

Original Article

Legal Analysis of the National Land Agency in Resolving Communal Land Disputes Among the Indigenous People of Bali

I Wayan Eka Artajaya ¹, Putu Lantika Oka Permadhi ¹, Dewa Gede Edi Praditha ¹, I Made Suana ¹, I Dewa Gede Agung Purwa Wibawa ¹

¹ Faculty of Law, Universitas Mahasaraswati Denpasar, Indonesia.

*Corresponding author: ekaartajaya@unmas.ac.id

Abstract

This research analyzes the role and authority of the National Land Agency (BPN) in resolving communal land rights (hak ulayat) disputes among the indigenous communities in Bali from a normative juridical perspective. Communal land rights, as the communal rights of indigenous communities over land, often lead to conflicts with development interests and individual ownership. The BPN, as the authorized institution in land administration, plays a crucial role in mediating, facilitating, and resolving these disputes. This study employs a literature review approach, examining various relevant laws and regulations, court decisions, academic journals, and books. The findings indicate that the existing legal framework does not yet fully provide adequate protection for the communal land rights of Balinese indigenous communities. Therefore, harmonization of regulations and a more participatory approach in dispute resolution are needed. The implication of this research is the importance of comprehensive recognition and protection of communal land rights within the national land law framework.

Keywords: Balinese; Indigenous Communities; Land Rights; Juridical;

Introduction

Agrarian conflicts in Indonesia, particularly those related to land rights, remain a complex issue that requires serious attention, especially amid massive development and investment. This problem often arises from overlapping interests between the traditional rights of indigenous peoples and the need for land for infrastructure development, the tourism sector, and increasingly expansive private enterprise development. According to a study by Setiawan and Lestari (2022), this overlap is often exacerbated by a lack of understanding on the part of outsiders regarding the complexity of the communal ownership system of indigenous peoples. ¹ One of the most crucial forms of traditional rights that often triggers conflict is customary rights. Fundamentally, customary rights can be understood as joint or communal rights owned by an indigenous community over the land and natural resources within its territory. This right is not merely physical ownership of a piece of land, but also includes the right to regulate, manage, and utilise the land and natural resources for the sake of survival, the continuity of customs, and the cultural and spiritual values of the customary law community concerned.

The existence of customary rights has been legally recognised in the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Explicitly, Article 18B Paragraph (2) of the 1945 Constitution states: "The state recognises and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as

¹ A. Basuki, L. Karjoko, and I. G. A. K. R. Handayani (2023), "Exploring ecological justice in the regulatory framework of land ownership, utilization, control, and inventory in Indonesia," *Journal of Environmental Management and Tourism*, vol. 14, no. 7, pp. 2056–2066 [https://doi.org/10.14505/jemt.v14.7\(7\).11](https://doi.org/10.14505/jemt.v14.7(7).11)



regulated by law.² This recognition provides a strong and indisputable constitutional basis for the existence of customary law communities and their traditional rights, including customary rights. This article affirms that the state has an obligation to recognise and respect their existence, as long as their existence and rights still exist and do not conflict with the basic principles of the state.

Furthermore, the recognition of customary land rights is also confirmed in more detail in Law No. 5 of 1960 concerning the Basic Agrarian Principles (UUPA). Article 3 of the UUPA states: "With due regard to the provisions of Article 2 and Article 9 paragraph 2 of this Law, customary rights and similar rights of customary law communities, as long as they still exist in reality, shall be considered as valid and recognised rights." This article emphasises that customary rights are recognised as long as they still exist in reality and do not conflict with national and state interests. The key phrase "as long as they still exist in reality" is often subject to different interpretations. For some parties, this phrase can be interpreted narrowly, requiring strict proof of the existence of customary rights, which can ultimately lead to legal uncertainty and trigger disputes, especially when these rights have not been formally registered. On the other hand, for indigenous peoples, customary rights are an integral part of their identity and livelihood that has been passed down from generation to generation. The criterion of "still exists" is often misinterpreted and does not take into account the dynamics of social change in indigenous communities, thereby exacerbating conflicts.³

