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Comparative Analysis of Land Management Approaches for Public Development on Customary Land: Emphasizing Cooperative Land Banking (CLB) in the Minangkabau Case Study

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ABSTRACT

Customary land, known as *tanah ulayat* in Indonesia, holds a unique status that differentiates it from other land types, particularly when used for public purposes. Government land acquisition practices risk eroding this status, potentially affecting Indigenous social groups. Cooperation between the government and indigenous communities, through regional governments and other institutions, is recommended as an alternative approach to land acquisition. This research examines various land management tools, focusing on customary land in Minangkabau for public and development purposes. Using a juridical-normative method linked to legal products and content analysis of previous studies, the research identifies three key variables related to customary land: control, utilization, and legality. These variables are analyzed within the context of public interest and research limitations. Three land provision schemes are explored: Land Provision, Cooperative Land Banking (CLB), and Land Commercialization. Each scheme has distinct impacts on land ownership, legality, and the collective well-being of indigenous communities. While Land Provision offers immediate compensation but forfeits land control, CLB and Land Commercialization allow indigenous groups to retain land ownership, with CLB being the preferred option due to its promotion of sustainable land use and active community involvement. The study concludes that CLB is the most viable approach for ensuring long-term economic benefits and land control for Indigenous communities. However, it requires government support regarding legal adjustments and frameworks for cooperation.

1. Introduction

Indonesia has a mandate to protect and provide certainty of rights to its citizens, including the rights regarding customary land tenure by indigenous communities. However, the state's recognition of customary land tenure rights still lacks concreteness, leading to threats and risks to the existence of customary land. Customary land is a unique land status in Indonesia. Although ulayat is one type of land rights (Hak Ulayat) as recognized in Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA), the nature, system, and utilization of customary land for the Indigenous community depends on how the social form of the community that utilizes and controls the customary land. In general, the obligation is to utilize the land for the public interests of the customary law community itself.[1] According to Law Number 2 of 2012[2] for the public interest the methods and mechanisms that exist in each of these tools serve as an effort

1 Intan Haryanti and Rakhmat Bowo Suharto, "The Juridical Overview of Customary Land Registration," Law Development Journal 3, no. 2 (July 29, 2021): 272–82, https://doi.org/10.30659/LDJ.3.2.272-282.

2 Law of The Republic of Indonesia Number 2 Of 2012 On Land Acquisition For Development In Public Interest

to accommodate the public interests and land acquisition related to ownership, compensation, relocation, and so on. Public interests can be interpreted as anything aimed at the public good. All parties must acknowledge and assist in smoothly implementing national development interests. The public interests in the context of the state can be interpreted as aiming for the welfare and prosperity of the Indonesian people.[3] This also includes land utilization and acquisition, where the government.

One example of customary land utilization for the public interest is the implementation of the Trans Sumatra toll road project. This mega infrastructure development project aims to improve connectivity between regions on the island of Sumatra. This toll road project will connect several major cities in Sumatra from the northern tip to the southern tip. With a total toll road length of approximately 2,700 km, the project passes through 5 Nagari, including customary land. The implementation of the public interests will directly impact the control and utilization of customary land by the Nagari/adat Minangkabau community, West Sumatra affected by the project. To realize public interests, land acquisition has become a popular scheme to provide land, such as in the construction of the Padang-Sicincin toll road.[4]. This scheme is one of the factors that change customary ownership.[5] The process of utilizing customary land by parties outside the Indigenous community will face several challenges. The status and existence of Nagari customary land will be lost due to the project, in addition, the government does not have a basis for how the community utilizes customary land because it does not have tenure ship status. This means that the utilization of the Nagari customary land as a place to live, livelihoods, and other survival efforts by the Nagari indigenous community will be lost. The Nagari indigenous community can no longer utilize the existing customary land. Public interests can be a threat to the existence of Minangkabau customary land if it does not have the right methods and regulations based on the conditions and context of existing customary land.

Another challenge customary land faces are emphasized through the Peraturan Menteri Keuangan (PMK) Number 95 of 2023 concerning the Procedures of Funding Land Acquisition Agency[6]. The regulation implies that customary land is included in the type of land that can be given compensation payments for land acquisition for Proyek Strategis Nasional (PSN). The existence of customary land as a state asset has the potential for state development, while the existence of indigenous peoples who are bound to each other with their customary land is evicted. The regulation was previously a revision of PMK Number 138 of 2020 concerning the same thing. The existence of this regulation is used as a legal instrument to improve governance and encourage the acceleration of the implementation of land acquisition, especially for PSN. The challenges and risks that land the existence of customary land may face are not only faced by the legal status of the customary land itself but also the PSN, legitimized by the existence of the PMK.

Similar cases and situations in the problematic conditions of land acquisition on customary land occur in various PSN projects. One of the examples is in Merauke, Papua. There is a PSN project in the form of developing rice fields, sugar cane plantations, and bioethanol located in the customary forest area. The conflict also resulted in a conflict between the customary law community and the government as an extension of the state of Indonesia in implementing the projects. Customary law applicable in Indonesia has a general position and authority through Article 18B of the UUD 1945. The rights and authorities of customary law communities are attached to what is recognized as customary land and have customary community institutions. The legal legitimacy that is generally applied to all customary areas spread throughout Indonesia still does not have solid strength and protection if the consolidation efforts made only result in a decision by the government to provide compensation. These compensation decisions have the risk of losing the cultural and social existence of customary communities.

