralism and Inaccurate Administration of Customary Land in Bali

Legal pluralism is a reality that always covers humans because humans are actually not only bound by state law but also various other orders of life.¹⁷ Griffith defines legal pluralism as a condition where two laws exist simultaneously in the same space, object, and time. According to him, legal pluralism can be divided into two, namely, weak legal pluralism which is a condition where customary law is subordinate to state law, and strong legal pluralism which is a situation where customary law is in an equal position with state law. Indonesia applies weak legal pluralism because the recognition, respect, and protection of indigenous peoples are highly dependent on the will, goodness, and policies of the state.¹⁸ Weak legal pluralism is also found in the 1945 Constitution which is also still conditional because it must be following the laws and regulations made by the state.¹⁹ This has caused many problems regarding the protection of indigenous peoples in Indonesia, such as the uncertainty of the legal standing of these communities, the takeover of customary land by the government or the private sector, and various other complex problems.²⁰

At a philosophical level, this is incongruent with the values of justice and legal certainty that underpin customary land management. This is not consistent with the value of justice because it will eliminate the cultural rights of customary law communities that have been hereditary.²¹ Based on the theory of justice put forward by Ronald Dworkin, there are two measures to create justice, namely political preference and personal preference.²² Political preference, namely the protection of indigenous peoples who have been seen as weak in defending their communal rights. In addition, the politics of law in Indonesia, as contained in Article 18 B paragraph (2) and Article 3 of the Basic Agrarian Law, which embraces legal pluralism that is weak in protecting indigenous peoples, also causes the interests of indigenous peoples to be sidelined. This legal politics ultimately makes it difficult for indigenous peoples to defend their interests both politically and legally. This is the case in the land management of Indigenous peoples in Bali as the communal lands of indigenous peoples have been lost due to the individualization of land and the weak legal protection of indigenous people's lands. One of the reasons for the weak protection of Indigenous peoples' land is the administrative weakness of the customary village, which does not

¹⁷ Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*, *Legal Pluralism Explained: History, Theory, Consequences*, 2021 <https://doi.org/10.1093/oso/9780190861551.001.0001>

¹⁸ Nilna Aliyan Hamida, 'Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?', *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <https://doi.org/10.19184/ijls.v3i1.26752>

¹⁹ Gde Made and Suviwat Jenvitchuwong, 'The Participation within Indigenous Land Management: Developments and Challenges of Indigenous Communities Protection', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27. <https://doi.org/10.53955/jhcls.v3i1.72>

²⁰ Jaja Ahmad Jayus, 'Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System', *Jurnal Media Hukum*, 27.1 (2020), 79–98 <https://doi.org/10.18196/jmh.20200144>

²¹ I Gede Arie Mataram.

²² David Roth-Isigkeit, *The Plurality Trilemma: The Contingent Geometry of Global Legal Thought*, *The Plurality Trilemma*, 2018 https://doi.org/10.1007/978-3-319-72856-8_6

clearly define the boundaries of the land, including the absence of a land history that facilitates the process of individualization.²³

In personal preference, the realization of justice must pay attention to the social and cultural conditions of the community concerned. This means that the realization of justice must reflect the social conditions, culture, and values of the community concerned. In this case, the individualization of Indigenous peoples by national law through court decisions legitimizing the conversion of communal rights into individual rights is clearly not in line with the communalist view of Indigenous peoples. This means that the current law is unable to reflect the values, rationality and customs of these indigenous peoples.²⁴

The two indicators put forward by Ronald Dworkin above are clearly not met in the case of customary land for indigenous peoples in Bali. The non-fulfillment of justice certainly cannot be justified in the Indonesian context because all people including indigenous peoples are entitled to justice because the goal of the nation is to protect the entire Indonesian nation and realize all Indonesian people including indigenous peoples.²⁵ In these conditions, there can be contestation between the two and when this happens, customary law has the potential to be overridden by state law.²⁶ This causes the application of state law to customary law to be scrutinized so that the negation of the uniqueness and rights of these communities is not sidelined in policy making.²⁷

This weak legal pluralism affects the pattern of policy-making and formation in the land sector in Indonesia, which places the state as the main actor in administering the customary land of indigenous peoples. Based on this authority, the state has formed various laws and regulations including the Regulation of the Minister of Agrarian Affairs No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas. Based on this regulation, the state conducts land registration of indigenous peoples which will result in land certificates in the form of land ownership rights to indigenous peoples. The granting of land rights in the last two regulations has reduced the *ulayat* rights of customary law communities to land rights. This is not appropriate because in the hierarchy of land tenure in Indonesia it is clear that customary rights have a higher position than land rights. The hierarchy of land tenure

²³ Lis Julianti and Artit Pinpak, 'The Digitalization of Investment Impact on Developing Tourism Industry', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 655–81 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.289>

²⁴ Ni Komang Sutrisni and others, *The Compliance of Governance on Family Data Protection Regulation*, *Journal of Human Rights, Culture and Legal System*, 2024, iv <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.293>

²⁵ Hilaire Tegnau, 'Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure', *Journal of Legal Pluralism and Unofficial Law*, 47.2 (2015), 312–23 <https://doi.org/10.1080/07329113.2015.1072386>

²⁶ Sartika Intaning Pradhani and Almonika Cindy Fatika Sari, 'Penerapan Pendekatan Positivistik Dalam Penelitian Hukum Adat', *Masalah-Masalah Hukum*, 51.3 (2022), 235–49 <https://doi.org/10.14710/mmh.51.3.2022.235-249>

²⁷ Thaddeus Arkum Aasoglenang, 'Legal Pluralism and Indigenous Conflict Adjudicatory Mechanisms: The Theory and Practice in North-Western Ghana', *SN Social Sciences*, 3.10 (2023), 1–28 <https://doi.org/10.1007/s43545-023-00764-x>

rights is:²⁸ Indonesian rights to land, State control over land, the customary rights of customary law communities, and Individual rights.

