

Legal Issues When Buying and Selling Customary Land in Papua

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Abstract

This study examines the legal issues surrounding the sale and purchase of customary land (*ulayat land*) in Yoka Village, Papua, through the mechanism of the customary release letter. The background of this research focuses on the conflict between customary law and national law in land transactions. Using a socio-legal approach and legal anthropology, this study analyzes the mechanisms of land sales in Yoka Village and the legal uncertainty caused by the incompatibility between customary practices and formal national law. The findings reveal that the lack of legal harmonization creates significant risks for both buyers and the indigenous community. The study concludes that formal recognition of the customary release letter and clear procedures for registering *ulayat* land are essential to protect the rights of all parties involved.

Keywords: customary land, *ulayat* land, legal uncertainty, customary law, land transactions.

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Правовые проблемы при купле-продаже традиционных земель в Папуа

Аннотация

В статье рассматриваются правовые проблемы, возникающие при купле-продаже традиционных общинных земель (*ulayat land*) в деревне Йока (город Джаяпура, Папуа) с помощью письма-разрешения об использовании земли. Основной проблемой является часто возникающее противоречие между законодательством (национальным правом) и общинным правом на землю. В исследовании использован социально-правовой подход, проведен анализ механизмов продажи земли в деревне Йоки и сделан вывод о существовании правовой неопределенности, вызванной несовместимостью традиционного общинного и формального национального права. Такая ситуация влечет за собой значительные риски как для покупателей, так и для коренного населения. Авторы приходят к выводу, что в рамках индонезийского законодательства необходимо разработать более четкие процедуры применения письма-разрешения об использовании земли определить правовые последствия выдачи таких писем-разрешений, это поможет защитить права всех вовлеченных в сделки сторон.

Ключевые слова: традиционная земля, общинная земля, правовая неопределенность, обычное право, земельное право Индонезии.

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Introduction. Land plays a vital role in human life, not only as a natural resource but also as a key support for various economic, social, and cultural activities. In Indonesia, land is not only used as residential space but also as a productive asset that supports agricultural activities, which dominate the country's economy. As an agrarian country, the majority of Indonesia's population relies on land for farming, plantations, and livestock. However, as time progresses, the increasing population and the need for development have expanded the role of land beyond being a basis for agrarian activities. Land has now become a strategic component for infrastructure development, housing, industry, and various other economic projects that drive the nation's growth. This has made land a highly sought-after commodity, triggering a significant increase in demand across various regions in Indonesia.

The growing demand for land occurs not only in urban areas but also in rural regions that have traditionally been regarded as agrarian zones. According to research conducted by Surya, urbanization and industrialization in Indonesia have caused significant changes in land use, where much agricultural land has now been converted into industrial, residential, and infrastructure land. This phenomenon is not only happening in Java, the center of Indonesia's economic activities, but is also spreading to other regions like Papua, Sulawesi, and Sumatra, which have now become national development priorities. Large-scale infrastructure projects such as highways, airports, and ports in these areas are also driving the conversion of land previously used for agrarian purposes into non-agricultural land¹.

On the other hand, land also holds important social and cultural dimensions, especially in regions inhabited by indigenous communities. In Papua, for instance, communal (*ulayat*) land is a crucial asset collectively owned by indigenous people and managed according to customary laws passed down through generations. According to Gandharum, communal land functions not only as an economic asset but also as part of the identity and sovereignty of indigenous communities². Managing communal land based on customary law often presents challenges in the modern context, particularly when it encounters national laws that regulate land ownership. This raises the need for harmonization between customary laws and national regulations, so land can be properly managed for the benefit of indigenous communities without neglecting the increasing need for national development.

In customary law, communal land refers to land collectively controlled by indigenous communities, where the rights of control and management are regulated according to customary laws passed down through generations. This land is not owned by individuals but by the community as a whole, and its use must be approved by the customary leader, such as the Ondoafi in Papua. The primary characteristics of communal land include collective ownership, its inalienability, and the central role of customary law in its management³.

