

AUTHORITY IN THE MANAGEMENT AND UTILIZATION OF AGRARIAN RESOURCES IN INDONESIA

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Abstract:

This study examines the construction and institutional distribution of authority in the management and utilization of agrarian resources in Indonesia, particularly where land administration, forestry governance, the Right of Management (Hak Pengelolaan), and ulayat rights intersect within the same space. It tests the proposition that institutional fragmentation should be addressed by concentrating authority in a single institution. Using normative legal research with a statutory approach and systematic interpretation, the analysis maps forms of authority according to their legal source, holder, object, scope of action, legal consequences, and limits, while employing the concepts of attribution, delegation, mandate, the State's Right of Control, and property–authority as analytical tools. The findings show that the State's Right of Control constitutes public authority whose exercise is distributed among governmental institutions on distinct normative bases. Land and forestry authorities may operate within the same space without necessarily producing an overlap of competence. The Right of Management is a specific legal instrument for land management and cannot be treated as the general source or prerequisite of sectoral authority independently conferred by legislation. Ulayat rights likewise cannot be reduced either to a delegation of the State's Right of Control or to the outcome of administrative recognition and land registration, because their existence must be distinguished from the administrative mechanisms through which Ulayat Land is formalized and afforded legal certainty. On this basis, the study proposes a model of differentiated but coordinated authority, under which institutional competences remain distinct while coordination, data integration, cross-verification, and dispute-resolution mechanisms operate at points of intersection between legal regimes. Institutional coherence is better achieved through clear delimitation of competence and effective coordination than through centralization of agrarian authority.

Keywords: agrarian authority; Right of Management; ulayat rights; forestry governance

INTRODUCTION

The control and utilization of land concern not only the existence of rights or claims over land, but also the authority that recognizes, regulates, and limits the exercise of those rights. Sikor and Lund demonstrate that *property* and *authority* are mutually constitutive because recognition of a claim over resources requires an authority regarded as legitimate, while the act of recognition itself contributes to the formation and reinforcement of that institution's

authority.¹ This relationship becomes more complex when public authority is not exercised by a single institution. Lund shows that several institutions may simultaneously exercise or claim public authority, particularly where the boundaries of authority and institutional legitimacy remain unclear. Such complexity becomes more pronounced when the same space falls within multiple legal regimes and is governed by institutions deriving their authority from different legal bases.²

This complexity assumes a distinctive form within Indonesian agrarian law. Article 1 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria*, UUPA) characterizes the earth, water, airspace, and the natural resources contained therein as national wealth, while establishing the relationship between the Indonesian nation and the earth, water, and airspace as enduring in nature.³ Article 2 of the UUPA subsequently positions the state as the organization of power of the entire people, with authority to regulate and administer the allocation, use, supply, and maintenance of agrarian resources and the legal relations arising from them.⁴ Within the framework of Indonesian land law, Sembiring explains the State's Right to Control (*Hak Menguasai dari Negara*, HMN) as a form of public authority that constitutionally derives from attribution under the 1945 Constitution and, within the conceptual structure of national land law, is understood as the transfer of public authority from the Indonesian Nation to the state rather than as state ownership in the private-law sense.⁵ Constitutional interpretation by the Constitutional Court has further developed the concept of state control through the functions of policy-making, administration, regulation, management, and supervision over natural resources.⁶ The exercise of these functions takes place within a governmental structure in which land affairs and natural-resource management are distributed among several institutions according to their respective areas of responsibility.

The exercise of the State's Right to Control operates through a governmental structure that allocates land affairs and natural-resource management among different institutions. Presidential Regulation No. 176 of 2024 assigns the Ministry of Agrarian Affairs and Spatial Planning responsibility for governmental affairs in land administration and spatial planning, while Presidential Regulation No. 177 of 2024 assigns the National Land Agency governmental functions in land affairs, including the determination of land rights and land registration, land-use administration, and the control of land tenure, ownership, use, and utilization.⁷ In the forestry sector, Presidential Regulation No. 175 of 2024 assigns the Ministry of Forestry responsibility for governmental affairs in forestry, including forest-area consolidation, sustainable forest management, conservation, social forestry, and forestry protection and law

¹ Thomas Sikor and Christian Lund, "Access and Property: A Question of Power and Authority," *Development and Change* 40, no. 1 (2009): 1–22, <https://doi.org/10.1111/j.1467-7660.2009.01503.x>

² Christian Lund, "Twilight Institutions: Public Authority and Local Politics in Africa," *Development and Change* 37, no. 4 (2006): 685–705, <https://doi.org/10.1111/j.1467-7660.2006.00497.x>.