In this regard, it is important to understand that only individual land rights are subject to land registration that can be owned individually or collectively. Through such land rights, the right holder has access to or use of the land and exclusivity or excludes others from using the land. This condition shows that the aspect of individual authority becomes the focal point in land rights. This has led to the individualization of land rights. In fact, in our research there are land rights that are certified in the name of an individual rather than on behalf of indigenous community. I Made Suwitra states that the highest right of control over customary land is in the customary village in form of the right to manage, to regulate, to use, and to utilize. This right of control is basically still based on a religious communalistic nature that is autonomously governed by customary law. One example occurs in Panglipuran Village where the use of land such as the change in the number of cultivators of customary land from 45 to 78 was decided by the Customary Council. The Customary Council has the authority to manage: (1) land owned by the Customary Village; (2) communal or individual land for use. Land for use has customary, religious, traditional, cultural, and economic functions for the owner while still paying attention to the social function of land rights.²⁹

Historically, land ownership in Bali cannot be separated from the history of the *Pasamuan Tiga* Decree chaired by Mpu Kuturan which clearly states that all land within the village area including *Kahyangan Tiga* land belongs to the customary village, cannot be traded and there is no individual ownership. Basically, every villager who utilizes a patch of land is obliged to carry out village ayahan in the form of both labor and material.³⁰ The customary council should carry out the administration of customary land including maintaining the continuity of the status of *Padruwen* land rights of the Customary Village, and maintaining the sanctity, preservation, cleanliness, and orderly use of the property of the customary law community. In order to facilitate a comprehensive understanding of the subject matter, it is essential to delineate the distinctions between the various categories of land tenure within the context of a customary village. These include Customary Village Land, Village Yard Land, and Village Ayahan Land. Customary Village Land is defined as land owned by the Customary Village. This land may be directly managed by the Customary Village, such as setra (cemetery) land, palaba (temple interest) land, market (*tegal*) land, and so forth. Alternatively, it may be handed over to the Customary Village krama for management purposes, including Customary Village yard land and Customary Village ayahan land. In addition, PKD represents land utilized by the krama (villagers) for residential purposes. Finally, AYDS denotes village land cultivated by the krama for agricultural purposes and other activities.

²⁸ King Faisal Sulaiman, 'Polemik Fungsi Sosial Tanah Dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 Dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), 091–111 <https://doi.org/10.31078/jk1815>

²⁹ Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.107017>

³⁰ Ida Bagus Putu Eka Suadnyana, "Desa Pakraman sebagai Lembaga Adat dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu di Bali," *Dharma Duta*, 18.1 (2020), 21–32 <https://doi.org/10.33363/dd.v18i1.446>

Given that PKD and AYDS land is customary village land, each village *krama* may not transfer rights to the land to other parties. However, empirically, under the pretext of conversion regulations in the BAL, the village *krama* can convert their land into freehold land ignoring the customary law that applies to the village land they control. In the end, conflicts occurred between the village of *krama*. The current ignorance of the reality of the communal nature of the land and the role of customary council in the management process has led to the loss of the right of customary law communities to manage their territories, including land as a resource governed by the tools or structures of the customary law community.

The reduction of customary rights to land rights and the disrespect for the authority of these communities to manage their territories violates the state's obligation to protect the rights of indigenous peoples.³¹ This obligation is contained in Article 6 of the Indigenous and Tribal Peoples Convention 1989 which states that the government must consult indigenous peoples on policies that can affect their lives. In the convention, there is the principle of prior, free, and informed consultation which should be the basis for the government in making policies in the land sector.³² Fergus MacKay's research shows that the non-ratification of this convention harms the protection of Indigenous peoples, including the Toba Batak community which is the focus of his research.³³ Experts in the field of indigenous peoples currently question the government's attention and policies towards indigenous peoples. This is due to the lack of countries that have ratified the Indigenous and Tribal Peoples Convention and the many violations of the rights of indigenous peoples in the world.³⁴

The implementation of customary land administration is not following these obligations because it has reduced the customary land rights of indigenous peoples to individual rights, does not involve indigenous peoples, and applies the prior informed and consent principle. This condition contrasts with the wave of fulfillment and strengthening of indigenous peoples' rights to land in other countries such as Scandinavia. In fact, in 1832, the United States Supreme Court issued a decision recognizing the rights of Indian Tribes as independent community entities that have the right to regulate and manage their own territory.³⁵ The same thing happened to the Sami indigenous people in Norway who even

³¹ Bertus de Villiers, 'Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?', *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <https://doi.org/10.53779/HBKA3992>

³² Tanya Hayes and Felipe Murtinho, 'Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador', *International Journal of the Commons*, 17.1 (2023), 37–53 <https://doi.org/10.5334/ijc.1200>

³³ Live Danbolt Drange, 'Indigenous Peoples and Rights to Land and Water in 2019: How Do Countries That Have Ratified the ILO-Convention 169 Comply?', *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <https://doi.org/10.1080/19452829.2021.1953965>

³⁴ Thomas Christiansen, 'When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law', *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <https://doi.org/10.2478/slgr-2020-0044>

³⁵ Anna J. Willow, 'Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination', *Human Ecology*, 41.6 (2013), 871–84 <https://doi.org/10.1007/s10745-013-9593-9>

have their own parliament to guarantee their interests called Sámediggi which has existed since 1989.³⁶

The conditions of Indigenous peoples in the countries above are very different from those in Indonesia because the government still uses a partial, non-integral-participatory approach in land administration. After all, it does not involve indigenous peoples in the process.³⁷ This will lead to various conflicts. This is because customary law communities have their order that must be considered and government policies that ignore this will be opposed by the community. This is what Ran Hirschl and Alexander Hudson call participation determining legitimacy. They state that participation has three characteristics: transparency, substantive, and community involvement.³⁸

3.2 Administration of Customary Land and its Problems

Problems arise because there is land registration carried out in traditional villages in Bali with the issuance of certificates as proof of ownership of land rights through the Complete Systematic Land Registration program. This land registration of customary lands was mainly carried out in 2018 so that many customary lands were then certified in the program. The inclusion of customary land in Bali as an object of Systematic and Complete Land Registration has reduced customary land rights to individual land rights. Through this CSLR, there will be two problems that can arise, namely that the land will become a land right that can be easily claimed by individuals, including being transferred and potentially becoming an object of collateral with a mortgage. Some examples of problems with CSLR implementation in Bali is there are indigenous villagers who get Free Hold Certificates on behalf of individuals.