For indigenous communities in Papua, communal land is not merely an economic asset but also an integral part of their cultural identity and sovereignty. This land carries a high symbolic value as it binds the community collectively and serves as a part of their ancestral heritage that must be preserved. As noted, communal land

¹ Surya, B., Ahmad, D. N. A., Sakti, H. H., Sahban, H. (2020) Land Use Change, Spatial Interaction, and Sustainable Development in the Metropolitan Urban Areas, South Sulawesi Province, Indonesia. *Land*, no. 9 (3), p. 95. DOI: <https://doi.org/10.3390/land9030095>

² Gandharum, L., Hartono, D. M., Karsidi, A., Ahmad, M., Prihanto, Y., Mulyono, S., Sadmono, H., Sanjaya, H., Sumargana, L., Alhasanah, F. (2024) Past and future land use change dynamics: Assessing the impact of urban development on agricultural land in the Pantura Jabar region, Indonesia. *Environmental Monitoring and Assessment*, no. 196 (7), p. 646. DOI: <https://doi.org/10.1007/s10661-024-12819-4>

³ Wicaksana Prakasa, S. U., R. S. Rakia, A. S., Wook, I. (2023) Protecting the Land Tenure Rights of Papuan Indigenous Peoples After New Autonomy Region. *Indonesia Law Reform Journal*, no. 3 (3), p. 288. DOI: <https://doi.org/10.22219/ilrej.v3i3.31352>

plays a crucial role in sustaining indigenous communities, as they rely on it to meet daily needs such as farming, hunting, and gathering natural resources. Therefore, managing communal land is essential in maintaining the social and cultural balance of indigenous communities in Papua, while facing the challenges of modernization and government regulations that often do not align with customary norms⁴.

In Jayapura City, most of the land is communal land controlled by local indigenous communities. The presence of communal land is a distinctive feature of land tenure in Papua, where indigenous people, led by customary leaders such as the Ondoafi, hold full control over the land. However, the development of infrastructure and government projects in eastern Indonesia, including Papua, has affected the dynamics of land control in Jayapura City. Large-scale development projects, such as highways, subsidized housing, and new government offices, require large amounts of land, resulting in transactions involving the sale of communal land through the customary release mechanism⁵. Although this provides opportunities for indigenous communities to gain economic benefits, conflicts often arise regarding legal certainty in the release of communal land, which still clashes with national law.

Government Regulation Number 18 of 2021 concerning Management Rights, Land Ownership, Housing Units, and Land Registration provides a legal framework for land management in Indonesia, including communal land owned by indigenous communities. This regulation stipulates that management rights can be granted to indigenous communities for communal land, as outlined in Article 5, paragraph (2), which emphasizes that communal land can only be managed by indigenous communities. This strengthens the position of customary law in managing communal land, but with strict limitations on land release or status changes. The management rights of communal land can only be relinquished for public purposes, as explained in Article 12, which imposes restrictions on the release of communal land for national development programs. This regulation attempts to balance the protection of indigenous people's rights with the national development needs, though its implementation is often marked by disagreements between indigenous communities and the government, especially regarding commercial interests.

Although Government Regulation Number 18 of 2021 provides a legal framework for managing communal land, the practice of buying and selling communal land in Jayapura City remains fraught with legal issues. One of the main issues is the legal uncertainty arising from the gap between customary law and national law. The indigenous communities in Jayapura, who continue to uphold the tradition of land release through customary release letters, often do not comply with national legal procedures, which require an authentic deed as the legal basis for land sale⁶. The customary release letter, which is not formally recognized as an authentic deed, poses risks for buyers as it does not provide legal certainty over land ownership rights. This gap creates legal uncertainty, which often leads to land disputes between indigenous communities and those purchasing communal land for personal or commercial purposes. This situation highlights the need for better harmonization between customary law and national law to ensure the protection of all parties involved.