³ Republic of Indonesia, *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria* [Law No. 5 of 1960 on Basic Agrarian Principles] (hereinafter UUPA), arts. 1(2)–(3), <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

⁴ UUPA, art. 2(1)–(2).

⁵ Julius Sembiring, "Hak Menguasai Negara atas Sumber Daya Agraria," *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 2 (2016): 119–32, <https://doi.org/10.31292/jb.v2i2.65>.

⁶ Constitutional Court of the Republic of Indonesia, *Decision No. 001-021-022/PUU-I/2003*.

⁷ Republic of Indonesia, *Peraturan Presiden Nomor 176 Tahun 2024 tentang Kementerian Agraria dan Tata Ruang* [Presidential Regulation No. 176 of 2024 on the Ministry of Agrarian Affairs and Spatial Planning], arts. 5–6, <https://peraturan.bpk.go.id/Details/306891/perpres-no-176-tahun-2024>; Republic of Indonesia, *Peraturan Presiden Nomor 177 Tahun 2024 tentang Badan Pertanahan Nasional* [Presidential Regulation No. 177 of 2024 on the National Land Agency], arts. 3–4, <https://peraturan.bpk.go.id/Details/306890/perpres-no-177-tahun-2024>.

enforcement.⁸ This division of functions does not, by itself, demonstrate an overlap of authority. However, Sahide and Giessen find that formal responsibilities in Indonesia's land-use administration are characterized by a complex and fragmented bureaucratic structure.⁹ Riggs et al. illustrate the issue more concretely in Rempek, Lombok, where legal uncertainty concerning land and resources, including the boundaries of forest areas, is associated with continuing tenure insecurity and land-control conflicts.¹⁰ At this point of institutional intersection, the distinction between authority to determine the legal status and legal relations of land and authority to regulate the sectoral function of an area requires closer examination.

The central issue therefore does not lie merely in the number of institutions involved, but in distinguishing the different legal relations operating within the same space. Sitorus distinguishes tenure relations over land, which are established through land rights, from legal relations concerning the extraction and utilization of agrarian resources other than land, which are generally governed through licensing instruments and do not automatically constitute a legal basis for the use of land as the earth's surface.¹¹ This distinction becomes significant when sectoral authority over natural resources intersects with legal relations concerning land. A comparable complexity arises in relation to the Right of Management (*Hak Pengelolaan*, HPL). Government Regulation No. 18 of 2021 defines the Right of Management as part of the State's Right to Control whose exercise is partially delegated to its holder, while Santoso's study shows that doctrinal debate and earlier regulatory developments reflected differing views on whether the Right of Management should be situated within the State's Right to Control or treated as a right comparable to land rights.¹² This intersection raises a further question concerning the relationship between governmental authority directly conferred by legislation and land-management authority derived from the exercise of the State's Right to Control.

Previous studies have examined different elements of this problem through distinct units of analysis. Sembiring examines the State's Right to Control as a form of public authority, including its source, modes of exercise, and limitations, while Sitorus distinguishes tenure relations over land from legal relations governing the utilization of agrarian resources other than land through licensing instruments.¹³ Sahide and Giessen identify the fragmentation of bureaucratic responsibilities within land-use administration, while Riggs et al. demonstrate how legal uncertainty concerning land and resources may perpetuate tenure insecurity and conflicts over land control.¹⁴ In relation to the Right of Management, Santoso examines its position within the national land-tenure structure, while Zulfikar, Pujiwati, and Wahjuni show that the regulation of its subjects and attached powers continues to raise questions of legal

⁸ Republic of Indonesia, *Peraturan Presiden Nomor 175 Tahun 2024 tentang Kementerian Kehutanan* [Presidential Regulation No. 175 of 2024 on the Ministry of Forestry], arts. 5–6, <https://peraturan.bpk.go.id/Details/306886/perpres-no-175-tahun-2024>.

⁹ Muhammad Alif K. Sahide and Lukas Giessen, "The Fragmented Land Use Administration in Indonesia: Analysing Bureaucratic Responsibilities Influencing Tropical Rainforest Transformation Systems," *Land Use Policy* 43 (2015): 96–110, <https://doi.org/10.1016/j.landusepol.2014.11.005>.