This condition is also inseparable from the faulty conversion provisions in national land law. Article 2 paragraph (1) of the BAL Conversion Provision states that druwe land can be converted into freehold land. Made Oka Cahyadi Wiguna stated that the substance of the provision that converts village druwe rights into individual property rights is not appropriate because the land is communal land of the customary law community concerned.³⁹ The land is made into property rights, it will be easier to transfer to other parties, does not show respect for the authority of customary structures and emphasizes individual aspects. Conversion of Village Courtyard Land and Ayahan Land into full private or individual land so that it will eliminate the communalistic nature of druwe land into individual private land. This case occurred in Lemukih Pakraman Village (Buleleng Regency), Culik Pakraman Village (Karangasem Regency),¹⁴ Belancan Village, Bukih Village and Manikliyu Village (Bangli Regency). There were 25 cases of land certification of village druwe into private land in Belancan Village and 10 certifications in Bukih

³⁶ Per Selle and Kristin Strømsnes, 'Indigenous People's Self-Governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi', *Ethnopolitics*, 0.0 (2023), 1–20 <https://doi.org/10.1080/17449057.2023.2286780>

³⁷ Geoffrey Swenson, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <https://doi.org/10.1093/isr/vix060>

³⁸ Ran Hirschl and Alexander Hudson, 'A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy', *Law and Social Inquiry*, 00.00 (2024), 1–28 <https://doi.org/10.1017/lsi.2023.82>

³⁹ Made Oka Cahyadi Wiguna, 'Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius Di Bali', *Jurnal Hukum Novelty*, 7.2 (2016), 182 <https://doi.org/10.26555/novelty.v7i2.a5466>

Village, while in Manikliyu Village there was private land acquisition by residents without being bound by *ayahan*.

Individual free hold certificate over *druwe* land (village land) not only degrade the position of customary rights but also cause this land can easily transferred. This condition further jeopardizes the position of customary land.⁴⁰ Moreover, based on the results of the author's research, there are various examples that show the conversion of customary rights into private property rights in Balinese customary law communities. The individualization of customary land into freehold land is also caused by poor inventory of customary land, starting with the absence of land boundaries, which can lead to conflicts between land users and between customary villages. Data on the mutation of land use is unknown so that the use of customary land by individuals cannot be monitored by the customary council and transferred to other parties. At this point, indigenous peoples and the government should jointly conduct customary land mapping. The involvement of indigenous peoples in the administration of customary land is actually a very good event also to make proper land mapping because what is desired in the legislation is land mapping, not land registration, which reduces the communalistic aspects of the community. The mapping of customary land should clearly determine the boundaries of customary land areas, land assets owned by customary law communities, the boundaries of land used by the community, the boundaries of agricultural land and various other aspects. This can be done because the customary law community has customary law named *awig-awig* which is the basis for customary land tenure.⁴¹ If this is not done through community involvement and based on *awig-awig*, the boundaries determined will not be precise and will even cause conflict and instability in the community.⁴²

At a practical level, currently in the context of customary land management of Balinese customary law communities there is still no legal certainty, especially land law that provides legal protection to the real owner.⁴³ In this case, the land as the object of rights must be clear so that legal certainty can be realized. However, until now there is no land administration in the customary law community that clearly records the boundaries of land tenure and clear land mutations. The absence of a record of land mutations in the customary law community means that changes in the control of the land of the customary law community in Bali by its members cannot be known.⁴⁴ The absence of land mutation records has two implications: no monitoring of indigenous peoples' land tenure and a lack of evidence for indigenous peoples to defend their communal customary land.

The weakness in the protection of the village *druwe* land of the customary law community, which ended with the individualization of land, occurred due to at least five factors, namely: (1) the development of individualism; (2) the very high economic value of land; (3) weak legal pluralism; (4) land policies that are not integrated and integrative; and

⁴⁰ Franklin Obeng-Odoom and Anne Haila, 'The Power of Uncertified Urban Land', *International Journal of Urban and Regional Research*, 48.5 (2024) <https://doi.org/10.1111/1468-2427.13244>

⁴¹ Wiwin Yulianingsih, Frans Simangunsong, and Muh. Arief Syahrani, 'Awig-Awig Management of Marine and Fisheries Resources West Lombok', *International Journal Of Community Service*, 2.4 SE-Articles (2022), 460–64 <https://doi.org/10.51601/ijcs.v2i4.152>

⁴² Arya Pageh Wibawa and others, 'Phenomenology : Adaptation of Poleng Motifs in Facing Bali Tourism', *KnE Social Sciences*, 2023.1 (2021), 259–65 <https://doi.org/10.18502/kss.v8i2.12769>

⁴³ Novyta Uktolseja and Agustina Balik, 'The Existence of Customary Rights in Modern Society', *Journal of Law, Policy and Globalization*, 93 (2020), 154–68 <https://doi.org/10.7176/jlpg/93-17>

⁴⁴ Gusti Ayu Made Suartika and Alexander R. Cuthbert, 'Sleight of Hand: The Expropriation of Balinese Culture', *Space and Culture*, 25.4 (2022), 758–78 <https://doi.org/10.1177/1206331220902973>

(5) the absence of good land administration in indigenous communities. The development of individualism and capitalism has led individuals to want to control resources, including land, which has a high value because Bali is a world-class tourist spot, causing the demand for land to increase and the price of land to rise.⁴⁵ The individualization of land ownership is also ironic because Indonesia has a weak legal pluralism that does not strongly protect the authority and rights of customary law communities to manage their territories. Moreover, the pattern of formation and implementation of regulations related to the customary rights of indigenous peoples is also clearly not in accordance with the socio-cultural conditions of indigenous peoples.⁴⁶ This is also further exacerbated because indigenous peoples also do not have complete administration.

I Made Suwirta in his dissertation research found that customary lands in each customary village have not been inventoried and mapped so that it cannot provide accurate information on the extent of customary lands controlled and owned by customary villages. Boundary disputes between indigenous villages have recently colored the lives of indigenous communities in Bali, such as those between the indigenous villages of Ulakan and Antiga, between the indigenous villages of Macang and Ngis in Karangasem. There have also been cases between the villages of Gunaksa and Kusamba Dawan Klungkung, between the villages of Pengosekan and Padangtegal Ubud Gianyar, and between the villages of Cekik and Gablogan in Tabanan. Therefore, the Pakraman Village Council needs to take the initiative to urge local governments in cities, regencies and provinces to conduct a holistic inventory and mapping of customary village with the aim of providing a complete picture of the existence of control and ownership rights over customary lands in each customary village with all its cultural activities, so that studies, guidance and empowerment will be effective and valuable. Finally, boundary disputes can be minimized.

