

Legal Standing of Customary Law Communities as Plaintiffs before Administrative Courts

Kedudukan Hukum Masyarakat Hukum Adat sebagai Penggugat di Peradilan Tata Usaha Negara

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Abstract

Customary law communities that seek the annulment of land certificates issued over their ulayat land must first establish their legal standing before the Administrative Court. Indonesian law conditions that standing upon prior subject-based recognition by regional government, so that a community without a decree of the regional head is frequently declared inadmissible before the merits are reached. This study examines the normative framework of that standing, its judicial construction in land administration disputes, and the implications of Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024. Employing normative legal research with statutory, case, and conceptual approaches, it finds that standing is determined administratively rather than judicially, that the ninety-day time limit compounds the difficulty, and that the 2024 Regulation strengthens the substantive position of ulayat land without altering the procedural threshold. It recommends judicial guidelines on proving standing and a recalibrated time limit.

Abstrak

Masyarakat hukum adat yang menuntut pembatalan sertifikat tanah yang terbit di atas tanah ulayatnya harus lebih dahulu membuktikan kedudukan hukumnya di Peradilan Tata Usaha Negara. Hukum Indonesia menggantungkan kedudukan tersebut pada pengakuan subjek oleh pemerintah daerah, sehingga masyarakat yang belum memiliki keputusan kepala daerah kerap dinyatakan tidak diterima sebelum pokok perkara diperiksa. Penelitian ini mengkaji kerangka normatif kedudukan hukum tersebut, konstruksinya dalam putusan sengketa administrasi pertanahan, serta implikasi Peraturan Menteri Agraria dan Tata Ruang Nomor 14 Tahun 2024. Dengan penelitian hukum normatif melalui pendekatan perundang-undangan, kasus, dan konseptual, penelitian ini menemukan bahwa kedudukan hukum ditentukan secara administratif dan bukan secara yudisial, bahwa tenggang waktu sembilan puluh hari memperberat keadaan, dan bahwa Permen 14/2024 memperkuat kedudukan substantif tanah ulayat tanpa mengubah ambang proseduralnya. Penelitian ini merekomendasikan pedoman pembuktian kedudukan hukum dan penyesuaian tenggang waktu.



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A. INTRODUCTION

1. Background

A customary law community that discovers a land certificate issued in the name of a stranger over territory it regards as its own faces a sequence of obstacles before any court will consider whether the certificate was lawfully issued. The first and often decisive obstacle is procedural rather than substantive. Article 53(1) of Law No. 5 of 1986 concerning the Administrative Courts confers the right to sue upon a person or a civil legal entity whose interests are injured by an administrative decision,¹ and a community that cannot demonstrate its own status as such a subject will be met with a declaration of inadmissibility before the merits are reached. The question of legal standing is therefore not a preliminary technicality in these disputes; it is frequently the whole of the case.

The difficulty arises from the architecture of recognition adopted in Indonesian law. Article 18B(2) of the 1945 Constitution provides that the State recognises and respects units of customary law communities together with their traditional rights, so long as they remain alive and consonant with the development of society,² and Article 3 of the Basic Agrarian Law recognises the exercise of ulayat rights so far as in reality they still exist.³ Neither provision, however, specifies the operational mechanism by which a given community is formally established as such, and the implementation of recognition has consequently been devolved to regional government.⁴ The scheme adopted is subject-based: a community must first be recognised as a legal subject, whereupon the recognition of its rights over land or forest may follow.⁵

The principal instrument of that scheme is Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. Article 6(2) provides that the regent or mayor effects the

¹ Law No. 5 of 1986 concerning the Administrative Courts, as amended by Law No. 9 of 2004 and Law No. 51 of 2009, arts. 1(3), 53(1), and 55.

² The 1945 Constitution of the Republic of Indonesia, arts. 18B(2), 28D(1), and 28I(3).

³ Law No. 5 of 1960 concerning the Basic Agrarian Regulations, art. 3.

⁴ Natal Frantomas Nababan and Martono Anggusti, "Pengakuan Wilayah Adat dalam Perspektif Hukum: Perbandingan Masyarakat Adat dengan dan tanpa SK Pemerintah Kabupaten serta Urgensi RUU Masyarakat Adat," *Humani (Hukum dan Masyarakat Madani)* 15, no. 2 (2025): 288, <https://doi.org/10.26623/humani.v15i2.13078>.

⁵ Athena Huberta Alexandra, "Penemuan Hukum oleh Hakim Pengadilan Tata Usaha Negara terhadap Kedudukan Hukum (Legal Standing) Masyarakat Hukum Adat sebagai Penggugat dalam Sengketa Administrasi Pertanahan" (undergraduate thesis, Universitas Gadjah Mada, 2023), 61.

determination of recognition and protection on the recommendation of the customary law community committee, by decree of the regional head,⁶ and the process passes through stages of identification, verification and validation, and determination.⁷ The instrument is not, however, harmonious with the statute law above it. Article 67(2) of Law No. 41 of 1999 concerning Forestry provides that the confirmation of the existence and the dissolution of a customary law community is established by regional regulation,⁸ so that there is a conspicuous difference in the legal form of recognition between the two instruments.⁹

The practical consequence of that divergence falls upon litigants. Where recognition depends upon the commitment and capacity of individual regional administrations, the outcome varies between regions, and communities without a decree encounter legal difficulty in defending their customary territory, in obtaining access to natural resources, and in pursuing remedies.¹⁰ Empirical studies of the implementation of the 2014 Regulation record instances in which a community satisfied every substantive criterion yet the regent declined for years to issue the determination.¹¹

The effect of that administrative precondition upon judicial proceedings is direct and documented. In a dispute over the determination of a development location for the public interest, the panel held that the customary law community appearing as plaintiff had no standing to sue because, up to the close of evidence, it could not prove recognition as such a community in the form of a decree of the local regional head under the 2014 Regulation.¹² The decision is instructive because the governing procedural instrument, Supreme Court Regulation No. 2 of 2016, expressly contemplates that a customary law

⁶ Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities, arts. 2, 4, 5, and 6(2).

⁷ Retno Kus Setyowati, "Pengakuan Negara terhadap Masyarakat Hukum Adat," *Binamulia Hukum* 12, no. 1 (2023): 131–142, <https://doi.org/10.37893/jbh.v12i1.601>.

⁸ Law No. 41 of 1999 concerning Forestry, art. 67(1) and (2).

⁹ Septya Hanung Surya Dewi, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, "Kedudukan dan Perlindungan Masyarakat Adat dalam Mendiarni Hutan Adat," *Jurnal Legislatif* 4, no. 1 (2020): 81, <https://doi.org/10.20956/jl.v4i1.12322>.

¹⁰ Nababan and Anggusti, "Pengakuan Wilayah Adat dalam Perspektif Hukum," 293.