Some previous studies on customary land, among others, were conducted by Lubis with the title Legal Position of Customary Rights in Land Acquisition for Development for the Benefit of State Defense in West Papua Province,[7] focusing on the dynamics of customary rights of indigenous peoples over land in West Papua

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3 Tesya Veronika and Atik Winanti, "Keberadaan Hak Atas Tanah Ulayat Masyarakat Hukum Adat Ditinjau Dari Konsep Hak Menguasai Oleh Negara," Humani (Hukum dan Masyarakat Madani) 11, no. 2 (December 2, 2021): 305–17, https://doi.org/10.26623/HUMANI.V11I2.4397.

4 Asih Retno Dewi and Alifia Nurhikmahwati, "Pemetaan Masalah Pengadaan Tanah Dengan Objek Tanah Ulayat (Kasus Jalan Tol Padang-Sicincin)," *BHUMI: Jurnal Agraria Dan Pertanahan* 6, no. 2 (November 21, 2020): 277–91, https://doi.org/10.31292/BHUMI.V6I2.454.

5 Hidayat, Lukitaningsih "Changes in Ownership and Ulayat Land Use in Lumban Rau Timur Village, Toba Samosir," Indonesian Historical Studies 5, no. 2 (March 29, 2022): 161–86, https://doi.org/10.14710/IHIS.V5I2.13452.

6 Minister of Finance Regulation, "Minister of Finance Regulation No. 95 of 2023 Concerning Procedures for Funding Land Acquisition for National Strategic Projects by the State Asset Management Agency," 2023.

7 Arief Fahmi Lubis, "Kedudukan Hukum Dari Hak Ulayat Dalam Pengadaan Tanah Bagi Pembangunan Untuk

and aiming to analyze the impact and efforts to arrange land assets for the benefit of national defense by applicable regulations. Furthermore, Liani and Winanti, in their journal entitled The Rights of Indigenous Peoples in the Implementation of Customary Land Acquisition for Development for the Public Interest[8] were carried out to find out the arrangements regarding the rights of indigenous peoples in land acquisition and to find out the role of the state in providing compensation in land acquisition for development for the public interest. Ramadhani[9] discusses the transfer of land rights status with a compensation mechanism. Previous studies related to customary land have focused solely on the procedural and legal aspects. Land acquisition through a compensation scheme in customary lands is bound by applicable regulations[10] without considering other alternatives. Discussions within the legal realm have only pointed to discrimination against indigenous communities in cases where their land is used for a public interest, whether in terms of their status[11], their rights[12,13], or from the perspective of their losses[14].

Therefore, this study will explore alternative land management schemes in the context of public interest development on customary lands., or from the perspective of their losses. Therefore, this study will explore alternative land management schemes in the context of public interest development on customary lands. The research question formulated from this issue is: What are the advantages and disadvantages of other land management tools compared to land acquisition for public purposes on indigenous lands in Minangkabau? This study aims to compare customary land management tools for public interests, including land acquisition and other schemes. General criteria are necessary as parameters to compare one tool with another. Three objectives need to be met: 1) Identify variables to compare among land management tools; 2) Determine the strengths and weaknesses of each land management tool; 3) Compare land management tools that can be employed to provide land for public purposes on lands owned by the Minangkabau indigenous community.

Furthermore, this research was conducted by collecting data related to customary land. Data collection was conducted by searching and reviewing previous journals on various land management tools for customary land in Indonesia. Then, the journals were organized to obtain categories in the form of 3 variables regarding customary land, such as tenureship, utilization, and legality. The three variables are linked and interpreted with the public interests that have been defined and have research limitations. In this research, legal products and legislation are used, such as Law Number 5 of 1960 concerning Basic Agrarian Law, Regional Regulation of West Sumatra Province Number 6 of 2008 concerning Customary Land and its Utilization, and Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interests, Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 18 of 2019 concerning Procedures for Administration of Customary Land for Customary Law Communities. From these data, an analysis is carried out by comparing the strengths and weaknesses of each variable to be able to see land management tools that are for land needs on customary land and maintain between public interests and the rights of indigenous peoples.

Kepentingan Pertahanan Negara Di Provinsi Papua Barat," *Jurnal Esensi Hukum* 3, no. 2 (December 23, 2021): 170–87, https://doi.org/10.35586/ESENSIHUKUM.V3I2.109.

8 Miranda Nissa Hilal Liani and Atik Winanti, "Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum," *SALAM: Jurnal Sosial Dan Budaya Syar-i* 8, no. 1 (January 26, 2021): 159–72, https://doi.org/10.15408/sjsbs.v8i1.19395.

9 Rahmat Ramadhani, "Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Penelitian Hukum De Jure* 19, no. 1 (March 27, 2019): 97–108, https://doi.org/10.30641/DEJURE.2019.V19.97-108.

10 Kornelius Ayub, Romario Simanulang, and Atik Winanti, "Prosedur Hukum Pelepasan Tanah Ulayat Untuk Pembangunan Infrastruktur Pemerintah," *Jurnal Kertha Semaya* 11, no. 7 (2023), https://doi.org/10.24843/KS.2023.v11.i07.p19.

11 Fahmi Lubis, "Kedudukan Hukum Dari Hak Ulayat Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Pertahanan Negara Di Provinsi Papua Barat."

