

Adoption of Customary Land Tenure as a Model in Agrarian Reform: A Study of the Tenurial System in Tenganan Pegringsingan Village

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Abstract: The high frequency of agrarian conflicts involving customary land reflects the weak legal protection of communal land rights. In response, the government issued Presidential Regulation Number 62 of 2023 concerning the acceleration of agrarian reform implementation, aimed at providing legal protection for customary land through land legalization and redistribution programs. However, the program's implementation has been ineffective due to the limited recognition of communal land rights, which does not fully prevent the repurposing of legalized customary land for investment or commercial use. As a comparison, Tenganan Pegringsingan Village in Bali demonstrates a robust system of customary land tenure, where land remains protected from conversion despite significant tourism pressures. This article aims to explore the values within the customary land tenure system in Tenganan Pegringsingan and its potential integration into agrarian reform agendas. This study employs a socio-legal approach, with data collected through non-participatory observation and in-depth interviews. The findings reveal that some aspects of the customary land tenure in Tenganan align with the principles of agrarian reform, while others do not, primarily due to the influence of modernization, tourism, and the role of tenant farmers. However, this village's customary land tenure system presents a novel model for agrarian reform initiatives in similar communities.

Keywords: Agrarian Reform, Customary Law, Tenganan Pegringsingan

INTRODUCTION

The national land law system recognizes customary law and the rights to customary land (Sumardjono, 2018; Simarmata, 2021). Several concepts, principles, and norms within land law are founded on and inspired by customary land law, such as the principle of horizontal separation (Sumardjono, 2018; Simarmata, 2021). As self-governing communities, Indigenous Peoples (Masyarakat Hukum Adat, MHA) have, for generations, managed natural resources in alignment with the social, cultural, economic, and ecological functions of their communities. However, in certain cases, customary-based resource control has also led to disparities among members of MHA. Nevertheless, legal protection for customary land tenure remains weak, resulting in prolonged agrarian conflicts. National Strategic Projects, in their extensive infrastructure development, often disregard

the rights of MHA and the critical role of customary land in supporting community sustainability, due to inadequate land availability (Angela & Setyawati, 2022). Forest area releases and land acquisitions for public purposes are frequently implemented, often encroaching on the living space of MHA.

The Indonesian government addresses land tenure disparities and improves public welfare through Presidential Regulation Number 62 of 2023 on the Acceleration of Agrarian Reform Implementation. Agrarian reform primarily focuses on restructuring land control, ownership, use, and utilization in a more equitable manner. This is achieved through asset restructuring and access reallocation, with the ultimate goal of promoting public prosperity, including for MHA. During President Joko Widodo's administration, agrarian reform features two main programs: asset legalization and land redistribution (Fauzian, 2020). Asset legalization aims to provide legal certainty through land title certification. Meanwhile, land redistribution involves the allocation of land rights to agrarian reform subjects. Indigenous Peoples are included as subjects of agrarian reform, with interpretations suggesting that asset legalization for MHA also follows the scheme of issuing customary land certificates (Ulukyanan, 2023). However, agrarian reform is not merely a program for distributing certificates. Genuine agrarian reform must create social justice, marked by agrarian equity and improved community welfare (Iskandar, 2022).

MHA must design agrarian reform to address complex agrarian challenges, particularly those related to the protection of customary land. This means that agrarian reform must consider not only ownership aspects but also the management and sustainability of land according to the values upheld by MHA. Often, there is limited recognition of communal land rights (Rosmidah, 2010) and does not fully ensure that legalized customary land will not be transferred to other parties for investment or commercialization purposes (Herrayani et al., 2019). The National Commission on Human Rights, the Indigenous Peoples' Alliance of the Archipelago, and Sawit Watch report between 500–800 cases of land conflicts between investors and MHA (Joesoef, 2021). Therefore, there is an urgent need to integrate agrarian reform policies with stronger and more sustainable mechanisms for protecting customary land for MHA. This protection should extend beyond ownership security to maintaining customary land's function as a communal asset that supports the social, cultural, and economic ecosystems of MHA.

Amid various challenges in protecting customary land, one region in Indonesia has successfully implemented and consistently maintained a communal land tenure system: Tenganan Pegringsingan Village in Bali Province. This village is one of the ancient (Bali aga) villages known as a cultural tourism destination (Tresnawati, 2023). Despite being located in an area exposed to significant tourism development pressures, the village has managed to uphold its customary values without sacrificing communal land for tourism infrastructure development. The land is collectively managed by the local community with

sustainable principles, allowing the village to preserve its customary values without converting communal land for tourism development. Pratama et al. (2016) explain that the spatial layout of Tenganan Pegringsingan Village has been preserved since ancient times and continues to endure despite intense modernization. Tenganan Pegringsingan Village has maintained its customary land and environmental sustainability amid intensive investment and development. This condition is challenging for other customary villages in Bali to achieve. While the tourism industry is often praised as a promising economic sector, it simultaneously threatens customary land rights and communal agricultural activities (Jayantiari & Rwa, 2017).

A study conducted by Utomo (2021a) found that the asset restructuring efforts by the government to address disparities in land ownership and utilization, particularly for communities dependent on land, have yet to focus on developing solutions for the challenges associated with agrarian reform of communal land. Another study by Krismantoro (2017) revealed that certain lands have been neglected in terms of their social function and the historical or philosophical values embedded within them. Similarly, there has been a disregard for religious values, meaning that land is viewed solely as a commodity without consideration for its inherent values. However, the primary objective of agrarian reform is to maintain the stability of land, especially those with historical and philosophical significance, to prevent their control by irresponsible parties.

Local laws known as *awig-awig* govern the context of the customary land tenure system (*ulayat*) in Tenganan Pegringsingan Village. The land tenure system in this village remains strongly associated with communal principles, manifested through shared ownership based on customary law. This system not only encompasses land ownership but also regulates the allocation of land for agricultural activities to ensure the village's primary food supply. Furthermore, this system plays a crucial role in maintaining the local economic base, contributing significantly to community welfare. While tourism may play a substantial role in the village's economy, the communal system continues to be a foundational element shaping the village's social and economic dynamics. Tenganan Village has managed to harmonize tourism development, tradition, and agriculture through community involvement in the tourism industry, cultural heritage preservation, and the maintenance of agricultural practices (Fauziatunnisa et al., 2021). Thus, the communal land tenure system based on customary law in Tenganan Pegringsingan Village could be adopted as a model for implementing agrarian reform in other indigenous communities.