Method and Research. This study employs a socio-legal method aimed at examining the practice of buying and selling communal land (ulayat) through customary release letters in the Indigenous Law Community of Yoka Village, Jayapura City. The socio-legal method was chosen because it allows the researcher to understand the relationship between formal legal norms and the actual legal practices within the indigenous community. This study prioritizes the collection of primary data through in-depth interviews and field observations, using Legal Anthropology, Legislation, and Conceptual approaches as its main foundations. The legal anthropology approach is employed to explore the customary legal norms and how they are applied in daily practices, particularly in the buying and selling of communal land in Yoka⁷. Through this approach, the researcher will map how the system of values and customary traditions shapes the community's legal behavior, as well as how the indigenous community faces challenges from modern law.

⁴ Chand, S. (2017) Registration and release of customary-land for private enterprise: Lessons from Papua New Guinea. *Land Use Policy*, no. 61, p. 414. DOI: <https://doi.org/10.1016/j.landusepol.2016.11.039>

⁵ Mulyadi, T., Kamsi, K., Surwandono, S., & Raharjo, T. (2019). The Legitimacy of Ondoafi in Conflict Settlement of Customary Land Tenure in Sentani, Papua. *Jurnal Media Hukum*, no. 26 (1), p. 112. DOI: <https://doi.org/10.18196/jmh.20190127>

⁶ Fahmi (Acehnese), C. (2024) The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia. *AlterNative: An International Journal of Indigenous Peoples*, no. 20 (1), p. 158. DOI: <https://doi.org/10.1177/11771801241235261>

⁷ Tobin, B. (2014) Indigenous Peoples, Customary Law and Human Rights—Why Living Law Matters. *Routledge*, p. 327. DOI: <https://doi.org/10.4324/9781315778792>

The Legal Anthropology Approach is used to examine the customary legal norms governing communal land transactions and their application in daily life. Through this approach, the study explores how the system of values and customary traditions influences the community's legal behavior and how the indigenous community faces challenges arising from interactions with modern law. This anthropological perspective provides an in-depth understanding of the social and cultural factors that shape the practice of communal land transactions in Yoka Village. Next, the Legislative Approach is applied by conducting an in-depth review of various relevant regulations, such as Government Regulation Number 18 of 2021 and the Special Regional Regulation of Papua Province regarding communal land rights. This approach plays an important role in analyzing the extent to which formal legal provisions align or conflict with customary practices and provides a legal basis to assess the legitimacy and validity of using customary release letters in formal transactions. Finally, the Conceptual Approach is used to examine fundamental legal concepts such as communal land rights and land management rights. Through this approach, the study analyzes the doctrines and basic principles underlying the differences between national and customary law. This conceptual approach provides a theoretical framework that helps explain the legal challenges and ambiguities that arise in the context of communal land transactions.

By integrating these three approaches, this study aims to provide a detailed and systematic overview of the compatibility or incompatibility between the national legal framework and customary legal practices in communal land transactions. The applied methodological structure is expected to uncover legal uncertainties and challenges faced by indigenous communities, as well as offer insights into potential pathways to achieve legal certainty and harmony between the national and customary legal systems.

Result and Discussion (Background of Customary Land in Yoka Village). Yoka Village, located at the eastern end of Lake Sentani, is part of the administrative region of Heram District in Jayapura City, Papua Province. The village was established on January 2, 1956, and has the following boundaries: to the north, it borders Nafri Subdistrict; to the south, it borders Itakiwa Village; to the west, it borders Ayapo Village; and to the east, it borders Waena Subdistrict. With an area of 10.12 square kilometers, Yoka Village is home to approximately 3,575 inhabitants.

As one of the villages situated in the Sentani customary area, the people of Yoka Village have a social and cultural structure closely tied to the customary legal system. Communal land (ulayat land) is one of the most important assets for the indigenous community in the village, managed through generations based on the applicable customary norms and laws. The existence of communal land is not only significant in social and cultural contexts, but it has also become a crucial issue in the development of Papua. Amid rapid infrastructure development and increasing land demand for construction projects, Yoka Village faces challenges in maintaining a balance between modern economic interests and the preservation of the customary rights passed down from their ancestors. The issue of buying and selling communal land through customary release letters has become one of the main focuses in land management dynamics in this area, which often intersects with national laws governing land ownership rights.

