



## RESEARCH ARTICLE

## Choosing a Subject Model and Types of Rights in the Registration of Customary Land in Bali and Its Legal Implications

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<i>ARTICLE INFO</i>	<i>ABSTRACT</i>
Received: Jul 21, 2024	<p>The purpose of this study is to find the legal implications of the registration of customary land in customary villages called village druwe through PTSL when customary villages are appointed as subjects of communal land ownership rights. The research problem that is studied is: how does the concept of mulur-mungkret exist for the control of customary lands carried out by village krama? The research methods used are in the form of normative and empirical legal research with a legal, analytical, case and sociological approach. The data was analyzed using interpretive and qualitative techniques. The results of the study show that customary land of customary villages is registered with the subject of customary villages except for the land of Laba Pura. The implication is that there is an individualization of customary lands of customary villages from the right of control to property so that there is a thickening of the ownership rights by the customary villages and thinning them and even eliminating the right of control of the village customs over the PKD land which is used as a place to erect buildings by their ancestors until now. This condition indicates that in the implementation of customary land registration, customary villages in Bali have eliminated the concept of mulur mungkret as the basis for customary land control, so that a more relevant model of granting rights is needed so that there is a coexistence between customary law and state law in customary land registration. In addition, the model of granting rights in registration through PTSL for customary land to function as a social control so that there is an affirmation of the type of rights and subjects of rights in accordance with the customary land and vice versa, disputes arising due to customary land registration can be prevented.</p>
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### INTRODUCTION

One of the policy directions for the issuance of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) is to create legal unification and the existence of administrative order in the field of land through the administration of land rights according to state law. The purpose is to provide assurance of certainty and legal protection to the rights holders by issuing a "Certificate of Rights" as perfect and strong proof of ownership. In addition, it is also to provide information to interested parties, including the Government, so that they can easily obtain the necessary data in carrying out legal acts regarding land plots.

With the issuance of a policy on simultaneous land registration in an area known as the National

Agrarian Project (Prona) with the Decree of the Minister of Home Affairs Number 220 of 1980 concerning the Amount of Fees in the Context of Granting Land Rights Certificates Derived from the Granting of State Land Rights, Affirmation of Customary Land Rights and Conversion of Former Customary Land Rights, which is the Object of the National Agrarian Operation Project. As a result of this policy, some Balinese people called customary village krama responded with euphoria, including the management of their customary village called Prajuru Adat as happened in Ngis Karangasem Traditional Village where part of the customary land as village customary land in the form of Village Fatherland (AYDS) was certified in 1982 systematically with conversion. This certification is also encouraged by the provision of credit in the form of fertilizers and production facilities (Saprotan) and the facilitation of certification when there is an Export Crop Plantation Rehabilitation Project (PRPTE) from the Plantation Service and will subsequently be used as collateral at BRI (I. Suwitra, 2009).