This study aims to achieve three objectives: first to understand the land tenure model of Tenganan Pegringsingan Village, Bali, by identifying land control, land use, production, and consumption patterns; second, to examine the implementation of agrarian reform; and third, to formulate customary land tenure as a model for agrarian reform.

METHODS

Empirical legal research was conducted to understand the customary tenure system in Tenganan Pegringsingan Village, Karangasem Regency, Bali Province. The identification of the tenure system in this study involved examining the relationship between the indigenous community and their land, encompassing the subjects, objects, and the legal relationship between them. This exploration of agrarian relations was connected to land control, land use, production, and consumption, which are the four essential components of agrarian reform (Sangkoyo, 2001). Tenganan Pegringsingan Village was selected as the research site because it is a Bali Aga community that still implements the Ulu Apad provisions in its marriage system, which has implications for the communal land tenure system. These customary provisions constitute the village's strength compared to other customary villages in Bali, as they have successfully maintained the expanse of customary land, with most of it used for agriculture. Communal land tenure that supports self-sufficient food production is a model needed by indigenous communities.

The research team conducted fieldwork in Tenganan Pegringsingan Village in July 2023. Structured interviews were held with the Kelian Desa Adat Tenganan Pegringsingan (traditional village leader), the Head of the Tenganan Administrative Village, the Head of Banjar Tengah, representatives of Gumi Bedauh (original Tenganan community), representatives of Gumi Bedangin (immigrant community or those from *wong agengndok* and *gumi bedauh* who violated customs), and sharecroppers/tenant farmers. These informants were selected using purposive sampling, considering their roles and positions within the village's social structure to gather diverse perspectives on the customary tenure system. The researchers also conducted non-participant observations to document social interactions, customary practices, and agricultural activities at the research site. Reading customary regulations recorded in *awig-awig* (traditional laws) further enriched the understanding of Tenganan Pegringsingan Village's customary tenure system.

Due to the pluralistic nature of Indonesia's national land system, customary tenure systems operate under both customary law and state law. Consequently, the researchers also examined relevant legislation governing the management and administration of customary land, as well as agrarian reform regulations. Literature sources such as books, journal articles, and research reports on customary tenure systems and agrarian reform were used to support the field data analysis.

RESULTS AND DISCUSSION

General Overview of Tenganan Pegringsingan Traditional Village

Bali Island still hosts ancient traditional villages that uphold the existence of their customary systems, one of which is Tenganan Pegringsingan. Its status as an ancient village

is evident through the lifestyle of its community, which reflects the culture and traditions of the Bali Aga (pre-Hindu) village, distinguishing it from other villages. Manggis District, Karangasem, Bali is home to Tenganan Pegringsingan, a prominent tourist destination in Bali.



Figure 1. Front Area of Tenganan Pegringsingan Traditional Village
Source: Personal documentation, 2023

The total area of this village is 917.2 hectares, comprising: (1) dry land covering 583.035 hectares (66.41%), (2) rice fields covering 255.845 hectares (25.73%), (3) forest land covering 197.321 hectares (20%), and (4) residential areas covering 78.304 hectares (7.86%) (Yogantara, 2018). Social groupings based on smaller customary units within the administrative village (*perbekelan*) form the traditional village (*pakraman*), which includes Banjar Kauh, Banjar Tengah, and Banjar Pande. The original inhabitants reside in Banjar Kauh and Banjar Tengah, arranged in four rows facing each other. Meanwhile, two rows in Banjar Pande are occupied by original residents who were relocated to this section due to violations of certain customary laws outlined in the *Awig-Awig*. The orderly arrangement of the entire settlement follows a north-south orientation. The traditional village owns the residential land that the villagers occupy, with each plot uniformly sized at 2.432 and governed by customary regulations (Yogantara, 2018).

In addition to residential rows, the area features plantation lands (*tegal*), bet (palm forests), and rice fields, the majority of which are located on hilly terrain. These hills yield a variety of crops, including durian, mango, pineapple, *tehep*, *duku*, candlenut, and *pangi*. In addition to fruits, these areas produce *ijuk* (palm fibers), palm sap (used to make palm wine), and various types of wood. The traditional village collectively owns these areas, with some plots belonging to the original residents of Tenganan Pegringsingan. Given that residential areas only account for 7.86% of the total village area, plantations, rice fields, and forest lands dominate and have remained unchanged over time due to customary laws prohibiting the sale, leasing, or misuse of the land for non-designated purposes.



Figure 2. Map of Tenganan Pegringsingan Customary Forest
Source: Personal Documentation, 2023

This traditional village upholds a parental system that gives both men and women within a family equal rights and opportunities to assume leadership roles, contingent upon marriage, and the right to inherit land. This leadership system based on marriage seniority is known as the *Ulu Apad* system. Additionally, this village follows an endogamous system that only permits marriages between individuals of native descent. If an individual violates this rule, they cannot become a core member of the traditional village (*krama desa*) and may face expulsion from the village, forfeiting their rights and obligations as an adat member (Iswari et al., 2022).