12 Liani and Winanti, "Hak Masyarakat Hukum Adat Dalam Pelaksanaan Pengadaan Tanah Ulayat Bagi Pembangunan Untuk Kepentingan Umum."

13 Rahmat Ramadhani, "Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Penelitian Hukum De Jure* 19, no. 1 (March 27, 2019): 97, https://doi.org/10.30641/dejure.2019.v19.97-108.

14 Kurnia Warman & Syofiarti, "POLA PENYELESAIAN SENGKETA TANAH ULAYAT DI SUMATERA BARAT (Sengketa Antara Masyarakat vs Pemerintah)," *Masalah-Masalah Hukum* 41, no. 3 (July 24, 2012): 407–15, https://doi.org/10.14710/MMH.41.3.2012.407-415.

2. Method

This research was conducted using a qualitative approach with comparative, normative juridical techniques and content analysis methods. In this research, comparison is used to compare two or more land management tools to identify similarities, differences, or relationships between them. The main objective of the comparative approach is to gain a deeper understanding of the appropriate management tools to use by looking at them from various perspectives. According to Krippendorff, content analysis is research conducted by examining texts, documents, or books to draw conclusions based on their context of use[15]. This research focuses on the comparison of land management tools for Minangkabau customary land in the public interest for development. This research does not specifically take one development activity for the public interests, but several cases to be a reference for discussion. The study area in this research is Minangkabau communal land in West Sumatra Province. There are several previous studies on customary land using the juridical-normative method, Utilization of Customary Land for the Public Interests in Indonesia[16], and the Existence of Customary Land Rights of Customary Communities considered from the Concept of the Right to Control by the State[17]. The normative juridical method is carried out by approaching certain legal products and applicable laws and regulations regarding customary land. In addition, a review of legislation and regulations applicable to customary land is also conducted.

The definition and limitation of the discussion used is regarding the public interests for development. The public interest for development is contained in Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation. However, not all land utilization for public interests is the scope of discussion in this research. The researcher defined the public interests as: (1) it requires utilization of the land plot; (2) it does not remove the land surface; and (3) it has economic benefits. The first and second criteria are determined so that they can be discussed in the context of the research. The third criteria serve to explore the study of the utilization of customary land for the collective interests of the community. Thus, the taking of cases in the research discussion refers to the three criteria of public interests to maintain the context of the discussion.

3. Findings and Discussion

The first and second parts will discuss the review of the concept of customary land in general in Indonesia and customary land in West Sumatra based on applicable laws and regulations. Then the third discussion is a review by determining the advantages and disadvantages of various land management tools based on three variables that have been determined with the public interest. The final part is a discussion of the overall review results by comparing each land management tool.

3.1 The Conception of Customary Land

The term "Ulayat" originates from the Arabic language, meaning "managed" or "supervised". *Ulayat* refer to the collective ownership of land, forests, and resources by indigenous communities, governed by their customary laws. The Basic Agrarian Law Number 5 of 1960 (UUPA)[18] recognizes these rights, stating they remain valid as long as the community continues to function and adhere to its traditional norms. However, the exercise of *hak ulayat* **must align with national interests, including development and legal frameworks, ensuring that these communal rights do not conflict with broader public welfare.** Ulayat rights are also inseparable from a set of authorities and obligations within a indigenous community related to the land. Generally, these obligations involve utilizing the land for the common interests of the indigenous community itself.

Ministerial Regulation ATR/BPN No. 14 of 2024[19] provides further guidelines on the formal recognition

15 Klaus Krippendorff, "Content Analysis: An Introduction to Its Methodology," *Content Analysis: An Introduction to Its Methodology*, February 2, 2019, https://doi.org/10.4135/9781071878781.

16 Muhammad Marizal, Aulia Pravasta Indrianingrum, and Hilman Rigel Nugroho, "Dinamika Pemanfaatan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Umum di Indonesia," Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum 4, no. 2 (October 2, 2022): 191–205, https://doi.org/10.37631/WIDYAPRANATA.V4I2.685.

17 Ramadhani, "Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Pengadaan Tanah Untuk Kepentingan Umum," March 27, 2019.

18 Law of The Republic of Indonesia Number 5 of 1960 on Basic Agrarian Principles

19 Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, "Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 14 the Year 2024 on the Implementation of Land Administration and Land Registration of Customary Land Rights of Customary Law Communities"

of hak ulayat. Indigenous communities can gain formal recognition of their land through government processes, including assessments of the community's existence, their customary laws, and territorial boundaries. Once recognized, these lands can be registered within the national land system, providing legal protection. The regulation emphasizes the active involvement of indigenous communities and promotes sustainable land management that balances their traditional practices with national development needs.

While hak ulayat is recognized, it is subject to limitations under both UUPA and the 2024 regulation. The state retains the authority to regulate or repurpose these lands for public interest, such as environmental protection or infrastructure development. Local governments play a key role in this process by identifying indigenous communities, defining their territories, and ensuring the legal registration of these lands, balancing the recognition of traditional rights with broader national priorities. Customary land is more focused on the tenure system over the land, which is not individual ownership or shared ownership (among several individuals) but rather communal tenureship. Thus, customary land is considered the collective property of an indigenous community and is viewed as communal land. There are two rights attached to customary land according to customary law:

1. Land tenure right
2. Land ownership right
    - Communal ownership right, where the land is distributed permanently for a lifetime or inherited.
    - Communal ownership right, where the land is distributed not permanently but can be redistributed at certain times.

