

ANALYSIS OF THE PROSPECTS FOR THE IMPLEMENTATION OF THE CUSTOMARY LAND REGISTRATION SYSTEM: BENEFITS AND LEGAL ISSUES

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Abstract

The existence of Permen ATR/KBPN No. 14 of 2024 regulates the customary land registration system in Indonesia. The purpose of this research is to analyse the customary land registration system and conceptually analyse the legal certainty of the issuance of customary land certificates. This type of research is normative legal research. The approaches used in analyzing in this research are legislative approach, case approach and concept approach. The results showed that the customary land registration system has been regulated in Permen ATR / KBPN No. 14 of 2024, in this legal provision it is regulated that customary land can be controlled in the form of management rights decisions and property rights certificates while the legal certainty of the issuance of customary land certificates according to Permen ATR / KBPN No. 14 of 2024 still encounters problems in terms of legal concepts.

Keywords: Customary Land Registration; Customary Law Society; Customary Land; Customary Rights; Legal Certainty

Abstrak

Keberadaan Permen ATR/KBPN No. 14 Tahun 2024 mengatur sistem pendaftaran tanah ulayat di Indonesia. Tujuan dari penelitian ini adalah untuk menganalisis sistem pendaftaran tanah ulayat dan menganalisis secara konseptual kepastian hukum dari penerbitan sertifikat tanah ulayat. Jenis penelitian ini adalah penelitian hukum normatif (*Normative Legal Research*). Pendekatan yang dipakai dalam menganalisis dalam penelitian ini adalah pendekatan peraturan perundang-undangan, pendekatan kasus dan pendekatan konsep. Hasil Penelitian menunjukkan bahwa Sistem pendaftaran tanah ulayat telah diatur di dalam Permen ATR/KBPN No. 14 Tahun 2024, dalam ketentuan hukum ini diatur bahwa tanah ulayat dapat dikuasai dalam bentuk keputusan hak pengelolaan dan sertifikat hak milik sedangkan kepastian hukum dari penerbitan sertifikat hak ulayat menurut Permen ATR/KBPN No. 14 Tahun 2024 masih menemui permasalahan dari sisi konsep hukum.

Kata Kunci: Pendaftaran Tanah Ulayat; Masyarakat Hukum Adat; Tanah Ulayat, Hak Ulayat; Kepastian Hukum

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INTRODUCTION

For humans, the soil has a tremendous role in supporting life because it is basically the soil as a place to live and humans return to the ground when they die. Not only that, the land is also economically valuable in supporting human life.¹ The existence of customary law in Indonesia existed long before Indonesia's independence, even before the Unitary State of the Republic of Indonesia was formed and recognized by the State of Indonesia.² The position of customary law in the national legal system is one part of positive law that is constitutionally "recognized" by the state and even becomes one of the sources of law. State recognition of customary law is set forth in Article 18 B paragraph (2) of the 1945 Constitution.³ The traditional rights of Masyarakat Hukum Adat are the right to occupy customary land (hak ulayat), herding, the right to own customary forests, the right to fish in rivers or lakes, the right to collect firewood, and the right to hunt.⁴ Meanwhile, the subjects of hak ulayat are Masyarakat Hukum Adat who inhabit a certain area.⁵ Furthermore, in terms of customary law, hak ulayat, which is also known by different names, is the highest right of control over land covering all land included in the territorial environment of a certain customary law community, which is the common property of its citizens.⁶

Article 3 of Law No. 5 of 1960 on basic agrarian principles (hereinafter referred to as the UUPA) states that "the exercise of customary and similar right so indigenous Peoples, insofar as they in fact still exist, must be such as to be in accordance with national and state interests, which based on the unity of the nation and should not be contrary to the laws and regulations of other higher regulation". Customary rights are recognized by the UUPA, but the recognition is accompanied by two conditions, namely regarding "existence" and regarding its implementation, customary rights are recognized "as long as the reality is still there".⁷ In this context, the regulation of customary land registration was previously regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2019 concerning Procedures

¹ Rahmi Murniwati and Sucy Delyarahmi, "Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat," *Unes Journal of Swara Justisia* 7, no. 2 (2023): 2579–4701, <https://doi.org/10.31933/ujsj.v7i2.355>.