In addition to having an Administrative Village, Bali also has a Customary Village as a Customary Law Settlement Agency (Adatrechtsgemeenschappen) so it is called duality in the village government system (Ter Haar, 1939). Until now in Bali there are 1493 traditional villages spread throughout the Regency and City. Every customary village in Bali has customary land called "druwe desa" and technically scientifically known as customary land includes: Setra land, Pasar land, Field land, Laba Pura land, Pauman land, PKD land, AYDS land. At the beginning of the enactment of Law No. 5 of 1960, known as the UUPA, these customary lands were tried to be registered to obtain a certificate of property rights (SHM) but could not be done because the customary village had not been appointed as a legal subject. The UUPA does provide an opportunity to convert the old rights to land that it has controlled for more than 20 consecutive years into individual land according to the type of rights regulated in the UUPA as new rights. The implication of this conversion provision has caused euphoria among village people to immediately register land. Especially when the tap of the free registration model was opened simultaneously in the village area through the National Agrarian Project (Prona) in the 1980s, so that many customary lands that were controlled individually such as PKD and AYDS were registered as full individual rights as "property rights". Further implications arise disputes in several villages, such as Siladan Tamanbali Bangli Village, Tusan Klungkung Village, Ngis Village, Kulik Karangasem, Sada Temple, Loloan Yeh Poh Badung, Meru Sesetan Temple, Kesumasari Sanur Denpasar, Panji Village, Lemukih Buleleng. Issuing policies in the Complete Systematic Land Registration (PTSL) since 2018 is also full of disputes and the most are in Gianyar Regency, such as PKD disputes in Taro Traditional Village, Pakudui Traditional Village, Gianyar Traditional Village, Pejeng Jro Kuta Traditional Village, Guwang Traditional Village, Samuantiga Traditional Village, Tegallinggah Traditional Village (Putra, 2022; Raharyo, 2022; Tabelak, 2022). Disputes in the registration of customary land also occurred in other districts such as in Banjar Adat Tenten Kediri Tabanan, Buitan Customary Village Karangasem, Julah Traditional Village, KubuAdditional Buleleng (Aryawan, 2022; Rastana, 2022). Disputes with customary land objects also occurred after the issuance of the certificate due to the inaccuracy of the officers in receiving registration documents, especially in complete systematic registration such as in the Abiansemal Badung Traditional Village. The existence of this phenomenon shows that research on disputes in customary land registration in Bali is very urgent. The main problem of this study analyzes the model of determining the subject of rights and the type of rights in the registration of customary land as customary land in Bali through PTSL, and its legal implications. One of the policy directions for the issuance of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) is to create legal unification and the existence of administrative order in the field of land through the administration of land rights according to state law. The purpose is to ensure certainty and legal protection of land ownership rights that have been registered and issued a "Certificate of Rights" as proof of perfect and strong ownership.

## **METHODOLOGY**

The research methods used are in the form of normative legal research and empirical legal research with consideration, it is found that there is overlapping regulations in land registration, especially for the administration of customary land as customary land of customary villages. In addition, it was found that there was a gap between *sollen* and *sein* on the basis of the claim of control so that there was a

dispute both before and after the registration. The problem-solving strategy is carried out through a legislative approach, namely exploring all related regulations, both written and unwritten (customary law) as a reference in identifying the type of customary land as the object of registration. Then find standards to be used as a basis for claims and sort between customary land and private land to determine the subjects who are entitled to registration and the relevant types of rights so that the relationship between the village customs and their customary villages in the control of customary land can be maintained as customary land. In addition, a philosophical approach is used, namely finding the value of propriety for claims known as good ethics in registration to ensure fair legal certainty and at the same time provide protection in the sense that there is a guarantee for the implementation of rights and there is a guarantee of law enforcement in the event of a violation of rights when new rights according to the UUPA have been issued. Another legal goal to be achieved is usefulness or benefit, which is to be able to create a harmonious relationship between the village customs and its customary villages which implies the strengthening of customary villages in the control of their assets as potential resources that can be managed autonomously for the welfare of village customs and are ready to become independent customary villages according to one of the Nawacita points of the President of the Republic of Indonesia.

The data sources used are primary data and secondary data. Primary data was collected by interview techniques with the Head of BPN Offices in the Regency. In addition, incidental observation techniques and participants are also used because researchers are part of the customary village customs. Meanwhile, secondary data known as legal materials, namely primary legal materials in the form of written and unwritten regulations, are collected by documentation techniques, while secondary legal materials in the form of thought results in the form of textbooks, journal publications and other tulsified materials are collected by recording file model techniques. All data were analyzed with systematic and qualitative interpretation techniques, meaning that they provided the meaning and meaning of each element of the description and both in the norms and the content of the interviews and the content of the observation results.

## **RESULTS**

### **The Existence of Customary Land as Customary Land in Bali**

The concept and philosophy underlying customary law about land is a communalism religious concept, which is relevant to the view of life of the original Indonesia people who view the relationship between individual human beings and society always on behalf of or prioritize the interests of the community (Sitorus, 2004). Thus, human beings in customary law are not at all alienated individuals, free from all ties and solely remember their own interests, but are primarily members of society.

