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LEGAL PLURALISM AND THE RECOGNITION OF INDIGENOUS LAND RIGHTS: A COMPARATIVE STUDY OF INDONESIA, THE PHILIPPINES, AND CANADA

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Abstract

The regulation of customary land rights (hak ulayat) in Indonesia's agrarian legal system reflects a structural tension between formal recognition and practical implementation. Although the 1945 Constitution of the Republic of Indonesia and the Basic Agrarian Law (UUPA) recognize indigenous peoples' rights, such recognition remains conditional and administratively dependent, resulting in a subordinated legal position of indigenous communities. This study comparatively examines customary land governance in Indonesia, the Philippines, and Canada to identify divergent models of indigenous land recognition and to formulate an ideal regulatory framework for Indonesia. This research employs a normative juridical method with statutory, conceptual, and comparative approaches. It analyzes Indonesia's agrarian framework, the Indigenous Peoples' Rights Act (IPRA) of the Philippines, and the doctrine of Aboriginal title within Canadian jurisprudence. Findings indicate that Indonesia applies a conditional administrative recognition model, the Philippines adopts a statutory affirmative model through Certificates of Ancestral Domain Title (CADT) and Free, Prior, and Informed Consent (FPIC), while Canada develops a constitutional-judicial model grounded in historical occupation, reinforced by fiduciary duty and meaningful consultation. These differences reflect varying degrees of legal certainty and institutional protection of indigenous land rights. The study concludes that Indonesia requires reconstruction toward a constitutional-pluralist model grounded in dignified justice, operationalized through declaratory recognition, binding territorial demarcation, substantive consent requirements, independent dispute resolution mechanisms, and a strict public interest test for state intervention.

Keywords: customary land rights, indigenous peoples, legal pluralism, comparative law

INTRODUCTION

Human life has evolved rapidly in line with the progression of time. Since the Industrial Revolution, patterns of human interaction have shifted from locally based relations toward global and transnational interactions. This transformation has been driven by the expansion of international trade, advances in communication technology, and the strengthening of global economic integration. These developments have facilitated the circulation of contemporary ideas and perspectives, while simultaneously generating new complexities in social structures, including the governance of natural resources.

In parallel with this transformation, modern societies have become increasingly organized and structured, characterized by production and distribution systems oriented toward efficiency, legal certainty, and economic growth. Within this context, the state plays a central role in regulating and managing strategic resources, including land, in support of development agendas. However, despite these profound changes, indigenous peoples' perspectives on land have remained relatively unchanged. For indigenous communities, land is not merely an economic object, but a space of social, cultural, and spiritual existence. It cannot be reduced to a commodifiable asset, as it constitutes an integral part of collective identity that binds intergenerational relations. Embedded in value systems, historical continuity, and communal sustainability (*libensarum*), this relationship reflects a meaning that extends beyond modern economic rationality.

This discourse has generated a structural tension within modern agrarian law. On the one hand, the state approaches land from the perspective of control and management oriented toward development priorities and legal certainty. On the other hand, indigenous communities understand their relationship to land through historical and social legitimacy that has been constructed across generations. This tension is particularly evident in land acquisition practices for development projects, where customary territories are frequently positioned as objects required to yступ to broader public interest objectives. Within the Indonesian legal framework, recognition of indigenous peoples is constitutionally grounded in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution), which affirms state recognition and respect for indigenous communities and their traditional rights, insofar as they remain in existence, are consistent with societal development, and align with the principles of the unitary state. Article 28I paragraph (3) further strengthens this normative foundation by guaranteeing respect for cultural identity and traditional community rights as part of human rights protection.

These constitutional mandates are implemented through Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). The UUPA establishes the concept of State Control Rights over land, water, and airspace, which are to be utilized for the greatest prosperity of the people. The state is not positioned as the owner of land under the domein verklaring doctrine, but rather as a public authority responsible for regulation, management, and determination of land allocation. The UUPA recognizes customary (ulayat) rights of indigenous communities insofar as they continue to exist, are consistent with societal development, and do not conflict with national interests or applicable legislation. Regulatory developments following Law No. 11 of 2020 on Job Creation, as amended by Law No. 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, demonstrate a policy shift toward investment acceleration and the simplification of business licensing. This transformation has impacted land governance, which is increasingly integrated into a risk-based licensing system emphasizing legal certainty and land availability for development purposes, including National Strategic Projects. The demand for "clean and clear" land status has become increasingly dominant in land use and control practices.