It can be argued that there are a number of inherent weaknesses in the current administration of customary land in Bali. The initial issue pertains to the reduction of *druwe* land (customary land) in Bali to land rights, which occupy a subordinate position within the hierarchy of land tenure rights. Subsequently, the second point that requires attention is that land rights place an emphasis on aspects of individual authority that are not consistent with the customary rights, which are oriented towards the collective or communal aspects of life. The third point pertains to the transfer of authority over customary land administration from customary law communities, which are entitled to respect, to the CSLR Program, which is a systematic land registration process that places the onus on the government. The fourth point is that the CSLR program in Bali Province has shortcomings due to its focus on quantity over quality in the context of customary land registration. Customary land is of a qualitative nature, encompassing social, cultural, and spiritual relations. Windia has asserted that the implementation of the CSLR program employs a principle of generalization that fails to account for the cultural diversity of each

⁴⁵ Nyoman Utari Vipriyanti, Ni Kadek Sri Arini, and Ernan Rustiadi, 'Land-Use Problem and Controlling for Sustainable Coastal Development in South Bali', *GeoJournal*, 89.2 (2024), 45 <https://doi.org/10.1007/s10708-024-11042-5>

⁴⁶ John F. McCarthy and others, 'Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?', *Geoforum*, 132.April (2022), 92–102 <https://doi.org/10.1016/j.geoforum.2022.04.008>

customary law community in Bali.⁴⁷ Ultimately, there is a dearth of efficacious mechanisms for the administration of customary land in Bali, which has resulted in a lack of legal certainty. The lack of administrative mechanisms to determine land boundaries, land mutations, land ownership history, and spatial stewardship and water use among customary law communities represents a significant gap in the data necessary for effective land management. The mechanism developed must align with the principles of public participation, or participation from the customary law community concerned, in order to reflect the values and legal culture of the community.

3.3 Integral-Participatory Administration of Land of Indigenous Peoples

The problem of integrated policies in the land sector is an urgent problem both in developed countries, developing countries and under developing countries. Integrated land management is a strategy to optimize planning and implementation so that goals can be achieved. An integrated policy involves various actors to solve a problem.⁴⁸ A participatory approach is an approach that involves all parties. The establishment of integrated and participatory policies has become Chapter X of Agenda 21 at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. This report states that to create an integrated land policy, parties must have a common goal, recognition of community rights, awareness of mutual dependency, involvement of all parties, transparent processes and consensus-based decision-making.⁴⁹

In this case, customary land management is actually based on the values embraced by the customary law community, including in the context of administering the land. One example is Panglipuran Village where the spatial layout is directed at the position of the rising sun and also the mountain at that location. In Panglipuran Village, which has an area of 112 acres, there is also a rule that it is not allowed to sell customary village land to people outside the village. The government should be present to support the existence and also ensure the implementation of the authority and rules of the customary law community. Instead of reducing the land of the customary law community from customary land to land rights as happened through the CSLR program and also making generalizations that do not respect the culture of the community.

The existence of various weaknesses in land administration certainly requires a new reconstruction that not only prioritizes quality aspects but makes the interests of indigenous peoples in Bali the main thing. Prioritizing the institutionalized authority of indigenous peoples and the participation of all indigenous peoples in Bali. Several steps must be taken in managing customary land in Bali, namely conducting an inventory of customary village lands, both those that become public facilities and customary village lands controlled by each village resident. Currently, based on the author's research, there has been an inventory of customary land in the community but it has not been fully implemented. This has been done in Mengwi village, for example. Based on data held by the Mengwi Village Clerk, I

⁴⁷ Shri I Gusti Ngurah WiraWedawitry WP I Putu Gelgel, I Wayan P.Windia, & Ngakan Dwijendra, 'Philosophical Meanings Behind Differences in Population Status Domiciled in Traditional Villages (Desa Adat) in Bali, Indonesia', *Law and Humanities Quarterly Reviews*, 1.3 (2022) <https://doi.org/10.31014/aior.1996.01.03.21>

⁴⁸ Jeremy Rayner and Michael Howlett, 'Introduction: Understanding Integrated Policy Strategies and Their Evolution', *Policy and Society*, 28.2 (2009), 99–109 <https://doi.org/10.1016/j.polsoc.2009.05.001>

⁴⁹ Sareh Moosavi and Geoffrey R. Brown, 'Advancing the Adaptive, Participatory and Transdisciplinary Decision-Making Framework: The Case of a Coastal Brownfield Transformation', *Cities*, 111.January (2021) <https://doi.org/10.1016/j.cities.2021.103106>

Putu Gede, there are several facilities in this traditional village spread across several Banjar, including in Banjar Mengwi, Banjar Pangean, Banjar Batu, Banjar Gampang, Banjar Pande, Banjar Alam Kajeng, Banjar Paseng. In addition, there are also burial grounds consisting of four, namely Setra Ageng, Setra Brahmana, Setra Pendeta and Setra Bebanjangan.

In addition, there are also village lands that are currently used as rice fields consisting of Subak Tungku Mengwi and Subak Bulan. In addition, there are also several public facilities located on the dry land of this traditional village, namely markets, auxiliary health center posts, schools, museums, official houses, perbekel offices and field land. The other use of village land is village yard land which is land used by the village krama. The discussion of subject certainty and object certainty is the basis for constructing the ideal administration of customary land in Bali Province. The author outlines the three basic principles of integral participatory customary village administration, namely, respect for customary law, community participation in land administration and the Importance of interdisciplinary approach.

The first principle is respect for customary law.⁵⁰ This means that the basis of the ideal land administration in Balinese traditional villages is to use customary law. This is also in line with the principle in Article 5 of the BAL that customary law is the basis of national agrarian law. In order to realize this, there needs to be an affirmation in the national agrarian law and specifically in the Balinese regional regulation which confirms that the administration of customary land including customary land in Bali is based on customary law both written in awig-awig and pararem which is a *living law* in Balinese society. For example, in Tenganan Village it was found that newlyweds can apply to the customary village for land including cutting down trees. Both rules are based on Catur Dresta which is imbued with Balinese Hindu teachings. Windia stated that until now there has been no special regulation regarding the administration of customary land in Bali. This is a weakness in terms of substance when examined from the legal system proposed by Lawrence M. Friedmann.