¹¹ Jasardi Gunawan, "Implementasi Permendagri No. 52 Tahun 2014 tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat," *Jurnal IUS Kajian Hukum dan Keadilan* 6, no. 1 (2018): 156–165, <https://doi.org/10.29303/ius.v6i1.536>.

¹² Lembaga Kajian dan Advokasi Independensi Peradilan, "Pembuktian Masyarakat Hukum Adat pada Gugatan Pengadaan Tanah untuk Kepentingan Umum," accessed 29 September 2026, <https://leip.or.id/pembuktian-masyarakat-hukum-adat-pada-gugatan-pengadaan-tanah-untuk-kepentingan-umum/>.

community may appear as plaintiff and regulates the proof of its standing.¹³ Even where the procedural law opens the door, therefore, the evidentiary requirement may close it.

Not every panel has reasoned in that manner. In Decision No. 22/G/2015/PTUN.Kdi the Kendari Administrative Court accepted the existence of the customary elders of the Saumolewa customary community upon the basis of a certificate issued by the head of the Todombulu sub-district,¹⁴ a document of considerably lower formal rank than a decree of the regent. The contrast between the two approaches indicates that the standard of proof applied to standing is not settled, and the most systematic study of the point confirms the impression: of nine administrative court decisions in land administration disputes brought by customary law communities, three claims were granted, one was rejected, and five were declared inadmissible, with eight of the nine containing express reasoning on the standing of the community.¹⁵

The object of these disputes compounds the difficulty. A land certificate is an administrative decision that is concrete, individual, and final, and it attracts the presumption of lawfulness until annulled,¹⁶ which in Indonesia's negative system of land registration with positive tendencies means that it may be challenged at any time by a person claiming a better right, while remaining effective in the interim.¹⁷ Because the certificate is addressed to its holder and not to the community, the community is a third party for procedural purposes, and the ninety-day time limit in Article 55 of the Administrative Courts Law¹⁸ must be computed for it under Circular Letter of the Supreme Court No. 2 of 1991, which directs that the period be reckoned casuistically from the moment the third party feels its interests to have been injured and becomes aware of the decision.¹⁹

Against that background, a significant regulatory development has occurred. The scheme governing ulayat land has been revised three times in a decade. Regulation of the

¹³ Supreme Court Regulation No. 2 of 2016 concerning Guidelines for Proceedings in Disputes concerning the Determination of Development Locations for the Public Interest.

¹⁴ Kendari Administrative Court, Decision No. 22/G/2015/PTUN.Kdi.

¹⁵ Alexandra, "Penemuan Hukum oleh Hakim Pengadilan Tata Usaha Negara," 74.

¹⁶ Nadia Safira Syazwani, Oryza Villa Sativa, and Dhimas Anggana Syahreza Pratama, "Perlindungan Hak Warga Negara dalam Sengketa Sertifikat Tanah Ganda Ditinjau dari Asas Praduga Rechmatige," *Journal of Innovative and Creativity* 5, no. 3 (2025): 34581, <https://doi.org/10.31004/joecy.v5i3.5359>.

¹⁷ Loisa Windy Lapondu, Joupny G. Z. Mambu, and Delbert Ch. Mongan, "Perlindungan Hukum terhadap Pemegang Sertifikat Hak atas Tanah Adat," *Inovasi: Jurnal Sosial Humaniora dan Pendidikan* 5, no. 2 (2026): 145, <https://doi.org/10.55606/inovasi.v5i2.5770>.

¹⁸ Law No. 5 of 1986 concerning the Administrative Courts, art. 55.

¹⁹ Circular Letter of the Supreme Court No. 2 of 1991 concerning Guidance for the Implementation of Duties of the Courts, ch. V para. 3.

Minister of Agrarian Affairs and Spatial Planning No. 9 of 2015 introduced communal rights over land;²⁰ it was replaced by Regulation No. 18 of 2019 concerning procedures for the administration of ulayat land of customary law community units, Article 2(2) of which set out the elements by which such land is deemed still to exist;²¹ and Regulation No. 14 of 2024 now governs the administration of land affairs and the registration of ulayat land. Article 2(1) and (2) of the 2024 Regulation provides that ulayat rights are exercised so far as in reality they still exist under the customary law applicable to the community concerned, and Article 16 provides that a parcel of ulayat land for which confirmation as a management right has not been sought retains its status as ulayat land.²²

The last of those provisions is of particular interest for the question examined here. If the status of ulayat land does not depend upon an application for confirmation, the substantive position of the community is strengthened. Whether that strengthening reaches the procedural threshold of standing before the Administrative Court is a separate question, and it is the question this article addresses.

The stakes extend beyond the individual dispute. Where a certificate issued over ulayat land survives because no one with standing could challenge it, the land passes into the ordinary market and subsequent transfers accumulate upon a defective foundation, so that restoration becomes progressively harder with the passage of time. Studies of certificates originating in customary land where no release of rights occurred record precisely that accumulation, and note that annulment at a late stage injures purchasers who acted in good faith as well as the community.²³ The threshold question of standing is therefore also a question about when a defect can still be corrected at acceptable cost.²⁴

The existing scholarship supplies the doctrinal foundation but not the answer. A

²⁰ Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 9 of 2015 concerning Procedures for the Determination of Communal Rights over Land, later replaced.

²¹ Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2019 concerning Procedures for the Administration of Ulayat Land of Customary Law Community Units, art. 2(2).

²² Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 concerning the Administration of Land Affairs and the Registration of Ulayat Land of Customary Law Communities, arts. 2(1) and (2) and 16.

²³ Erna Hardhini, Wiwin Franciska, and Ahmad Nur Halim, "Perlindungan Hukum bagi Pemilik Tanah atas Pembatalan Sertifikat oleh Pengadilan Tata Usaha Negara yang Berasal dari Tanah Adat tanpa Adanya Pelepasan Hak," *SENTRI: Jurnal Riset Ilmiah* 3, no. 1 (2024): 213.

²⁴ Adityo Santoso et al., "Efektifitas Upaya Hukum Sengketa Tanah Ulayat Masyarakat Adat Pantai Raja dengan PTPN V," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 1260.

substantial literature examines the recognition of ulayat rights within the national agrarian legal order and identifies the absence of clear verification and registration mechanisms as a source of legal uncertainty,²⁵ the ambiguity of the recognition afforded by the Basic Agrarian Law,²⁶ and the need for legalisation in statutory form.²⁷ A second body of work addresses the annulment of land certificates by the Administrative Court, including certificates originating in customary land where no release of rights has occurred,²⁸ and the difficulties of executing such judgments.²⁹ A third addresses the computation of the time limit for third parties.³⁰ None of these, however, examines the standing of customary law communities as plaintiffs in the light of the 2024 Regulation. That gap constitutes the novelty of this article.