Land acquisition for public purposes is regulated under Law No. 2 of 2012, further elaborated through Government Regulation No. 19 of 2021 and Government Regulation No. 42 of 2021 concerning the facilitation of National Strategic Projects. The land acquisition process comprises planning, preparation, implementation, and handover stages, with deliberation serving as the basis for determining the form and amount of compensation. However, in practice, the application of the public interest doctrine raises issues when confronted with customary land, which is communal, historical, and cannot be fully reduced to individual compensation schemes. Recognition of indigenous peoples is dispersed across various sectoral regulations. Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of BPN No. 18 of 2019 provided an initial administrative framework for the registration of customary land through identification and recording mechanisms, which has since been revoked and replaced by Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 concerning Land Administration and Registration of Customary Land Rights of Indigenous Communities (hereinafter Ministerial Regulation No. 14/2024).

However, its implementation remains dependent on regional government recognition, resulting in the absence of a nationally standardized and operationally binding recognition system. Although the regulatory intent is aimed at ensuring legal certainty within Indonesia's national land administration system, previous studies have identified various complexities in its implementation. One such study conducted by Wahyu highlights[1], that agrarian law following the enactment of the Job Creation Law has opened regulatory space for the governance of indigenous peoples through both statutory instruments and regional regulations within the framework of regional autonomy. Several regions, including Jambi, West Kalimantan, and Lebak Regency, have issued Regional Regulations (Perda) governing the verification, registration, territorial recognition, and institutional arrangements of indigenous communities. However, such regional regulations must remain aligned with higher-level sectoral legislation. In practice, conflicts of authority frequently arise between regional and central governments, particularly in relation to the designation of forest areas, resulting in legal uncertainty regarding the recognition of indigenous communities on the ground. Another study conducted by Felix further indicates that[2], There is also a clear mismatch between the collective character of ulayat rights under the Basic Agrarian Law (UUPA) and the regulatory approach adopted in Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of BPN No. 14 of 2024, which tends to enable

[1] Wahyudi Wahyudi dan A. Junaedi Karso, "Konstitusionalisasi Hak Masyarakat Adat Pasca Amandemen UUD 1945," *Limbago: Journal of Constitutional Law* 6, no. 2 (Juni 2026): 312, https://doi.org/10.22437/limbago.v6i2.53671.
[2] Felix Rafiansyah Affandi, Imam Koeswahyono, dan Setiawan Wicaksono, "Problematika Pengakuan Hak Ulayat Antara Pasal 3 UUPA dan PMATR/KaBPN Nomor 14 Tahun 2024," *RechtJiva* 2, no. 3 (November 2025): 495, https://doi.org/10.21776/rechtjiva.v2n3.6.

a form of indirect individualization through certification registered under the name of customary institutions or their administrators. This approach potentially weakens the communal and collective essence of ulayat land and creates doctrinal inconsistency with Article 3 of the UUPA, which expressly recognizes customary land rights as communal rights attached to indigenous legal communities as collective legal subjects. Furthermore, as demonstrated in empirical findings by Tandori[3], The recognition of indigenous customary law communities has, from its inception, been characterized by a degree of ambivalence, as it is conditioned by legal clauses requiring both the factual existence of such rights and their conformity with higher-ranking legislation. In practice, these conditional requirements often operate as a juridical basis through which the state may restrict, reinterpret, or even negate historically grounded indigenous land rights under the justification of development imperatives and investment priorities.

These various legal and empirical issues indicate that the recognition of indigenous peoples' customary land rights in Indonesia continues to exhibit a substantial gap between normative acknowledgment and operational implementation. The existing framework remains fragmented, sectoral, and highly conditional, thereby producing legal uncertainty and inconsistent protection in practice. This condition suggests the necessity of further scholarly inquiry into more effective recognition models through a comparative legal approach. Such an approach is particularly relevant in relation to jurisdictions such as the Philippines, which adopts a statutory recognition system through the Certificate of Ancestral Domain Title (CADT), and Canada, which develops a constitutional-judicial model of recognition through the doctrine of Aboriginal title under Section 35 of the Constitution Act 1982. These comparative frameworks provide important analytical reference points for evaluating alternative legal constructions capable of delivering stronger legal certainty and more effective substantive protection of indigenous customary land rights.