The second principle is the participation of the community in the administration and management of land. The word of participation indicates that the administration of customary land in Bali must involve the community, academics and the government. In this case, the party with the most important role is the customary law community. This is important to ensure that the land administration process is in line with the values of the customary law community. This shows that community participation in land administration is genuine participation where the community determines the substance of land administration policies. Using Sherry Arnstein's ladder of participation, public participation in land administration should reach the level of citizen control so that it is the community that controls the decision-making.⁵¹

The third one is the importance of an interdisciplinary approach. In order to create this participation, there must be a change in the perspective of the government and a change in

⁵⁰ Damai Siallagan, 'Hukum Adat as Embodied Law : Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia', *Canadian Law Review*, 3.12 (2024) <https://doi.org/https://dx.doi.org/10.2139/ssrn.4986123>

⁵¹ Sherry R. Arnstein, 'A Ladder of Citizen Participation', *Journal of the American Planning Association*, 85.1 (2019), 24–34 <https://doi.org/10.1080/01944363.2018.1559388>

the power structure that gives more space to the community in making decisions. For public participation to be successful, there are several conditions that must be met, namely human resources, knowledge, finance and expertise. With regard to finance, public participation can reduce the costs of land administration and achieve greater benefits.⁵² Among these resources, the most important is expertise, which makes an interdisciplinary approach very important. In this case, anthropology, sociology, law and geodesy need to be used so that land administration is based on holistic and comprehensive thinking.⁵³ The effectiveness of combining interdisciplinary, participatory and socio-legal approaches in dealing with indigenous peoples has been demonstrated by Michael Stauffacher in shaping and implementing sustainable policies in Switzerland.⁵⁴

At a technical level, the administration of customary land in Bali must be seen in three stages, namely planning, implementation and supervision.⁵⁵ In the context of planning, the administration of customary land in Bali, which emphasizes public participation, discusses the land objects that will be the target of this activity, including the boundaries between customary villages so that communication with other customary villages is also necessary, the lands of public facilities that belong to and are used for the benefit of customary villages and customary village lands controlled by the village krama. This relates to the inventory aspect of customary village land.

3.4 Constructing Village Druwe Land Administration in Bali for Legal Certainty

The construction of village druwe land administration in Balinese customary law communities is certainly based on the value of justice which aligns with respecting cultural rights. In addition, it is also intended to create legal certainty so that indigenous peoples can easily prove ownership of their land and prevent the takeover of customary land by individuals or other parties. To achieve this legal certainty, an ideal and comprehensive administrative model for indigenous peoples is needed. In this context, the current land administration in Balinese indigenous communities and the new construction will be described:

Indicator	Current Land Administration	Future Land Administration
Land administration by Desa Adat	Only limited to the name of the community that controls the land	Land administration by Desa Adat includes: 1. Land use and spatial planning of Indigenous villages 2. Land boundary data 3. Land Mutation Data 4. Land History Data
Impact	1. The realization of legal certainty and protection of customary land has not been achieved. 2. Does not realize justice for Indigenous peoples because they have the potential to lose their communal land 3. Numerous conflicts over land boundaries between traditional villages 4. Conversion of customary village land into individual freehold land 5. Unclear control and use of village land	1. Legal certainty and protection of customary land 2. Realizing justice for Indigenous peoples 3. Realization of orderly land administration in Indigenous villages 4. Customary villages can easily prove their land ownership due to organized administration 5. Land conflicts can be avoided
Government	Intervene by carrying out Systematic and	Customary land administration is the basis for

⁵² Hayes and Murtinho.

⁵³ Kaisa Kurkela and others, 'Citizen Participation as an Organisational Challenge in Local Government', *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <https://doi.org/10.1108/IJPSM-08-2022-0179>

⁵⁴ Michael Stauffacher and others, 'Analytic and Dynamic Approach to Collaboration: A Transdisciplinary Case Study on Sustainable Landscape Development in a Swiss Prealpine Region', *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <https://doi.org/10.1007/s11213-008-9107-7>

⁵⁵ Putu Devi Rosalina and others, 'Rural Tourism in Bali: Towards a Conflict-Based Tourism Resource Typology and Management', *Tourism Recreation Research*, 1–16 <https://doi.org/10.1080/02508281.2023.2223076>

Complete Land Registration of customary land in Bali which has not taken into account the social and cultural conditions of the Balinese people and administrative errors on Balinese customary land.	implementing land registration and mapping in Bali's indigenous peoples, ensuring that the government's administration of customary land is in line with its recognition and respect for indigenous peoples.
Based on weak legal pluralism	Based on strong legal pluralism
Not yet participatory	Highly participatory even at the top stage of citizen control in Sherry Arnstein's ladder of participation

The table above shows that there are very significant changes and differences between the current construction of customary village land administration which is still very simple and has not yet realized legal certainty. Therefore, a fundamental change is needed by creating a more detailed and comprehensive land administration in customary villages based on the principle of communalism of Balinese customary law communities. The main actor responsible for the implementation of customary land administration in Bali is the structure of the customary village in Bali, which knows the pattern of land tenure and its principles. This also confirms the existence of strong legal pluralism because it recognizes, appreciates and respects the rights of customary law communities in managing their land. The existence of clear customary land administration as we offer will provide legal protection to customary law communities over their land because the land/*lebensraum* is a shared or social space for these communities.

Currently, there is no ideal inventory of Desa Adat land in Bali, although the administration is more advanced than in other areas because of block maps and set books. The block map contains the map and block numbers of the land and is accompanied by a set book that contains the names of participants corresponding to the numbers on the map. This book was the basis for tax payments in the past so it is not a special administration that the adat village has over land tenure in the village.