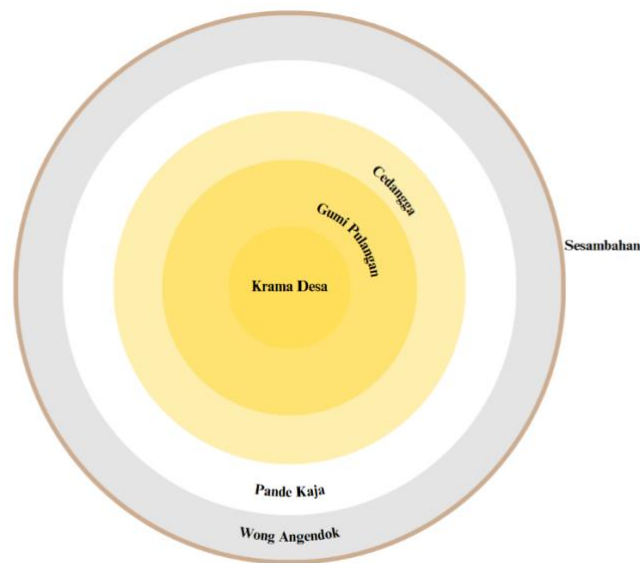


Figure 3. Social System of Tenganan Pegringsingan Community

Source: Compiled by the Author, 2023

According to interviews with the *krama desa* and the village chief (*kelian desa*), the endogamous marriage rule under the parental system forms the basis of a two-tiered social structure. The original community members of the village comprise the first tier, which includes the daily leadership group known as Gumi Bedauh. This group includes the core members of the village (*krama inti desa*), Gumi Pulangan (men from *krama desa* who married women from outside the village), and Cedangga (original villagers with physical disabilities who are exempt from customary duties, such as participating in ceremonies and leading traditional activities). Gumi Bedangin, the second tier, consists of Pande Kaja/Pande Tengah, individuals from Gumi Bedauh who have undergone sanction and demotion, and Wong Angendok, who are Javan migrants from earlier times. Beyond these tiers, there is the *Sesambahan* group, referring to non-villagers who work as tenant farmers cultivating the land of the original residents (*petani penyakap*).

System of Land Tenure in Tenganan Pegringsingan Customary Village

The land within Tenganan Pegringsingan Customary Village is classified as customary land, also known as *tanah ulayat*. This land is fundamentally owned by the customary village through an informal land tenure system, part of *beschikkingrecht* or communal land rights (Simarmata et al., 2021). According to Simarmata et al. (2021), informal land tenure systems have distinct characteristics. Firstly, communal interests in the land are always prioritized. Secondly, land ownership rights are limited to the authority for usage, utilization, and transfer among customary members. Thirdly, the system of proof often relies on non-written evidence. Although the customary village holds ownership, not all communal land tenure is under the direct control of the village. Suwitra (2011) explains

that communal land is collectively owned by the customary community, represented by the customary village, and may be jointly managed by the community or partially controlled by individuals. This situation illustrates the dual nature of public and private rights over communal land. Private rights allow customary members to use and benefit from the land, while public rights mean that customary leaders have the authority to enforce customary regulations regarding the designation and use of agrarian resources (Simarmata et al., 2021).

The ownership of communal land by the customary village implies the village's authority to establish regulations concerning the management of communal land. These regulations encompass provisions regarding the allocation, use, and transfer processes applicable within the customary community, including oversight (Simarmata et al., 2021). In Tenganan, these provisions are known as *awig-awig*. *Awig-awig* is customary law that governs the social order within a customary village, containing directives, prohibitions, and sanctions for violations (Pertiwi & Mardiana, 2020). It is characterized by its static presence, dynamic adaptability to community developments, and flexibility in addressing the needs and preferences of the community. This flexibility includes the content of *awig-awig*, the role of customary institutions, and the involvement of the community itself. The *awig-awig* of Tenganan Pegringsingan Customary Village consists of 61 articles that regulate human relationships with God, interpersonal relations, and human-environment interactions.

In the context of the tenure system in Tenganan Village, there are two types of land ownership: communal customary land and individual customary land. Based on interviews with a local village leader (*kliyang*), communal customary land may include rice fields, *bet* (palm forest), or dry fields (*tegalan*). This land is used for the village's needs, such as supporting ceremonial activities, selling harvests for village development, and using the proceeds from rice field harvests as "salaries" for core members of the customary community. Communal land is also used for social-religious purposes, such as building temples, community halls (*bale banjar*), village offices, marketplaces, and parking areas. Individual customary land also comprises rice fields, *bet*, or *tegalan* and is used for agriculture, with the harvest benefiting the members. Additionally, there are residential plots for building homes as living spaces for village members. It is common in Balinese customary villages to allocate land for communal settlements among members (Simarmata et al., 2021). This practice, also present in Tenganan Pegringsingan, is known as *Tanak PKD* (customary residential land). Customary land in Tenganan Pegringsingan cannot be transferred to outsiders, reflecting the inalienable nature of communal land rights. This prohibition includes restrictions on sale, leasing, and using customary land as collateral. This inalienability differentiates customary land, especially in Tenganan Pegringsingan, from ordinary land. The principle of inalienability, according to some scholars, contrasts

with the general theory that one characteristic of land ownership is its transferability (Bosko, 2023).

Agrarian Reform Values Embedded in the Land Tenure System of Tenganan Pegringsingan Customary Village

Agrarian reform extends beyond land redistribution and asset legalization as part of governmental agendas. Wiradi, as cited in Shohibuddin (2019), posits that agrarian reform constitutes a comprehensive set of policies where land redistribution serves as the initial step, accompanied by land use structuring aligned with its function and appropriate spatial allocation. Additionally, agrarian reform is supported by various programs designed to enhance land productivity, such as education and training, infrastructure development, access to credit, technology, and marketing. Furthermore, Sangkoyo (2001) introduces four components of agrarian renewal: governance of access (*tata kuasa*), land use management (*tata guna*), production organization (*tata produksi*), and consumption patterns (*tata konsumsi*). These components are further elaborated by Shohibuddin et al. (2017) as follows:

- a. Power governance refers to the restructuring of access to natural resources within the village with the aim of creating a more inclusive and equitable distribution among community members.
- b. Land Use Management involves restructuring the types and allocation of natural resource use within the village to optimize utilization based on appropriate land suitability and spatial function
- c. Production Organization relates to the management and organization of commodities and production to ensure that the output from resources such as land, labor, capital, and technology reaches optimal levels in line with productivity and sustainability criteria.
- d. Consumption Patterns pertain to the restructuring of consumption patterns to promote healthy, sustainable consumption and safeguard the community's sovereignty over their self-cultivated food (KPA, 2024).