According to customary law, the primary is not the individual, but the community. The individual is primarily considered a member of society, a being who lives first to achieve the goals of society. Therefore, customary law views individual life as a life that is primarily intended for service to society. Based on this conception, customary land as a common right of a customary law community is seen as a common land which is a "gift" from a supernatural force, not seen as something obtained by chance or because of the strength of the indigenous people's efforts. So customary rights that are a life-giving environment for indigenous peoples are seen as common land, so that all individual rights are sourced from the common land, which is relevant to the theory of property rights, the understanding of the law of nature Grotius which states, that everything in nature is common property. Nature or the world exists to be used jointly by mankind. Private property rights are only accepted in the sense of the right to use common property. If a person is said to own something, it means that he has the ability to use the common property appropriately, and not to belong to him in such a way as to rule out the possibility of belonging to another individual.

The Research Report on the Integration of Customary Rights into the Jurisdiction of the UUPA, Ministry of Home Affairs-FH UGM in 1978 stated, that customary rights as a juridical technical term are rights inherent as a typical competence in customary law communities, in the form of authority/power to manage and regulate the land with the power to act inward and outward (Sumardjono, 2002). Customary law communities are autonomous indigenous peoples' unity where they regulate their life

systems (legal, political, economic and so on), in addition to being autohton, that is, a unit of customary law communities that is born/formed by the community itself, not formed by other forces, for example the unity of the village with its LKMD. Now it is no longer fully autonomous and independent of the process of integration into the organizational unity of the life of the nation-state on a large scale and in a national format (Sirait et al., 2000).

As the content of the authority of the customary rights in question, the relationship between customary law communities and their land/territory is a relationship of control, not a property relationship as is the case in the concept of the relationship between the state and land, according to Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The determination of whether or not there is still a customary right can use three criteria, as below, namely:

1. The existence of customary law societies that meet certain characteristics as subjects of customary rights;
2. The existence of land/territory with certain boundaries as Lebensraum which is the object of customary rights; and
3. The existence of the authority of customary law communities to carry out certain actions as described above.

Based on the understanding and conceptual mentioned above, the differentiation of Land Tenure Rights (HPAT) according to customary law consists of: Ulayat Rights (communal rights) and individual rights to land. Customary rights are the highest HPAT in customary law. From customary rights, due to the process of individualization, individual rights (individual rights) can be born. It is relevant to Achmad Sodiki's statement, that:

The land tenure system in customary law is based on customary rights, which is a right of the legal community as a unit that has authority to the outside and in. This means that in this customary right there is an individual right to land, namely a right born from continuous intensive exploitation of a piece of land (empty).

The relationship between customary rights (owned by the legal community as a unit) and individual rights is a flexible, flexible relationship, meaning that the stronger the individual's rights to land, the weaker the enforceability of customary rights over the land. On the other hand, the weaker the rights of the individual, the stronger the enforceability of customary rights. These individual rights will disappear and the land will return to the power of customary rights if the land is abandoned/turned into bushes or forests again. It is relevant to the Ballen Theorie of Ter Haar, which states that the stronger the customary rights, the weaker the individual rights and vice versa. Likewise, Iman Sudiyat stated, that the rights of the alliance and the individual rights of each member influence each other, meaning that they exist in a relationship of deflating, expanding, stretching and ending (Iman, 1981).

Herman Soesang Obeng stated that in order to obtain a clear picture of individual land ownership, it is necessary to pay attention to the interrelationship between community rights and individual rights according to the nature of the indigenous people's mind (participierend denken according to Ter Haar). According to this line of thought, the relationship between man and the land is a religious magical relationship that more or less contains elements of supernatural power (mystic) as a manifestation of the dialogue between man and the supernatural world, namely the spirits that he values (Soesangobeng, 1975). Therefore, the community will develop a number of certain norms about land, both controlled by the community and individually. IB. Lasem in relation to this control also states that customary lands such as PKD that are controlled individually in it contain the concept of Tri Hita Karana, namely in the form of Parhyangan in the form of Merajan (believe system), Pelemahan in the form of a residential area (artefact system), and Pawongan in the form of family members living there (social system) which incidentally is a banjar krama and a customary village krama. All of this is of course regulated in awig-awig. These customary lands are still believed to have a magical religio nature, so that the life of the village customs is intended to serve God who is stationed in each Kahyangan Tiga Temple and other temples that are emmoned by the village customs in the customary village area. This condition is inseparable from the history behind the emergence of customary villages according to the content of

the story in Lontar Markandya Purana.