1. Structure of the Customary Government of Yoka Village

Yoka Village has a customary government structure consisting of several key positions that govern social, cultural, and communal land management. This structure includes:

- Ondofolo (Supreme Leader of the Village):

Ondofolo is the supreme leader of Yoka Village, responsible for overseeing the customary government. Ondofolo holds rights over land and water as a legacy from the ancestors. He has the authority to lead, manage peace, declare war, and appoint or replace clan chiefs within the village. Ondofolo also plays a social role, such as paying bride wealth for the first male descendant of the village's clans.

- Yo Noro (Ondofolo's Right and Left Hands):

Yo Noro is Ondofolo's trusted aide who serves as both protector and assistant in carrying out customary duties. Additionally, Yo Noro acts as a secretary for administrative matters and supports Ondofolo in various tasks related to customary governance.

- Abhu Afaa (Supreme Customary Council):

Abhu Afaa is the supreme customary council in Yoka Village, composed of influential traditional leaders. This council has the responsibility to select and propose candidates for Ondofolo's successor, advise and guide Ondofolo, and ensure the well-being of the community. Abhu Afaa also holds the secrets of blessings and curses believed to influence the life of the village.

- Yo Khote (Tribal Chief)

Yo Khote serves as the tribal chief, acting as an extension of Ondofolo in coordinating each of the tribes in Yoka Village. Within Yoka's customary leadership system (keondoafian), there are five tribal chiefs representing five major clans: Mebri, Makuba, Tukayo, Olua, and Ohee. Each of these tribal chiefs plays a critical role in managing their respective clans and ensuring that customary laws are upheld.

2. The Importance of Communal Land for the Indigenous Law Community of Yoka Village

a. Social Structure

Communal land in Yoka Village plays a crucial role in the social context of the community. It serves as the foundation of the local community's social identity. The ownership of communal land is not only viewed as a material right but also holds a strong symbolic value. The land is regarded as an ancestral heritage that strengthens social bonds within the community. Through the ownership of communal land, social status within the community is also established, reflecting the close relationships among community members.

The social structure of Yoka Village is governed by a kinship and customary system that regulates the distribution of land and access rights. In this context, customary leaders play a central role in making decisions regarding land management, which are always carried out with the consensus of the entire community. This system maintains harmony and equality among community members, ensuring that the use of communal land always reflects the collective interest.

In addition, communal land serves as an important venue for various social activities. Many traditional ceremonies and community gatherings are often held on communal land, which not only serves spiritual purposes but also strengthens social cohesion and solidarity among community members. The interactions that occur through these activities reinforce familial ties and preserve the traditional bonds passed down from generation to generation.

b. Culture

In a cultural context, communal land in Yoka Village holds deep historical and cultural value. Each part of the communal land is often associated with folklore, myths, and traditions passed down through generations. The land bears witness to the community's historical journey and plays an important role in preserving the collective memory and cultural identity of the Yoka people. For them, communal land is not merely a physical space, but also a representation of their relationship with the past and their ancestors.

Additionally, communal land serves as the center for various rituals and traditional ceremonies that hold spiritual significance. These ceremonies, such as the welcoming of guests or harvest celebrations, are conducted on communal land, reinforcing the community's connection to their ancestors and preserving their traditional beliefs. Through these rituals, the Yoka community continues to maintain their relationship with the spiritual world and honor the ancestors they believe help safeguard their lives.

Communal land also plays a role in the cultural expression of the Yoka people, such as in traditional dances and music. These arts often reflect the community's spiritual connection to the land and their ancestors. Through arts and music, the community expresses their customary values and cultural heritage, while also conveying important messages about their relationship with the land that forms the foundation of their lives. These cultural activities serve as a means of preserving tradition while educating younger generations about the importance of communal land in their customary way of life.

c. Economic Context

In an economic context, communal land in Yoka Village serves as the main source of livelihood for the local community. This land provides various natural resources that support activities such as agriculture, fishing, and hunting, which are integral parts of the community's daily life. The wise management of communal land is crucial to ensuring food availability and maintaining the economic well-being of the community.