LITERATURE REVIEW

METHOD

The methodology used in this research is normative legal research, which analyzes legal phenomena by systematic analysis of legal norms, principles and regulatory frameworks. The study is based on the analysis of law as a coherent system, the relationship between legal rules, doctrinal concepts and their normative application. The research is conducted using statutory, conceptual and comparative approaches. The analysis of the relevant legal instruments on customary land rights under Indonesian agrarian law is done using the statutory approach. The conceptual approach is applied to the doctrinal constructions of indigenous land rights and state authority over land. Using the comparative method, the regulation of customary land rights of indigenous peoples in the Philippines and Canada is evaluated and compared in the broader context of agrarian legal systems. The legal materials are composed of primary sources which include legislation and regulatory instruments organized hierarchically and secondary sources made up of scholarly literature, academic writings and relevant jurisprudential analyses. The materials selected are doctrinally relevant and analytically deep. All data are analyzed using qualitative legal analysis with deductive approach. The approach moves from general legal norms and theoretical frameworks to specific legal issues, to draw systematic and coherent conclusions on the regulation of indigenous customary land rights across different jurisdictions.

RESULTS AND DISCUSSION

A. Characteristics of the Recognition of Indigenous Customary Land Rights in Agrarian Law in Indonesia, the Philippines, and Canada

The provisions on ulayat land could not be separated from the legal construction of the relationship of indigenous legal communities with their living environment which is historically, socially and culturally constituted. Ulayat land is not just seen as an object of property rights, but rather as an integral part of a communal life system regulated by customary norms, which includes collective authority to control, manage and maintain the sustainability of customary territories as a unified living space. More philosophically, ulayat rights are essentially the realization of the collective rights of indigenous legal communities to control and exploit natural resources, especially land in their customary territories, for the sole objective of securing collective subsistence and continuity of the social and

[3] Tandori Tandori dan V. Hari Supriyanto, "Kontradiksi Hak Komunal Dan Hak Ulayat Dalam Hukum Pertanahan Indonesia: Tinjauan Yurisprudensi Dan Regulasi Indonesia," *Tunas Agraria* 8, no. 3 (September 2025): 381, https://doi.org/10.31292/jta.v8i3.483.

ecological systems of the indigenous community.[4] In line with this, Van Vollenhoven,[5] also recognized an ulayat rights as a communal right (beschikkingsrecht) over a specified customary territory (beschikkingskring), which meant that land control does not belong to individuals but is necessarily attached to the indigenous legal community as a collective social entity with the power to regulate, manage and control the use of land inside its territorial domain. According to this construction, ulayat rights have some fundamental features in customary land tenure systems. They are first communal in nature, as they are attached to indigenous legal communities as collective legal subjects, not as individuals. Secondly, they are, in principle, inalienable as individual property rights are, since they are an integral part of the identity and continuity of indigenous communities. Third, they are applied only within the legal community of indigenous peoples, to regulate the legal relations within the community. Fourth, except for mechanisms recognized and regulated by customary law and state law, ulayat land can generally not be acquired by external parties as private property. Fifth, customary leaders or traditional authorities serve as administrators and supervisors in the implementation of norms on ulayat land. Sixth, outsiders' use generally requires recognitio, a kind of acknowledgment of the collective rights of indigenous communities. Thus, ulayat rights are not only a land tenure regime, but also a normative system to regulate social, economic and ecological relations in a sustainable way to the indigenous legal communities.

The recognition of ulayat rights in the Indonesian legal system is constitutionally established in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the State recognizes and respects the existence of indigenous legal communities along with their traditional rights as long as they exist and in accordance with the principle of the unitary state and social development. This provision is further strengthened by Article 28I paragraph (3) of the 1945 Constitution which guarantees that the right to cultural identity and traditional community rights is respected as a human right that must be protected by the state. These provisions are further elaborated at the statutory level, namely Law No. 5 Year 1960 concerning Basic Agrarian Principles (UUPA), especially Article 3 which recognizes ulayat rights of indigenous legal communities as far as they exist in reality and the implementation does not conflict with national interests or higher legislation. Thus, ulayat rights are recognized in the Indonesian legal system in a conditional recognition framework, where the existence is required to be factually proven and the regulation remains subordinate to the right of control over land by the state as stipulated in Article 2 of the UUPA.