Some of the prominent characteristics about individual ownership according to customary law include:

1. Land ownership can only be owned by members of the legal community.
2. Ownership is not born based on the decision or permission of the customary head. The decision or permit of the customary head only serves as a paving the way towards the possibility of controlling land with ownership. Ownership is born based on public recognition caused by the fact that a person's relationship with land is not close. Close in the sense that the soil is always worked on, well cared for and not neglected.
3. Ownership only arises if the de facto condition in the form of residing in the legal community, working on the land continuously, and the de jure condition in the form of public recognition of the ownership, apply simultaneously in the person concerned.
4. The end of land ownership means the cessation of public recognition of the rights of the person concerned.

Understanding the relationship of land tenure in traditional villages, van Vollenhoven's conceptual "beschikkingrecht" is very helpful. The two main elements that characterize this right are, first: there is no power to transfer land, and second, there is an interaction between communal rights and individual rights that have consequences or apply inward or outward.

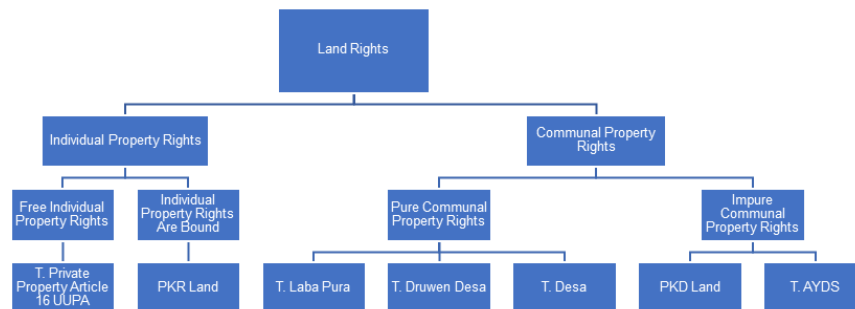
In the first sense, the fellowship and its members can benefit from the land and everything that grows and lives on it, such as: cultivating the land, establishing a dwelling, herding cattle, gathering food, hunting, fishing. So this right is only used to obtain the necessities of life for the family and himself, and not to form supplies for commercial (business) needs. Second, the rights of individuals are still subject to the rights of the community (customary rights) over the customary land, because there is still federal interference in the use and transfer of individual rights. Third, the Federation can designate or provide the land for public purposes, such as for cemeteries (setra), schools, places of worship (temples), markets, office land (crooked), in Bali known as evidence land/ration.

Consequential or outward means that there is a prohibition for people outside the fellowship to withdraw profits from customary land, unless there is a permit and has paid the recognition money (recognitie). This provision applies to members of the alliance if they are in withdrawing profits from the customary land used for commercial purposes (business). Second, prohibitions, restrictions or various regulations that bind people to obtain individual rights to agricultural land. This means that outsiders who are going to cultivate federal land are only given the right to enjoy (genotrecht) in one harvest, they cannot become heirs, or buy land. So they only get the opportunity to participate in using the land of the federal territory.

The Supreme Court jurisprudence dated February 7, 1959 No.59K/Sip/1958 determined that according to Karo customary law, a piece of "kesain" land, that is, an empty piece of land, located in a village, can become private property after the land is intensively cultivated by a villager (Ali, 1979). The acquisition of rights is traditionally relevant to the theory of "accupatio" to the method of obtaining property rights, meaning the occupation of land that is classified as "res nullius", that is, land that has not been owned by a person. What has been discovered by a person belongs to the person concerned. This way of obtaining property rights is also in accordance with the Theory of Natural Law as stated by Hugo Grotius, namely: All objects were originally res nullius (objects that have no owner). But the community divides all things on the basis of consent. Objects that are not divided in this way are then found by individuals and made their own. Thus the object is subject to individual mastery. One full power to determine the use of things (power of disposition) is the deduction of the mastery of the individual, as something contained in it according to logic and this collective power becomes the basis for obtaining it from others. The claim of rights stands directly or indirectly on the natural basis of the original division either by consent, invention, or subsequent occupation.