Additionally, certain areas of communal land have the potential for valuable natural resources, such as timber or minerals. The utilization of these resources is carefully managed by the indigenous community to ensure environmental sustainability and prevent exploitation that would harm them. The management of natural resources is carried out collectively, where decisions regarding their use are made together to ensure sustainability and protect the rights of the indigenous community.

Communal land also has significant potential for modern economic development, such as cultural and nature-based tourism. The natural beauty and cultural richness of Yoka Village can be an attraction for tourists. However, land management for economic purposes must be conducted with consideration for the preservation of local culture and ensuring the fair distribution of benefits for the indigenous community. In this way, the indigenous community can gain economic benefits without sacrificing their cultural heritage and the environmental balance they have preserved for generations.

3. The Process of Buying and Selling Customary Land According to Customary Law in Yoka Village

In Yoka Village, the practice of buying and selling customary (ulayat) land follows a long-established customary legal system deeply rooted in the lives of the indigenous community. One of the main instruments in land transactions is the customary release letter, issued by local customary leaders, such as the Ondofolo. This letter is an important document that states the indigenous community's consent to relinquish their collective rights to the land to external parties, whether individuals or companies, typically in relation to economic activities or infrastructure development in the area⁸. This process not only involves individuals who wish to purchase the land but also requires the approval of the entire indigenous community, usually represented by customary leaders and local customary institutions.

The customary release letter plays a crucial role in legitimizing the social aspects of customary land transactions. In the context of customary law, a transaction without a customary release letter is considered invalid by the indigenous community because it does not follow the procedures established by customary norms and laws. For the indigenous people of Yoka Village, customary land holds more than just economic value. The land is part of their cultural identity and ancestral heritage that must be preserved. The decision to relinquish customary land is not taken lightly and must be accompanied by deliberation involving all elements of the community. The customary release letter serves as proof that the land transfer is made through collective agreement, rather than an individual decision⁹.

Although the customary release letter carries strong legitimacy among the indigenous community, it is often not formally recognized by Indonesia's national legal system. The customary release letter does not meet the requirements of an authentic deed, which is legally recognized under national law. As a result, buyers who possess only a customary release letter may face legal uncertainty regarding the ownership status of the purchased land. In some cases, buyers may encounter difficulties when attempting to register the land under the national legal system or when seeking to convert customary land rights into state-recognized ownership¹⁰.

This issue of legal uncertainty has become a critical problem in the management of customary land, particularly in Papua. The discrepancy between customary law and national law often creates space for conflict, especially when there are differing perceptions regarding land ownership and management rights. Buyers of customary land who do not fully understand the differences between a customary release letter and an authentic deed may face problems in the future, particularly if another party challenges the legitimacy of land ownership under national law.

Moreover, in many cases, the process of buying and selling customary land that involves only a customary release letter is often conducted without the assistance of a notary or official land authorities, which exacerbates the legal uncertainty. According to recent research by Steffens and von Benda-Beckmann, one of the biggest challenges in managing customary land in Indonesia is harmonizing the community-based customary legal

⁸ Odendaal, W., Hebinck, P. (2021) A Socio-legal Analysis of the Complexity of Litigating Ancestral Land Rights. In: H. Chitonge, R. Harvey (Eds.) Land Tenure Challenges in Africa. *Springer International Publishing*, p. 247. DOI: https://doi.org/10.1007/978-3-030-82852-3_12

⁹ Mensah, L. (2021) Legal pluralism in practice: Critical reflections on the formalisation of artisanal and small-scale mining (ASM) and customary land tenure in Ghana. *The Extractive Industries and Society*, no. 8 (4), 100973. DOI: <https://doi.org/10.1016/j.exis.2021.100973>

¹⁰ Pelupessy, E. (2017) The Land Rights of Indigenous Peoples: Revaluation of Papua Special Autonomy. *Hasanuddin Law Review*, no. 3(1), p. 77. DOI: <https://doi.org/10.20956/halrev.v3i1.1047>

system with the more centralized and formal national legal system. The lack of formal recognition of the customary release letter creates tension between the interests of indigenous communities who seek to preserve their traditions and the need to comply with the national legal framework¹¹.