² Ridwan Sri Warjiyati, Safrin Salam, Jan Alizea Sybelle, Imaduddin Abil Fida, "The Legalization and Application of Osing Indigenous People 's Customary Law Model in the Legal System," *Lex Localis* 21, no. 4 (2023): 853–75, [https://doi.org/https://doi.org/10.4335/10.4335/21.4.853-875\(2023\)](https://doi.org/https://doi.org/10.4335/10.4335/21.4.853-875(2023)).

³ St. Nurjannah Nadya Oktaviani Bahar, "Eksistensi A'tunu Panroli Dalam Pembuktian Hukum Adat Di Tana Toa Kajang Kabupaten Bulukumba," *Alauddin Law Development Journal (ALDEV)* 3, no. 1 (2021): 119–30.

⁴ Jenny. K. Matuankotta et al., "The Impact of the Hamlet Land Pawn Agreement on the Economic Level of Indigenous Peoples in Negeri Piliانا, Maluku Tengah Regency," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 21–32, <https://doi.org/10.30631/alrisalah.v23i1.1262>.

⁵ A S Sinaga, J Sembiring, and ..., "Strategi Penyelesaian Pendaftaran Tanah Hak Komunal Masyarakat Hukum Adat Pandumaan-Sipituhuta," *Jurnal Tunas Agraria* 2, no. 1 (2019): 46–69.

⁶ Murniwati and Delyarahmi, "Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat."

⁷ I Gusti Nyoman Guntur, "Ragam Pengakuan Formal Terhadap Penguasaan Tanah Adat Di Indonesia," *Tunas Agraria* 6, no. 2 (2023): 93–109, <https://doi.org/10.31292/jta.v6i2.215>.

for Administration of Customary Land of Customary Law Communities (hereinafter referred to as Permen ATR/KBPN No. 18/2019).

But the existence of candy ATR / KBPN No. 18/2019 only regulates the recording of communal lands in the land register. The recording is only to provide information on the object, namely the location and boundaries of the land plot, but does not provide information on the subject/owner of the land and the interests of the rights of other parties or information on what kind of legal relationship. There are limited information on customary land areas in the recording.⁸ Permen terkait tanah adat kemudian dicabut dengan keberadaan Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 tentang penyelenggaraan administrasi pertanahan dan pendaftaran tanah hak ulayat masyarakat hukum adat (selanjutnya disebut Permen ATR/KBPN No. 14 of 2024).⁹

Substantive differences between ATR / KBPN candy No. 14 of 2024 with Permen ATR / KBPN No. 18 of 2019 is on the substance i of the regulation of land registration objects. One of the striking differences is the management rights and property rights attached to the ulayat land registered as Permen ATR/KBPN No. 14 of 2024 while the ATR/KBPN candy No. 18/2019 is limited only to the recording of communal land objects in the land register. This difference in legal arrangements has major consequences in the regulation of customary land in Indonesia, especially the existence of the legal community as the subject of the rights of the customary rights. The legal consequences show legal changes to the regulation of customary land, juridical the consequences of the regulation of the minister of agrarian and spatial planning / head of the national land agency change the structure of customary land tenure arrangements, namely¹⁰ : first, the regulation of customary land is more focused on land within the jurisdiction of indigenous peoples; second, the land that is regulated factually still exists and is managed by indigenous peoples and third, the customary land to be regulated does not have any land rights. So that the consequences of the regulation of customary land basically focus on customary land which purely still has customary rights and is fully managed by indigenous peoples.