The current administration of customary village land in Bali still has various weaknesses, including that the administration only addresses the name of the owner of the land parcel and also the size of the land. This data is not detailed because not include clear land boundaries, no land parcel maps and no history of land tenure so that the user can be clearly determined, no clear information about mutations to land and no specific guidelines regarding spatial planning, land stewardship, building and water use.⁵⁶ The absence of information on these matters clearly means that the value of legal certainty will not be achieved. In Humberto Avila's view, one form of legal certainty is certainty because of the law, namely the existence of clear and complete evidence for rights holders, which in this case is the Balinese customary law community. Certainty because the law itself is very important to provide protection and security for these customary law communities and prevent land ownership disputes.⁵⁷

It is also clear that the certainty of the object of the right, the certainty of the subject of the right and the certainty of the legal status of the land will not be achieved. Certainty of the object of the right will not be achieved because there is no certainty of the boundaries of the land associated with the existence of land maps and measurement letters and the

⁵⁶ Wardana.

⁵⁷Katharina Pistor, 'The Value of Law', *Theory and Society*, 49.2 (2020), 165–86 <https://doi.org/10.1007/s11186-020-09388-z>

existence of a clear spatial map. On the other hand, the certainty of the subject of the right also cannot be fully guaranteed because the owner is not clearly known because it is not supported by the history of land ownership and there is no clear evidence of land mutation. The lack of certainty of the subject of the right and the object of the right will certainly affect the certainty of the legal status of the land.⁵⁸

A more in-depth and technical review shows that the weakness of this inventory of indigenous villages is that there is no specific administration of land tenure and use in indigenous villages, both related to land history; Land Parcel Maps; Records of Land Mutations and Problems and contains Spatial Planning, Land Stewardship, Building Planning, and Water Use. To overcome these problems, it is necessary to reconstruct the land administration by dividing the land administration into four books consisting of:

Book A Land History	Book B Land Map	Book C Land Mutation Data	Book D Spatial Planning, Land Use, And Water Use
Land history is important so that the history of land tenure and use can be known so that the subject of the right can be known with certainty. This book can describe the name of the party using the land, the basis of the land tenure, and the use of the land. This also applies to land controlled by groups of indigenous people together for public purposes such as land for temples, markets, and various other activities. The existence of this book will make it easier for indigenous peoples to prove the existence of control and ownership of the land from the claims of other parties.	The purpose of Book B is to create certainty of the object of the right because it contains physical land data. This book determines the size of land parcels and the boundaries of land parcels controlled by customary law communities, including land parcels controlled by villagers. The existence of this book is also to clearly define the boundaries of the customary village so that conflicts over land boundaries between customary villages can be prevented. It is also important to determine the boundaries of land for public facilities such as cemeteries, schools, official houses, perbekel offices, temples, and others so that the boundaries are clear. Included in what needs to be properly inventoried are the clear boundaries of land parcels so that conflicts between village krama do not occur and there is no conflict between adat structures with structures (bendesa) and village krama. In practice, the determination of land boundaries needs to involve the village or the bordering landowner.	Land mutation data plays an important role in realizing legal certainty for customary village land because it can identify changes in the list of users so that it can be <i>updated</i> from time to time. The author needs to state the user of the land because this land is still juridically indigenous village land but is physically used by the village krama. The existence of this data is also important to serve as evidence to avoid claims from irresponsible parties. The land mutation data above is also very important to prevent the transfer of land to people outside the customary village and the pledging of customary village land. This is because both of these are prohibited in the Balinese customary law community and sanctions will be imposed on the perpetrators. This happened in the Tenganan indigenous community in 1985 and the person was penalized to pay twice the price of the land at the time.	Book D is one of the most important and fundamental books in the administration of customary land in Bali because it determines the designation of land parcels such as land intended for village settlements (krama), land for agriculture, land for engagement, and other interests. This causes the use of land to be adjusted to the potential of the land and to prevent problems in the future.

The creation of the four books above can be done through a program that emphasizes the authority of Balinese customary law communities in administering their land. This will lead to various benefits, namely: (1) it is a form of respect for customary law communities in managing their territories; (2) it prevents the transfer of customary land to other parties; (3) it increases legal certainty in the land sector; and (4) it prevents conflicts in the land sector, both conflicts between fellow village krama and between customary villages.

⁵⁸ Robert B Keiter and Matthew Mckinney, 'Public Land and Resources Law in the American West', *Environmental Law*, 49.1 (2019), 1–72. <https://dx.doi.org/10.2139/ssrn.3417931>

4. Conclusion

The current land administration of Balinese Indigenous peoples still has various weaknesses, namely: (1) Current practices stem from weak legal pluralism that contained in various laws and court decisions that do not prioritize respect and protection of the rights of indigenous peoples to their land; (2) land administration policies are insufficiently participatory so that they only emphasize the role of the government and do not fully reflect the socio-cultural conditions of indigenous peoples; (3) the existence of land administration that is not detailed in indigenous peoples because it is only in the form of the names of people who are users of customary land so that it does not include land boundaries, the absence of land stewardship and also the absence of land data mutation. These weaknesses have led to customary law community land being transferred to individual property and conflicts over land boundaries. Therefore, this research proposes changes in the land administration of indigenous peoples in Bali, namely changes in the political side of the law from weak legal pluralism to strong legal pluralism that respects and protects the customary land of Indigenous peoples, an integrative-participatory land administration policy so that the involvement of Indigenous peoples becomes essential and structuring the administration of customary lands so that it is more detailed and comprehensive. This can be done through the creation of four land administration books, namely: (1) book A containing land history; (b) book B containing land maps; (c) book C containing land mutation data; (d) book D containing spatial planning, land use and water use. The clear and detailed land administration of Indigenous peoples can be the basis for the government to conduct land registration and mapping.