¹⁰ Rebecca Anne Riggs et al., "Forest Tenure and Conflict in Indonesia: Contested Rights in Rempek Village, Lombok," *Land Use Policy* 57 (2016): 241–49, <https://doi.org/10.1016/j.landusepol.2016.06.002>.

¹¹ Oloan Sitorus, "Penataan Hubungan Hukum dalam Penguasaan, Pemilikan, Penggunaan, dan Pemanfaatan Sumber Daya Agraria (Studi Awal terhadap Konsep Hak atas Tanah dan Ijin Usaha Pertambangan)," *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 1 (2016): 1–11, <https://doi.org/10.31292/jb.v2i1.29>.

¹² Republic of Indonesia, *Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah* [Government Regulation No. 18 of 2021 on Rights of Management, Land Rights, Strata Title Units, and Land Registration], art. 1(3), <https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021>; Urip Santoso, "Eksistensi Hak Pengelolaan dalam Hukum Tanah Nasional," *Mimbar Hukum* 24, no. 2 (2012): 275–88, <https://doi.org/10.22146/jmh.16130>.

¹³ Sembiring, "Hak Menguasai Negara," 119–32; Sitorus, "Penataan Hubungan Hukum," 1–11.

¹⁴ Sahide and Giessen, "The Fragmented Land Use Administration in Indonesia," 96–110; Riggs et al., "Forest Tenure and Conflict in Indonesia," 241–49.

certainty.¹⁵ These studies have not specifically brought together governmental authority derived directly from legislation and land-management authority derived from the partial delegation of the exercise of the State's Right to Control, particularly where both operate within the same physical space. Addressing this analytical space requires a mapping of the source, form, object, and limits of each authority before interinstitutional relations can be characterized as a division of functions, an intersection of authority, or a legal overlap of authority.

Building on this analytical gap, this study focuses on the legal construction of authority in the management and utilization of agrarian resources, particularly the relationship between governmental authority derived from legislation and land-management authority arising from the exercise of the State's Right to Control. The theory of governmental authority is employed to trace the acquisition of authority through attribution, delegation, and mandate and to identify the material, territorial, and accountability limits associated with its exercise.¹⁶ This framework is combined with the concept of *property–authority*, which situates the recognition of legal relations over resources within its relationship to the institutional authority that grants and sustains such recognition.¹⁷ Through this framework, the study examines the source, object, and limits of land authority and sectoral authority where both operate within the same space, including the position of the Right of Management and ulayat rights in shaping or limiting the exercise of such authority. The analysis is directed toward constructing a legal framework capable of distinguishing a division of functions, an intersection of authority, and an overlap of authority in the management and utilization of agrarian resources.

METHOD

This study employs a normative legal research method using a statutory approach. This approach is selected because the research problem concerns the source, distribution, and limits of authority in the management and utilization of agrarian resources as established through legislation. The analysis focuses on the normative relationship among the 1945 Constitution, the Basic Agrarian Law, legislation governing land and forestry, regulations concerning the Right of Management and ulayat land, and institutional regulations governing the functions of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Forestry. Doctrinal legal research is employed to identify relevant legal norms, interpret their content, and examine the consistency and relationship among statutory provisions within a single legal system. Hutchinson and Duncan identify the location of relevant legal sources, interpretation, and legal analysis as fundamental components of doctrinal research, while Van Hoecke places interpretation at the core of the construction of legal doctrine.¹⁸ The statutory approach is therefore used to determine whether the authority exercised by each institution has

¹⁵ Santoso, "Eksistensi Hak Pengelolaan," 275–88; Moch Dinur Zulfikar, Yani Pujiwati, and Sari Wahjuni, "Kedudukan Hak Pengelolaan dalam Hukum Tanah Nasional Dikaitkan Kepemilikan Barang Milik Negara/Daerah," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 1, no. 2 (2022): 229–45, <https://doi.org/10.23920/litra.v1i2.771>.

¹⁶ Republic of Indonesia, *Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan* [Law No. 30 of 2014 on Government Administration], as amended by *Undang-Undang Nomor 6 Tahun 2023*, arts. 1(22)–(24) and 11–15, <https://peraturan.bpk.go.id/Details/38695/uu-no-30-tahun-2014>; Moh Gandara, "Kewenangan Atribusi, Delegasi dan Mandat," *Khazanah Hukum* 2, no. 3 (2020): 92–99, esp. 93–96, <https://doi.org/10.15575/kh.v2i3.8187>.

¹⁷ Sikor and Lund, "Access and Property," 1–22.