Shohibuddin (2018) emphasizes that for the comprehensive implementation of agrarian reform as detailed in these four components, it must be supported by four pillars: access assurance, rights protection, ecosystem protection, and production system protection. He underscores the importance of these four pillars because agrarian reform agendas do not occur in a vacuum but are embedded within the ongoing context of “access struggles” and “threats of exclusion.” Access, as defined, refers to the ability to derive benefits from something not solely determined by legal rights but by various power structures (bundle of powers) such as technology, capital, markets, labor, knowledge, and social relations (Ribot & Peluso, 2003 in Shohibuddin, 2019). Exclusion, conversely, refers

to the range of forces that prevent individuals from accessing benefits (i.e., resulting in failed access), encompassing regulations, coercion, market mechanisms, and legitimacy. The first pillar (access assurance) embodies “access struggle,” while the remaining three pillars represent forms of “counter-exclusion struggles” (Shohibuddin et al., 2017). The relationship between the four components of agrarian reform as proposed by Sangkoyo (2001) and the four pillars of agrarian reform as outlined by Shohibuddin (2018) can be illustrated as follows:

Table 1. The Correlation between the Pillars of Agrarian Reform Implementation and the Components of Agrarian Reform Structuring

Pillars of Agrarian Reform Implementation	Components of Agrarian Reform Organization			
	Power governance	Land Use Management	Production Management	Consumption Management
Access Assurance	V			V
Rights Protection	V			V
Ecosystem Protection		V		
Production System Protection			V	

Source: Shohibuddin (2019) with modifications by the author

The primary components of reform in Agrarian Reform (RA) and the pillars of its implementation presented in Table 1.1 are interrelated in a mutually influential relationship. This interconnection can be understood through the table, where the fulfillment of access assurance and rights protection will enable power governance and consumption management to proceed in accordance with the expectations of customary law communities (MHA). Similarly, the fulfillment of ecosystem protection will have a positive impact on land use management, while the protection of the production system will support the optimization of the production management component in the implementation of agrarian reform.

Notably, the Tenganan Pegriingsingan customary village's system of customary land tenure aligns with the values of agrarian reform through its four components and pillars of implementation. The author analyzes each component separately to comprehend the implementation of agrarian reform values in the Tenganan Pegriingsingan customary village, as follows:

Land Governance in the Tenganan Pegriingsingan Customary Village

As previously explained, the Tenganan Pegriingsingan customary village practices communal land ownership, which means that the village owns all land in its name. Interviews with the village leaders reveal that, despite the customary village's legal

ownership of the land, individuals within this community retain access and use rights through various forms of land tenure. These rights include the right to build structures, the right to reside, the right to harvest natural resources, and the right to utilize rice fields and dry land for agricultural and livestock activities. Local regulations, known as *awig-awig*, regulate all aspects of the distribution of tenure, ownership, management, and utilization of customary land. Article 7 of the Tenganan Pegringsingan Customary Village *Awig-Awig* states:

“...It is prohibited for anyone from the village to sell or trade rice fields or dry land. If there is a violation known by anyone, the property to be pawned or sold shall be confiscated by the villagers and fined 2,000, without any reduction or negotiation...”

The provisions of the *awig-awig* indicate the strong role of the village in land governance, including in matters of land transactions. As stated in the translation of the *awig-awig* text above, land sales are not permitted. The sales referred to involve transactions between villagers and outsiders. According to Ter Haar, the inalienability of land is a significant characteristic of customary rights (Bosko, 2023). This provision aims to maintain the integrity of customary land by preventing ownership from transferring to individuals outside the Tenganan customary village.

Individual land is inherited from the Tenganan family lineage and cannot be sold or pawned. Interviews with village leaders and community members reveal that if an individual feels compelled to sell their land, the transaction must adhere to strict conditions. The first condition is that the buyer must be a native resident of Tenganan. We must first offer the land to close family members, starting with the immediate family (ring 1). The offer then extends to the next circle of relatives (ring 2), and so on, if no immediate family members express interest. This process aims to prevent the concentration of customary land ownership in the hands of certain wealthy individuals. The requirement to first offer land to close relatives aims to prevent extreme land fragmentation, which could lead to the loss of land ownership for that family. This approach aligns with the agenda of agrarian reform, particularly the component of power governance, which focuses on a more equitable distribution of land and preventing concentration of land ownership by particular parties.

Despite being aligned with the power governance component, the customary land tenure system in the Tenganan Pegringsingan customary village faces challenges in achieving the pillar of access assurance in practice. Essentially, the division of rights to traditional land in the Tenganan Pegringsingan customary village is based on lineage. *Gumi Bedauh*, as the first layer, inherits rights to residential land, dry land, and rice fields. On the other hand, *Gumi Bedangin*, belonging to the second layer, can only utilize residential land. Furthermore, as a group outside these layers, *Sesambahan* can only collaborate with *Gumi Bedauh* as land cultivators, without acquiring any land rights or customary obligations.

Land Use in the Tenganan Pegriingsingan Customary Village

Customary regulations within the Tenganan Pegriingsingan customary village explicitly govern the allocation of customary land within the village. As previously explained, Tenganan divides customary land into several designated uses, including residential land (settlement), forest (bet and tegalan), and rice fields (subak). The Tenganan Pegriingsingan customary village divides the forested areas into bet, which primarily yields sugar palm, and tegalan, which primarily yields coconut. Meanwhile, rice cultivation occupies the majority of the rice field areas. Land use in the Tenganan Pegriingsingan customary village is predominantly agrarian, as indicated by the extensive areas of bet, tegalan, and rice fields. According to interviews with several informants, this spatial arrangement has remained unchanged from the past to the present due to the *awig-awig* regulations that prohibit the conversion of customary land functions.



Figure 4. Land Use in the Tenganan Pegriingsingan Customary Village
Source: Sumunar et al. (2017) & Author's Documentation, 2023

The only functional transitions that occur are exchanges between bet and tegalan or vice versa. Moreover, there are customary regulations in Tenganan that prohibit the establishment of hotels, villas, homestays, and other tourist facilities on customary land. These regulations further support the preservation of spatial congruence in land use within Tenganan village. Tourism in the Tenganan Pegriingsingan traditional village does not threaten the sustainability of the existing customary land. The Tenganan community operates businesses from their homes without encroaching on customary land to construct commercial establishments.