This study examines the concept of land registration in Permen ATR / KBPN No. 14 year 2024 whether it has been in accordance with the principles of land registration within the framework of the protection of the rights of indigenous peoples as subjects of the rights of the customary rights. In addition, this study focuses on the legal impact of the emergence of property rights and rights of use on the registration of customary land within the framework of the theory of legal certainty.

⁸ Guntur.

⁹ Safrin Salam et al., "Pengakuan Hak Atas Tanah Ulayat Masyarakat Hukum Adat Di Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja : Perspektif Teori Hukum Kritis," *Jurnal Interpretasi Hukum* 4, no. 3 (2023): 721–32.

¹⁰ Ega Pribadi et al., "Pemahaman Mazhab Sejarah Dalam Konteks Kepastian Hukum Hak Ulayat Di Indonesia : Studi Kasus Terhadap Dinamika Sosial Legal Masyarakat Adat," *UNES Law Review* 6, no. 4 (2024): 11799–808.

METHOD

This type of research uses normative legal research.¹¹ The approach used in analyzing in this research is a statutory approach, a case approach and a concept approach.¹² The data sources used are primary data consisting of primary legal materials in the form of regulations related to land and customary land and customary law communities, then secondary legal materials in the form of journals, book papers related to customary land and tertiary legal materials in the form of dictionaries, legal encyclopedias. While the data analysis using legal theory in the form of legal certainty and the theory of property rights related to the existence of communal land. The results of the analysis of the data found will be formulated into a legal concept to answer the problems studied.

RESULT AND DISCUSSION

1. Registration of customary land according to Permen ATR / KBPN No. 14 of 2024

In terms of customary law, ulayat Rights, also known by different names, are the highest rights of ownership of land covering all land included in the territorial environment of a particular customary law community, which is land jointly owned by its citizens.¹³ Istilah teknik terhadap hak persekutuan dengan istilah “*Beschikkings recht*” while the land that constitutes its territory is called “*Beschikkingskring*”.. This term is given by Prof. C. Van Vollenhoven. Translated into bahasa Indonesian with ulayat or Lordship rights, while *Beschikkingkring* translated as ulayat environment. Juridically customary rights is a right that is inherent as a characteristic competence inherent as a characteristic competence that exists in the community of customary law in the form of authority and power to take care of and regulate the land and its plants by applying into or out of the community of customary law and absolute rights (absolut). Customary rights are a set of powers and obligations of a customary law society in relation to land located within its territory.¹⁴ Pada dasarnya secara teori, hak ulayat mengandung dua unsur yaitu:

- a. Elements belonging to which are included in the field of civil law;
- b. The element of authority that regulates the control and leads the use of common land included in the field of Public Law and its implementation is delegated to the head of the guild or together with other guild figures.

Based on this explanation, it can be interpreted that the right to control or the right to regulate owned by the community is called customary rights while the object of customary rights (land that is managed is customary land. In other words, the concept of customary rights refers to those subjects of law who have the right to the territory in question only those subjects of law who are citizens of the local community of life in question.¹⁵ Dari sisi peraturan hukum, pengaturan hak ulayat dan tanah ulayat diatur di dalam Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional

¹¹ Sulistyowati Irianto & Shidarta, *Metode Penelitian Hukum Konstelasi Dan Refleksi* (Jakarta: Yayasan Obor Indonesia, 2009).

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2013).

¹³ Murniwati and Delyarahmi, “Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat.”

¹⁴ Siti Hapsah Isfardiyana, *Hukum Adat* (Yogyakarta: UII Press Yogyakarta, 2018).

¹⁵ Dkk Sri Hajati, *Buku Ajar Hukum Adat* (Jakarta Timur: Kencana, 2018).

Republik Indonesia Nomor 14 Tahun 2024 tentang penyelenggaraan administrasi pertanahan dan pendaftaran tanah hak ulayat masyarakat hukum.