¹⁸ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119, <https://doi.org/10.21153/dlr2012vol17no1art70>; Mark Van Hoecke, "Legal Doctrine: Which Method(s) for What Kind of Discipline?," *Ciencia Jurídica* 3, no. 6 (2014): 127–48, <https://doi.org/10.15174/cj.v3i2.115>.

distinct legal bases, objects, and scopes or whether different authorities intersect in relation to the same legal object.¹⁹

ANALYSIS AND DISCUSSION

The Legal Construction of the State's Right of Control and the Distribution of Agrarian Authority

Indonesian agrarian law distinguishes the relationship between the Indonesian nation and agrarian resources from the position of the State in exercising control over those resources. Article 1(2) of the Basic Agrarian Law (UUPA) provides that the earth, water, and airspace, including the natural resources contained therein, constitute the earth, water, and airspace of the Indonesian nation and form part of the national wealth, while Article 1(3) characterizes the relationship between the Indonesian nation and those resources as an enduring one. Article 2 of the UUPA subsequently places the State, as the organization of power of the entire people, at the highest level of control over the earth, water, and airspace. Within the construction of Indonesia's National Land Law, the State's Right of Control (*Hak Menguasai dari Negara*) constitutes public-law authority and is not equivalent to ownership in the private-law sense.²⁰ The Constitutional Court has further developed the meaning of State control through the functions of policy-making, administration, regulation, management, and supervision.²¹ This construction shifts the inquiry toward how State authority is exercised and distributed among governmental organs.

The exercise of State authority cannot be equated with the authority of a single governmental organ. Article 2(4) of the UUPA provides that the exercise of the State's Right of Control may be entrusted to autonomous regions (*daerah-daerah Swatantra*) and customary law communities (*masyarakat-masyarakat hukum adat*), insofar as necessary and not contrary to the national interest. This provision distinguishes the State, as the subject exercising the highest level of control, from the entities entrusted with part of its implementation. Under the current governmental structure, the Ministry of Agrarian Affairs and Spatial Planning administers governmental affairs in land administration and the spatial-planning sub-sector, the National Land Agency (BPN) performs governmental functions in land administration, while the Ministry of Forestry administers governmental affairs in forestry.²² This allocation places land within a physical space in which several governmental functions may intersect, making it necessary to distinguish the object and scope of each authority before determining the legal relationship between them.

Such differentiation indicates that the involvement of several institutions within the same physical space does not, in itself, establish an overlap of authority. Within the land-law regime, the BPN performs, among other functions, the determination of land rights and land registration, land-use administration, and the control of land possession, ownership, use, and utilization.²³ By contrast, the Forestry Law grants the Government authority to regulate and administer forests, forest areas, and forest products, including the authority to designate particular areas as forest areas or to designate forest areas as non-forest areas.²⁴ In the context

¹⁹ Tunggal Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origin and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

²⁰ Sembiring, "Hak Menguasai Negara," 119–32.

²¹ Constitutional Court, *Decision No. 001-021-022/PUU-I/2003*; Yance Arizona, "Perkembangan Konstitusionalitas Penguasaan Negara atas Sumber Daya Alam dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 3 (2011): 257–314, <https://doi.org/10.31078/jk833>.

²² *Perpres No. 176 Tahun 2024*, arts. 5–6; *Perpres No. 177 Tahun 2024*, arts. 3–4; *Perpres No. 175 Tahun 2024*, arts. 5–6.

²³ *Perpres No. 177 Tahun 2024*, arts. 3–4.

²⁴ Republic of Indonesia, *Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan* [Law No. 41 of 1999 on Forestry], as amended, art. 4(2), <https://peraturan.bpk.go.id/Details/45373/uu-no-41-tahun-1999>.

examined here, land-administration functions concern the determination and administration of legal relations over land, whereas forestry authority concerns the legal status of forest areas and the administration of forestry affairs. Sitorus demonstrates the importance of distinguishing tenure relations over land from legal relations concerning the utilization of other agrarian resources because each is constituted through different legal instruments and produces different legal consequences.²⁵ The intersection between these two regimes becomes a legal issue when the designation or gazettelement of a forest area encounters pre-existing land rights or *ulayat* rights within the same territory.²⁶

Constitutional Court Decision No. 45/PUU-IX/2011 clarifies the limits of forestry authority at precisely this point of intersection. The Court affirmed that the designation of a forest area constitutes only one stage in the forest-area gazettelement process and that boundary demarcation and mapping must take into account the possible existence of individual rights or customary territorial rights (*hak pertuanan/ulayat*) within the area to be designated as forest.²⁷ This principle was subsequently reflected in Government Regulation No. 23 of 2021, which incorporates the inventory and settlement of third-party rights into the process of forest-boundary demarcation.²⁸ The position of customary law communities was further reinforced by Constitutional Court Decision No. 35/PUU-X/2012, which removed customary forests from the category of State forests and defined customary forests as forests located within the territories of customary law communities.²⁹ These developments direct the analysis toward the manner in which the forestry regime itself accommodates legal relations over land and customary territories in determining forest status.