However, for the indigenous community of Yoka Village, the customary release letter remains a legitimate and highly respected instrument. This mechanism allows the community to maintain control over their customary land, even when the land is transferred to external parties. With the customary release letter, the indigenous community feels that they retain sovereignty in deciding the fate of their land and ensure that the land transfer is carried out in accordance with the values and norms they uphold.

In the context of growing development in Papua, including in the Jayapura area, the customary release letter mechanism often acts as a bridge between the customary world and the modern world. Despite facing legal challenges at the national level, this mechanism enables indigenous communities to participate in larger economic transactions without fully sacrificing their identity and sovereignty over customary land. However, to achieve better legal certainty, efforts are needed to harmonize customary legal practices with national law, as well as to provide formal recognition for mechanisms such as the customary release letter in customary land transactions.

Government Regulation No. 18 of 2021, which governs management rights and land ownership, including customary land, aims to create uniformity in land management across Indonesia. One of its provisions states that management rights for customary land can only be granted to indigenous law communities, while for public purposes, customary land can be released through certain mechanisms specified by law¹². However, this regulation often does not fully align with customary legal practices in Yoka Village.

One aspect of this misalignment is the use of the customary release letter, which, while recognized in the customary context, is not considered a formal legal document under national regulations. This creates a gap between customary law and national law, where national regulations require that customary land transactions be validated through an authentic deed made by a notary or land officer. As a result, indigenous communities often face difficulties in converting the status of their customary land ownership into legally recognized ownership under national law. This inconsistency highlights the need for revision and harmonization between government regulations and customary legal practices to ensure legal certainty and protect the rights of indigenous law communities.

The main legal issue in the practice of buying and selling customary land in Yoka Village relates to the incompatibility between the customary legal system and the national legal system. Under customary law, customary land transactions conducted through a customary release letter are considered valid if approved by the customary leader (Ondofolo) and the local community. In this system, the process of relinquishing land rights based on custom has strong social legitimacy and is accepted as a valid transaction within the indigenous community. However, Indonesia's national legal system requires that all land transactions, including customary land, be conducted through an authentic deed made and certified by a notary or land official. The discrepancy between the two legal systems creates legal uncertainty for buyers of customary land, particularly when the customary release letter is not formally recognized by national law.

Conflicts between customary law and national law often lead to various issues, both within the indigenous community and between the indigenous community and external parties purchasing the land. One common conflict arises when buyers of customary land who possess a customary release letter face difficulties in registering the land under the national legal system. Land offices require an authentic deed made by a notary as a prerequisite for land registration. In some cases, although the transaction is considered valid under customary law, the buyer may be unable to obtain formal ownership of the land because the customary release letter is not recognized by national law. This creates uncertainty for the buyer and often leads to prolonged land disputes.

The legal arguments surrounding the validity of customary release letters in communal land transactions require an in-depth analysis to fully explain the issues and broader legal implications. Customary release

¹¹ Inguanzo, I. (2014) Indigenous Peoples' Rights in Southeast Asia. *Asian Journal of Political Science*, no. 22 (1), p. 46. DOI: <https://doi.org/10.1080/02185377.2014.895911>

¹² Government Regulation. No. 18, 2021. URL: <https://iglolaw.com/regulations/government-no-18-of-2021/>

letters, often used by indigenous communities as proof of transfer of communal (ulayat) land rights, lack the same legal strength as formal documents in Indonesia's national legal system, such as land certificates or official deeds of sale. In the context of customary law, release letters are recognized as legitimate and serve as a form of collective agreement reflecting the community's consensus regarding the transfer of usage rights over communal land. However, in the national legal system, these documents are not considered valid proof of ownership or as legally binding instruments for transferring ownership, which creates significant legal uncertainties for the parties involved.