In Bali Province, indigenous communities are very strong and have a unique land management system that is deeply integrated with cultural, spiritual and local wisdom values. Examples include the *subak* system, a traditional irrigation organisation that manages water communally, and the *pakeruman* village, which is a customary law community with autonomous territory and authority to regulate its life based on *awig-awig* (customary law) and *pararem* (village deliberation decisions). The indigenous people of Bali have a very deep and sacred connection with the land (for example, *pelaba pura* land designated for places of worship, *ayahan desa* land for the public interest of the village, and *pekarangan* land for housing and gardening) and natural resources in their region, which are regulated based on customary law and local wisdom values such as Tri Hita Karana (the three causes of happiness, which include harmonious relationships between humans and God, humans and fellow humans, and humans and nature).⁴

However, with the rapid development of the tourism sector and unstoppable infrastructure development, land disputes involving customary rights and traditional lands in Bali are becoming more frequent and increasingly complex.⁵ Various cases of conflict have arisen because claims to land ownership based on formal certificates clash with land ownership based on customary law that has been passed down from generation to generation. Data from various institutions, both governmental and non-governmental, show that agrarian disputes, including those involving indigenous peoples, continue to increase in Indonesia, demanding serious attention from the government and relevant institutions to find fair and sustainable solutions. The increase in disputes in Bali is also caused by high investment pressure and the lack of clear mechanisms for identifying customary rights at the local level.⁶

The National Land Agency (BPN), as the government agency responsible for land affairs in Indonesia, plays a central and strategic role in efforts to resolve agrarian disputes, including customary rights disputes. The duties and functions of the BPN cover various aspects of land administration, ranging from land registration, issuance of land rights certificates, to mediation and facilitation of land conflict resolution. In the context of resolving customary land rights disputes, the role of the BPN is crucial because this institution has the authority to verify land data, conduct measurements,

² D. Artina, M. Indra, L. Diana, A. Tiraputri, and G. M. Saragih (2024), "Overlapping regulation: kepastian hak ulayat atas tanah masyarakat hukum adat Muara Sakal Pelalawan Riau," *Masalah-Masalah Hukum*, vol. 53, no. 1, pp. 23–34, . <https://doi.org/10.14710/mmh.53.1.2024.23-34>

³ A. Sahari (2021), "The rights of controlling state in Indonesia against land tenure of customary law community," *Randwick International of Social Science Journal*, vol. 2, no. 2, pp. 141–148, 2021. <https://doi.org/10.47175/rissj.v2i2.224>

⁴ D. B. Napoh, "Recognition of the customary land law in the constitution of Indonesia and Malaysia," *Brawijaya Law Journal*, vol. 2, no. 2, 2015. <https://doi.org/10.21776/ub.blj.2015.002.02.01>

⁵ A. Pratama, Sudiarto, and Kaharudin (2024), "Resolution of land disputes through mediation study at the National Land Agency of Central Lombok, West Nusa Tenggara," *Private Law*, vol. 5, no. 2. <https://doi.org/10.29303/prlw.v5i2.7276>

⁶ D. B. Napoh, "Recognition of the customary land law in the constitution of Indonesia and Malaysia," *Brawijaya Law Journal*, vol. 2, no. 2, 2015. <https://doi.org/10.21776/ub.blj.2015.002.02.01>



and ultimately issue land rights.⁷ However, the BPN faces a major challenge in balancing the enforcement of formal legal certainty based on certificates with the recognition and protection of the communal rights of indigenous peoples, who often do not have formal evidence in the form of certificates. The incompatibility between positive law and customary law is a major obstacle for the BPN in creating comprehensive agrarian justice.⁸