In Bali, land tenure rights are also based on customary rights or pre-earth rights. This condition will be very relevant if it is related to the relationship between customary villages and customary lands in its

historical perspective. In addition, it is also relevant to the theory of natural law and *occupatio* in the sense that there is joint control and ownership (communal) and also individual control and ownership (individual). The relationship between communal rights and individual rights also seems to be pressing with each other, thickening and thinning, stretching and stretching. It is even more dominated by individual rights, especially in the use of yard land and its research (I. M. Suwitra, 2005). The process of thickening and thinning the relationship between communal rights and individual rights seems to depend heavily on the sensitivity of the indigenous people and the awareness of the village customs towards the customary lands they control in determining whether communal property will change its status to full individual ownership. Land that used to be included in customary land has sometimes been transferred to full private ownership which is better known as Certificate of Ownership (SHM) land, such as AYDS land in Kemenuh Gianyar Traditional Village after independence converted to full individual land, as a result of the issuance of tax letters by the government, even though initially AYDS was a unit with PKD land. In the results of the 2009 dissertation research, several types of customary stakes were identified, namely as follows:



**Figure1: Conceptual Model**

This type of customary land varies greatly from one customary village to another. As in the *awig-awig* of Macang Traditional Village, Bebandem District, Karangasem Regency, several types of customary land are regulated as village customary land in the form of: PKD land, Karang Pura land, AYDS land, Banjar Coral Land, Setra, margi, rurung, temple profit land, Prajuru Evidence land, Pangaku Evidence, Banjar Evidence, and all struggles for *toya*, *toya sapling* (water source). Meanwhile, in Tusan Traditional Village, Banjarangkan District, Klungkung Regency, they know the village *druwe* in the form of: temple profit, market land, PKD, setra land, village land in the form of *tegal* and rice fields.

### Customary Land Registration Model

Customary lands as customary villages in Bali have been massively registered since the issuance of the Decree of the Minister of Home Affairs Number 220 of 1980 which is better known as *Prona*. At that time, customary villages and temples had not been appointed as subjects of rights that could have property rights to land. Because there is euphoria in the customary village, the customary lands when registered use the subject of their personal names either as village *krama*, as *Kelihan Pura* (temple administrator), as *Jero Mangku Pura* (officers at the temple to arrange all religious ceremonies) so that there is a change in the status of control and ownership from communal control and ownership to individual control and ownership. This means that there is privatization of control and ownership as its juridical implications. Another implication is that there is a dispute over the claim from the village after several years have passed as a result of the delay in awareness of the implications of privatization of the control and ownership of customary lands as customary villages (*druwe*).

With the issuance of the Decree of the Minister of Home Affairs Number: SK.556/DJA/1986 concerning the Appointment of Temples as Religious Legal Entities That Can Have Property Rights Over Land, there is slowly a rescue of the assets belonging to the Temple (*druwe*), especially the Land of Profit (*druwe*) of the Temple, because it can be registered using the subject of the Temple's rights and no longer uses the subject nominally by borrowing the name of *Kelihan Pura* (Temple administrator) or *Jero Mangku Pura* (religious leader officer in the Temple). Although there is a change towards the individualization of ownership and ownership as part of village customary land as the default Vision of the UUPA, which is more oriented to ensure legal certainty in the ownership of land rights, but it becomes better and more

certain than not registering. So all Laba Pura land can be registered in the name of the Temple, such as Merajan Temple, Dadia Temple, Pemaksan Temple, Melanting Temple, Penyarikan Banjar Temple, Dalem Temple, Pengulun Setra Temple (Prajapati), Village Temple, Puseh Temple, Kahyangan Jagat Temple, Gedong Sari Temple, Banjar Pauman Temple.