This study finds that standing in these disputes is determined administratively rather than judicially, the decisive document being a decree of the regional head rather than evidence of customary life adduced before the court; that the time limit compounds the difficulty because communities ordinarily learn of a certificate long after its issuance; and that the 2024 Regulation strengthens the substantive position of ulayat land without altering the procedural threshold that determines access to the court.

2. Research Questions

Proceeding from the background set out above, this study addresses three questions. First, how is the legal standing of customary law communities as plaintiffs regulated within Indonesian administrative procedural law? Second, how have administrative courts construed that standing in disputes concerning the annulment of land certificates issued over ulayat land? Third, what are the implications of Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024 for that standing, and what reforms follow?

²⁵ Ikhsan Lubis et al., "Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional: Tantangan dan Solusi dalam Pengakuan Hak Ulayat," *Tunas Agraria* 8, no. 2 (2025): 157, <https://doi.org/10.31292/jta.v8i2.401>.

²⁶ Salman Arrasid, "Eksistensi Hak Ulayat Masyarakat Adat dalam Undang-Undang Pokok Agraria," *IPMHI Law Journal* 1, no. 1 (2021): 82, <https://doi.org/10.15294/ipmhi.v1i1.49861>.

²⁷ Djamanat Samosir, "Legalisasi Hak Ulayat Masyarakat Hukum Adat," *Masalah-Masalah Hukum* 42, no. 2 (2013): 238, <https://doi.org/10.14710/mmh.42.2.2013.236-243>.

²⁸ Hardhini, Franciska, and Halim, "Perlindungan Hukum bagi Pemilik Tanah," 220.

²⁹ Rani Arvita, "Kedudukan BPN RI dalam Menghadapi Problematik Putusan Non-Executable Pengadilan Tata Usaha Negara tentang Pembatalan Sertipikat Hak atas Tanah," *Jurnal Media Hukum* 23, no. 1 (2016): 82.

³⁰ Yunantyo Adi Setiawan and Unu Putra Herlambang, "Permasalahan Tenggang Waktu Pengajuan Gugatan oleh Pihak Ketiga dalam Perkara Tata Usaha Negara," *Al-Wasath: Jurnal Ilmu Hukum* 2, no. 2 (2021): 113.

The three questions are sequential. The first establishes the normative framework, the second measures judicial practice against it, and the third assesses the effect of the most recent regulatory intervention and draws prescriptive conclusions.

3. Research Methods

This study employs normative legal research, which treats law as a system of norms and seeks a prescription concerning what ought to be done in respect of a given legal issue rather than a description of social behaviour.³¹ Three approaches are combined. The statutory approach is directed at Article 18B(2) of the 1945 Constitution, Article 3 of the Basic Agrarian Law, Articles 1(3), 53(1), and 55 of the Administrative Courts Law, Law No. 30 of 2014 concerning Government Administration, Article 67 of the Forestry Law, Government Regulation No. 24 of 1997, Regulation of the Minister of Home Affairs No. 52 of 2014, Regulations of the Minister of Agrarian Affairs and Spatial Planning No. 9 of 2015, No. 18 of 2019, No. 21 of 2020, and No. 14 of 2024, Supreme Court Regulation No. 2 of 2016, and Circular Letter of the Supreme Court No. 2 of 1991. The case approach is directed at administrative court decisions in land administration disputes brought by customary law communities, including Decision No. 22/G/2015/PTUN.Kdi, together with Constitutional Court Decision No. 35/PUU-X/2012.³² The conceptual approach draws upon the doctrine of *beschikkingsrecht* in customary law,³³ upon the theory of the injured interest in administrative litigation,³⁴ and upon the general principles of good administration.³⁵

The legal materials are of three orders. Primary legal materials comprise the Constitution, the statutes and regulations enumerated above, and the judicial decisions identified. Secondary legal materials comprise scholarly monographs and peer-reviewed articles, supplemented by the published analyses of judicial practice produced by legal research institutions. Tertiary legal materials comprise legal dictionaries and encyclopaedias. The materials were collected through documentary study and analysed qualitatively by means of interpretation, systematisation, and argumentation.

³¹ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana Prenada Media, 2014), 133–137.

³² Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013.

³³ Ter Haar Bzn, *Asas-Asas dan Susunan Hukum Adat*, trans. K. Ng. Soebakti Poesponoto (Jakarta: Pradnya Paramita, 2001), 71–78.

³⁴ S. F. Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia* (Yogyakarta: FH UII Press, 2011), 232–239.

³⁵ Philipus M. Hadjon et al., *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2011), 270–276.

B. DISCUSSION/ ANALYSIS

The discussion follows the sequence of the three research questions. The first section reconstructs the normative framework of standing; the second examines its judicial construction; and the third assesses the implications of the 2024 Regulation and sets out prescriptive proposals.

1. The Normative Framework of Legal Standing for Customary Law Communities

a. The Injured Interest under Article 53 of the Administrative Courts Law

The starting point is Article 53(1) of Law No. 5 of 1986, which confers the right to bring an action upon a person or a civil legal entity whose interests are injured by an administrative decision.³⁶ Two elements must therefore be established: the claimant's status as a subject of the kinds enumerated, and the injury to an interest. In the ordinary case the two are examined together, since a person addressed by a decision manifestly possesses both. In the case of a customary law community they separate, because the community's status as a subject is itself contested.

The doctrinal literature on administrative litigation treats the requirement of an injured interest as an instrument for confining access to those genuinely affected, and not as a device for excluding claimants whose substantive position is difficult to characterise.³⁷ Zairin Harahap emphasises that the interest must be personal, direct, objectively determinable, and present, but does not require that it be founded upon a registered title.³⁸ On that construction a community whose members have cultivated and governed a territory for generations possesses an interest that is manifestly direct and present, whatever the state of its paperwork.

The difficulty lies in the first element. A customary law community is neither a natural person nor, without more, a civil legal entity in the sense familiar from private law. Classical customary law scholarship conceives it as a *rechtsgemeenschap*, a legal community possessing a *beschikkingsrecht* over its territory, that is to say an original right of disposal which is not derived from any grant by the state.³⁹ Boedi Harsono's formulation, which has passed into judicial usage, defines ulayat right as the authority

³⁶ Law No. 5 of 1986, art. 53(1).

³⁷ Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, 255.

³⁸ Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Rajawali Pers, 2014), 44–51.