With regard to the regulatory level, the technical arrangement of ulayat rights is regulated by Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of BPN No. 14 of 2024 The regulation creates an administrative system of land governance that allows the registration of customary land and the formation of indigenous communities as legal subjects of land control. But this frame work is still a topic of debate among scholars. On the one hand, the administrative approach in this regulation is considered a progressive step as it increases legal certainty and integrates ulayat rights into the national land registration system, thus increasing legality and reducing agrarian disputes. However, some scholars argue that such a scheme threatens to change the communal character of ulayat rights into a more individualised or state-centric administrative structure, thereby reducing the autonomy of indigenous communities in the management of their land in accordance with living customary law. This tension also reflects the ongoing battle between the need for legal certainty in a system of positive law, and the desire to preserve the original communal and autonomous character of ulayat rights as a social institution.

At least there are 3 (three) main features of the Indonesian regulatory framework on ulayat rights can be identified from a normative point of view. First, recognition is constitutional but conditional, because this recognition depends on the state's recognition of the existence of indigenous legal communities. Second, the scope of protection is limited as it is constrained by national interests, development priorities and sectoral regulations. Third, the recognition mechanism is largely administrative rather than judicial or constitutively determinative. Thus, the rights of ulayat in Indonesia are better read as recognized rights rather than autonomous rights which exist independently of state intervention. In contrast, the Philippine model of recognition embodies a more structured way of building indigenous legal rights. The Indigenous Peoples' Rights Act (IPRA) of 1997 recognizes the rights of indigenous peoples over ancestral domains as collective rights to control, manage and develop ancestral territories. This recognition is not only declaratory but is reinforced through the Certificate of Ancestral Domain Title (CADT) mechanism that confers formal legal legitimacy to the communal ownership of indigenous peoples. In this way, the state becomes a facilitator of recognition rather than the determinant of the existence of rights. Section 5 of the IPRA also states that the indigenous concept of ownership is one that sees ancestral domains and all the resources found

[4] H. M. Arba, *Hukum Agraria Indonesia* (Jakarta: Sinar Grafika, 2025), 93–94.
[5] Rosnidar Sembiring, *Hukum Pertanahan Adat* (Depok: Rajawali Pers, 2017), 71.

therein as the material basis of indigenous cultural integrity. In this construction, ancestral domains are understood as communal property of the Indigenous Cultural Communities/Indigenous Peoples (ICC/IP), intergenerational in nature, and thus inalienable, non-transferable and non-destructible, and ensuring the sustainability of traditional resource use. The IPRA additionally acknowledges the principle of Free, Prior and Informed Consent (FPIC) as an essential tool for protection and participation. The principle requires the state and private actors to secure the free, prior and informed consent of indigenous peoples, before any activity takes place, based on full and transparent information. FPIC is a social and legal control mechanism that ensures the participation of indigenous peoples in all decisions involving the exploitation of natural resources. Previous studies suggest, however, that FPIC is often implemented without consideration of collective consent, and that the CADT process remains lengthy and administratively complex.[6]

"personal and usufructuary right." Subsequent jurisprudence has, however, demonstrated that this characterization is insufficient to capture the full doctrinal complexity of Aboriginal title within Canadian law. Rather, Aboriginal title has progressively been understood as a *sui generis* proprietary interest in land, distinct from conventional common law estates such as fee simple, while simultaneously not being fully reducible to indigenous legal conceptions of land tenure.

In this regard, Canadian courts have clarified that Aboriginal title constitutes a unique legal category that derives its content from both common law principles and pre-existing indigenous occupation and use of land prior to the assertion of Crown sovereignty. This dual foundation reflects an attempt to reconcile colonial legal structures with the prior existence of indigenous legal orders. Accordingly, Aboriginal title is not merely a residual interest, but a constitutionally cognizable right that requires interpretation through a combined lens of common law doctrine and indigenous legal perspectives. This doctrinal development was further refined in subsequent jurisprudence, particularly in *Calder v. British Columbia* (1973), which marked a pivotal shift by recognizing that Aboriginal title is not solely dependent on Crown recognition, but may arise from historical occupation. This evolution culminated in *Tsilhqot'in Nation v. British Columbia* (2014), where the Supreme Court of Canada issued the first declaration of Aboriginal title over a specific and defined territory, thereby affirming the legal continuity of indigenous land rights within the Canadian constitutional framework.[7]