The principle of Tri Hita Karana, strongly upheld by the customary law community (MHA) of Tenganan, reflects their determination to preserve and protect the ecosystem

within the village area. This commitment is evident in the customary rules they adhere to, which primarily aim to maintain harmony between humans and nature. Arif (2021) states that indigenous communities are the last bastion in safeguarding biodiversity and managing the environment sustainably. By adhering to this principle, the MHA of Tenganan effectively contributes to environmental sustainability in their region through traditional regulations that focus on harmony between humans and natural ecosystems. This illustrates how the traditional land governance system in the Tenganan Pegringsingan customary village aligns with the components of land use and the pillars of ecosystem protection in agrarian reform.

Production in the Tenganan Pegringsingan Customary Village

Agricultural activities produce three primary commodities: rice from the rice fields, coconut from the dry land, and sugar palm from the forested areas, processed into tuak. An interview with a village member revealed that in the 1990s, a government program focused on agriculture, offering superior rice seeds and farming equipment to the subak groups in the customary village. Through more modern agricultural technologies and practices, this program aimed to enhance productivity and support the autonomy of farming groups in the customary village.

Local farmer groups, who create subak organizations for the rice fields, manage agriculture in the Tenganan Pegringsingan customary village throughout the year.



Figure 5. Rice Field Area
Source: Personal Documentation, 2023

Although Gumi Bedauh is incorporated within the farmers' group (*subak*), the cultivation of the rice fields is carried out by outside farmers (*sasembahan*) under a sharecropping system. The *sasembahan* farmers are granted permission to build houses within the territory of Tenganan Pegringsingan. According to an interview with one of the village leaders, this situation is attributed to three reasons:

- a. The indigenous population of Tenganan is small while the controlled land area is extensive;
- b. The busy schedule of religious and cultural activities; and

- c. The original Tenganan residents focus on managing tourism.

Table 1.2 Percentage of Profit Sharing between Landowners and Cultivating Farmers

Commodity	Percentage	
	Landowners	Cultivating Farmers
Rice	50	50
Coconut	75	50
Sugar palm (<i>tuak</i>)	50	50

Source: Data processed by the author

Agriculture throughout the year in the Tenganan Pegringsingan customary village, supported by modern tools, enhances production in alignment with the component of production systems. However, the aspect of production system protection is neglected, as the land is managed by agricultural laborers rather than the landowners. The patron-client relationship between landowners and agricultural laborers creates an unbalanced and potentially exploitative moral and economic dependency (Shohibuddin & Luthfi, 2011). This situation contradicts the principles of agrarian reform, which aim to reduce exploitative relationships and eliminate detrimental patronage patterns affecting agricultural laborers.

Consumption Patterns in the Tenganan Pegringsingan Customary Village

The Tenganan Pegringsingan customary village has customary regulations governing the community's consumption patterns regarding natural products and the utilization of natural resources within the village area. There are six types of fruit—jackfruit, tehep, candlenut, pangi, champaca, durian, and sugar palm—which may only be harvested after they have fallen naturally, thereby becoming communal property. Tree felling is also regulated; it is permitted only if the tree is dead, grows too densely, or for specific needs, such as firewood for weddings. These regulations aim to preserve the village ecosystem, manage the sustainable use of natural resources, and maintain the environmental balance that supports the community's livelihood.

The agricultural sector in the Tenganan Pegringsingan customary village is a crucial source of income, particularly evident during the COVID-19 pandemic when tourism came to a halt. However, the Tenganan community seldom consumes their agricultural produce. After the government introduced new rice seeds in the 1990s, the rice produced had a short shelf life, leading to a cessation of stockpiling in the village granaries, with most being sold to middlemen. Rice sales are conducted through an auction system, where the buyer is responsible for harvesting and processing the rice. Despite an abundant agricultural yield, access to these resources is not equitable among village residents. The primary agricultural products, such as rice, coconut, and sugar palm (*tuak*), can only be enjoyed by the Gumi

Bedauh. Residents of Gumi Bedangin do not directly benefit from these agricultural outputs. Nevertheless, all residents have equitable access to the six specific types of fruit, with harvesting allowed only when the fruit falls naturally.

The practices of customary land tenure in the Tenganan Pegringsingan customary village are capable of fulfilling the ecosystem protection pillar in the context of consumption patterns, but they do not fully satisfy the pillars of access assurance and rights protection. The inequitable access rights to customary land among the Tenganan community are a primary factor in this issue. Although there are several customary regulations designed to provide equal access and rights to specific commodities, these measures are insufficient to guarantee equality in the quality of consumption fulfillment for all village residents. As a result, while efforts to preserve the ecosystem and manage natural resources sustainably are underway, challenges in achieving equitable rights to land and agricultural products continue to obstruct the realization of the consumption component in Tenganan.



Figure 6. Utilization of Natural Products, including Coconut, Pig, and Tehep (a Plant for Natural Dyeing of Gringsing Cloth)
Source: Personal Documentation, 2023

The Agenda for Agrarian Reform: A Brief History and Implementation

In addressing issues related to the reorganization of land ownership, control, and utilization, the government has intensified solutions, one of which is through the agenda of agrarian reform. Agrarian reform is an effort to establish a just agrarian law that was previously constrained by capitalist monopolies during the colonial era. Historically, the agenda for agrarian reform has occurred over three periods: the Old Order (1945-1965), the New Order (1965-1998), and the Reform Era (1998-present) (Sutadi, 2021).