³⁹ Ter Haar, *Asas-Asas dan Susunan Hukum Adat*, 97.

which under customary law belongs to a particular community over a particular territory constituting the environment of its members, to take benefit from the natural resources within it.⁴⁰ Upon that conception the community's legal personality precedes and does not depend upon any act of the state.

b. Subject-Based Recognition and Its Procedural Consequences

Indonesian positive law has adopted the contrary construction. Recognition operates in two stages: the community is first recognised as a legal subject by declarative or administrative act, and the recognition of substantive rights such as ulayat land or customary forest follows.⁴¹ Constitutional Court Decision No. 35/PUU-X/2012, which held that customary forest is not state forest, did not displace that structure; it made the substantive right depend upon a prior recognition of the subject that remains within the competence of regional government.⁴²

The consequences are procedural as well as substantive. Where recognition is a condition of subjecthood and subjecthood is a condition of standing, the decision whether a community may litigate rests with the executive rather than with the court. A regent who declines to issue a determination thereby forecloses judicial review of administrative acts affecting the community, and does so without any decision of a court. Studies of implementation record precisely that outcome, noting that the dependence of recognition upon local policy has produced marked disparity between regions and that communities without a decree encounter difficulty in defending their customary territory.⁴³ Marolop Marbun analyses the same problem through the lens of regional autonomy.⁴⁴

The disharmony between the instruments aggravates the position. The Forestry Law requires confirmation by regional regulation, a legislative product requiring the concurrence of the regional legislature, whereas the 2014 Regulation of the Minister of Home Affairs provides for a decree of the regional head, an executive product.⁴⁵ A community may therefore hold an instrument of one kind and find it treated as

⁴⁰ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya* (Jakarta: Djambatan, 2008), 185–192.

⁴¹ Alexandra, "Penemuan Hukum oleh Hakim Pengadilan Tata Usaha Negara," 74.

⁴² Constitutional Court, Decision No. 35/PUU-X/2012.

⁴³ Nababan and Anggusti, "Pengakuan Wilayah Adat dalam Perspektif Hukum," 293.

⁴⁴ Marolop Marbun, "Kedudukan Hukum Hak Ulayat Masyarakat Hukum Adat Dihubungkan dengan Otonomi Daerah," *Jurnal Darma Agung* 29, no. 2 (2021): 125, <https://doi.org/10.46930/ojsuda.v29i1.940>.

⁴⁵ Law No. 41 of 1999, art. 67(2).

insufficient in a forum expecting the other. The literature has repeatedly identified this as a source of legal uncertainty,⁴⁶ and Hayatul Ismi argued two decades ago that the recognition and protection of customary rights over land required reform at the level of statute rather than of ministerial regulation.⁴⁷ Djamanat Samosir reached a comparable conclusion, treating legalisation in statutory form as a *conditio sine qua non* for the implementation of Article 3 of the Basic Agrarian Law.⁴⁸

c. The Certificate as an Administrative Decision and the Position of the Third Party

The object of the action supplies a further set of constraints. A certificate of land rights issued by the Land Office is an administrative decision within the meaning of Article 1(3) of the Administrative Courts Law: it is concrete, individual, and final, and it therefore falls within the competence of the Administrative Court.⁴⁹ It also attracts the presumption of lawfulness, so that it produces its effects until annulled, and Indonesia's negative system of registration with positive tendencies permits it to be challenged by a person claiming a better right.⁵⁰ Article 32 of Government Regulation No. 24 of 1997 supplies the framework within which that possibility operates.⁵¹

Two consequences follow for a customary law community. The first concerns competence. Because the community's claim is in substance a claim to the land itself, defendants routinely contend that the dispute is one of ownership belonging to the general courts rather than a dispute over the legality of an administrative act. The boundary between the two jurisdictions is contested and has generated a substantial literature.⁵² The distinction that the courts draw, in principle, is between the lawfulness of the process by which the certificate was issued, which is for the Administrative Court, and the question of who holds the better right, which is not.

⁴⁶ Dewi, Handayani, and Najicha, "Kedudukan dan Perlindungan Masyarakat Adat dalam Mendiami Hutan Adat," 88.

⁴⁷ Hayatul Ismi, "Pengakuan dan Perlindungan Hukum Hak Masyarakat Adat atas Tanah Ulayat dalam Upaya Pembaharuan Hukum Nasional," *Jurnal Ilmu Hukum* 3, no. 1 (2013): 7, <https://doi.org/10.30652/jih.v3i01.1024>.

⁴⁸ Samosir, "Legalisasi Hak Ulayat Masyarakat Hukum Adat," 241.

⁴⁹ Syazwani, Sativa, and Pratama, "Perlindungan Hak Warga Negara dalam Sengketa Sertifikat Tanah Ganda."

⁵⁰ Lapondu, Mambu, and Mongan, "Perlindungan Hukum terhadap Pemegang Sertifikat Hak atas Tanah Adat."

⁵¹ Government Regulation No. 24 of 1997 concerning Land Registration, arts. 19 and 32.

⁵² Azis Akbar Ramadhan, "Sengketa Kompetensi Absolut Pengadilan Negeri dan Pengadilan Tata Usaha Negara Terkait dengan Perkara Sengketa Pertanahan," *Journal of Mandalika Literature* 6, no. 1 (2025): 266, <https://doi.org/10.36312/jml.v6i1.3993>.

The second concerns the computation of time. The community is not the addressee of the certificate, and the ninety-day period in Article 55 is expressed by reference to receipt or announcement of the decision.⁵³ Circular Letter of the Supreme Court No. 2 of 1991 resolves the resulting gap by directing that for a person not addressed by the decision but whose interests are injured, the period is computed casuistically from the time that person feels the injury and becomes aware of the decision.⁵⁴ The rule is protective in design, but its application is unpredictable, and the literature records considerable difficulty in identifying the moment at which awareness is to be attributed.⁵⁵ Scholarship on the ninety-day rule more generally has questioned whether a single period, uniformly applied, is compatible with equal access to justice across a geographically dispersed archipelago.⁵⁶ Table 1 sets out the framework as a whole.

Table 1. Normative Framework Governing the Standing of Customary Law Communities

Element	Governing provision	Requirement	Difficulty for the community
Status as a subject	Article 53(1), Law No. 5 of 1986	Person or civil legal entity	Community is neither without prior recognition
Recognition of the subject	Article 6(2), Regulation of the Minister of Home Affairs No. 52 of 2014	Decree of the regent or mayor	Depends upon the will and capacity of regional government
Alternative form of recognition	Article 67(2), Law No. 41 of 1999	Regional regulation	Disharmony in the required legal form
Injured interest	Article 53(1), Law No. 5 of 1986	Direct, personal, present interest	Readily satisfied in substance once subjecthood is accepted
Object of the action	Article 1(3), Law No. 5 of 1986	Concrete, individual, and final decision	Objection that the dispute is one of ownership
Time limit	Article 55, Law No. 5 of 1986; Supreme Court Circular No. 2 of 1991	Ninety days, computed casuistically for third parties	Awareness typically arises years after issuance

Source: processed from the statutory and regulatory instruments cited in this section.