The ambiguous legal status of customary release letters has direct implications for the certainty and security of land transactions. For buyers, the lack of clear legal recognition means that ownership over land acquired through a customary release letter carries the risk of future disputes. This uncertainty could result in a situation where ownership rights cannot be enforced under national law, and buyers lose their investment without adequate legal protection. This situation can lead to economic losses and erode trust in the legal system, especially among investors or parties interested in land transactions in indigenous areas. Furthermore, this lack of formal legal basis creates opportunities for external parties to exploit regulatory weaknesses, allowing them to take advantage of legal loopholes to acquire communal land unilaterally or at unfair prices, ultimately disadvantaging indigenous communities.

On the other hand, the legal impact of this uncertainty also affects indigenous communities themselves. Without formal legal recognition of customary release letters, indigenous communities risk losing control over their land. Land transfers conducted through release letters are not protected within the national legal system, meaning that the land can easily be controlled by outside parties without a fair mechanism for restitution for indigenous communities. Additionally, indigenous communities lose bargaining power in defending their rights to communal land, as their position is not recognized by national law. This situation raises concerns about the sustainability of indigenous land ownership and the potential erosion of their identity and cultural rights.

This condition highlights the urgent need for harmonization between customary law and national law. Formally recognizing customary release letters as valid documents within the national legal system would benefit all parties involved. For buyers, this recognition would provide the legal certainty necessary for secure investments or ownership of communal land. For indigenous communities, formal recognition would protect their rights to communal land and ensure that any transfer of rights is conducted with community consent and acknowledged by the state. Thus, the state can play a role in balancing the interests of indigenous communities with the need for legal certainty in land transactions.

Concrete steps can be taken by the government to achieve this harmonization. First, specific regulations should be established to address the legal status of customary release letters, recognizing them as valid instruments for transferring rights within the context of communal land. This regulation should also outline clear mechanisms for verification and registration, allowing release letters to be officially registered with agencies like the Land Office, ensuring they are legally valid and protected. Second, the state must involve indigenous communities in the legislative process to ensure that their rights and cultural values are respected and accommodated in the new regulations. This process will not only lend legitimacy to the regulations but also build trust between indigenous communities and the government.

With clear regulations and active participation from indigenous communities, land transactions using customary release letters can proceed in a more orderly and secure manner. Formal recognition of customary release letters would help reduce legal conflicts and promote justice in the management of communal land. It would also strengthen the position of indigenous communities in preserving and protecting their land while providing legal certainty for all parties involved in communal land transactions. This harmonization is a crucial step towards creating a legal system that is inclusive, fair, and responsive to the needs of indigenous communities as well as the development of the national legal framework in Indonesia.

The potential for land disputes becomes more complex because land ownership claims under customary law do not always align with claims under national law. This situation opens the door to future conflicts of interest, where other parties with claims under national law may seek to reclaim land previously sold through customary mechanisms. This legal uncertainty not only threatens the rights of buyers but also weakens the legal

protection of indigenous communities involved in the sale of customary land. Indigenous communities, who rely on their traditional legal system, often lack adequate access to understand or navigate the complexities of national law¹³.

This conflict highlights the need for further efforts to harmonize the two legal systems. Without clear synchronization between customary law and national law, the issue of legal uncertainty will continue to arise, endangering the rights of indigenous communities and land buyers. A mechanism that allows for formal recognition of the customary release letter, accompanied by clearer regulations on the registration of customary land, could be one of the solutions to address this problem.

Conclusion. The practice of buying and selling customary land in Yoka Village reflects the complexity of interactions between customary law and national law in Indonesia. Although the customary release letter has long been a legitimate and respected mechanism for land transactions by indigenous communities, this document is not formally recognized by national law, which requires the use of an authentic deed. The inconsistency between these two legal systems creates legal uncertainty for buyers and often leads to land disputes. This conflict is further exacerbated by the lack of harmonization between customary law and national law, which leaves the rights of customary land buyers, as well as the rights of the indigenous communities themselves, in a vulnerable position.

The legal uncertainty arising from this discrepancy not only affects the legality of the transactions but also impacts the social and economic well-being of indigenous communities. The sale of customary land can alter the social structure within the indigenous community, while the economic benefits obtained are often disproportionate to the true value of the land being sold. Therefore, steps need to be taken to harmonize these two legal systems, ensuring legal certainty without neglecting the rights of the indigenous communities that they have long upheld. Formal recognition of the customary release letter and clearer procedures for registering customary land could be important steps toward balancing tradition and modern law in Indonesia.