The forestry regime itself links forest status to legal relations over land and customary territories. Government Regulation No. 23 of 2021 defines State Forest (*Hutan Negara*) as forest located on land that is not encumbered by land rights, Rights Forest (*Hutan Hak*) as forest located on land encumbered by land rights, and Customary Forest (*Hutan Adat*) as forest located within the territory of a Customary Law Community.³⁰ These categories indicate that the determination of forest status is not wholly detached from legal relations that already exist, or operate concurrently, over the relevant land or territory. At the same time, the existence of a legal relation over land does not in itself create authority to administer forestry affairs. The relationship between these two layers becomes more complex where a governmental institution requires a legal basis to manage particular Land for the performance of its functions, which brings the analysis to the position of the Right of Management (*Hak Pengelolaan*) within the structure of the State's Right of Control.

The Right of Management is relevant in this context because Government Regulation No. 18 of 2021 defines it as the State's Right of Control whose exercise is partially delegated to the holder of the Right of Management. A Right of Management originating from State Land may be granted, among others, to Central Government institutions, subject to requirements concerning the relationship between the institution's principal duties and functions and the management of Land.³¹ Article 7 of the same Regulation specifies the powers of a Right of Management holder to prepare plans for the designation, use, and utilization of Land; to use or

²⁵ Sitorus, "Penataan Hubungan Hukum," 1–11.

²⁶ Constitutional Court of the Republic of Indonesia, *Decision No. 45/PUU-IX/2011*, particularly the legal considerations concerning forest-area gazettelement and existing individual and *ulayat* rights.

²⁷ Constitutional Court, *Decision No. 45/PUU-IX/2011*, paras. [3.12.3]–[3.12.4].

²⁸ Republic of Indonesia, *Peraturan Pemerintah Nomor 23 Tahun 2021 tentang Penyelenggaraan Kehutanan* [Government Regulation No. 23 of 2021 on Forestry Administration], as amended by *Peraturan Pemerintah Nomor 8 Tahun 2026*, art. 19(2)(d), (3), <https://peraturan.bpk.go.id/Details/161853/pp-no-23-tahun-2021>.

²⁹ Constitutional Court of the Republic of Indonesia, *Decision No. 35/PUU-X/2012*, legal considerations and operative paras. 1.1–1.2.

³⁰ *PP No. 23 Tahun 2021*, as amended, art. 1(4), (6), (7).

³¹ *PP No. 18 Tahun 2021*, art. 1(3) and arts. 5–7.

utilize all or part of the Land under the Right of Management for its own purposes or in cooperation with other parties; and to determine tariffs and/or annual mandatory payments imposed on other parties pursuant to an agreement. Santoso similarly conceptualizes the Right of Management as the exercise of part of the State's authority of control relating to land management, rather than as ownership in the private-law sense.³² This scope requires the analysis to turn to the source of sectoral authority itself in order to determine whether such authority derives from the Right of Management or instead rests on an independent normative basis.

In the forestry sector, that source of authority is found directly in the Forestry Law. Article 4(2) of Law No. 41 of 1999 grants the Government authority to regulate and administer forests, forest areas, and forest products; to determine the status of particular areas as forest areas or forest areas as non-forest areas; and to regulate legal relations between persons and forests as well as legal acts concerning forestry.³³ Within the framework of administrative-law theory, authority conferred directly by statute has the character of attributed authority, whereas the Right of Management results from the partial delegation of the exercise of the State's Right of Control to its holder.³⁴ This difference in the mode by which authority is acquired means that the Right of Management cannot automatically be treated as the source from which forestry authority is constituted. The issue therefore shifts to whether the land-law regime requires control or management of particular Land as a general precondition before forestry authority derived from statute may be exercised.