Table 1 discloses that of the six elements, the community's position is secure only in respect of the injured interest. Every other element operates as a filter, and the two

⁵³ Law No. 5 of 1986, art. 55.

⁵⁴ Circular Letter of the Supreme Court No. 2 of 1991, ch. V para. 3.

⁵⁵ Setiawan and Herlambang, "Permasalahan Tenggang Waktu Pengajuan Gugatan oleh Pihak Ketiga," 119.

⁵⁶ Renius Albert Marvin and Anna Erliyana, "Polemik Jangka Waktu Pengajuan Gugatan ke Pengadilan Tata Usaha Negara," *Jurnal Hukum & Pembangunan* 49, no. 4 (2019): 942, <https://doi.org/10.21143/jhp.vol49.no4.2350>.

that operate most severely, namely recognition of the subject and the computation of time, are governed by instruments of lower rank than the statute that confers the right to sue.

d. Ulayat Rights and the State's Right of Control

A fourth element of the framework deserves separate treatment because it shapes how courts characterise the community's interest. Article 3 of the Basic Agrarian Law recognises the exercise of ulayat rights so far as in reality they still exist and so far as it is not inconsistent with the national interest,⁵⁷ and the qualification has been read as subordinating the customary right to the right of control vested in the State. Scholarship examining the relation between the two in the context of protected areas has shown that the qualification operates in practice as a standing invitation to treat the customary right as displaced wherever a competing public purpose is asserted.⁵⁸

The criteria by which the continued existence of the right is assessed have themselves been criticised. Regulation of the Minister of Agrarian Affairs No. 5 of 1999 set out the first sustained attempt at such criteria,⁵⁹ and Djamanat Samosir argued that the resulting tests tended to operate to the detriment of the communities they were designed to protect.⁶⁰ The enactment of the Job Creation Law introduced a further set of questions, and critical analysis of the recognition of ulayat land within that statute has concluded that the recognition afforded is conditional in a manner that leaves the community structurally exposed.⁶¹

The introduction of management rights over ulayat land adds a further layer. Where a community obtains confirmation of a management right, its land may be the subject of cooperation with investors and the community retains control at the conclusion of the arrangement; where the land has not been so confirmed, cooperation is still possible but the land may pass into the category of state land once the derived right expires.⁶² That contrast explains why Article 16 of the 2024 Regulation, examined

⁵⁷ Law No. 5 of 1960, art. 3.

⁵⁸ Sahrina Safiuddin, "Hak Ulayat Masyarakat Hukum Adat dan Hak Menguasai Negara di Taman Nasional Rawa Aopa Watumohai," *Mimbar Hukum* 30, no. 1 (2018): 63, <https://doi.org/10.22146/jmh.16681>.

⁵⁹ Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for the Settlement of Ulayat Rights of Customary Law Communities, art. 2(2).

⁶⁰ Samosir, "Legalisasi Hak Ulayat Masyarakat Hukum Adat," 241.

⁶¹ Safrin Salam, R. M. Suhartono, and Edi Nurcahyo, "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 (2020): 723.

⁶² Dian Cahyaningrum, "Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat untuk Kepentingan Investasi," *Negara Hukum* 13, no. 1 (2022): 23.

in the third section of this discussion, is of more than technical significance.⁶³

For the question of standing, the consequence of this framework is indirect but real. A court that regards the customary right as inherently subordinate to the right of control of the State is unlikely to regard the community's interest as sufficiently direct to found an action, whereas a court that regards the right as original and merely qualified will reach the opposite view. The characterisation of the substantive right thus conditions the assessment of the procedural capacity, which is one reason why decisions on standing in these cases are difficult to reconcile with one another.⁶⁴

2. Judicial Construction of Standing in Land Administration Disputes

a. The Pattern of Outcomes

The most systematic study of judicial practice on this question analysed nine administrative court decisions in land administration disputes in which the plaintiff was a customary law community. Three claims were granted, one was rejected on the merits, and five were declared inadmissible; eight of the nine contained express judicial reasoning upon the standing of the community.⁶⁵ The distribution is itself the principal finding. In a majority of the cases the court never reached the question whether the certificate had been lawfully issued, because the action failed at the threshold.

The significance of that pattern should not be understated. An administrative court exists to supervise the legality of executive action, and a filter that excludes a majority of claims brought by a particular class of litigant operates, in effect, to exempt from supervision the administrative acts that most directly affect that class. The general principles of good administration, which Law No. 30 of 2014 has given statutory expression,⁶⁶ are of little practical use to a community that cannot obtain a hearing upon them.

b. The Evidentiary Standard: Proving Recognition

The decisive question in practice is what a community must adduce to establish its standing. Two approaches are discernible, and they diverge sharply. The first requires formal recognition by the state. In the case examined by the Institute for the Independence of the Judiciary, the panel held that the community had no standing

⁶³ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

⁶⁴ Syafa'at Anugrah Pradana, "Keadilan Hijau bagi Masyarakat Adat di Meja Peradilan Tata Usaha Negara," *Bina Hukum Lingkungan* 10, no. 1 (2025): 67, <https://doi.org/10.24970/bhl.v10i1.436>.

⁶⁵ Alexandra, "Penemuan Hukum oleh Hakim Pengadilan Tata Usaha Negara," 74.

⁶⁶ Law No. 30 of 2014 concerning Government Administration, arts. 1(7), 75, and 87.

because up to the close of evidence it had been unable to prove recognition as a customary law community in the form of a decree of the local regional head under the 2014 Regulation.⁶⁷ Upon that approach the decree is constitutive of the capacity to litigate.

The second approach treats recognition as a matter of proof rather than of form. In Decision No. 22/G/2015/PTUN.Kdi the Kendari Administrative Court accepted the existence of the customary elders of the Saumolewa customary community upon the basis of a certificate issued by the head of the Todombulu sub-district.⁶⁸ A sub-district head's certificate is an instrument of markedly lower rank than a decree of the regent, and its acceptance indicates that the panel regarded the question as one of establishing a fact rather than of producing a prescribed document.

The second approach is, in the view taken here, the correct one, and three considerations support it. The first is doctrinal. Article 18B(2) of the Constitution and Article 3 of the Basic Agrarian Law both recognise customary law communities and their rights so far as in reality they still exist.⁶⁹ The criterion is factual existence, not administrative registration, and a court that requires a decree substitutes a different criterion for the one the Constitution supplies. The second is structural. To make the capacity to litigate depend upon a document issued by an organ of the executive is to permit the executive to determine which of its own acts may be reviewed. The third is textual: Supreme Court Regulation No. 2 of 2016 contemplates that a customary law community may appear as plaintiff and regulates the proof of its standing,⁷⁰ which presupposes that standing is capable of being proved rather than merely certified.