Several prerequisites must be met by the Land Office to ensure good management of customary land, especially about Kerapatan Adat Nagari (KAN). Referring to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024 concerning the Implementation of Land Registration and Land Registration of Customary Land Rights of Indigenous Peoples, in the second part of Land Administration of Customary Land Rights of Indigenous Peoples: inventory and identification, measurement and mapping, recording a list of customary land for further registration and obtaining management rights or property rights with the issuance of a certificate of property rights that includes the name of the leader of the Customary Law Communities Group of Members.

3.2 Customary Land in West Sumatera

Customary land in West Sumatra is defined as an ancestral land along with its natural resources acquired through generations, constituting the indigenous community's rights. Based on the rights and utilization, customary land in West Sumatra, according to Regional Regulation of West Sumatra Province Number 6 of 2008 concerning Customary land and Its Utilization[20], is divided into four types:

1. Nagari Customary land

This is the right of control by the ninik mamak of the Kerapatan Adat Nagari (KAN) and is utilized to the maximum extent for the benefit of the Nagari community. The Nagari Government acts as the regulatory authority for its utilization and is positioned as the reserve land of the Nagari indigenous community.

2. Suku Customary land

This is the collective ownership right of all members of a specific tribe, with control and utilization regulated by tribal leaders (penghulu). It serves as reserve land for specific tribe members within the Nagari.

3. Kaum Customary land

This represents the collective ownership right of all members of a community, consisting of jurai/paruik, with control and utilization regulated by mamak jurai/mamak kepala waris. It functions as cultivated land with the status of ganggam bantuak pagang bamansiang.

4. Rajo Customary land

The control and utilization of this land are regulated by the eldest male descendant through the maternal line who is currently alive in some nagari in West Sumatra. It is positioned as cultivated land with the status of ganggam bantuak pagang bamansiang, overseen by the relatives of the Rajo heirs.

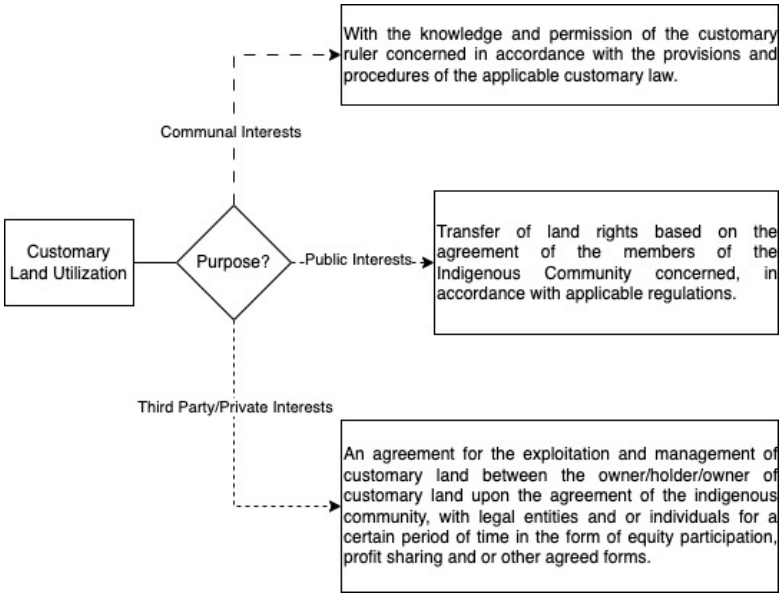
In the context of discussing customary land, the focus is on discussing Nagari customary land because the route is located in the Lima Puluh Kota Regency, crossed by the Padang-Pekanbaru toll road. Nagari is an indigenous community unit in the West Sumatra Province, consisting of tribes and groups of tribes, having a territory with specific boundaries. The control and ownership of customary land are bound by regulations from

20 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization

the authority; Nagari customary land is bound by Nagari regulations.

The main principle of customary land is permanent based on the Minangkabau customary philosophy "jua ndak makan bali, gadai ndak makan sando" meaning that customary land in Minangkabau cannot be bought and sold, nor can it be mortgaged. This principle implies that the ownership status of Minangkabau customary land should not change. The principle of utilizing customary land is to maximize benefits for the interests of the indigenous community, being just and responsible in accordance with the philosophy of "Adat Basandi Syara' Syara' Basandi Kitabullah." Continuing to Article 3[21] regarding the utilization of customary land by parties who are not members of the respective indigenous community is done with the principle of mutual benefit and risk-sharing through the customary principle of "adat diisi limbago dituang" through consensus deliberation. Thus, the permissible activities for managing customary land according to customary principles include profit-sharing, leasing, capital participation, and/or land use rights. The regulation also stipulates the return of customary land to its original owner upon the termination of the cooperation agreement for the right of utilization and management (Article 11)[22] and the expiration of the validity period of specific rights registration (Article 14, paragraph 1)[23].

Figure 1. Utilization and Usage of Customary land in West Sumatra



Source: Analysis Results, 2023

In the West Sumatra Provincial Regulation No. 6 of 2008 concerning Customary land and Its Utilization[24], it is stated that customary land is regulated in such a way as to preserve its sustainability. Customary land has social and economic functions, but it is also a reserve asset for its rulers (especially for Nagari customary land). Meanwhile, the utilization of customary land can be carried out not only by the community but also through cooperation. This cooperation can take the form of a land management and exploitation agreement or an investment agreement.