Efforts to update policies in regulating the model of administration of customary land as customary villages continue to undergo changes, namely changes that can be stated as major changes in determining the subject of rights and types of rights in the registration of customary land, namely with the issuance of the Decree of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 276/KEP-19-2/CX/2017 concerning the Appointment of Pakraman Village in Bali Province as the Subject of Joint Ownership Rights (Communal) On Land (Kepmen ATR 276/2017) jo Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 1918 concerning Systematic Land Registration of Lemgkap (Ministerial Regulation ATR 6/2018), there is again "euphoria" for customary villages because Kepmen ART 276/2017 and PermenATR 6/2028 will bring blessings in strengthening the status of customary lands as customary villages to be registered by using the subject of the right "Customary Village" with the type of right or with the title "Hak Milik "Ownership". As a result, there are several phenomena as implications that are brought about in the structure and culture of the community in customary villages, such as: all customary lands that have not been registered or not yet certified in the customary village area are claimed as customary land of customary villages, all customary lands as customary villages are registered using the subject of the right "customary village" with the title "property rights", except for the land of the temple. Further data on the customary land registration model will be presented in the form of a sampling table.

**Table 1. Localization of Customary Land Controlled by Village Communities through Complete Systematic Land Registration (PTSL)**

No	Region	Types of Customary Land			Subject of Rights	Title Hak
1	Bungkulan Buleleng Traditional Village	PKD/AYDS			Traditional Villages	Proprietary
2	Banjarasem Buleleng		Tri Mandala Banjar		Traditional Villages	Proprietary
3	Liligundi Buleleng	PKD/AYDS			Pakraman Village	Proprietary
4	Unggahan Buleleng			Pasar	Pakraman Village Market Upload	Proprietary
5	Unggahan Buleleng		Plaba Desa		Plaba Desa Unggahan	Proprietary
6	Abang Batudinding Bangli	AYDS			Individu Krama Desa	Proprietary
7	Tamanbali Bangli	AYDS/PKD			Individu Krama Desa	Proprietary
8	Jehem Tembuku Bangli	PKD			Traditional Villages	Proprietary
9	Gelgel Klungkung	PKD			Pakraman Village	Proprietary
10	Panca Bhuwana Santhi Nusa Penida Klungkung	PKD			Traditional Villages	Proprietary
11	Batubulan Sukawati Gianyar	PKD			Pakraman Village	Hak Milik

12	Jero Kuta Pejeng Gianyar	Teba AYDS			Individu Krama Desa	Hak Milik
13	Jero Kuta Pejeng Gianyar	PKD			Traditional Villages	Hak Milik
14	Demayu Gianyar	Teba AYDS			Individu Krama Desa	Hak Milik
15	Demayu Gianyar	PKD			Traditional Villages	Hak Mlik

## ANALYSIS

From the data described through the table above, it can be analyzed as follows: Until now there has been a variation in the type of customary land as customary land in each customary village. However, in general, in every customary village, it definitely controls and/or owns the land of Laba Pura, Tanah Setra. Meanwhile, in most customary villages, they also control and/or own market land, PKD land with their cultivation, AYDS land, Teba-AYDS land, field land, Village Profit land in the form of rice fields or gardens/moorlands, customary forests such as Tenganan Pegringsingan Karangasem Traditional Village.

The administrative model in the registration of these customary lands was found in two patterns after the issuance of Ministerial Decree 276/2017 jo Ministerial Regulation ATR 6/2028 concerning PTSL, which is as follows: For temple land is registered using the subject "Pura" with the title "Hak Milik", such as Melanting Temple, Prajapati Temple, Dalem Temple, Puseh Temple, Segara Temple, Banjar Penyarikan Temple. For market land, it is registered with the subject of Customary Village/Pakraman Village with the title of Customary Village/Pakraman Property Rights, for field land, either land or in the form of land near and/or beach, it is registered with the subject of the Temple belonging to the Customary Village/Pakraman which has the closest distance in the concept of Tri Mandala in accordance with the Decree of the Minister of Home Affairs SK.556/DJA/1986. As for AYDS land, Teba-AYDS and PKD were found several models, such as: Model 1 for AYDS and/or PKD land was registered using individual subjects of village krama (customary village members) with the title of ownership; Model 2 uses the subject of customary villages/pakraman villages with the title of property rights accompanied by a note appointing the village customs that occupy it; Model 3 for Teba-AYDS land is registered with the subject of village krama using the title of ownership, while for PKD land is registered with the subject of customary village/pakraman village using the title of ownership. So it was found that there are 3 (three) models in the registration of subjects and types of rights for the same type of land (AYDS-Teba-AYDS and PKD). The existence of model variations in the land registration of AYDS-Teba-AYDS and PKD proves that the state does not have a standard and definite standard in the registration of customary lands as customary land in Bali, which implies that there is no guarantee of legal certainty in choosing a model to convert from old rights to new rights according to the UUPA. The determination of this model seems to be determined more by the policy of the state legal structure such as BPN and at the insistence of the legal structure in customary villages, such as Prajuru Desa Adat. So whether or not the impact of the UUPA with its various organic regulations is very determined by the cue of the legal structures, which is relevant to Friedman's Legal System Theory (Friedman, 1975).