In the provisions of Article 1 point 1 Permen ATR/KBPN No. 14 of 2024, customary rights are regulated that:

“customary or similar rights of customary law communities, hereinafter referred to as customary rights, is the authority that according to customary law belongs to a particular customary law community over a certain area that is the environment of its citizens to take advantage of natural resources, including land, in the region, for their survival and life, arising from the external and internal relations are hereditary and the parties are disconnected between the customary law community and the region concerned”.

In addition to customary rights, it is also regulated regarding customary law communities (called the unity of customary law communities and customary land rights), as stipulated in Article 1 point 2, the term of the unity of customary law communities is:

"the unity of customary law community is a group of people who are bound by their customary legal order as joint citizens of a legal partnership because of the similarity of residence or hereditary basis that has customary institutions, has common property and/or customary objects, and a value system that determines customary institutions and norms of customary law”.

Then Article 1 point 4, regulating land customary rights is

"customary land is land that is in the territory of customary law community control which in reality still exists and is not attached to any land rights”.

Based on the provisions of Article 1 of Permen ATR/KBPN No. 14 of 2024 shows that in the position of customary law communities as subjects of law have the right to regulate the existence of customary land as long as the existence of customary land has not been attached to the land rights on it (Property Rights, use rights, lease rights, building rights, Business rights and other rights). Another term is, ulayat rights as land rights controlled by Indigenous Peoples. This ulayat land for the customary law community is a jointly owned land and is believed to be the gift of a supernatural force or ancestral heritage to a group that is a customary law community. And also as the main supporting element for the life and livelihood of the group throughout the ages.¹⁶ Berdasarkan konsepsi ini keberadaan Permen ATR/KBPN No. 14 of 2024 has regulated the concepts of customary law that have been translated into technical regulations related to the administration of customary land.

On the arrangement of customary land of Permen ATR / KBPN No. 14 of 2024 divides 2 (two) forms of customary land, namely the administration of customary land contained in Chapter III which contains the administration of customary land rights of customary law communities consisting of Articles 4 to 14. Then the second type is the registration of communal land which is regulated in Chapter IV of the communal land registration starting from Article 15 to Article 27 of the ATR/KBPN Regulation No. 14 of 2024.

¹⁶ Sri Hajati.

Registration of customary land as stipulated in Article 15 to Article 27 of the ATR/KBPN Regulation No. 14 of 2024 can be described in the stages of customary land registration as shown in **Figure 1**.

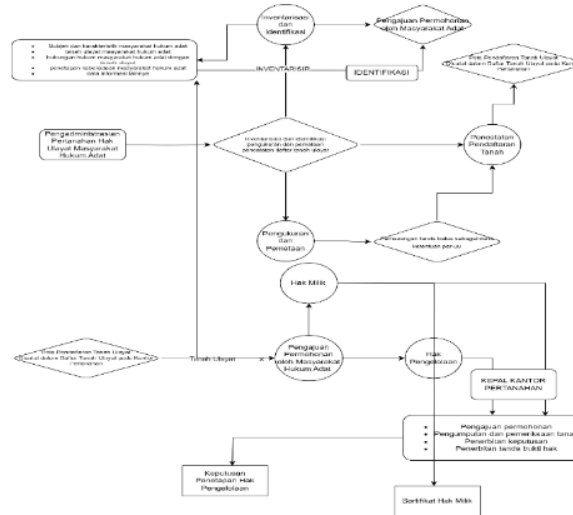


Figure 1. Stages of Customary Land Registration 1

Based on Figure 1 above shows that in the registration of communal land as stipulated in the ATR/KBPN no. 14 of 2024 divides 2 (two) stages of applying for the right to be attached to customary land:

- a. Customary land with management rights
- b. Customary land with Title

The management rights with the property rights are submitted by the applicant in this case the customary law society to the head of land in this case the customary law society with the criteria that must be met, namely:

- a. Subjects and Characteristics of Customary Law Communities;

The subjects and characteristics of customary law communities are legal subjects, namely a group of people who are bound by a legal order as joint citizens of a legal community due to similarity of residence or on the basis of descent who have customary institutions, have property and/or customary objects belonging together, as well as a value system that determines customary institutions and customary legal norms. Meanwhile, the characteristics of this customary law community are identified from the formation of legal alliances both territorially, genealogically and bilaterally.