Afterwards, interpretative efforts have attempted to clarify the legal meaning of Aboriginal title over time, but these developments have shown that the terminology used by the Privy Council is insufficient to fully convey the multidimensionality of Aboriginal title within Canadian legal doctrine. The major doctrinal change came in Calder v. British Columbia (1973), where the Supreme Court of Canada for the first time held that Aboriginal title was not merely a grant from the Crown, but an independent right grounded in historical occupation prior to the assertion of colonial sovereignty. In this sense, Calder represented a paradigm shift from the narrow conception of Aboriginal rights as mere usufructuary interests to the recognition of an autonomous legal basis for indigenous land rights. This doctrinal shift was further entrenched in Tsilhqot'in Nation v. British Columbia (2014), when the Supreme Court of Canada explicitly rejected the so-called "blank slate" doctrine, i.e. the colonial assumption that Canadian territory was legally empty prior to Crown assertion of sovereignty. The Court described this assumption as a colonial ideology that ignored the pre-existence of indigenous peoples and their legal systems. In affirming that Indigenous title is a legally cognizable interest grounded in prior occupation and continued connection to land, Tsilhqot'in further entrenched the constitutional recognition of Aboriginal title in Canadian law.[8]

In terms of philosophy, from this perspective, Aboriginal title is a doctrine challenging the state to fulfill its obligations and respect the rights of indigenous legal communities that have existed since time immemorial. All of these communities had social and political systems and territorial governance structures in place prior to the legal establishment and formal proclamation of state sovereignty. In this sense, Aboriginal title is a collective right, which is acknowledged as having resulted from the historical occupation and use of land by indigenous peoples before the coming of modern state sovereignty. Within this framework, the primary understanding of Aboriginal title is as a constitutional-judicial construct, with the state having the power to impose limitations, but such limitations subject to high standards of justification. This includes the Crown's fiduciary duty and the duty to consult meaningfully with

[6] Hairunnisa Rahmi Fadiyah dan Fadhel Ally Muhammad, "Legal Protection of Indigenous Communities from Natural Resource Exploitation: A Comparative Study of Indonesia and the Philippines," *Journal of Law, Politic and Humanities* 6, no. 3 (April 2026): 2037, https://doi.org/10.38035/jlph.v6i3.3139.
[7] Kent McNeil, "Indigenous Law and Aboriginal Title," SSRN Scholarly Paper no. 2825097 (Rochester, NY: Social Science Research Network, 12 Agustus 2016), 2, https://doi.org/10.2139/ssrn.2825097.
[8] Senwung Luk, "The Law of the Land: New Jurisprudence on Aboriginal Title," *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 67, no. 1 (Januari 2014): 291, https://doi.org/10.60082/2563-8505.1290.

indigenous peoples. Canadian case law also recognizes that customary or native land rights are governed by the doctrine of inalienability, which means that lands cannot be alienated or conveyed in perpetuity to third parties such that their native character is extinguished.[9] This principle is an integral aspect of customary (ulayat) land rights in that it provides legal certainty and security of land held by indigenous legal communities. It also serves as a protection against the dispossession or expropriation of customary land, and at the same time, it guarantees the sustainability of the existence of indigenous peoples themselves. This is since the permanent alienation of customary land and territories may endanger the survival, the identity and the collective continuity of indigenous communities. Thus, the existence of inalienable communal land rights is not only a key characteristic of indigenous legal systems in general, but also of several jurisdictions.

In this sense, the control over the Aboriginal title in Canada shows that the recognition of indigenous rights to land is mainly obtained through the court's rulings and is developed in a constitutional legal framework. Such rights are acknowledged as collective rights arising from the indigenous people themselves but still embedded in the state legal system. Therefore, the state performs a regulatory function by setting the bounds of land use through rigid legal standards. This relationship demonstrates that recognition of indigenous land rights in Canada does not create a distinct boundary between the state and indigenous peoples but instead creates a dynamic legal relationship that is in a process of continuous development through judicial evolution. A comparative analysis of the regulation of customary land rights in Indonesia, the Philippines and Canada shows remarkable differences in their legal construction and in the way each state positions the relationship between state sovereignty and indigenous rights. Legal basis for the recognition of ulayat rights in Indonesia is based on the 1945 Constitution, especially Article 18B(2) and Article 28I(3) and its implementation in the Basic Agrarian Law (UUPA) and Ministerial Regulation No. 14 of 2024. But such recognition is of a conditional character, because the existence of indigenous legal communities must first be recognized by the state through an administrative device in which local governments are involved. In this framework, ulayat rights are framed as communal rights that are under state control, which results in limited autonomy and a strong dependence on formal recognition.