It is nonetheless necessary to acknowledge the concern that animates the first approach. A court confronted with a claim by a group asserting customary status has no independent means of verifying that assertion, and the risk of opportunistic claims is real. The elements set out in Article 2(2) of the 2019 Regulation, requiring a community and a customary institution, a territory within which the ulayat right operates, and a continuing system of customary norms,⁷¹ supply a workable checklist, and the 2024

⁶⁷ LeIP, "Pembuktian Masyarakat Hukum Adat pada Gugatan Pengadaan Tanah."

⁶⁸ Kendari Administrative Court, Decision No. 22/G/2015/PTUN.Kdi.

⁶⁹ The 1945 Constitution of the Republic of Indonesia, art. 18B(2).

⁷⁰ Supreme Court Regulation No. 2 of 2016.

⁷¹ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2019, art. 2(2).

Regulation carries the same substantive test forward in Article 2(1) and (2).⁷² What is missing is a procedural instrument directing courts to apply that checklist as the test of standing.

c. The Time Limit as a Second Filter

Even a community that establishes its standing must contend with the time limit. The difficulty is structural rather than accidental: certificates are issued without notice to persons other than the applicant, and a community ordinarily learns of the issuance only when physical occupation begins, which may be years later. Circular Letter of the Supreme Court No. 2 of 1991 addresses the problem by directing casuistic computation from the moment of awareness and felt injury,⁷³ but the rule creates its own uncertainty, since the moment of awareness is itself a contested question of fact.⁷⁴

The literature on the ninety-day rule records that the period runs from the date of receipt or announcement and is computed in calendar rather than working days, and that once it has expired the decision may no longer be disturbed even where it is gravely defective.⁷⁵ For a community whose relation to the land is continuous rather than documentary, a rule of that severity is difficult to reconcile with the constitutional guarantee of certainty of law that is just. Table 2 sets out the pattern of outcomes and the grounds upon which claims have failed.

Table 2. Outcomes and Grounds of Failure in Administrative Court Decisions Analysed

Outcome	Number of decisions	Typical ground	Stage reached
Claim granted	3	Standing accepted and procedural defect established	Merits examined
Claim rejected	1	Standing accepted but defect not established	Merits examined
Claim inadmissible	5	Standing not established; recognition by decree of the regional head not produced	Threshold only
Reasoning on standing	8 of 9	Express consideration of the community's status	Both stages

Source: processed from the analysis of nine administrative court decisions reported in the study cited in this section.

⁷² Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

⁷³ Circular Letter of the Supreme Court No. 2 of 1991, ch. V para. 3.

⁷⁴ Setiawan and Herlambang, "Permasalahan Tenggang Waktu Pengajuan Gugatan oleh Pihak Ketiga," 119.

⁷⁵ Marvin and Erliyana, "Polemik Jangka Waktu Pengajuan Gugatan ke Pengadilan Tata Usaha Negara," 943.

Table 2 supports the finding stated at the outset of this section. The determinant of outcome in these disputes is not the quality of the administrative act challenged but the documentary position of the claimant, and the document that matters is one that the claimant cannot itself produce.

d. Competence and the Limits of Administrative Review

A third filter operates alongside standing and the time limit, and it is frequently raised in the same set of preliminary objections. Defendants contend that a claim founded upon ulayat rights is in substance a claim to ownership, which belongs to the general courts, and that the Administrative Court therefore lacks competence. The boundary is genuinely difficult, and the literature records a persistent pattern of disputes in which the same facts are litigated in both jurisdictions.⁷⁶

The distinction that the case law draws is between the legality of the process by which the certificate was issued and the question of who holds the better right. On that distinction an allegation that the Land Office failed to verify the status of the land, failed to conduct an adequate field measurement, or failed to give notice to adjoining occupiers is properly administrative, whereas an allegation that the community is the true owner is not. Studies of individual decisions illustrate how narrow the resulting inquiry can become: in one analysis of an annulment decision the court was criticised for having set aside a certificate without evidence of administrative defect, on the view that annulment on such a basis produces legal uncertainty rather than remedying it.⁷⁷ Analysis of a further decision concerning a cultivation right reaches a comparable conclusion.⁷⁸

The difficulty for a customary law community is that its case is typically constituted by the very fact that the administrative process took no account of its rights, which is at once an allegation of procedural defect and an assertion of entitlement. Where the certificate was issued over land held communally and no release of rights was ever executed, the absence of a release is simultaneously evidence of the defect and evidence of the claim.⁷⁹ Work on the evidentiary weight of certificates over ulayat land reaches a

⁷⁶ Ramadhan, "Sengketa Kompetensi Absolut Pengadilan Negeri dan Pengadilan Tata Usaha Negara," 272.

⁷⁷ Abdul Dalimunthe and Rizki Ramadani, "Putusan Pengadilan Tata Usaha Negara Nomor 115/G/2023/PTUN.MDN tentang Pembatalan Sertifikat Hak Milik Perspektif Fiqh Siyasah," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 1 (2025): 34.

⁷⁸ Noni Rambe and Khalid, "Analisis Putusan Pengadilan Tata Usaha Negara Nomor 118/G/2023/PTUN.MDN terhadap Sertifikat Hak Guna Usaha Perspektif Siyasah Qada'iyah," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 2 (2025): 286.

⁷⁹ Hardhini, Franciska, and Halim, "Perlindungan Hukum bagi Pemilik Tanah," 220.

similar conclusion, observing that the strength of the certificate as proof depends upon the integrity of the process that produced it.⁸⁰

Two observations follow. The first is that the competence objection and the standing objection are frequently interchangeable in substance: a panel disinclined to hear the claim may dispose of it on either ground. The second is that the harmonisation of land registration with customary tenure, which the literature identifies as the underlying problem,⁸¹ cannot be achieved by adjusting procedural doctrine alone. It requires that the registration process itself be structured so as to detect customary claims before a certificate issues rather than after.

3. Implications of Regulation No. 14 of 2024 and Prescriptive Proposals

a. The Regulatory Trajectory: From Communal Rights to Registration

The instruments governing ulayat land have been replaced three times within a decade, and the trajectory is instructive. Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 9 of 2015 introduced communal rights over land, enabling communities and persons within designated areas to hold land in common through the issuance of a communal rights certificate.⁸² That instrument was replaced by Regulation No. 18 of 2019, which shifted the emphasis from the creation of a right to the administration of existing ulayat land and set out in Article 2(2) the elements by which such land is deemed still to exist.⁸³ Regulation No. 14 of 2024 now governs the administration of land affairs and the registration of ulayat land of customary law communities.⁸⁴

Two features of the 2024 Regulation bear upon the question examined here. The first is Article 2(1) and (2), which provides that ulayat rights are exercised so far as in reality they still exist under the customary law applicable to the community concerned.⁸⁵ The formulation reproduces the constitutional and agrarian-law criterion of factual existence and thereby confirms that the substantive test is not registration. The second

⁸⁰ Made Kalidna Ratna Putri, "Kekuatan Hukum Sertipikat Tanah Ulayat Milik Masyarakat Adat yang Diklaim Penguasaannya oleh Subjek Hukum Perorangan di Desa Timpag, Kabupaten Tabanan Bali," *Indonesian Notary* 4, no. 1 (2022): 570, <https://scholarhub.ui.ac.id/notary/vol4/iss1/27>.