An examination of the regulations governing the two fields does not reveal a normative basis for treating land-administration authority as a general precondition for the exercise of forestry authority. General Elucidation II(2) of the UUPA does provide that the State may place land that is not held under a particular right under the management of a Governing Body (*Badan Pengusaha*) for the performance of its functions, but the provision does not establish such management as the legal basis for the creation of every form of sectoral authority. Government Regulation No. 18 of 2021 characterizes the Right of Management as the partial delegation of the exercise of the State's Right of Control, whereas the Forestry Law directly confers forestry authority upon the Government.³⁵ Presidential Regulation No. 177 of 2024, meanwhile, positions the BPN as the institution responsible for governmental functions in land administration and specifies the land-related functions it performs.³⁶ This configuration directs the analysis toward a construction of inter-institutional authority that preserves the distinct sources and objects of each competence while still accounting for the intersections that may arise in their implementation.

On the basis of this mapping, the relationship between land-administration authority and forestry authority at the normative level is more accurately understood as a distribution of distinct competences, rather than as the consolidation of all authority relating to land within a single institution. An intersection may be characterized as an overlap of authority only where an act performed under one competence enters into the legal object, scope, or legal consequences falling within another competence.³⁷ Within this construction, the Right of Management provides a legal basis for the management of Land by its holder within the scope prescribed by law, but it does not constitute the source of attributed sectoral authority that has

³² Santoso, "Eksistensi Hak Pengelolaan," 275–88.

³³ *Undang-Undang No. 41 Tahun 1999*, as amended, art. 4(2).

³⁴ *Undang-Undang No. 30 Tahun 2014*, as amended, art. 1(22) and art. 12; *PP No. 18 Tahun 2021*, art. 1(3); Gandara, "Kewenangan Atribusi, Delegasi dan Mandat," 93–96.

³⁵ *PP No. 18 Tahun 2021*, art. 1(3); *Undang-Undang No. 41 Tahun 1999*, as amended, art. 4(2).

³⁶ *Perpres No. 177 Tahun 2024*, arts. 3–4.

³⁷ *Undang-Undang No. 30 Tahun 2014*, as amended, arts. 1(13) and 15; Sitorus, "Penataan Hubungan Hukum," 1–11.

already been conferred directly by statute.³⁸ This distinction therefore corrects the proposition that a Right of Management constitutes a general prerequisite for sectoral ministries to exercise their statutory authority. The next issue arises where this distribution of authority operates within territories already governed by distinct legal relations through the *ulayat* rights of customary law communities, which requires further examination of the position of *ulayat* rights within the relationship among the Right of the Indonesian Nation (*Hak Bangsa*), the State's Right of Control, and the exercise of governmental authority.

The Legal Position of Ulayat Rights and Customary Law Communities within the Structure of State Control

The legal position of *ulayat* rights under the Basic Agrarian Law (UUPA) is not identical to the exercise of the State's Right of Control (*Hak Menguasai dari Negara*) that may be entrusted to customary law communities. Article 2(4) of the UUPA regulates the exercise of the State's Right of Control that may be entrusted to autonomous regions (*daerah-daerah Swatantra*) and customary law communities (*masyarakat-masyarakat hukum adat*), whereas Article 3 separately governs the exercise of *ulayat* rights and other similar rights, insofar as they continue to exist in fact and their exercise is consistent with the national and State interests. These provisions have different normative objects: Article 2(4) concerns the exercise of authority derived from the State's Right of Control, while Article 3 concerns the exercise of *ulayat* rights whose existence is determined by the factual circumstances of the customary law community concerned. The phrase "having regard to the provisions of Articles 1 and 2" places *ulayat* rights within the framework of the Right of the Indonesian Nation (*Hak Bangsa*) and the State's Right of Control, but does not indicate that *ulayat* rights derive from a delegation of the State's Right of Control.³⁹ This distinction leads to the question of the relationship between the existence of *ulayat* rights and their recognition by the State.

The existence of *ulayat* rights must be distinguished from the administration of Ulayat Land (*Tanah Ulayat*), the formal determination of a customary law community, and the registration of Ulayat Land. Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 14 of 2024 provides that *ulayat* rights may be exercised insofar as they continue to exist in fact under customary law, as indicated by the community's continuing adherence to its customary legal order, the existence of Ulayat Land, and/or the continuing operation of customary rules governing the administration, control, and use of such land.⁴⁰ The administrative process consists of inventory and identification, surveying and mapping, and recording in the Ulayat Land Register. The same regulation allows this process to proceed even where the customary law community has not yet been formally determined by the regional government; a copy of the Ulayat Land Register may even be used as material for consideration in that determination process. However, the formal determination of the customary law community, together with a copy of the Ulayat Land Register, constitutes the basis for registration of Ulayat Land. This construction distinguishes the factual existence of *ulayat* rights from the stages through which they are formalized within the land administration system, a distinction that acquires a constitutional dimension when applied to the status of customary forests.