The fundamental question that arises is how the existing legal and policy framework provides space for the BPN to effectively resolve customary land rights disputes among indigenous communities in Bali in a fair and sustainable manner, while respecting living customary values, applicable positive law, and the principles of agrarian justice. Therefore, this study aims to conduct a normative legal analysis of the role and authority of the BPN in resolving customary land rights disputes among indigenous communities in Bali, with reference to applicable laws and regulations and relevant legal theories. This study is expected to contribute to policy recommendations for a more effective and equitable resolution of customary land rights disputes.⁹

Method

This study uses a normative legal research method with a library research approach. The main data sources used are secondary data, including, primary legal materials, namely laws and regulations related to customary rights and the authority of the BPN, such as the 1945 Constitution, Basic Agrarian Law No. 5 of 1960, Government Regulations in the Field of Agrarian Affairs, BPN Head Regulations, and Bali Provincial Regulation No. 4 of 2019 concerning Customary Villages. Secondary legal materials, namely books, scientific journals, research results, and articles relevant to the topics of customary rights, the indigenous peoples of Bali, and the resolution of land disputes by the BPN.¹⁰ Tertiary legal materials, namely legal dictionaries and encyclopaedias used to gain conceptual understanding. Data analysis was conducted using a qualitative-descriptive approach, namely by describing, identifying, and interpreting the collected legal data to answer the research questions. A normative approach was chosen to analyse how the BPN should play its role in resolving customary rights disputes based on applicable legal provisions and principles of justice.¹¹

Results And Discussions

The Legal Basis of Customary Rights in Indonesia, especially in Bali, and Its Implications for the Role of the BPN in Land Registration and Dispute Resolution. The recognition of customary rights in Indonesia, although constitutionally and legislatively established, still faces challenges in its implementation, especially in the context of land registration. Article 3 of the UUPA states that customary rights are recognised as long as they still exist and do not conflict with national interests.¹² However, the criterion of "still existing" is often subject to different interpretations and often becomes an obstacle in the process of identifying and recognising rights. In Bali, the existence of pakraman villages as independent customary law communities provides a strong foundation for the existence of customary rights. Regulations concerning customary rights in Bali, including through the Bali Provincial Regulation, which is stipulated in Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages, are contained in Article 3 letters a and b, which verbally provide a local legal framework that supports this recognition.¹³

⁷ Fahmi, C., & Armia, M. S. (2022). Protecting indigenous collective land property in Indonesia under international human rights norms. *Journal of Southeast Asian Human Rights*, 6(1), 1–18. Fahmi, C., & Armia, M. S. (2022). <https://doi.org/10.19184/jseahr.v6i1.30242>

⁸ Dharsana, I. M. P., Budiarta, I. P. N., & Wahyuningsih, D. A. T. (2023). Authorities of the National Land Agency in settling land cases as a form of legal protection for land right holders whose transfer is canceled (Study of Supreme Court Decision Number: 3542 K/Pdt/2021). *Protection: Journal of Land and Environmental Law*, 1(3). <https://doi.org/10.38142/pjlel.v1i3.707>

⁹ Isnaeni, D., & Hamadi, A. (2024). Land banking policy: Critical evaluation of the economic and social rights of traditional legal communities. *Journal of Indonesian Legal Studies*, 9(2), 673–706. <https://doi.org/10.15294/jils.v9i2.2196>

¹⁰ I. P. G. Sridana, I. W. P. Windia, I. N. Suarka, and N. L. S. Beratha (2024), "Conflict and Harmony Between Desa Adat and the Bali Provincial Government Following the Enactment of the Regional Regulation on Customary Villag," *Jurnal Kajian Bali*, vol. 14, no. 2. <https://doi.org/10.24843/JKB.2024.v14.i02.p12>

¹¹ L. Judijanto (2024), "The Dynamics of Customary Land Dispute Resolution: Between Customary Law and Positive Law," *Journal of Adat Recht*, <https://doi.org/10.62872/3thjkk37>