References

1. Chand, S. (2017) Registration and release of customary-land for private enterprise: Lessons from Papua New Guinea. *Land Use Policy*, no. 61, pp. 413–419. DOI: <https://doi.org/10.1016/j.landusepol.2016.11.039>
2. Fahmi (Acehnese), C. (2024) The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia. *AlterNative: An International Journal of Indigenous Peoples*, no. 20 (1), pp. 157–166. DOI: <https://doi.org/10.1177/11771801241235261>
3. Gandharum, L., Hartono, D. M., Karsidi, A., Ahmad, M., Prihanto, Y., Mulyono, S., Sadmono, H., Sanjaya, H., Sumargana, L., Alhasanah, F. (2024) Past and future land use change dynamics: Assessing the impact of urban development on agricultural land in the Pantura Jabar region, Indonesia. *Environmental Monitoring and Assessment*, no. 196 (7), 645 p. DOI: <https://doi.org/10.1007/s10661-024-12819-4>
4. Inguanzo, I. (2014) Indigenous Peoples' Rights in Southeast Asia. *Asian Journal of Political Science*, no. 22 (1), pp. 45–70. DOI: <https://doi.org/10.1080/02185377.2014.895911>
5. Mensah, L. (2021) Legal pluralism in practice: Critical reflections on the formalisation of artisanal and small-scale mining (ASM) and customary land tenure in Ghana. *The Extractive Industries and Society*, no. 8 (4), 100973. DOI: <https://doi.org/10.1016/j.exis.2021.100973>
6. Mulyadi, T., Kamsi, K., Surwandono, S., & Raharjo, T. (2019). The Legitimacy of Ondoafi in Conflict Settlement of Customary Land Tenure in Sentani, Papua. *Jurnal Media Hukum*, no. 26 (1). DOI: <https://doi.org/10.18196/jmh.20190127>
7. Odendaal, W., Hebinck, P. (2021) A Socio-legal Analysis of the Complexity of Litigating Ancestral Land Rights. In: H. Chitonge, R. Harvey (Eds.) *Land Tenure Challenges in Africa* (pp. 247–265). *Springer International Publishing*. DOI: https://doi.org/10.1007/978-3-030-82852-3_12
8. Pelupessy, E. (2017) The Land Rights of Indigenous Peoples: Revaluation of Papua Special Autonomy. *Hasanuddin Law Review*, no. 3(1), p. 77. DOI: <https://doi.org/10.20956/halrev.v3i1.1047>

¹³ Prill-Brett, J. (2007) Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines. *The Journal of Legal Pluralism and Unofficial Law*, no. 39 (55), p. 12. DOI: <https://doi.org/10.1080/07329113.2007.10756606>

9. Prill-Brett, J. (2007) Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines. *The Journal of Legal Pluralism and Unofficial Law*, no. 39 (55), pp. 11–36. DOI: <https://doi.org/10.1080/07329113.2007.10756606>
10. Surya, B., Ahmad, D. N. A., Sakti, H. H., Sahban, H. (2020) Land Use Change, Spatial Interaction, and Sustainable Development in the Metropolitan Urban Areas, South Sulawesi Province, Indonesia. *Land*, no. 9 (3), p. 95. DOI: <https://doi.org/10.3390/land9030095>
11. Tobin, B. (2014) Indigenous Peoples, Customary Law and Human Rights — Why Living Law Matters. *Routledge*. DOI: <https://doi.org/10.4324/9781315778792>
12. Wicaksana Prakasa, S. U., R. S. Rakia, A. S., Wook, I. (2023) Protecting the Land Tenure Rights of Papuan Indigenous Peoples After New Autonomy Region. *Indonesia Law Reform Journal*, no. 3 (3), pp. 287–303. DOI: <https://doi.org/10.22219/ilrej.v3i3.31352>

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