3.3 Land Management Tools

After a review of the concept of customary land, the next is a discussion of the concept of land management based on control, legalization, and utilization. This sub-chapter contains a review, determines the strengths and weaknesses, and compares each land management tool of land management tools for land acquisition, land banking non-conventional, and land commercialization that can be employed to provide land for public purposes on lands owned by the Minangkabau indigenous community.

21 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization. Art 3

22 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization. Art 11

23 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization. Art 14 p.1

24 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization

Alternatives in procurement management need to be considered. This is based on the difficulty of consolidation and communication efforts carried out by the government, the lack of cultural approaches and feasibility studies for development carried out in customary land, and deliberations with the community which in various cases have resulted in many conflicts and disputes between the community and the state of Indonesia. Consolidation and pragmatic steps taken by the government – namely compensation do not provide justice for customary law communities who have authority over their customary land. On the other hand, the legal instruments related to ownership and validity of customary land still overlap between the Undang-undang Pokok Agraria (UUPA), as well as the regulations and laws that mention customary land. While it cannot be denied that the government needs development that aims to improve the welfare of the state of Indonesia. The emphasis through PMK that customary land is included in state assets that can be compensated for PSN is one form of state authority over customary law communities. So in the following explanation to overcome customary land conflicts due to development.

3.3.1 Land Provision

Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning Land Procurement for Development for Public Interests[25] discusses the expropriation of land with customary land status. The land provision on customary land is carried out through coordination with the local government. Moreover, a crucial aspect is engaging in communication and involving traditional community leaders to reach agreements and resolutions with the affected communities. Land provision is a mechanism that prioritizes the needs of external parties other than the landowners (externalities), namely through PT. HK as the contractor and manager who will utilize the KAN customary land for the Pekanbaru-Padang toll road project. This form of fulfillment establishes land provision as compensation for landowners, in this context, the owners of customary land.

Various forms of compensation can be agreed upon, including cash, barter, stocks, or other forms. The mechanism for determining the form of compensation, as explained in the Guidelines of Law Number 2 of 2012, has also been established through the Minister of Agrarian and Spatial Planning/National Land Agency Regulation mentioned in Article 17, stating, "The preference for forms of compensation as referred to in Article 6 letter K elaborates on the choices of compensation forms according to the needs of the community based on the study conducted by the DPPT drafting team"[26]. The decision on the form of compensation is final and binding. Therefore, in the context of indigenous community, the role of the indigenous community leader is crucial in following the deliberation procedure for determining the form of compensation. The forms of compensation determined by the government are mentioned to be carried out through several types as follows:

a. Money
b. Replacement land
c. Resettlement
d. Ownership of shares
e. Other forms agreed upon and approved by both parties

The compensation mechanism process in land provision is generally provided or agreed upon in the form of monetary compensation. However, some cases indicate that the compensation provided may not meet the expectations of indigenous community. One example is the land acquisition for the Padang-Sicincin Toll Road, which tends to provide low compensation values[27]. The form of compensation certainly requires clear and definitive legality to determine how and to what extent the land area is compensated. The government does not yet have a consistent and binding regulation for the legality of indigenous/customary land in Indonesia. Moreover, access and responsibility for this matter at each local government level are minimal. Additionally, regulations regarding the legality of customary land have not been fully realized in all regions of Indonesia[28]. Consequently, land provision becomes weak when the mechanism for determining land tenure or ownership lacks a strong legal foundation. The land that undergoes the land provision process must have clear status and legality, along with specified boundaries, not solely based on the legitimacy or unilateral claims of the indigenous community. Hence,

25 Government Regulation of the Republic of Indonesia Number 19 of 2021 Concerning Land Procurement for Development for Public Interests

26 Law of The Republic of Indonesia Number 2 Of 2012 On Land Acquisition For Development In Public Interest

27 Retno Dewi and Nurhikmahwati, "Pemetaan Masalah Pengadaan Tanah Dengan Objek Tanah Ulayat (Kasus Jalan Tol Padang-Sicincin)."

28 Intan Haryanti and Rakhmat Bowo Suharto, "The Juridical Overview of Customary Land Registration, Law Development Journal 3, no. 2 (July 29, 2021): 272–82, https://doi.org/10.30659/LDJ.3.2.272-282.

this weakness creates an opportunity for communities to make "large" claims to determine areas considered customary land.

Land tenure in the principles of customary land relates to how both the objects and subjects have authority and use of the land, in this case, the indigenous community. The legally ambiguous conditions in Indonesia are also influenced by the unwritten principles of customary law that adapt to how communities utilize natural resources[29]. Rights and authority over customary land have flexibility and depend on the utilization process of resources, time, and how the community perceives such customary authority[30]. On the other hand, customary land is not a registrable right according to Article 9 of Government Regulation Number 24 of 1997 on Land Registration[31], which explains that the objects of Land Registration include: (1) land owned with rights such as ownership, land cultivation rights, building rights, and usage rights; (2) land management rights; (3) waqf land; (4) ownership rights over condominium units; (5) mortgage rights; (6) State Land. Based on the legal facts, customary land does not have legal access to become valid ownership with clear boundaries.