³⁸ PP No. 18 Tahun 2021, arts. 5–8; Undang-Undang No. 41 Tahun 1999, as amended, art. 4(2).

³⁹ Mukmin Zakie, "Konsepsi Hak Menguasai Oleh Negara Atas Sumberdaya Agraria," *Jurnal Hukum IUS QUIA IUSTUM* 12, no. 29 (2005): 111–27, esp. 120, <https://doi.org/10.20885/iustum.vol12.iss29.art9>.

⁴⁰ Republic of Indonesia, *Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 14 Tahun 2024 tentang Penyelenggaraan Administrasi Pertanahan dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat* [Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 14 of 2024 on the Administration and Registration of Ulayat Land of Customary Law Communities], arts. 2(1)–(2), 4, and 14(3)–(5), <https://peraturan.bpk.go.id/Details/280736/permen-atrkepala-bpn-no-14-tahun-2024>.

Constitutional Court Decision No. 35/PUU-X/2012 affirmed the position of customary forests in relation to the State's Right of Control. The Court declared that the word "State" in Article 1(6) of the Forestry Law had no binding legal force, thereby construing customary forest as forest situated within the territory of a customary law community. The Court also placed customary forests within the scope of *ulayat* rights and held that State authority over such forests is limited by the content of the community's *ulayat* authority, with the result that the State exercises only indirect authority over customary forests.⁴¹ Although all categories of forest remain, at the highest level, subject to State control, such control is public in character and neither transforms customary forests into State forests nor extinguishes the legal relationship between customary law communities and their *ulayat* territories.⁴² This distinction determines how forestry authority must be exercised when it encounters territory falling within the scope of *ulayat* rights.

The consequences of this distinction are evident in the forest-area gazettelement process. Constitutional Court Decision No. 45/PUU-IX/2011 affirmed that forest-area gazettelement must take into account the possible existence of individual rights or customary territorial rights (*hak pertuanan/ulayat*), while Decision No. 35/PUU-X/2012 placed customary forests outside the category of State forests.⁴³ This principle is reflected in Government Regulation No. 23 of 2021, which incorporates the inventory and settlement of third-party rights into the forest-boundary demarcation process.⁴⁴ Accordingly, the designation and gazettelement of a forest area do not, by themselves, extinguish existing *ulayat* legal relations within the relevant territory. The next issue concerns how the land administration system gives formal legal form to Ulayat Land without treating that formalization as the source of the underlying *ulayat* right itself.

The formalization of Ulayat Land within the land administration system does not produce a uniform legal consequence. Ministerial Regulation No. 14 of 2024 provides that Ulayat Land recorded in the Ulayat Land Register may be submitted for recognition as a Right of Management (*Hak Pengelolaan* or HPL) by a Customary Law Community Unit (*Kesatuan Masyarakat Hukum Adat*), while land that is not submitted for recognition as HPL retains its status as Ulayat Land.⁴⁵ For a Group of Members of a Customary Law Community (*Kelompok Anggota Masyarakat Hukum Adat*), Ulayat Land may be established as a collective right of ownership registered in the name of the group. This construction demonstrates that the registration system provides several possible legal forms and does not make HPL a mandatory consequence of the administration of Ulayat Land. Government Regulation No. 18 of 2021 further provides that HPL arises upon registration by the Land Office.⁴⁶ These different legal consequences require further examination of what occurs when Ulayat Land is specifically formalized as HPL.

Once Ulayat Land is established as HPL, its management becomes subject to the powers prescribed by Government Regulation No. 18 of 2021. The HPL holder is authorized to prepare plans for the designation, use, and utilization of the land; to use or utilize the land itself or in cooperation with other parties; and to enable the granting of Rights of Cultivation (*Hak Guna Usaha* or HGU), Rights to Build (*Hak Guna Bangunan* or HGB), or Rights of Use

⁴¹ Constitutional Court, *Decision No. 35/PUU-X/2012*, legal considerations concerning customary forests, *ulayat* rights, and the scope of State authority, and operative paras. 1.1–1.2.

⁴² Constitutional Court, *Decision No. 35/PUU-X/2012*, 171–73; Faiq Tobroni, "Menguatkan Hak Masyarakat Adat atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)," *Jurnal Konstitusi* 10, no. 3 (2013): 461–82, <https://doi.org/10.31078/jk1035>.