References

- Aasoglenang, Thaddeus Arkum, 'Legal Pluralism and Indigenous Conflict Adjudicatory Mechanisms: The Theory and Practice in North-Western Ghana', *SN Social Sciences*, 3.10 (2023), 1–28 <https://doi.org/10.1007/s43545-023-00764-x>
- Arnstein, Sherry R., 'A Ladder of Citizen Participation', *Journal of the American Planning Association*, 85.1 (2019), 24–34 <https://doi.org/10.1080/01944363.2018.1559388>
- Astariyani, Ni Luh Gede, Mariko Hattori, and Willy Naresta Hanum, 'The Validity of Sanctions Arrangements in Regional Regulations', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 682–705 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.313>
- Cambou, Dorothée, 'The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective', *International Journal of Human Rights*, 23.1–2 (2019), 34–50 <https://doi.org/10.1080/13642987.2019.1585345>
- Christiansen, Thomas, 'When Worlds Collide in Legal Discourse. The Accommodation of Indigenous Australians' Concepts of Land Rights into Australian Law', *Studies in Logic, Grammar and Rhetoric*, 65.1 (2020), 21–41 <https://doi.org/10.2478/slgr-2020-0044>
- Creutzfeldt, Naomi, 'Traditions of Studying the Social and the Legal', *Routledge Handbook of Socio-Legal Theory and Methods*, 2019, 9–34 <https://doi.org/10.4324/9780429952814-2>
- Creutzfeldt, Naomi, Marc Mason, and Kirsten Mc Connachie, *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge (London: Routledge, 2020) <https://doi.org/10.4324/9780429952814-1>
- Drange, Live Danbolt, 'Indigenous Peoples and Rights to Land and Water in 2019: How Do

- Countries That Have Ratified the ILO-Convention 169 Comply?', *Journal of Human Development and Capabilities*, 22.4 (2021), 577–96 <https://doi.org/10.1080/19452829.2021.1953965>
- Eka Suadnyana, Ida Bagus Putu, 'Desa Pakraman Sebagai Lembaga Adat Dan Lembaga Agama Bagi Kehidupan Masyarakat Hindu Di Bali', *Dharma Duta*, 18.1 (2020), 21–32 <https://doi.org/10.33363/dd.v18i1.446>
- Franklin Obeng-Odoom and Anne Haila, 'The Power of Uncertified Urban Land', *International Journal of Urban and Regional Research*, 48.5 (2024) <https://doi.org/10.1111/1468-2427.13244>
- Hamida, Nilna Aliyan, 'Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?', *Indonesian Journal of Law and Society*, 3.1 (2022), 1 <https://doi.org/10.19184/ijls.v3i1.26752>
- Hartanto, Ponco, Pujiyono Suwadi, Muhammad Rustamaji, and Rizqan Kamil, 'Corruption Policy Challenges in Combating Land Mafia: Experiences from Several Countries', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 521–654 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.233>
- Hayes, Tanya, and Felipe Murtinho, 'Diagnosing Participation and Inclusion in Collective Decision-Making in the Commons: Lessons from Ecuador', *International Journal of the Commons*, 17.1 (2023), 37–53 <https://doi.org/10.5334/ijc.1200>
- Hirschl, Ran, and Alexander Hudson, 'A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy', *Law and Social Inquiry*, 00.00 (2024), 1–28 <https://doi.org/10.1017/lsi.2023.82>
- I Putu Gelgel, I Wayan P.Windia, & Ngakan Dwijendra, Shri I Gusti Ngurah WiraWedawitry WP, 'Philosophical Meanings Behind Differences in Population Status Domiciled in Traditional Villages (Desa Adat) in Bali, Indonesia', *Law and Humanities Quarterly Reviews*, 1.3 (2022) <https://doi.org/10.31014/aior.1996.01.03.21>
- Jayus, Jaja Ahmad, 'Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System', *Jurnal Media Hukum*, 27.1 (2020), 79–98 <https://doi.org/10.18196/jmh.20200144>
- Julianti, Lis, and Artit Pinpak, 'The Digitalization of Investment Impact on Developing Tourism Industry', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 655–81 <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.289>
- Keiter, Robert B, and Matthew Mckinney, 'Public Land and Resources Law in the American West', *Environmental Law*, 49.1 (2019), 1–72 <https://dx.doi.org/10.2139/ssrn.3417931>
- Kersapati, Muhamad Iko, 'Spatio-Historical Data Enrichment for Toponomastics in Bali, The Island of Gods', *GeoJournal*, 88.5 (2023), 5489–5510 <https://doi.org/10.1007/s10708-023-10932-4>
- Kurkela, Kaisa, Anna–Aurora A. Kork, Anni Jäntti, and Henna Paananen, 'Citizen Participation as an Organisational Challenge in Local Government', *International Journal of Public Sector Management*, 37.1 (2024), 124–40 <https://doi.org/10.1108/IJPSM-08-2022-0179>
- Larsen, Peter Bille, and Jérémie Gilbert, 'Indigenous Rights and ILO Convention 169: Learning from the Past and Challenging the Future*', *International Journal of Human Rights*, 24.2–3 (2020), 83–93 <https://doi.org/10.1080/13642987.2019.1677615>
- Made, Gde, and Suwiat Jenvitchuwong, 'The Participation within Indigenous Land Management : Developments and Challenges of Indigenous Communities Protection', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 308–27 <https://doi.org/10.53955/jhcls.v3i1.72>
- Mahfud, Muh Afif, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, 'Constitutionality of