3.3.2 Land Banking Non-Conventional

In the matter of customary land for public interest development, a non-conventional land bank concept can be utilized, known as Cooperative Land Banking[32]. The basic concept involves landowners voluntarily providing the use of their land for productive activities with secondary rights. Subsequently, the income generated is distributed to landowners as dividends or interests. This ensures that landowners retain their assets and benefit from the development of their assets.

Non-Conventional Land Banking or Cooperative Land Banking (CLB) can provide a clear position for landowners and entrepreneurs in the land tenure system. The agreed-upon cooperation will maintain the ownership of customary land while allowing the land to be utilized for public purposes. In the context of profit-based collaboration, landowners will receive various sources of income, primarily through profit-sharing[33]. Unlike conventional land banking, which requires relinquishing ownership of land to serve as an asset, this system can preserve the ownership of customary land.

One collaboration scheme that can be developed is the Public Private People Partnership (PPPP) in the case of managing customary land. This scheme can not only share benefits with the indigenous community but also contribute to the local government's revenue through a Regional-Owned Enterprise (BUMD)[34]. Customary land can be managed with Cooperative Land Banking (CLB) using property pricing calculations based on market prices[35]. The land sector is treated as capital so that the customary land can contribute to the cooperation.

One of the public interest developments that can serve as a case study is the construction of the Pekanbaru-Padang toll road. CLB positions the Indigenous community (KAN) as the landowner and PT. HK as the user. The income from the toll road can be calculated based on the profits in section III of the Pekanbaru-Padang toll road. The referred profit is the remainder of the revenue after deducting various necessary expenses (debts, taxes, and others). Profits, of course, will fluctuate, so the amount obtained by KAN will vary each year. This collaboration needs to be formalized through a profit-sharing agreement between KAN and PT. HK.

This scheme can be a more cost-effective option while preserving control over customary land. The implementation of profit-sharing enables the utilization of customary land without transferring ownership rights and distributes the benefits among the community members[36]. In comparison, the profit-sharing burden will be

29 Kurnia Warman & Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)," Masalah-Masalah Hukum 41, no. 3 (July 24, 2012): 407–15, https://doi.org/10.14710/MMH.41.3.2012.407-415.

30 Muhammad Marizal, Aulia Pravasta Indrianingrum, and Hilman Rigel Nugroho, "Dinamika Pemanfaatan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Umum Di Indonesia," Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum 4, no. 2 (October 2, 2022): 191–205, https://doi.org/10.37631/WIDYAPRANATA.V4I2.685.

31 Government Regulation Number 24 of 1997 on Land Registration. Art 9

32 Andi Oetomo, "Mencari Konsep Pem-bank-an Lahan (Land Banking) Di Perkotaan Indonesia," *Jurnal PWK* 10, no. 2 (1999): 93–100.

33 Shann Turnbull, "Cooperative Land Banks for Low-Income Housing," 1983, https://papers.ssrn.com/abstract=649642.

34 Azhari Pamungkas and Haryo Winarso, "Bentuk Kelembagaan Dan Pola Pembiayaan Land Banking Publik Di Indonesia," *TATALOKA* 20, no. 1 (February 28, 2018): 35–49, https://doi.org/10.14710/tataloka.20.1.35-49.

35 Shlomo Angel, "Land Tenure for the Urban Poor" (Select Books, 1983), https://nyuscholars.nyu.edu/en/publications/land-tenure-for-the-urban-poor.

36 Dodi Febrizal, Kurnia Warman, and A. Irzal Rias, "Utilization of Communal Land (Ulayat) for Property Businesses

borne by the operational costs of PT. HK, while land acquisition is the responsibility of the government. However, the burden will be lower compared to the land leasing mechanism because the profit-sharing percentage adjusts to the profits gained. This profit-sharing scheme may also receive assistance from the government, which is obligated to acquire land for the toll road, considering that PT. HK will contribute a portion of the profits to the state.

3.3.3 Land Commercialization

Land commercialization or land cultivation can be one alternative to maintain ownership of customary land and its utilization for public purposes. There are various methods of managing land, such as land leasing and profit-sharing. The method of commercializing land through leasing can also be described as "gaining profits without producing"[37]. In this method, the accumulation of customary land occurs through changes in legality to create individual ownership rights, followed by the transfer of this land accumulation to economic value for the indigenous community.

The procedure for land leasing is conducted through an agreement between the lessee and the indigenous community via the customary land guardian. The customary land guardian will provide an understanding of the purpose and impact of the lease and allow the indigenous community to express their views on the proposed lease. No transactions with customary land can be undertaken unless the indigenous community generally agrees to the lease. During the agreement period, control is entirely in the hands of the lessee, while the indigenous community will receive compensation in the form of benefits, namely, an agreed-upon amount of money. The compensation is based on factors such as the benefits and political capacity of the indigenous community and the social responsibility pressure on the lessee to share the benefits of the project[38]. The compensation is used for the welfare of the indigenous community as they cannot manage or control the customary land bound by the lease agreement[39].

The land that is collaboratively worked on with the lessee can be undertaken by first acknowledging the legality of the customary land. The right to manage the collaborated customary land can be granted in the form of the right to cultivate (Hak Guna Usaha or HGU), the right to build (Hak Guna Bangunan or HGB), and/or the right to use (Hak Pakai or HP)[40]. Management rights provisions can benefit the lessee; they can use their land rights as collateral to obtain the necessary loans for business capital. However, for indigenous communities, the utilization of collaborated land in commercialization will eliminate access to resources in the customary land, which is crucial for the indigenous community's livelihood. High land commercialization in customary land will also decrease the food security level for the Indigenous community[41]. Furthermore, once the agreement is concluded, the customary land will be returned to the indigenous community and can be utilized again.