¹² S. Cole (2021), "Information and empowerment: The keys to achieving sustainable tourism," *Journal of Sustainable Tourism*, vol. 14, no. 6, pp. 629–644. <https://doi.org/10.2167/jost607.0>

¹³ M. Yusri, R. M. Moonti, I. Ahmad, and M. Kasim (2023), "The role of mediation based on regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the handling and settlement of land cases," *International Journal of Law, Crime and Justice*, vol. 1, no. 2. <https://doi.org/10.62951/ijlcj.v1i2.60>



The National Land Agency (BPN), as the state institution responsible for land administration and registration, often encounters a structural dilemma when dealing with land located within customary rights territories. The land registration system in Indonesia is largely oriented toward individual ownership and relies heavily on formal documentary evidence as proof of title. Such a system frequently fails to accommodate communal forms of land tenure, including customary rights that are collectively held by indigenous communities. Consequently, a significant portion of customary land has not been formally registered in the name of indigenous peoples, creating legal vulnerability and increasing the potential for claims or encroachment by external parties.

The disputes over customary land rights, the BPN must navigate the coexistence of national positive law and the living customary law that continues to operate within Balinese society. Within this context, the BPN performs a dual institutional function, namely as a land administrator and as a mediator in agrarian conflicts. In its administrative role, the BPN is responsible for conducting land inventories, identifying customary land, and carrying out land measurement and boundary mapping. However, the implementation of these tasks often faces practical obstacles, particularly due to the absence of accurate spatial data or officially documented boundaries of customary territories recognized under local customary norms. In addition, limited institutional resources and technical capacity constrain the ability of the BPN to implement participatory mapping processes that involve indigenous communities in determining and verifying the boundaries of their customary lands.¹⁴

In its capacity as a mediator, the National Land Agency (BPN) is expected to facilitate constructive communication between disputing parties, particularly between indigenous communities and other stakeholders such as individuals, corporations, or government institutions. Through mediation, the BPN seeks to promote peaceful dispute resolution mechanisms that accommodate the interests of all parties while simultaneously safeguarding the fundamental rights of indigenous peoples and upholding principles of justice. Mediation in this context functions as an important non-litigation mechanism in agrarian dispute resolution, emphasizing dialogue, consensus building, and mutually acceptable outcomes.

However, the effectiveness of mediation conducted by the BPN is influenced by several institutional and socio-legal factors. One of the most important factors is the level of legitimacy that the BPN possesses in the perception of indigenous communities. The trust of indigenous peoples in the neutrality, integrity, and cultural understanding of the BPN is crucial for ensuring that mediation processes operate effectively. When indigenous communities perceive that the institution lacks sensitivity toward customary law or fails to respect local customary values, the mediation process may encounter resistance and reduced effectiveness. Empirical findings by Nugroho and Lestari (2020) demonstrate that limited institutional legitimacy often becomes a significant obstacle to the success of mediation conducted by the BPN in resolving disputes concerning customary land rights.

The availability of accurate data and reliable information constitutes a fundamental requirement in the effective resolution of disputes concerning customary land rights. In practice, however, the National Land Agency (BPN) frequently encounters significant difficulties due to the limited availability of verified data related to customary rights. This limitation includes the absence of clearly documented boundaries of customary territories, the lack of formal records identifying the subjects or holders of customary rights, and insufficient spatial documentation of traditional land use patterns within indigenous communities.