Another legal implication that can be analyzed is, with the conversion of models 1 to 3 indicating that there has been a co-optation of state law and the dominance of the application of state law to customary law, which is relevant to the theory of weak legal pluralism, thus eliminating the concept of *mulur-mungkret* which reflects the comparability of the relationship between the village community and the customary village in the control of customary land in the form of AYDS and PKD. With the individualization of customary villages as subjects of property rights, it limits the authority of customary villages absolutely in their utilization and use, and can even attract at any time when there is a dispute or arbitrarily impose customary sanctions on "kasepekang", such as the case in Demayu Village, Pejeng Jero Kuta, Taro Kelod Gianyar, Telaga Busungbiu Buleleng Village by evicting the village krama. Or conversely, when individualization is given to village krama, it can happen that the village krama that controls and owns the land will transfer to others, as has happened in Jehem Village, Tamanbali Bangli, Tenganan Pegringsingan Karangasem Traditional Village, Tusan Klungkung Village. So in this



registration model, it can cause arrogance both by customary villages and from customary village customs related to the authority to control and own it after registration is carried out according to the new rights in the UUPA. This indicates that the concept of communal religious control that underlies the control of customary land has been changed by state law to individual control (customary villages/village krama). Both eliminate the concept of mastery called customary rights. So that the initial purpose of the issuance of the UUPA and its organic regulations has not achieved its goals, namely certainty, fairness and utility. With the emergence of various disputes in the agrarian sector as a result of the registration and issuance of certificates through PTSL shows and proves that it has injured the sense of village customs on the one hand, while on the other hand it can also hurt the sense of justice in customary villages, as a further result, that the rules in question have not been able to provide benefits and problems for life in customary villages. So the UUPA as a state law has not achieved its goals, both for justice, certainty and utility, which is relevant to Gustav Radbruch, who stated that the main purpose of law is to realize justice, because the three interests of living together are the three basic values of law, namely justice, usefulness and legal certainty (Huijbers, 1982). According to John Rawls, justice is a value that realizes the balance between the parts of unity, between personal goals and common goals (Rawls, 1973).

Aware of the existence of incoherence in the application of rules in the field of customary land registration which has a huge impact on the existence of customary lands as customary land in Bali, namely the transfer of the status of all customary lands that have been administered in registration through PTSL, namely the transition of the control model in the concept of customary rights in customary law to the right of control and ownership according to state law, Therefore, the Government through the Ministry of ATR has again issued the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 14 of 2024 (Permen ATR 14/2024) concerning the Implementation of Land Administration and Land Registration of Customary Rights of Customary Law Communities. As the basis for the main consideration of its issuance, namely in an effort to recognize and respect the state for the customary rights of customary law communities and adjust the registration model so that there is harmony between the needs of customary law communities and the needs of legal development in the administration of customary lands, so that the concept and value of *mulur-mungkret* can be conserved in the development of state law, namely the existence of coexistence between customary law and state law in land registration Ulayat, especially for customary lands that have not been administered. The most important provision is observed in the administration of customary land, as stated in Article 4 paragraph (2) which states that: The administration of customary land rights as referred to in paragraph (1) is carried out to record customary land in the List of Customary Lands.