On the other hand, in the Philippines, indigenous land rights are more explicitly recognized by the Indigenous Peoples' Rights Act (IPRA) of 1997. The rights to ancestral domains are recognized as inter-generational collective rights embodied in the Certificate of Ancestral Domain Title (CADT). This instrument gives legal legitimacy to communal ownership, and the state is reduced to a prime facilitator of recognition. The Philippine framework also encourages participatory governance through the principle of Free, Prior and Informed Consent (FPIC) which insists on indigenous consent prior to any activity involving their territories, although there are implementation challenges in practice. Meanwhile in Canada, the recognition of indigenous rights has been developed through the doctrine of Aboriginal title, which has been shaped by Supreme Court jurisprudence from St. Catherine's Milling, Calder v. British Columbia, to Tsilhqot'in Nation (2014). This evolution of the jurisprudence marks a movement away from a narrow colonial understanding to a stance that acknowledges indigenous land rights as a consequence of historical occupation, prior to the establishment of state sovereignty. This recognition is of a constitutional-judicial character, which means the state retains regulatory authority subject to a fiduciary duty and an obligation to consult in a meaningful way. But these rights are still acknowledged as strong collective rights of an inalienable nature. In essence, the comparison demonstrates that Indonesia utilizes a conditional administrative recognition model, the Philippines develops an affirmative statutory model, and Canada builds a jurisprudential-constitutional model. Thus there is a spectrum of recognition of indigenous customary land rights, from recognition by the state at the administrative level, to recognition by legislation and constitutional recognition developed by the courts in common law systems.

B. Reconfiguration of the Recognition Model of Customary Land Rights in Indonesia's Agrarian Legal System

The customary land rights framework in the agrarian legal system in Indonesia cannot be separated from the plural and non-uniform nature of the Indonesian social structure. Indonesia is not only a plural society, but also sanctuary for various indigenous legal communities with their own systems of land tenure, social norms and resource governance mechanisms . In this case, there is no single standard of customary law, but a fragmentation of normative systems that operate locally and coexist in parallel. This condition shows that the construction of the agrarian legal order of Indonesia has been positioned in the legal reality which is basically not homogeneous from the beginning.

[9] Muhamad Agil aufa Afinnas, "Perbandingan Hukum Penetapan Eksistensi Hak Ulayat Dengan Penetapan Native Title di Australia," *DIVERSI : Jurnal Hukum* 8, no. 1 (Juni 2022): 152, https://doi.org/10.32503/diversi.v8i1.2316.

This situation can be explained enough by Fred W. Riggs' theory of prismatic society. According to Riggs, many post-colonial states, particularly in Southeast Asia, are characterized by the presence of fused and diffracted administrative and social structures. In these societies, traditional (ascriptive and particularistic) norms are not completely supplanted by modern (universalistic and bureaucratic) legal rationality but co-exist and overlap in an unstable and often inconsistent pattern. The legal evolution of prismatic societies is hence mostly marked by a hybrid arrangement of integration and disjunction between customary systems and national legal institutions. In the Indonesian context this prismatic condition is mirrored in the ongoing interaction between systems of customary law and the formal state legal order. Thus, the regulation of customary land rights takes place in a hybrid legal space, where state law aims for uniformity and certainty and indigenous legal systems maintain local specificity and normative diversity. This structural dualism is one of the reasons for a persistent dispute in the recognition and implementation of customary land rights in the national agrarian system.[10]

In a prismatic civilization like Indonesia, traditional and modern institutional structures coexist with a lack of full integration. This overlap can be seen clearly in the connection between customary law as a traditional normative order and state law as a modern-bureaucratic legal order. The recognition of ulayat rights therefore does not function in a unified system, but within a transitional legal space, characterized by differences in recognition, a lack of standardized norms, and a strong reliance on state institutions. In this sense, ulayat rights do not belong to a separate legal sphere. Rather they belong to a hybrid and structurally unstable legal system. Fred W. Riggs' theory of prismatic society provides a useful analytical framework here, as it explains how legal development in such societies is highly vulnerable when it is not based on a balanced foundation that can accommodate multiple coexisting value systems. Structural imbalance of legal construction leads to gaps in legal practice, especially in places where one normative system, especially state law, dominates the other living legal systems. In the long term this situation may lead to the deterioration of the basic goals of law, as defined by Gustav Radbruch, which are justice, expediency and legal certainty.