- Simultaneous Extension and Renewal of Land Rights', *Jurnal IUS Kajian Hukum Dan Keadilan*, 12.1 (2024), 159–76 <https://doi.org/10.29303/ius.v12i1.1360>
- , 'Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice', *Jambura Law Review*, 6.2 (2024), 240–63 <https://doi.org/10.33756/jlr.v6i2.24166>
- McCarthy, John F., Ahmad Dhiaulhaq, Suraya Afiff, and Kathryn Robinson, 'Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?', *Geoforum*, 132.April (2022), 92–102 <https://doi.org/10.1016/j.geoforum.2022.04.008>
- Meckelburg, Rebecca, and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017 <https://doi.org/10.1016/j.landusepol.2023.107017>
- Moosavi, Sareh, and Geoffrey R. Brown, 'Advancing the Adaptive, Participatory and Transdisciplinary Decision-Making Framework: The Case of a Coastal Brownfield Transformation', *Cities*, 111.January (2021) <https://doi.org/10.1016/j.cities.2021.103106>
- Pistor, Katharina, 'The Value of Law', *Theory and Society*, 49.2 (2020), 165–86 <https://doi.org/10.1007/s11186-020-09388-z>
- Pradhani, Sartika Intaning, and Almonika Cindy Fatika Sari, 'Penerapan Pendekatan Positivistik Dalam Penelitian Hukum Adat', *Masalah-Masalah Hukum*, 51.3 (2022), 235–49 <https://doi.org/10.14710/mmh.51.3.2022.235-249>
- Rahmawati, Etika, Esmi Warassih Pudji Rahayu, and Sukirno, 'State Actors in Agrarian Conflicts: A Judicial Review in Rule of Law Perspective', *Journal of Southeast Asian Human Rights*, 7.2 (2023), 276–98 <https://doi.org/10.19184/jseahr.v7i2.43798>
- Rayner, Jeremy, and Michael Howlett, 'Introduction: Understanding Integrated Policy Strategies and Their Evolution', *Policy and Society*, 28.2 (2009), 99–109 <https://doi.org/10.1016/j.polsoc.2009.05.001>
- Rosalina, Putu Devi, Ying Wang, Karine Dupre, I Nyoman Darma Putra, and Xin Jin, 'Rural Tourism in Bali: Towards a Conflict-Based Tourism Resource Typology and Management', *Tourism Recreation Research*, 1–16 <https://doi.org/10.1080/02508281.2023.2223076>
- Roth-Isigkeit, David, *The Plurality Trilemma: The Contingent Geometry of Global Legal Thought*, *The Plurality Trilemma*, 2018 https://doi.org/10.1007/978-3-319-72856-8_6
- Sani, Hanisah Binte Abdullah, 'State Law and Legal Pluralism: Towards an Appraisal', *Journal of Legal Pluralism and Unofficial Law*, 52.1 (2020), 82–109 <https://doi.org/10.1080/07329113.2020.1727726>
- Selle, Per, and Kristin Strømsnes, 'Indigenous People's Self-Governing Bodies and the Role of Civil Society: The Case of the Norwegian Sámi', *Ethnopolitics*, 0.0 (2023), 1–20 <https://doi.org/10.1080/17449057.2023.2286780>
- Siallagan, Damai, 'Hukum Adat as Embodied Law : Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia', *Canadian Law Review*, 3.12 (2024) <https://doi.org/https://dx.doi.org/10.2139/ssrn.4986123>
- Stauffacher, Michael, Thomas Flüeler, Pius Krütli, and Roland W. Scholz, 'Analytic and Dynamic Approach to Collaboration: A Transdisciplinary Case Study on Sustainable Landscape Development in a Swiss Prealpine Region', *Systemic Practice and Action Research*, 21.6 (2008), 409–22 <https://doi.org/10.1007/s11213-008-9107-7>
- Suartika, Gusti Ayu Made, and Alexander R. Cuthbert, 'Sleight of Hand: The Expropriation of

- Balinese Culture', *Space and Culture*, 25.4 (2022), 758–78 <https://doi.org/10.1177/1206331220902973>
- Sukirno, Sukirno, and Muh. Afif Mahfud, 'Relational Dynamics of State Law and Customary Law: A Study of the Ulayat Land Rights Recognition', *Kanun Jurnal Ilmu Hukum*, 24.3 (2022), 309–25 <https://doi.org/10.24815/kanun.v24i3.25367>
- Sulaiman, King Faisal, 'Polemik Fungsi Sosial Tanah Dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 Dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), 091–111 <https://doi.org/10.31078/jk1815>
- Sutrisni, Ni Komang, Putu Angga Pratama Sukma, Rahimah Embong, and Khanlar Haydarov, *The Compliance of Governance on Family Data Protection Regulation, Journal of Human Rights, Culture and Legal System*, 2024, IV <https://doi.org/https://doi.org/10.53955/jhcls.v4i3.293>
- Swenson, Geoffrey, *Legal Pluralism in Theory and Practice* (London: Anthem Press, 2018) <https://doi.org/10.1093/isr/vix060>
- Tamanaha, Brian Z., 'Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences', *Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021), 168–205 <https://doi.org/10.1080/07329113.2021.1942606>
- , *Legal Pluralism Explained: History, Theory, Consequences, Legal Pluralism Explained: History, Theory, Consequences*, 2021 <https://doi.org/10.1093/oso/9780190861551.001.0001>
- Tegnan, Hilaire, 'Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure', *Journal of Legal Pluralism and Unofficial Law*, 47.2 (2015), 312–23 <https://doi.org/10.1080/07329113.2015.1072386>
- Uktolseja, Novyta, and Agustina Balik, 'The Existence of Customary Rights in Modern Society', *Journal of Law, Policy and Globalization*, 93 (2020), 154–68 <https://doi.org/10.7176/jlpg/93-17>
- de Villiers, Bertus, 'Dithering Between Consultation and Consensus – Whereto with Advisory Bodies for Indigenous Peoples?', *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1 (2023), 32–62 <https://doi.org/10.53779/HBKA3992>
- Vipriyanti, Nyoman Utari, Ni Kadek Sri Arini, and Ernan Rustiadi, 'Land-Use Problem and Controlling for Sustainable Coastal Development in South Bali', *GeoJournal*, 89.2 (2024), 45 <https://doi.org/10.1007/s10708-024-11042-5>
- Wardana, Agung, 'Debating Spatial Governance in the Pluralistic Institutional and Legal Setting of Bali', *Asia Pacific Journal of Anthropology*, 16.2 (2015), 106–22 <https://doi.org/10.1080/14442213.2014.997276>
- Wibawa, Arya Pageh, Imam Santosa, Setiawan Sabana, and Achmad Haldani, 'Phenomenology : Adaptation of Poleng Motifs in Facing Bali Tourism', *KnE Social Sciences*, 2023.1 (2021), 259–65 <https://doi.org/10.18502/kss.v8i2.12769>
- Wiguna, Made Oka Cahyadi, 'Pengaruh Eksistensi Masyarakat Hukum Adat Terhadap Penguasaan Tanah Prabumian Berdasarkan Konsepsi Komunalistik Religius Di Bali', *Jurnal Hukum Novelty*, 7.2 (2016), 182 <https://doi.org/10.26555/novelty.v7i2.a5466>
- Willow, Anna J., 'Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination', *Human Ecology*, 41.6 (2013), 871–84 <https://doi.org/10.1007/s10745-013-9593-9>
- Yulianingsih, Wiwin, Frans Simangunsong, and Muh. Arief Syahroni, 'Awig-Awig Management of Marine and Fisheries Resources West Lombok', *International Journal Of Community Service*, 2.4 SE-Articles (2022), 460–64 <https://doi.org/10.51601/ijcs.v2i4.152>