President Sukarno, during the Old Order (1945-1965), aimed to abolish the colonial exploitative agrarian system that oppressed the indigenous population. This system, particularly the *domeinverklaring* system, allowed colonial authorities to claim most of the land in Indonesia (Rachman, 2017). Recognizing the importance of agrarian reform as a pillar of equitable development, the government enacted the Basic Agrarian Law (Undang-Undang Pokok Agraria, UUPA) in 1960. The UUPA introduced the concept of State Control Rights (Hak Menguasai Negara, HMN), which positioned the state as the principal land manager with the primary aim of promoting the welfare of the people. The principle of "land for the people" was implemented with an emphasis on fair land redistribution, limiting maximum land ownership, and returning excess land to the government for reallocation to farmers. This policy aimed to reduce disparities in land ownership and empower agricultural laborers through land redistribution programs directed at those who actually cultivate the land. The UUPA also acknowledged the customary land rights of indigenous communities. Mahfud MD stated that the UUPA provides a proportional space for customary law, as stipulated in Article 5 of the UUPA, which states that the agrarian law applicable to land, water, and space is customary law that has been adapted and does not conflict with the principle of unification. (Mahfud, 2012).

During the New Order (1965-1998), agrarian reform underwent radical changes in terms of approach and implementation. Suharto's government focused land policy on investment-based economic development, shifting the paradigm from agrarian reform for the welfare of the people to "land for development." The Suharto regime revived the *domeinverklaring* system by granting extensive land permits and concessions to both private and state corporations, particularly in the mining, forestry, and plantation sectors (Rachman, 2019). During this period, highly centralized land policies ignored the rights of indigenous communities to their land (Ginting, 2012). Corporate interests accompanied these policies with the revocation of land rights and the eviction of communities from lands allocated to them, leading to numerous agrarian conflicts that were detrimental to the community. Furthermore, the Old Order suspended the land redistribution programs because they posed a threat to political and economic stability. With a pro-market orientation, the New Order regime overlooked the interests of small communities, including indigenous peoples, in favor of maximizing land productivity and accumulating foreign investment.

To secure political support from business elites, the New Order government shifted the agrarian reform approach to focus on granting use rights (Hak Guna Usaha, HGU), building use rights (Hak Guna Bangunan, HGB), and usage rights (Hak Pakai, HP) to companies and related institutions. Between 1969 and 1982, the government issued thousands of HGU, HGB, and HP permits covering millions of hectares of land. The Location Permit policy was even implemented to facilitate investors' access to land, despite

the fact that these lands had already been cultivated by local communities. Consequently, many farmers lost access to their land, while structural agrarian conflicts sharply increased due to community resistance to evictions often accompanied by violence from state apparatus. Thus, the agrarian reform policies during this period prioritized investor profits while sidelining community welfare, widening land ownership disparities, and exacerbating agrarian conflicts.

The Reform Era (1998-present) has brought agrarian reform back to the forefront of public debate. During the administrations of B.J. Habibie and Megawati, various societal groups pressured the government to address agrarian inequality and to return lands that had been allocated to corporations (Wijardjo & Perdana, 2001). This was reinforced by the issuance of TAP MPR IX/2001 regarding Agrarian Renewal and Natural Resource Management, which provided a legal foundation for agrarian policy reform in Indonesia. Although TAP MPR IX/2001 established a robust legal framework, the implementation of agrarian reform remained delayed due to political and economic instability during this administration (Utomo, 2021b).

Under the presidency of Susilo Bambang Yudhoyono (2004-2014), the agrarian reform agenda gained new momentum with a target of redistributing up to 9 million hectares of land sourced from abandoned land, forest areas, and former use rights (Hak Guna Usaha, HGU). However, its implementation faced obstacles due to a lack of cross-ministerial support and ongoing agrarian conflicts (Wahyuddin et al., 2021). Despite progress in administrative aspects such as land certification, the redistribution program did not meet expectations, and agrarian conflicts continued to be prevalent in various regions. During this period, Law No. 2 of 2012 concerning Land Acquisition was enacted, which prioritized land acquisition for development over land redistribution for the community. As a result, land inequality remained high, and the direct impacts of agrarian reform on small farmers were minimal.

In the era of Joko Widodo (2014-present), agrarian reform became part of the Nawacita program, with five main pillars: resolution of agrarian conflicts, reorganization of land control, provision of legal certainty, community empowerment, and the establishment of central and regional agrarian reform institutions. The Jokowi administration also introduced the Social Forestry program to open land access for rural communities living near forests. Nonetheless, its implementation has been limited due to structural challenges, overlapping policies, and land conflicts involving communities, companies, and local governments. To realize agrarian reform, the government aims to promote the redistribution of 9 million hectares of land (Arif, 2024). However, implementation challenges persist, particularly concerning forest area lands with unclear status. As of 2016, land redistribution was proceeding slowly, and a significant number of agrarian conflicts continued to occur in various regions. The Social Forestry program

achieved only a portion of its national target due to various operational constraints. Land ownership inequality remained high, while agrarian conflicts involved multiple parties, including local communities, state-owned enterprises, and security forces. During this time, new innovations in the implementation of agrarian reform targeting indigenous peoples emerged. With the issuance of Presidential Regulation No. 62 of 2023 on the Acceleration of Agrarian Reform Implementation (Perpres Reforma Agraria), indigenous peoples were recognized as one of the subjects of agrarian reform.

Critique of the Agrarian Reform Agenda in Indonesia

The Presidential Regulation on Agrarian Reform designates indigenous peoples as subjects eligible to benefit from the agrarian reform agenda. This policy encompasses an asset legalization program, specifically focused on the administration of customary lands owned by indigenous communities. This initiative merits appreciation as it reflects the government's commitment to respecting the rights of indigenous peoples over their ancestral lands. However, several fundamental obstacles hinder the optimal implementation of this policy.

First, this recognition applies only to indigenous legal communities that have been acknowledged based on stringent criteria and complex administrative procedures, which are often difficult for indigenous peoples with limited human resources to fulfill. This recognition, dependent on administrative conditions, mirrors an effort at systematic regulation regarding the identification and utilization of customary land rights in Indonesia. This situation gives rise to three fundamental critiques (Ginting, 2012). First, there is a lack of clarity regarding the definition of customary rights that have been lost or no longer exist, which creates opportunities for authorities to eliminate specific customary rights. Second, the state's dominance under the guise of "public interest" sometimes interferes with the living space (*lebensraum*) of indigenous peoples. Third, arguments that contradict existing legal regulations have overlooked the existence of customary law itself. In fact, Article 5 of Law No. 5 of 1960 explicitly states that the agrarian law applicable to the earth, water, and space is customary law.