If this is the case, then without the harmonization of state law, living customary law and normative principles of justice, the provisions concerning ulayat rights will not be able to realize the goal of realizing legal protection for indigenous legal communities. The Indigenous Peoples' Rights Act (IPRA) of 1997, compared with the Philippines, shows an effort to reduce the structural tension through the introduction of more affirmative legal instruments through the Certificate of Ancestral Domain Title (CADT) and the principle of Free, Prior, and Informed Consent (FPIC). In this model, state law is paramount, but the space for the recognition of indigenous legal systems is expanded through formal certification mechanisms that provide territorial certainty. However, procedural hegemony remains, with the state as the final arbiter of the validity of recognition of Indigenous land rights. Canada, on the other hand, is taking a different path. Aboriginal title is not recognized primarily through administrative legislation, but rather through the incremental evolution of jurisprudence by the Supreme Court. In this model, state law is not merely a tool of control, but a place where the existence of indigenous legal orders that pre-existed the formation of the state is recognized. Yet, this recognition is still within a justificatory frame, particularly through the principles of justification and fiduciary duty, which preserves the state as the ultimate authority in determining the scope of indigenous land rights. As a result, even if the Canadian model seems to be more progressive, the asymmetry of the relationship between the state and the indigenous peoples is not entirely erased.

The comparison of these three models shows that the core problem is not whether ulayat rights are acknowledged or not, but the position of the state in determining the legitimacy and extent of such rights. On the most administrative and conditional end of the spectrum is Indonesia; on the affirmative statutory end is the Philippines; and Canada is at a constitutional-judicial position based on jurisprudential development and reconciliation. This condition from the point of view of the dignified justice theory based on Pancasila shows that law is not only needed to provide formal recognition but also must protect the dignity of indigenous legal communities as living legal subjects. Justice cannot be measured only on the basis of procedural certainty but also based on the extent to which law protects the social, cultural and ecological existence of indigenous peoples. Agrarian law should not be purely legalistic but must be oriented to human dignity and substantive social justice in the framework of Pancasila, especially the second and fifth principle. Accordingly, to this synthesis, the ideal model of ulayat land regulation in Indonesia cannot be derived only from one comparative system but must be constructed as a constitutional-pluralist model based on dignified justice. This model demands a compromise between state legal certainty, acknowledgment of living customary law and safeguarding substantive justice values. The state still plays

[10] Zainal Arifin Mochtar dan Eddy Os Hiariej, *Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas, dan Filsafat Hukum* (Depok: Rajawali Pers, 2024), 292.

its regulatory role but should not be allowed to monopolize the determination of the existence and validity of ulayat rights. Constitutional recognition of indigenous legal communities should be framed as the recognition of autonomous legal subjects rather than administrative objects.The ideal transformation of agrarian law in Indonesia is not to strengthen the state control, but to reconstruct the relationship between the state and indigenous legal communities in order to realize a more equal, dialogical and pluralistic legal order that recognizes the living law. Therefore, the ideal regulatory model of ulayat rights in Indonesia's agrarian legal system should be conceived not merely as a normative reform, but as a structural reconstruction of the relationship between the state, indigenous legal communities and living legal systems. In Indonesia's prismatic society as conceptualized by Fred W. Riggs, customary law, state law and modern bureaucratic mechanisms do not function as an integrated system but rather parallelly and often inconsistently. This non-synchronization results in an inconsistent recognition of ulayat rights that remains very much dependent on state administrative instruments. Hence, a bridging mechanism is required for bridging formal legal systems and living customary law. In such circumstances, strengthening the regulatory model of ulayat rights is not just about expanding recognition but must be aimed at forming a legal structure that guarantees legal certainty and preserves the autonomy of indigenous legal communities. Therefore, this ideal model becomes the operational outputs of five core deterministic variables.