In its implementation, through West Sumatra Regional Regulation Number 6 of 2008 in articles 9 and 10[42], the commercialization of customary land is made possible using capital participation, profit-sharing, or other forms bound by an agreement. However, the commercialization of land through land leasing will change the legality of customary land into ownership rights, which will be recorded by the National Land Agency (BPN). This can be both advantageous and disadvantageous for indigenous communities. The advantage gained is the

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with a Build-Up System through a Notary in Padang City," *International Journal of Multicultural and Multireligious Understanding* 6, no. 3 (June 18, 2019): 242–52, https://doi.org/10.18415/IJMMU.V6I3.813.

37 Costas Lapavitsas, "The Financialization of Capitalism: 'Profiting without Producing,'" *City* 17, no. 6 (2013): 792–805, https://doi.org/10.1080/13604813.2013.853865.

38 Sangeetha Chandrashekeran, "Rent and Reparation: How the Law Shapes Indigenous Opportunities from Large Renewable Energy Projects," *Local Environment* 26, no. 3 (March 4, 2021): 379–96, https://doi.org/10.1080/13549839.2020.1861590.

39 Sianny Cindy The et al., "Legal Protection of Ulayat Lands of Indigenous Peoples Against the Threat of Land Commercialization," *International Journal of Multicultural and Multireligious Understanding* 9, no. 12 (December 15, 2022): 300–307, https://doi.org/10.18415/IJMMU.V9I12.4288.

40 Happy Hayati Helmi and Anna Erliyana, "Reformasi Hukum Pertahanan: Pengaturan Komersialisasi Ruang Tanah," RechtsVinding: Media Pembinaan Hukum Nasional 8, no. 3 (December 11, 2019): 381, https://doi.org/10.33331/RECHTSVINDING.V8I3.354.

41 Elisabeth Prügl, Fenneke Reysoo, and Dzodzi Tsikata, "Agricultural and Land Commercialization – Feminist and Rights Perspectives," *The Journal of Peasant Studies* 48, no. 7 (November 10, 2021): 1419–38, https://doi.org/10.1080/03066150.2021.1974843.

42 Regional Regulation of West Sumatra Province Number 6 of 2008 Concerning Customary Land and Its Utilization. Art 9 & 10

legitimate ownership recording by the government. Meanwhile, the disadvantage experienced by indigenous community is the release of inherent communal rights, which will be returned upon the completion of the lease agreement.

3.4 Compiling by Comparing Land Management Tools

As a land management scheme to allocate land for public interests, land provision will eliminate customary land ownership. Land provision is the scheme that can provide the most certainty of land control, not owned by others but by the state. In cases involving public interests, the state faces a dilemma in maintaining customary land ownership. The state should be the guarantor of customary land ownership[43], but legislative regulations restrict the use of this scheme.

Both parties benefit from this scheme. The government gains clarity about land control, no longer entangled with other parties. This clarity ensures that Indigenous community conflicts with the Indigenous community do not disrupt the continuity of a project for public purposes. Meanwhile, the Indigenous community receives instant benefits in the form of compensation. However, these immediate benefits are not sustainable for indigenous communities due to losing their assets. Unequal distribution of compensation also has the potential to cause internal conflicts among individuals[44].

Government planning in development, locked within legislative regulations, diminishes the assertiveness of indigenous communities, leaving them with no other choice but to defend their customary land. One of the evident is in Taluak, Agam District, where the development of Bukittinggi city administration is planned. Indigenous community feel excluded from the planning process, despite rejecting urbanization as a consequence of the development.[45]. However, once the planning product becomes formal, adherence is mandatory.

Each scheme has its own advantages and disadvantages in terms of tenure ship, legality, and collective benefits for indigenous community. Land provision will force the legal ties to customary land to be severed along with its control. The compensation provided will yield immediate benefits, such as monetary compensation. However, these benefits are unlikely to last long. Land Commercialization and Non-conventional Land Banking can sustain the control of Indigenous communities. Their legality may need to change to accommodate cooperation between parties. The key difference between these two schemes lies in their utilization. Landowners under the Land Commercialization scheme do not demand use land use optimization, while under the Non-conventional Land Banking scheme, landowners also participate in directing land utilization to obtain optimal benefits.

The use of land for public interests sparks a challenging discussion to determine the best scheme for both parties. From the perspective of the Indigenous community, Non-conventional Land Banking seems to be the most suitable scheme because customary land can be optimized. However, public interests fall within the public domain and must adhere to government planning. Land use is already regulated according to the plan, making it difficult to intervene. On the other hand, land as a development site for public interests requires condition dispute-free conditions in the future. The safest scheme for the government is land procurement in accordance with Government Regulation of the Republic of Indonesia Number 19 of 2021.

Differences in interests and perspectives in the whirlwind of managing customary land for public purposes are also related to the government's role to the indigenous community. Often, the government acts as a service provider rather than being involved in the development of the Indigenous community[46]. Public interests and collective interests may align within the concept of community development to manage assets on customary land. However, unifying these two interests proves challenging in a win-win solution.