⁸¹ Ardhia Pramesti Pramudawardhani et al., "Harmonisasi Hukum Adat dan Hukum Nasional dalam Pelaksanaan Sistem Pendaftaran Tanah Guna Mewujudkan Kepastian Hukum bagi Masyarakat Adat," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* 3, no. 1 (2026): 181, <https://doi.org/10.71153/jimmi.v3i1.457>.

⁸² Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 9 of 2015.

⁸³ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2019, art. 2(2).

⁸⁴ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

⁸⁵ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

is Article 16, which provides that a parcel of ulayat land for which confirmation as a management right has not been sought retains its status as ulayat land.⁸⁶ The provision forecloses the inference, which the earlier communal-rights scheme invited, that a community which does not enter the administrative process forfeits its position.

These are substantial gains, and they should be recognised as such. Scholarship on the registration of ulayat land has emphasised that the absence of clear verification and registration mechanisms was a principal source of uncertainty,⁸⁷ and studies of implementation in Papua and elsewhere have documented the practical consequences of that absence.⁸⁸ Empirical work on registration under the new framework is beginning to appear.⁸⁹ The earlier Balinese experience, in which the recognition of *desa pakraman* as a subject capable of holding rights in common permitted the registration of *tanah druwe*,⁹⁰ illustrates what becomes possible once the question of subjecthood is settled.⁹¹

b. The Persistence of the Procedural Threshold

The gains are nonetheless substantive rather than procedural, and the distinction is decisive. Article 16 secures the status of the land; it does not confer upon the community the capacity to litigate about it. Standing continues to be governed by Article 53(1) of the Administrative Courts Law read with the recognition scheme of the 2014 Regulation of the Minister of Home Affairs, neither of which the 2024 Regulation touches. A community that has not obtained a decree of the regional head is therefore in the same position before the court after 2024 as it was before.

There is, however, an argument available to litigants that the 2024 Regulation has strengthened. If ulayat land retains its status without any application for confirmation, and if ulayat rights are exercised so far as in reality they still exist, then a community asserting standing may contend that the criterion of its own existence is likewise factual and that the elements enumerated in the Regulation supply the applicable test. The argument is coherent, but it requires a court willing to read a regulation concerned with

⁸⁶ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

⁸⁷ Lubis et al., "Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional," 143.

⁸⁸ Adi Rahmadi, "Urgensi Penetapan Hak Ulayat Masyarakat Hukum Adat Terkait Kebijakan Pelayanan Pertanahan di Papua," *Tunas Agraria* 5, no. 1 (2022): 19, <https://doi.org/10.31292/jta.v5i1.170>.

⁸⁹ Abdul Aziz Hamid, Winanto, and Ana Silviana, "Pelaksanaan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat di Kabupaten Puncak Jaya," *Notarius* 18, no. 2 (2025): 557, <https://doi.org/10.14710/nts.v18i2.67090>.

⁹⁰ I Putu Dody Sastrawan, I Gusti Nyoman Guntur, and Dwi Wulan Titik Andari, "Urgensi Penguatan Hak atas Tanah Druwe Desa di Bali," *Tunas Agraria* 1, no. 1 (2018): 93, <https://doi.org/10.31292/jta.v1i1.6>.

⁹¹ Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017.

land administration as bearing upon procedural capacity, and the divergence in practice described in the preceding section suggests that not every panel will be so willing.

A further difficulty lies beyond the judgment. Even where a claim succeeds, annulment of the certificate is effected not by the court but by the Land Agency, under Articles 29(1) and 40 of Regulation No. 21 of 2020 concerning the handling and settlement of land cases.⁹² The literature records instances in which judgments annulling certificates were treated as non-executable,⁹³ and studies of certificates originating in customary land without any release of rights record the consequent uncertainty for all parties.⁹⁴ A community that overcomes both filters may therefore still find its remedy incomplete.

It should also be noted that the 2024 Regulation operates upon a field in which regional practice remains highly uneven. Empirical studies of recognition under the 2014 Regulation of the Minister of Home Affairs record communities that satisfied every substantive criterion yet waited years for a determination,⁹⁵ and the procedural stages of identification, verification and validation, and determination each depend upon the administrative capacity of the regional government concerned.⁹⁶ A regulation that presupposes an identified community cannot, of itself, remedy the failure to identify one.

c. Prescriptive Proposals

Three measures follow from the analysis. The first is the issuance of a Supreme Court instrument directing that the standing of a customary law community be determined by reference to the elements of factual existence rather than to the production of a decree of the regional head. The elements are already available in Article 2(2) of the 2019 Regulation and in Article 2 of the 2024 Regulation,⁹⁷ and Supreme Court Regulation No. 2 of 2016 furnishes a precedent for regulating the proof of standing by judicial instrument.⁹⁸ Such an instrument would restore to the courts a determination that presently rests with regional executives, and would give effect to the criterion that the Constitution itself lays down.⁹⁹

⁹² Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 concerning the Handling and Settlement of Land Cases, arts. 29(1) and 40.

⁹³ Arvita, "Kedudukan BPN RI dalam Menghadapi Problematik Putusan Non-Executable," 90.

⁹⁴ Hardhini, Franciska, and Halim, "Perlindungan Hukum bagi Pemilik Tanah," 220.

⁹⁵ Gunawan, "Implementasi Permendagri No. 52 Tahun 2014."

⁹⁶ Setyowati, "Pengakuan Negara terhadap Masyarakat Hukum Adat."

⁹⁷ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024, art. 16.

⁹⁸ Supreme Court Regulation No. 2 of 2016.

⁹⁹ The 1945 Constitution of the Republic of Indonesia, art. 18B(2).