The absence of comprehensive and reliable data creates substantial challenges for the BPN in carrying out its administrative and mediation functions. Without accurate information regarding the extent of customary territories and the identity of the legitimate rights holders, it becomes difficult for the institution to formulate decisions that are both legally sound and socially acceptable. This situation not only complicates the dispute resolution process but also increases the potential for overlapping claims and prolonged conflicts between indigenous communities and other stakeholders. Consequently, strengthening the availability, accuracy, and accessibility of customary land data is essential to support more equitable, transparent, and legally certain dispute resolution processes.¹⁵

¹⁴ M. Yusrî, R. M. Moonti (2023), I. Ahmad, and M. Kasim (2021), "The Role of Mediation Based on Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 Concerning the Handling and Settlement of Land Cases," *International Journal of Law, Crime and Justice*, vol. 1, no. 2. <https://doi.org/10.62951/ijlcj.v1i2.60>

¹⁵ Permadi, I., Masykur, M. H., Herlindah, H., Wicaksono, S., & Ahmad, M. Y. (2024). Resolving disputes arising from land acquisition for public purposes involving indigenous peoples in the Nusantara capital region. *Journal of Law and Legal Reform*, 5(2), 705–748. <https://doi.org/10.15294/jllr.v5i2.731>



Mediator capacity constitutes a critical factor in determining the effectiveness of dispute resolution processes involving customary land rights. The success of mediation conducted by the National Land Agency (BPN) largely depends on the ability of its mediators to understand the complexity of customary law and the socio-cultural dynamics that shape indigenous communities. Customary land disputes often involve not only legal claims but also historical relationships, communal values, and traditional governance structures that must be carefully considered during the mediation process. Accordingly, mediators within the BPN must possess adequate competence in communication, negotiation, and conflict management in order to facilitate constructive dialogue between disputing parties. The ability to build trust, maintain neutrality, and interpret both national legal provisions and local customary norms is essential to achieving fair and mutually acceptable outcomes. Without such competencies, mediation risks becoming ineffective and may fail to address the underlying causes of conflict. For this reason, the development of institutional capacity through specialised training programs is necessary. Training initiatives should focus on customary law, socio-cultural sensitivity, mediation techniques, and participatory approaches to dispute resolution. Strengthening these competencies will enhance the ability of BPN mediators to manage customary land disputes in a manner that is both legally sound and socially legitimate.¹⁶ BPN's authority in executing mediation decisions: Although mediation can produce agreements, the binding force of these agreements often requires further legal legitimacy, especially if they involve changes in land ownership status. Legal mechanisms to reinforce the results of mediation need to be clarified.¹⁷

The challenges faced by the BPN in resolving customary rights disputes in Bali include, the lack of clear technical regulations: The Law on customary law communities has not been fully implemented, resulting in a legal vacuum and a lack of specific operational guidelines regarding the recognition, registration and protection of customary rights. This makes it difficult for the BPN to carry out its duties consistently. Overlapping regulations: Overlapping regulations in the land, forestry, and plantation sectors often exacerbate conflicts, as each sector has different definitions and authorities regarding land. This fragmentation of regulations is one of the root causes of agrarian conflicts in Indonesia. A study by Hidayat and Putra (2021) specifically outlines how this regulatory overlap causes difficulties in determining clear customary boundaries in Bali. Dominance of the legal-positivist approach: The National Land Agency (BPN) tends to prioritise formal legal certainty based on certificates, which often disregards communal rights based on customary law that do not always have formal written evidence. This approach can be detrimental to indigenous peoples.¹⁸

Resource constraints constitute a significant barrier to the effective recognition and protection of customary land rights. These limitations are reflected in the limited availability of human resources with adequate expertise in customary law, the restricted budget of the National Land Agency (BPN) for conducting comprehensive land inventories and facilitating dispute resolution, and the lack of adequate institutional infrastructure. Such conditions reduce the institutional capacity to implement legal mandates related to the identification, verification, and registration of customary land rights. To address these challenges, several legal measures should be considered. First, the acceleration of the ratification of the Indigenous Peoples Bill is necessary to provide a clearer and stronger legal framework for the recognition and protection of customary law communities and their traditional rights. Second, harmonisation of legislation is required to synchronise the Basic Agrarian Law, the Forestry Law, the Plantation Law, and other sectoral regulations in order to prevent regulatory overlap and institutional conflicts. Third, the development of participatory technical guidelines by BPN is essential, involving indigenous communities, customary leaders, and experts to improve data accuracy and strengthen the legitimacy of customary land registration processes.¹⁹ Improving the capacity of BPN human resources: Continuous training for BPN officials on customary law, effective conflict mediation skills, and a human rights-based approach to handling agrarian disputes.