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43 Laura Aileen Sauls, Fernando Galeana, and Steven Lawry, "Indigenous and Customary Land Tenure Security: History, Trends, and Challenges in the Latin American Context," *Land Tenure Security and Sustainable Development*, 2022, 57–79, https://doi.org/10.1007/978-3-030-81881-4_4.

44 Wycliffe Antonio and Charisse Griffith-Charles, "Achieving Land Development Benefits on Customary/Communal Land," *Land Use Policy* 83 (April 1, 2019): 124–33, https://doi.org/10.1016/J.LANDUSEPOL.2019.02.005.

45 Ira Safitri Darwin, Haryo Winarso, and Denny Zulkaidi, "The Role of Customary Land Ownership in Land-Use Conversion in the Peri-Urban of Bukittinggi, Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 175, no. 4 (2019): 533–55, https://doi.org/10.1163/22134379-17504002.

46 Danielle Campbell and Janet Eileen Hunt, "Achieving Broader Benefits from Indigenous Land Use Agreements: Community Development in Central Australia," *Community Development Journal* 48, no. 2 (April 1, 2013): 197–214, https://doi.org/10.1093/CDJ/BSS036.

Table 1. Land Management Tool Comparison

Land Management Tool	Considerations					
	Tenure		Utilization		Legality	
	Strength	Weakness	Strength	Weakness	Strength	Weakness
Land Provision	Indigenous communities can make claims or evidence (stakes) that can change so that (the assumption is) they get a large compensation benefit.	Lack of evidence (in some nagari) of how customary land tenure is demarcated. It is also difficult to measure compensation.	More extensive use of land for natural resource extraction such as mining and exploitation.	The litigation process will take place repeatedly because indigenous community sees the value of economic benefits (compensation). When land provision is carried out, the community no longer owns the land and must move from its original location.	In cases of disputes that occur between communities, for example, the use of customary land as a non-indigenous building or settlement, can be an added value to the value of the customary land asset claim.	The status of customary land does not yet have clear legality. Meanwhile, the compensation process views land status as the dominant consideration.
Land Commercialization	KAN still controls the land as an asset cultivated by either other parties or parties from within the community group.	In some types of public interest projects (such as public roads), land no longer has value as an asset, and ownership must be released.	There is a favorable agreement for both parties (third party & KAN); customary land will return if the agreement has been completed.	• Limited activities of Indigenous peoples on customary land during the agreement period; • Land acquisition is carried out to be registered at the BPN as property rights.	• For the Indigenous community: the existence of legal recognition, as they must first obtain a certificate; • Indigenous community obtain legality in the form of Ownership Rights, while investors/third parties obtain legality through HGU. Communal rights will not be relinquished as they will be returned upon the completion of the agreement, unless the third party/investor purchases the land.	Customary legal rights and obligations potentially relinquished during the course of the agreement
Non-conventional Land Banking	Land tenure can be maintained because land is seen as a cooperation asset.	Governance is complicated by the division in orientation of the private sector. One side is profit-oriented, while the other is more conservatively oriented towards preserving the land.	PPPP in the concept of Non-conventional Land Banking can determine the most optimal utilization both in terms of private profit, customary land conservation, and public interests.	There are many interested parties so the indigenous community needs to continue to try to defend their interests, especially in obtaining communal benefits in the utilization of their customary land.	Cooperation in utilizing customary land is possible if the customary land can be separated between land ownership rights and utilization rights. One type of land rights that can be cooperated is HGU or HGB.	Property rights cannot be directly involved in land reserve schemes. Customary land tends to have SHM.

Source: Analysis Results, 2023

4. Conclusion

Peraturan Menteri Keuangan (PMK) No. 95/2023 highlights serious challenges in customary land acquisition, where government measures are often not in line with the protection of indigenous peoples' rights, resulting in conflict. Although customary land is recognized as a state asset, inadequate compensation decisions and unclear legal status can result in the marginalization of indigenous peoples. Of the three alternative schemes for providing land for public purposes, land commercialization-cooperative land banking (CLB) allows indigenous peoples to maintain control over their land while optimally utilizing the asset through a partnership model. Land Commercialization and Cooperative Land Banking allow indigenous communities to retain control over their land, although legal adjustments may be needed to accommodate cooperation with other parties. The key difference between the two schemes lies in land utilization, where Land Commercialization does not require optimal land use. At the same time, in Land Banking, landowners participate in directing land use to achieve optimal benefits. In contrast, Land Provision favors a pragmatic approach that often disadvantages indigenous peoples, and Land Commercialization does not guarantee optimal land utilization. It severs legal ties and control over customary land, offering immediate compensation such as monetary payment, but the benefits are short-term.

Cooperative Land Banking (CLB) appears more suitable from the perspective of indigenous communities, as it allows the optimization of customary land through a partnership model. As such, strategic asset management by the indigenous landowners becomes crucial. Indigenous communities need to adopt a more corporate-like approach to maximize the value of their land.[47] In conclusion, Cooperative Land Banking seems to be the most viable option among the three available schemes for indigenous communities. This scheme allows them to retain control over their land while offering opportunities for more sustainable economic benefits. In its implementation, government support in accommodating legal adjustments and establishing appropriate frameworks for cooperation will be essential to ensure the success of this strategy. Support from the government in legal adjustments and building the right framework for cooperation will be key to the success of this strategy. Thus, CLB can contribute to indigenous peoples' economic empowerment and preserve their cultural identity.

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