Customary Land Recording is carried out after going through several rigid stages and procedures, starting from inventory and identification, measurement and mapping activities. Only then was the recording of the Ulayat Land List carried out. In addition to being kept at the BPN office in the Regency, a copy of this list is submitted to the Customary Law Society and the local government where the Customary Land is located (Article 14). Customary Land Parcels that have been recorded in the Customary Land List can be submitted for Management Rights by the Customary Law Community Unit (Article 15). Meanwhile, the Customary Land Plot owned by the Customary Law Community Member Group can be determined as Property Rights on behalf of the Customary Law Community Member Group as common property (Article 17). So there are 2 (two) models of rights subjects and title rights that can be attached to Customary Land, namely: First, in the form of "management rights" with the subject of the Customary Law Community Unit, which in Bali is called Customary Village. Second, in the form of "property rights" by "members of the Customary Law Community" to the Customary Land owned by the Customary Law Community Member Group. These two titles of rights that can be granted to customary land, it seems that if not properly observed in Bali, it will be able to create new problems, by remembering that there are several types of customary land as customary land that has been controlled individually but is still in the communal bond of customary villages such as AYDS and PKD land. Therefore, the issuance of Ministerial Regulation ATR 14/2014 before it is implemented, it is necessary to disseminate various inputs, scientific thinking by establishing the needs of customary law, especially the concept and principles with the development of state law, between the needs of the Customary Law Community and the interests of the government and the state implemented by the BPN apparatus in the

district. Customary Land Recording is carried out after going through several rigid stages and procedures, starting from inventory and identification, measurement and mapping activities. Only then was the recording of the Ulayat Land List carried out. In addition to being kept at the BPN office in the Regency, a copy of this list is submitted to the Customary Law Society and the local government where the Customary Land is located (Article 14). Customary Land Parcels that have been recorded in the Customary Land List can be submitted for Management Rights by the Customary Law Community Unit (Article 15). Meanwhile, the Customary Land Plot owned by the Customary Law Community Member Group can be determined as Property Rights on behalf of the Customary Law Community Member Group as common property (Article 17). So there are 2 (two) models of rights subjects and title rights that can be attached to Customary Land, namely: First, in the form of "management rights" with the subject of the Customary Law Community Unit, which in Bali is called Customary Village. Second, in the form of "property rights" by "members of the Customary Law Community" to the Customary Land owned by the Customary Law Community Member Group. These two titles of rights that can be granted to customary land, it seems that if not properly observed in Bali, it will be able to create new problems, by remembering that there are several types of customary land as customary land that has been controlled individually but is still in the communal bond of customary villages such as AYDS and PKD land.

Therefore, the issuance of Ministerial Regulation ATR 14/2014 before it is implemented, it is necessary to disseminate various inputs, scientific thinking by establishing the needs of customary law, especially the concept and principles with the development of state law, between the needs of the Customary Law Community and the interests of the government and the state implemented by the BPN apparatus in the district.

## CONCLUSION

It was found that there are 3 (three) administrative models in the registration of customary lands as customary villages, especially for AYDS, Teba-AYDS, and PKD lands, namely: First, for AYDS land is registered using individual/individual subjects from the village krama itself with the title "ownership" given AYDS land records, so that it has legal implications for the loss of status as customary land and customary village customs and is vulnerable to being transferred to other parties outside the village krama (village members). There is also a loss of customary relations in the concept of the village krama and its customary village in relation to the father in the form of obligations in the customary village. Second, for Teba-AYDS land, it is registered using individual subjects of village krama with the title "ownership" without any record as AYDS land. So purely become a full individual land. The legal implication is to completely eliminate its status as customary land and honor the obligations of the father who previously attached it to the owner or the one in control. Third, PKD land is registered using the subject of customary villages/pakraman villages with the title "ownership". The legal implications caused by the loss of the relationship between village customs and customary villages can thicken and thin in the concept of creeping. However, what has emerged is the strengthening and increasingly absolute power and authority of customary villages over village customs in the relationship of control and regulation of PKD land to the property of customary villages that were previously village customaries. Therefore, several recommendations are needed, namely:

First, it is hoped that there will be a change in the model in the appointment of rights subjects in the registration of customary land as customary villages so that customary lands that have been registered do not lose their function as village customary lands and the relationship between village customs and customary villages can still be maintained by means of the ability to oscillate between customary law and state law in the registration of land as customary villages.

Second, individualization in the registration of customary lands, especially AYDS and PKD lands, must be avoided both by using customary village subjects and customary village rights subjects individually because they are prone to causing disputes as a result of the arrogance of ownership from the previous one in the form of control in the concept of customary rights.

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