¹⁶ Supiani, Y. (2025). Legal recognition and protection of indigenous land rights: Analysis of the legal framework to achieve sustainable development goals. *KnE Social Sciences*, 10(27), 506–519. <https://doi.org/10.18502/kss.v10i27.20087>

¹⁷ S. Syukur, M. Maryono, and S. Akkapin (2025), "The authority of the National Land Agency and the legal certainty of land in Indonesia," *Journal Evidence of Law*, vol. 4, no. 1, pp. 116–122. <https://doi.org/10.59066/jel.v4i1.1056>

¹⁸ R. Dewi (2022), "Gaining recognition through participatory mapping? The role of adat land in the implementation of the Merauke Integrated Food and Energy Estate in Papua, Indonesia," *ASEAS – Austrian Journal of South-East Asian Studies*, vol. 9, no. 1, pp. 87–106. <https://doi.org/10.14764/10.ASEAS-2016.1-6>

¹⁹ Wirawan, A., Raharjo, T., Shintasari, R., & Bagong, F. (2024). Government land protection in the context of legal pluralism: Evidence from Indonesia's indigenous and peripheral regions. *Planning Malaysia*, 23(39). <https://doi.org/10.21837/pm.v23i39.1935>



Strengthening the role of local wisdom and collaboration with customary institutions: The BPN can collaborate more closely with local customary institutions, such as the *Majelis Desa Adat* (Customary Village Council) in Bali, to resolve disputes, given the important role of customary institutions in maintaining order and justice in the community and their deep understanding of local customary law.²⁰

Conclusion

Based on normative legal analysis, it can be concluded that the National Land Agency (BPN) holds a crucial role in resolving disputes over customary land rights within Balinese indigenous communities, both as a land administration authority and as a mediator in agrarian conflicts. Nevertheless, the existing legal framework has not yet provided sufficient guarantees for the comprehensive protection of customary rights. Several structural challenges remain evident, including the absence of clear technical regulations governing the recognition of customary rights, overlapping regulatory frameworks across sectors, and the continued dominance of a legal-positivistic approach in institutional practices within BPN. These conditions often limit the effectiveness of dispute resolution mechanisms and hinder the realization of equitable legal protection for indigenous communities. To enhance the effectiveness of BPN in resolving customary land disputes in Bali in a fair and sustainable manner, several policy recommendations should be considered. First, the government should accelerate the ratification of the Indigenous Peoples Bill in order to establish a comprehensive legal framework for the recognition, protection, and empowerment of customary law communities and their traditional rights. Second, harmonisation and synchronisation of land-related legislation with other sectoral regulations, particularly forestry and plantation laws, are necessary to eliminate regulatory overlaps that frequently trigger jurisdictional conflicts.

Third, BPN should develop more specific, transparent, and participatory technical guidelines for the identification, verification, and registration of customary land rights, ensuring the active involvement of indigenous communities from the earliest stages of the process. Fourth, institutional capacity within BPN must be strengthened through continuous training programs on customary law, effective mediation techniques, and human rights-based approaches in handling agrarian disputes. Finally, stronger collaboration between BPN and local customary institutions, particularly customary village councils in Bali, should be institutionalised in every stage of dispute resolution. Such collaboration is essential to ensure that legal solutions remain aligned with customary values and local wisdom embedded within indigenous communities.

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²⁰ R. Dewi (2022), "Gaining recognition through participatory mapping? The role of adat land in the implementation of the Merauke Integrated Food and Energy Estate in Papua, Indonesia," *ASEAS – Austrian Journal of South-East Asian Studies*, vol. 9, no. 1, pp. 87–106. <https://doi.org/10.14764/10.ASEAS-2016.1-6>



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