The second is the recalibration of the time limit in respect of third parties asserting customary rights. Circular Letter No. 2 of 1991 already provides for casuistic computation,¹⁰⁰ but its generality leaves the outcome to the disposition of the individual panel. A rule stating that, where the claimant is a customary law community not addressed by the certificate, the period runs from the date on which the community is shown to have acquired actual knowledge of the issuance, and placing the burden of establishing that date upon the party asserting expiry, would preserve the protective purpose of the Circular while supplying the determinacy it presently lacks.¹⁰¹

The third is the harmonisation of the instruments of recognition. The divergence between regional regulation under the Forestry Law and a decree of the regional head under the 2014 Regulation serves no discernible purpose and produces avoidable litigation.¹⁰² The literature has long argued that recognition should be regulated at the level of statute rather than dispersed among sectoral instruments,¹⁰³ and the enactment of a statute on the recognition and protection of customary law communities would resolve at once the question of form, the question of the competent organ, and the evidentiary question that presently determines access to the court.¹⁰⁴ Comparative material on the constitutional position of customary rights within the agrarian order supports the same conclusion.¹⁰⁵

Taken together, the three measures would convert a procedural filter into a genuine test. The object is not to dispense with the requirement of standing, which performs a legitimate function in confining access to those genuinely affected,¹⁰⁶ but to ensure that the requirement is applied by the court upon evidence rather than delegated to an executive organ whose own acts are the subject of the challenge. Table 3 summarises the framework.

¹⁰⁰ Circular Letter of the Supreme Court No. 2 of 1991, ch. V para. 3.

¹⁰¹ Setiawan and Herlambang, "Permasalahan Tenggang Waktu Pengajuan Gugatan oleh Pihak Ketiga," 119.

¹⁰² Law No. 41 of 1999, art. 67(2).

¹⁰³ Ismi, "Pengakuan dan Perlindungan Hukum Hak Masyarakat Adat atas Tanah Ulayat," 14.

¹⁰⁴ Samosir, "Legalisasi Hak Ulayat Masyarakat Hukum Adat," 241.

¹⁰⁵ Gusti Ayu Ketut Rachmi Handayani Nasir, Khudzaifah Dimyati, and Absori, "Jaminan Hukum atas Pengakuan dan Eksistensi Hak Ulayat pada Masyarakat Hukum Adat," *Lex Publica* 6, no. 1 (2019): 34, <https://doi.org/10.58829/lp.6.1.2019.32-40>.

¹⁰⁶ Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, 255.

Table 3. Prescriptive Framework

Issue	Present position	Effect of Regulation No. 14 of 2024	Prescription
Test of standing	Decree of the regional head treated as constitutive	Unchanged; the Regulation does not address procedure	Supreme Court instrument adopting the elements of factual existence
Status of ulayat land	Formerly dependent upon entry into the administrative scheme	Retained even without confirmation as a management right – Article 16	Argument available to litigants; requires judicial reception
Time limit	Ninety days, computed casuistically for third parties	Unchanged	Period running from proven actual knowledge; burden on the party asserting expiry
Form of recognition	Regional regulation or decree of the regional head	Unchanged	Harmonisation at the level of statute
Execution of judgment	Annulment effected by the Land Agency	Unchanged	Clear obligation and time limit for implementation

Source: processed from the analysis undertaken in this study.

d. Limits of the Analysis

Three limits qualify the findings set out above. The first concerns the evidentiary base. The most systematic study available analysed nine decisions, a number sufficient to establish a pattern but not to support statistical inference, and the decisions were drawn from the period preceding the 2024 Regulation.¹⁰⁷ The conclusions offered here are accordingly propositions about the structure of the problem rather than measurements of its incidence, and they invite replication upon a larger corpus once decisions applying the new Regulation have accumulated.

The second concerns the diversity of customary tenure across the archipelago. The Balinese arrangement, in which *desa pakraman* was recognised as a subject capable of holding rights in common and *tanah druwe* became registrable,¹⁰⁸ differs materially from the arrangements found in Papua, where the identification of the holding community is itself contested,¹⁰⁹ and from those of Sumatra, where lineage-based holdings predominate. A single procedural test of standing must accommodate all of them, and a test drawn too closely from any one may operate to exclude the others. The elements of factual existence proposed here are preferable on that ground as well, since they inquire

¹⁰⁷ Alexandra, "Penemuan Hukum oleh Hakim Pengadilan Tata Usaha Negara," 74.

¹⁰⁸ Sastrawan, Guntur, and Andari, "Urgensi Penguatan Hak atas Tanah Druwe Desa di Bali," 104.

¹⁰⁹ Rahmadi, "Urgensi Penetapan Hak Ulayat Masyarakat Hukum Adat," 27.

into the presence of a community, an institution, a territory, and a continuing normative order without prescribing the form any of them must take.¹¹⁰

The third concerns the relation between procedural reform and substantive outcome. Widening access to the Administrative Court would permit more claims to be heard on their merits, but it would not by itself alter the standard against which certificates are reviewed, which remains the legality of the process rather than the justice of the allocation.¹¹¹ Nor would it resolve the execution problem identified above, since annulment continues to be effected by the Land Agency.¹¹² The measures proposed in this article are therefore necessary but not sufficient; they open a door that other reforms must make it worthwhile to pass through.¹¹³

C. CONCLUSIONS

The legal standing of a customary law community as plaintiff before the Administrative Court is governed by Article 53(1) of Law No. 5 of 1986 read together with a scheme of subject-based recognition in which the community must first be established as a legal subject by decree of the regional head under Regulation of the Minister of Home Affairs No. 52 of 2014, or by regional regulation under Article 67(2) of the Forestry Law, with the consequence that a determination which the Constitution frames in terms of factual existence is in practice made by an organ of the executive. Judicial construction of that standing is divided: of nine decisions analysed in land administration disputes, three claims were granted, one was rejected, and five were declared inadmissible, and while one panel required a decree of the regional head as a condition of the capacity to litigate, the Kendari Administrative Court in Decision No. 22/G/2015/PTUN.Kdi accepted a certificate of the sub-district head as sufficient proof, the divergence being compounded by a ninety-day time limit that must be computed casuistically for a community which, not being the addressee of the certificate, ordinarily learns of its issuance years afterwards. Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 14 of 2024 strengthens the substantive position of ulayat land, providing that ulayat rights are exercised so far as in reality they still exist and that a parcel for which confirmation as a management right has not been sought retains its

¹¹⁰ Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2019, art. 2(2).

¹¹¹ Ramadhan, "Sengketa Kompetensi Absolut Pengadilan Negeri dan Pengadilan Tata Usaha Negara," 272.

¹¹² Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 21 of 2020, art. 29(1).

¹¹³ Lubis et al., "Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional."

status as ulayat land, but it leaves the procedural threshold untouched, so that a community without a decree stands in the same position before the court as it did before. It is accordingly recommended that the Supreme Court issue an instrument directing that standing be determined by reference to the elements of factual existence rather than to the production of an administrative decree, that the time limit be recalibrated so that it runs from proven actual knowledge with the burden of establishing expiry upon the party asserting it, and that the instruments of recognition be harmonised at the level of statute.

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