Second, this policy is limited to customary lands not classified as forest areas, thereby failing to protect all customary lands owned by indigenous peoples. This limitation results from overlapping regulations, particularly between the Basic Agrarian Law and the Forestry Law, which restrict comprehensive recognition of indigenous land rights. This overlap complicates the ability of indigenous peoples to assert rights over lands they have managed for generations, as land recognized under one regulation may be defined differently in another. According to Franky, the Executive Director of Yayasan Pusaka Bentala Rakyat, this overlap creates confusion and hinders indigenous communities from

obtaining comprehensive recognition (Elisabeth, 2023). Recognition should adequately encompass indigenous territories without being fragmented into different sectoral schemes.

Third, the focus of this policy is solely on the legalization of assets through the registration of customary lands, without considering the aspects of land management and sustainability in accordance with the values held by indigenous peoples. Achieving social welfare for indigenous communities should not be confined to formal ownership recognition. Agrarian reform should also include support for land management and sustainability. Solely legalizing assets does not guarantee the optimal utilization of customary land according to indigenous values. This is evidenced by the case of land certification for the Kenegerian Senama Nenek indigenous community in Riau. Despite the issuance of 1,385 certificates of ownership for customary lands, the management of plantation lands on those customary lands remains under corporate control (Fikri, 2021). This situation indicates that formal ownership alone is insufficient to provide full sovereignty to indigenous peoples over their lands.

Lastly, the enactment of Law No. 6 of 2023 concerning Job Creation (UU Cipta Kerja) adds a notable entry to the record of agrarian reform implementation (Utomo, 2021b). Aimed at promoting investment, this law expands the concept of public interest in land procurement and establishes a land bank (Rosmidah et al., 2023). This is accomplished by streamlining licensing processes and land allocation for investors, often without consultation with indigenous communities. Consequently, cases such as the appropriation of customary land in Rempang for the National Strategic Project (PSN) and land belonging to the Awyu tribe in Papua for palm oil plantations have resulted in conflicts due to the transfer of indigenous lands without consideration for local values (Hardi, 2023; Hasyim & Wuragil, 2024). This policy neglects the principles of social justice in agrarian reform, as it prioritizes the acceleration of projects that significantly impact the environment and local communities, rather than upholding the protection and sustainability of customary land rights promised in agrarian reform.

Although the Presidential Regulation on Agrarian Reform has provided a framework for the recognition and protection of indigenous peoples' rights, this recognition remains far from comprehensive. Efforts to legalize and redistribute indigenous lands require stronger protections to ensure that indigenous communities maintain full control over their lands without threats of conversion or commercialization that could jeopardize the sustainability of these communities. Therefore, a new model for the implementation of agrarian reform is necessary, one that takes into account the fundamental characteristics of indigenous communities to effectively protect their rights.

Utilizing the Model of Indigenous Land Tenure as One Approach in Agrarian Reform

Indonesia is a country that recognizes legal pluralism, wherein not all laws are enacted by the government and enforced through state agencies (Subroto, 2022). This is an inevitability given Indonesia's long history and the numerous legal dynamics within it. One of the legal systems recognized in national law is customary law. This relates to the adage *ubi societas ibi ius*, meaning that where there is a society, there is law. Furthermore, Von Savigny posits that law is a reflection of the *volkgeist*, indicating that law embodies the spirit of a people, thus every place possesses its own *volkgeist* (Aulia, 2020).

In the implementation of Agrarian Reform in Indonesia, there are significant challenges regarding the recognition and regulation of communal rights for Indigenous Law Communities (Masyarakat Hukum Adat, MHA). A primary critique arises concerning the agrarian reform program's focus on the legalization of assets through the administration of MHA customary land. This administration of customary land provides only formal name protection without considering the sustainability of customary land management. Therefore, a model of agrarian reform for customary land is needed that not only protects ownership in a formal sense but also ensures the sustainable management and utilization of customary land, thereby enhancing the welfare of MHA, in line with the ideals of agrarian reform.

The integration of customary law and national law is necessary, as the relationship between these two forms of law is functional; customary law serves as a primary source for deriving the necessary elements for national legal development (Sudaryatmi, 2012). An alternative solution to prevent detrimental agrarian reform practices affecting MHA land could involve emulating the indigenous land tenure system in Tenganan Pegringsingan Village. In the customary law-based land tenure system present in Tenganan Pegringsingan Village, several core values can be adopted as a model for agrarian reform with the following provisions:

1. Land ownership (including natural resources) is based on communal/shared principles regulated internally by the community, such as customary laws/social regulations (self-governing communities), to create equitable access guarantees among community members;
2. Land use is prioritized for food production (agriculture, livestock, or fisheries) and livelihoods to establish a circular economy;
3. The land under control possesses conservation value, and the development of activities such as tourism should be directed towards preserving the authenticity of the landscape (eco-tourism).

The aforementioned aspects are crucial to integrate as they are closely related to the key components and the four pillars of agrarian reform implementation. **First**, when land is collectively owned and managed by a group of individuals or a community, the ideal

agrarian reform approach should involve the redistribution and legalization of land collectively to all members of the community, rather than in the form of individual household ownership, as is commonly practiced. In the context of Indigenous Law Communities (Masyarakat Hukum Adat, MHA), land certificates should ideally take the form of communal certificates with public characteristics, rather than private ones, in order to maintain the original nature of customary land as a shared resource. This public land ownership is expected to reduce the potential for agrarian conflicts in the future, as the land will continue to be managed as a collective asset without the risk of individual commercialization that could alter the nature of ownership. Collective ownership of customary land also plays a significant role in reducing social inequality, particularly in access to agricultural land among community members. With collective control, the community becomes more resilient in facing external changes, especially in preventing the conversion of customary land for the interests of third parties that may be detrimental. Democratic decision-making within such communities contributes to public participation in local decision-making processes and strengthens grassroots democracy.