- b. Customary Land of Customary Law Communities;

The communal land in question is land that is in the control area of the customary law community which in reality still exists and is not attached to any land rights.

- c. Legal relationship between customary communities and customary land;

In the context of customary law, the legal relationship in question is regulated in the dimension of public law (customary head with customary community on land), which is public law in the

regulation and control of customary land between the customary head and members of the customary community on land, and the dimension of private law, namely private legal relations between members of the customary community and land. In this context, there is the concept of communal land ownership, i.e. that communal land does not belong to an individual, but is the common property of a customary community. Control of communal land is based on traditions, customs and collective agreements passed down from generation to generation. On the other hand, there is a sacred relationship to customary land, which often has sacred significance and is seen as an ancestral heritage to be maintained and preserved.

d. Determination of the Existence of Customary Law Communities;

When referring to the Minister of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities, the determination of customary law communities can take the form of a Regional Head Decree of the Regent/Regency on the recognition and protection of customary law communities.

e. Data and Other Information.

The data in question is related to data that supports the existence of land objects such as the activities of customary law communities on customary land such as gardening activities by customary law communities; customary ritual activities within customary land areas and so on.

These prerequisites must be met by the customary law community to obtain management rights in the form of management rights decisions issued by the head of land while the recognition of rights in the form of customary rights into a certificate of property rights on behalf of the customary law community.

2. *Legal Certainty Of Ulayat Land Certificate*

Ulayat land has been regulated in the ATR/KBPN Regulation No. 14 of 2024 that:

"Tanah ulayat is land that is in the territory **of customary law community control which in reality still exists** and is not attached to any land rights".

The definition of customary land has not explained the legal relationship between Indigenous peoples and land. Whereas the concept of communal land with communal rights cannot be separated just like that. Moreover, in this sense it is explained that customary land is land that is in the territory of customary law community control, this explanation has not provided a strong legal entity regarding the position of the customary law community with customary land. In fact, according to the legal doctrine put forward by Andi Suriyaman Mustari Pide said that customary rights are the authority possessed by certain customary law communities over a particular region to take advantage of natural resources including land in the region for the sake of survival and life that typically arise from relationships outwardly and inwardly, hereditary, and unbroken between Indigenous peoples and their territory.¹⁷ In this case, customary rights indicate the existence of a legal relationship between Indigenous peoples as the subject of rights and land as the object of their rights in which the relationship between Indigenous peoples with the land of its territory is a master relationship.¹⁸

¹⁷ A. Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Kencana, 2014).

¹⁸ A. Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenadamedia Group, 2014).

The legal doctrine is related to the concept of customary land as stipulated in the norms contained in the ATR/KBPN Regulation No. 14 year 2024 related to the definition of customary land there is a discrepancy in translating customary land as an object of customary rights. Moreover, the legal measure used to determine the existence of customary land is a physical measure, namely: a) the concept of mastery b) the fact that it still exists and c) the right to land not attached. In fact, these criteria create legal uncertainty about the existence of customary rights (reducing the power of customary rights of Indigenous Peoples).

Legal uncertainty over the management and utilization of communal land is evident from the pile of rights attached to communal land. The pile of Rights has deviated from the concept of customary rights that have been regulated as before. This can be seen in the provisions of customary rights as stipulated in the ATR/KBPN Regulation No. 14 of 2024 regulates in layers the submission of applications for the legal status of customary land in addition to the rights created in the ATR/KBPN Regulation No. 14 year 2024 is no longer a customary right but has been expanded into management and property rights. In fact, the context of management rights and property rights will be attached or strengthen the position of individual rights both within the customary law community and outside the customary law community. Expansion of customary rights as stipulated in ATR/KBPN Regulation No. 14 of 2024 is seen in 2 the following Figure 2:

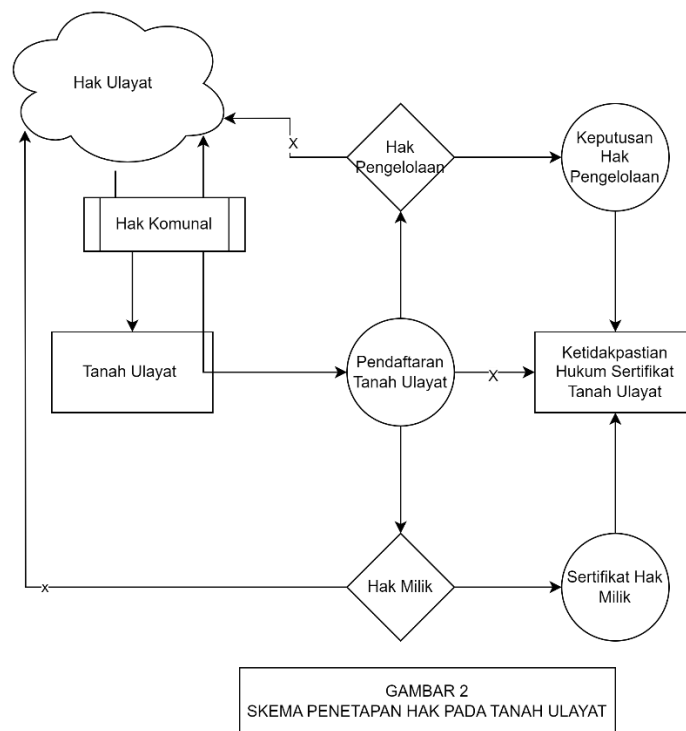


Figure 2. Expansion of customary rights in ATR/KBPN

Figure 2 explains that according to the provisions of the ATR/KBPN Regulation No. 14 year 2024 customary land can be attached with 2 (two) rights, namely property rights and management rights. However, in the setting of property rights and management rights does not refer to the context of what the property rights and management rights. When referring to the provisions of Law No. 5 of 1960 on basic agrarian regulations, it is stipulated that property rights and management rights are land rights,

while the concept of customary rights as stipulated in the ATR/KBPN Regulation No. 14 of 2024 is not a right to land but a single, original right so that special customary rights are regulated in Article 3, Article 5 and Article 58 of the UUPA.

The existence of management rights and property rights in Permen ATR/KBPN No. 14 of 2024 shows efforts to reduce in the sense of being limited as long as management rights and property rights are not applied for, then customary land is not used by Indigenous Peoples. This is clearly seen in Article 16 Paragraph (1) Permen ATR/KBPN No. 14 of 2024 which stipulates that:

"areas of customary land that are not affirmed as management rights by the unity of customary law communities still have **the status of customary land**"

Provisions of Article 16 Paragraph (1) ATR/KBPN Regulation No. 14 of 2024 confirms that customary land that is not applied for then the customary land remains the status of customary land but with the provisions of the mechanism for submitting an application for registration of customary land through the mechanism of management rights and property rights of the customary law community to the Land Office shows the legal position of the customary law community as a subordinate of the state. That the position of the state in this case has a higher power than the customary law community as a subject of law. On the other hand, the impact of regulation of Article 16 of the ATR/KBPN Regulation No. 14 of 2024 makes the regulatory position of customary land as an object without a subject in this case the customary rights of customary law communities. The absence of ulayat rights attached to ulayat land as stipulated in the ATR/KBPN Regulation No. 14 of 2024 makes the use of customary land unenforceable by Indigenous Peoples. This is because, Indigenous peoples in the context of law, must apply for customary land to be the right of management and property rights to be a certificate of property rights.