First, the recognition of indigenous legal communities and ulayat land rights should shift from a constitutive-administrative model to a declaratory one based on socio-historical facts. In this framework, ulayat rights are not seen as created by the state, but rather as a pre-existing legal reality embedded within indigenous social structures. Thus, the state is no longer a "right-granting authority," but an institution that checks and formally recognizes a pre-existing legal order. This shift is needed to curb the over-reliance on administrative discretion, which has been a structural flaw in the recognition of customary land rights.

Second, legal certainty about customary territories must be improved through the creation of definitive, binding and nationally integrated customary territory maps within the national land administration and spatial planning system. In practice, one of the main causes of agrarian conflict in Indonesia comes from overlapping claims between customary territories, state forest areas, and land allocation based on concessions. Therefore, customary land maps should not be viewed as simple administrative documents, but as legal instruments on par with the spatial planning instruments of the state. This will give legal certainty but protect the indigenous living spaces from external expansion of economic and investment interests.

Third, the Free, Prior and Informed Consent (FPIC) mechanism needs to be redefined as a substantive and legally binding consent framework, rather than a procedural consultation requirement. Under the current regime, FPIC frequently is mere formal administrative requirement with no decisive legal effect. In a rights-based framework, however, indigenous consent must be considered a material precondition of the validity of any state or private action that significantly affects customary territories. Therefore, FPIC should not be a symbolic procedural safeguard, but effective legal control on the exploitation and use of natural resources.

Fourth, there should be an independent quasi-judicial body for resolving indigenous agrarian disputes. The existing system for settling disputes is characterized by the insensitivity of general courts to customary law and long administrative procedures that are ineffective in addressing structurally embedded agrarian conflicts. Such an institution is needed to provide a more adaptive, expeditious and legally informed forum based on the recognition of customary law as living law but with binding adjudicatory authority, rather than as a consultative body.

Fifth, the state's authority over customary land governance needs to be rebuilt from an absolute control model to a limited control model based on a strict and justiciable public interest test. In this model the state still has a regulatory role, but its intervention is no longer dominant or discretionary. Any interference with ulayat rights must be proportionate, rational and legally accountable and subject to judicial review. This reconceptualization transforms the state's relationship with indigenous communities from a hierarchical structure to a more balanced legal relation within the framework of a constitutional state governed by the rule of law.

From this framework, the ideal model of ulayat land regulation should be viewed not merely as a normative reform, but as a structural and cultural reconstruction of the legal system. Such a model must be able to balance legal structure, legal substance, and legal culture. Thus, the regulation of ulayat rights would no longer remain in a fragmented and administratively dependent position, but rather would become a more stable, just, and substantively meaningful legal system that reflects the constitutional commitment to recognizing indigenous legal communities in accordance with the ideal legal aspirations of the Indonesian state.

CONCLUSION

The regulation of customary land rights in the agrarian legal systems of Indonesia, the Philippines and Canada, based on the foregoing analysis, reveals that the recognition of indigenous peoples' rights is not uniform, but resides on a spectrum of different legal models. Indonesia's model of conditional recognition is based on state administrative mechanisms. It subordinates indigenous legal communities to the state's authority. The Philippines developed an affirmative model through the Indigenous Peoples' Rights Act (IPRA) of 1997, the Certificate of Ancestral Domain Title (CADT) and the principle of Free, Prior and Informed Consent (FPIC), but its implementation still suffers from practical constraints. In contrast, recognition is developed in Canada through the doctrine of Aboriginal title, a judicial-constitutional doctrine that is based on historical occupation, but subject to limitations imposed by the fiduciary duty of the Crown.

Hence, the ideal model of customary land rights regulation in Indonesia should be re-conceptualized towards constitutional-pluralist approach based on dignified justice considering these comparative findings. Such a model would require declaratory recognition of indigenous legal communities, legally binding certainty over customary territories, stronger mechanisms of indigenous consent, creation of an independent dispute resolution body, and tight judicially reviewable limits on state authority through a public interest test. Therefore, the ulayat rights regulation should not only guarantee legal certainty but also be able to protect the existence and dignity of indigenous legal communities in accordance with the constitutional legal ideals of Indonesia.

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