The concept of communal ownership through the provision of certificates differs from that of joint property certificates (Sertifikat Hak Milik Bersama, SHM Bersama) as regulated in the Presidential Regulation on Agrarian Reform. SHM Bersama can be bought, sold, or transferred to other parties, thereby allowing for the potential shift of land ownership away from the community. Conversely, communal customary land certificates are permanent and cannot be sold. These communal certificates are also not subject to mortgaging, which provides a more permanent protection for land held by the community. This concept ensures that the land remains under the community's control in the long term, free from the risks of functional or ownership transfer. This value is closely related to the components of agrarian reform, which include land governance and production systems, as well as the pillars of access guarantees, rights protection, and production system protection within the framework of agrarian reform implementation. In this context, the primary objective of communal land ownership is to create a more sustainable and equitable agricultural system, where land resources are not solely owned by individuals but are collectively managed to enhance productivity and reduce social inequalities in access to agricultural land. This communal approach not only promotes the economic well-being of the community but also strengthens social bonds and cooperation among community members in achieving success in the agricultural sector, which is vital for them. In this way, communal land redistribution can serve as a foundation for creating a more empowered and sustainable agrarian society in the long term, replacing the household-based redistribution model that is often inefficient and exacerbates inequality.

Second, the implementation of informal regulations alongside state law, such as customary rules or laws, can provide significant support for communities in achieving self-

governing status. Communities that attain this level of autonomy often exhibit strong social bonds and cooperation among their members, enhancing the resilience of local populations against external pressures and encroachments. This can be exemplified by the customary regulations in Tenganan Pegringsingan Village, which strictly dictate the allocation of customary land, prohibiting the construction of villas, guesthouses, or other tourism-related facilities that could potentially alter the village's spatial configuration. This practice has proven to protect the spatial integrity of Tenganan Village for hundreds of years. These regulations may vary according to the customary rules of each Indigenous Law Community (MHA). The application of customary law over customary land plays a crucial role in safeguarding the social, cultural, and ecological values upheld by Indigenous communities. In the context of agrarian reform, the government must not only ensure the distribution of land certificates to MHA but also guarantee that the customary land owned by MHA is fully subject to local customary laws. This means that land use changes for investment purposes cannot occur if they conflict with customary law. This approach is essential to ensure full recognition of MHA's rights over customary land without disregarding the local values inherent in such land.

Third, this relates to the conservation value of the land under communal management. Challenges in implementing agrarian reform for MHA often arise from neglecting the conservation values associated with the land they manage. Currently, the government's enthusiasm for accelerating investment frequently overlooks these conservation values, under the pretext of maximizing financial profits. As a consequence, many customary lands are repurposed for investment interests, both by private entities and the government, under the guise of "public interest" or National Strategic Projects (Proyek Strategis Nasional, PSN). However, the primary nature of the customary land managed by MHA is as conservation areas that not only sustain ecological balance but also reflect the cultural and social values of MHA, who have rights to the land.

In the context of agrarian reform for MHA, the government should establish regulations that uphold the conservation functions of customary land. This conservation function intersects with the principle of self-governance within Indigenous communities, granting them the right to decide and manage land use according to their customary values. Various land conflict cases, like the conversion of the Awyu tribe's customary land into land concessions for palm oil companies, clearly demonstrate this. Such changes have detrimental impacts on environmental sustainability and the socio-economic well-being of the community. The government must strictly prohibit land use changes for commercial purposes or third-party interests if it genuinely commits to implementing agrarian reform that protects MHA's rights to customary land. Protecting customary land for MHA not only preserves land use patterns but also supports their production and consumption aspects. Firstly, from the perspective of land use, customary land as conservation areas plays a vital

role in maintaining ecosystems that support biodiversity and environmental sustainability. Secondly, in terms of production, customary land is the primary space for MHA to engage in economic activities, predominantly based on sustainable agriculture. Thirdly, regarding consumption, customary land serves as a source of food for MHA, encompassing both agricultural produce and other natural resources that they manage sustainably. We can fulfil the pillars of genuine agrarian reform by protecting these three key components—land use, production, and consumption. The success of agrarian reform that focuses on conservation and the self-governing rights of MHA not only ensures the well-being of Indigenous communities but also addresses the need for socio-ecological justice.

CONCLUSIONS

Agrarian reform is one of the primary land-related agendas in Indonesia. However, the policies within this agrarian reform agenda implemented by the government still focus primarily on land redistribution programs, which do not adequately fulfill the core values of agrarian reform. Furthermore, the implementation of Presidential Regulation Number 62 of 2023 has not been optimal, as it has failed to provide strong protection for the customary land owned by Indigenous Law Communities (MHA). This opens up opportunities for the conversion or commercialization of customary land under the guise of public interest or national strategic projects, thereby jeopardizing the sovereignty and sustainability of Indigenous communities. Shohibuddin, in his book "Agrarian Waqf," outlines four pillars of agrarian reform implementation, which include access guarantees, rights protection, ecosystem protection, and production system protection. Sangkoyo identified four fundamental components of agrarian reform renewal, namely authority, land use, production, and consumption, to which these pillars provide assistance. Implementing agrarian reform while fulfilling these four pillars and components can provide robust legal protection for its implementation on customary land.

The customary land governance system in Tenganan Pegringsingan Village has high relevance to the principles of agrarian reform, particularly in protecting MHA's customary land from conversion and commercialization in line with the pillars and components of agrarian reform. It is based on informal law and is managed by communities and self-governing authorities. The customary land governance system has a lot of potential to be a part of the agrarian reform agenda, especially in places where people get along well and where farming is important. This model of communal land management also supports conservation efforts aligned with the lifestyle of MHA. The success of this village in preserving its customary land serves as an inspiration for how communal management systems can be effective solutions in addressing the challenges of modernization while maintaining the sustainability of local ecosystems and cultures. Other Indigenous communities in Indonesia that share similar characteristics have the potential to integrate

the principles of land management from Tenganan Pegringsingan into their agrarian reform agenda. Incorporating Tenganan's customary land governance values into national agrarian reform policies can help make agrarian reform more inclusive by taking into account the needs of MHA to protect their land from economic pressures and make sure it is managed in a way that is sustainable.

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