Conceptually, the registration of customary land through the mechanism of determination of rights (management rights and property rights) will have the following impact:

- a. There is a narrowing of customary rights into state rights through management rights. The right of management is the delegation of the right to control the state. When referring to Article 4, Article 16 Paragraph (1), and Article 53 of the UUPA. The right of management is not purely the right to control the state over land, but the delegation of the right to control the state over land. Management rights are given to departments, directorates, and autonomous regions. Related to the period of time, Land Management rights are not timed, meaning that they are valid as long as the land is used for the implementation of tasks or businesses.¹⁹
- b. There was a transition from communal rights to individual rights. The existence of the arrangement of land registration application through Permen ATR / KBPN No. 14 of 2024 has the potential to threaten the existence of communal land because communal land is not attached to communal rights, but these legal provisions have been expanded to management rights and property rights which in the construction of the UUPA are land rights which in this case the existence of these two rights refers to the rights of individuals of primary nature. So that the land registration is a consequence of the loss of customary rights to individual rights.

¹⁹ Urip Santoso, "Eksistensi Hak Pengelolaan Dalam Hukum Tanah Nasional," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 24, no. 2 (2012): 275, <https://doi.org/10.22146/jmh.16130>.

- c. Land that has not been granted a right will be vacant. In accordance with the provisions of Permen ATR/KBPN No. 14 of 2024, customary land that is not applied for either individual rights or property rights has the legal consequences of customary land having the status of land but without rights in it. This has been emphasized in the provisions of Article 16 Paragraph (1) Permen ATR/KBPN No. 14 of 2024. In addition, there is no further regulation regarding the status of customary land that is not applied for such rights as what land.
- d. Registration of customary land creates a legal vacuum on land that is not applied for. This is explained in Point c above.
- e. The concept of customary rights is weakened by eliminating the status as the right to manage and utilize customary land. This can be examined by not further regulating the customary land with the status of not applied for or the recognition mechanism is further regulated customary rights.

Based on the explanation above, it shows that there are legal problems related to the customary land registration mechanism as stipulated in the ATR/KBPN Regulation No. 14 of 2024. In addition to the weaknesses in the regulation of the land registration system in the provisions of the law, the land registration system is also tested through the analysis framework of the process of using the land registration proclaimed by M. Barry L. Roux in 2016.²⁰ Adapun alat analisis ditunjukkan pada Gambar 3 berikut:

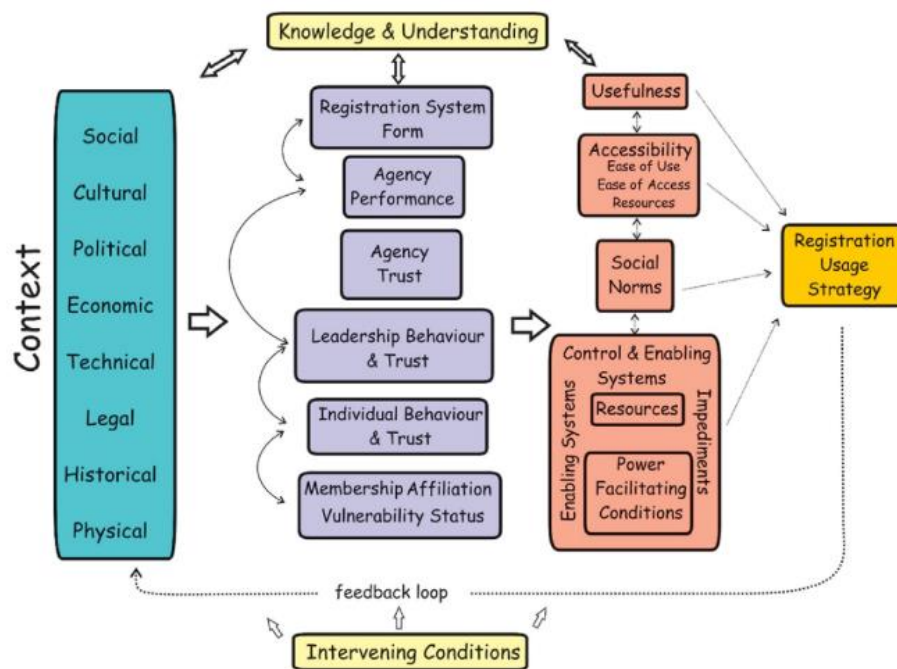


Figure 3. The Land Registration System

²⁰ Michael Barry and Lani Roux, "Land Ownership and Land Registration Suitability Theory in State-Subsidised Housing in Two South African Towns," *Habitat International* 53 (2016): 48–54, <https://doi.org/10.1016/j.habitatint.2015.10.028>.

This figure 3 shows that in the land registration system there are several forms of land ownership combinations as alat land ownership administration (e.g. registration ownership) functions weakly, half weak, half strong or strong providing indicators that are easy to understand. In general, if the evaluation of a particular combination is strong, then the tool is suitable for that form of ownership in those conditions. The situation requires only a slight improvement. In the case of semi-strong EV allotments, the tool combination of land ownership forms is effective or can be predicted to be effective provided a number of variables are addressed. In semi-weak combinations, significant intervention is required. In the case of a weak score, it is not recommended to use such combinations at all, at least not at that time. The analysis tool if connected with the customary land registration system as regulated in the substance of Permen ATR/KBPN No. 14 of 2024 in the social, cultural, political, economic, historical and physical aspects, the regulation of the land registration system, especially customary land as regulated, is still very weak. Weak registration system is influenced by a lack of understanding and knowledge about the registration of communal land (minimal sosialisasi) so that the impact on the non-fulfillment of the benefits of the land registration system, in addition to the availability of understanding and knowledge of employees related to this system still needs to be studied so that government officials understand well in the land registry.

Based on this, from the existing analysis framework, government involvement is needed to overcome existing problems, the existence of customary land cannot be seen purely juridical but based on the analysis framework other approaches are also needed, such as social, cultural, political, economic, historical and physical. Social aspects, need to be given an understanding of the importance of indigenous peoples land registration and legal protection, politically, the existence of indigenous peoples recognized and protected under state law, economic aspects, registration should bring a positive impact on the economy of indigenous peoples while history, that with the registration of this land can maintain a noble and wise existence indigenous peoples as the local wisdom of the Indonesian nation, as well as physically, the existence of indigenous peoples and natural resources are well maintained, sustainable and sustainable for generations. If this can be fulfilled, the registration of customary land becomes the main choice of the customary law community to register customary land with the state.

In addition to the customary land registration mechanism that needs to be improved, the customary land registration system that takes the concept of customary rights must strengthen the position of customary rights as the authority to regulate customary land as a native right owned by Indigenous Peoples. Not then provide a legal vacuum by expanding the meaning of these rights into property rights and management rights. Customary rights need to be recognized, protected and implemented in the form of recognition of the original rights of indigenous peoples who also need to be registered without prejudice to the essence of the customary rights. So that the essence of the registration of communal land can be carried out empirically.

CONCLUSION

The customary land registration system has been regulated in the Permen ATR/KBPN No. 14 of 2024, in this legal provision, it is stipulated that customary land can be controlled in the form of management rights decisions and property rights certificates while the legal certainty of the issuance of customary rights certificates according to ATR/KBPN Regulation No. 14 in 2024, there are still problems in terms of legal concepts such as: customary land that is not applied for rights (management rights and property rights) making the legal status of land without rights (managed rights and rights to be used) in addition, there are 2 types of Rights on customary land that provide legal consequences for the potential for reduced force to outside of customary rights as communal rights of Indigenous Peoples. The suggestion of this research is Permen ATR / KBPN No. 14 of 2024 needs to be revised, especially the regulation of land registration through the mechanism of granting management rights and property rights. Customary law communities as subjects of rights should not be burdened with the requirements for applications for other rights other than customary rights as the original rights of customary law communities.

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