⁴³ Constitutional Court, *Decision No. 45/PUU-IX/2011*, paras. [3.12.3]–[3.12.4]; Constitutional Court, *Decision No. 35/PUU-X/2012*, legal considerations and operative paras. 1.1–1.2.

⁴⁴ *PP No. 23 Tahun 2021*, as amended, art. 19(2)(d), (3).

⁴⁵ *Permen ATR/Kepala BPN No. 14 Tahun 2024*, arts. 15(1)–(3), 16(1)–(2), and 17(1)–(2).

⁴⁶ *PP No. 18 Tahun 2021*, arts. 10–11.

(*Hak Pakai*) over the HPL in accordance with applicable laws and regulations.⁴⁷ These legal consequences arise from the HPL regime and must therefore be distinguished from the basis of *ulayat* rights, which rests on the continued existence of a customary law community, its territory, and its operative customary legal order. The literature indicates that applying the HPL construction to Ulayat Land may generate legal difficulties where the distinct legal foundations and characteristics of the two relationships are not preserved.⁴⁸ Accordingly, legal certainty provided through HPL cannot simply be equated with recognition of *ulayat* rights; rather, HPL constitutes a distinct land-law status carrying its own powers and legal consequences.

Taken together, these legal arrangements demonstrate that *ulayat* rights cannot be reduced either to the exercise of the State's Right of Control or to the outcome of land registration. Their existence is grounded in the continued existence of customary law communities and their legal relationship with their *ulayat* territories, subject to the requirements established by positive law, while administration, formal determination of the customary law community, and registration provide legal form and certainty to that relationship.⁴⁹ Where Ulayat Land is established as HPL, the powers and legal consequences of the HPL regime apply; conversely, Ulayat Land that is not submitted as HPL may continue to retain its status as Ulayat Land.⁵⁰ Land and forestry authorities must therefore be exercised with due regard to the legal position of *ulayat* rights, without treating administrative acts as the sole source of their existence. This construction provides the basis for reorganizing inter-sectoral institutional relations so that the distribution of State authority can operate without obscuring the legal position of the *ulayat* rights of customary law communities.

Reconstructing the Institutional Framework of Agrarian Authority

The findings of the two preceding sections indicate that institutional problems in agrarian governance cannot appropriately be resolved by concentrating all authority that intersects with land in a single institution. The Ministry of Agrarian Affairs and Spatial Planning and the National Land Agency (BPN) perform functions in the land sector, while the Ministry of Forestry performs functions in the forestry sector under their respective normative frameworks.⁵¹ Institutional reconstruction should therefore focus on clarifying the boundaries of competence and regulating points of intersection between authorities, rather than eliminating the plurality of sectoral competences. The literature on land-use administration and tenure reform shows that institutional fragmentation becomes problematic when the distribution of responsibilities is not accompanied by adequate coordination.⁵² The central issue, therefore, is not to identify a single holder of authority, but to establish criteria capable of distinguishing the allocation of competence, intersections between authorities, and overlaps of authority.

For the purposes of such reconstruction, the boundaries of competence should be mapped according to the source of authority, holder of authority, legal object, scope of action,

⁴⁷ PP No. 18 Tahun 2021, arts. 7–8.

⁴⁸ Dian Cahyaningrum, “Hak Pengelolaan Tanah Ulayat Masyarakat Hukum Adat untuk Kepentingan Investasi,” *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 13, no. 1 (2022): 41–59, <https://doi.org/10.22212/jnh.v13i1.2970>; Thomas Al Ghazali Burhan and Tamsil, “Disharmoni dan Inkonsistensi Pengaturan Hak Pengelolaan di Atas Hak Ulayat Karapatan Adat Nagari,” *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 5, no. 2 (2026): 186–204, <https://doi.org/10.23920/litra.v5i2.2612>.

⁴⁹ Republic of Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* [Constitution of the Republic of Indonesia of 1945], art. 18B(2); UUPA, art. 3; *Permen ATR/Kepala BPN No. 14 Tahun 2024*, arts. 2, 4, and 14.

⁵⁰ PP No. 18 Tahun 2021, arts. 7–11; *Permen ATR/Kepala BPN No. 14 Tahun 2024*, arts. 15–17.

⁵¹ *Perpres No. 176 Tahun 2024*, arts. 5–6; *Perpres No. 177 Tahun 2024*, arts. 3–4; *Perpres No. 175 Tahun 2024*, arts. 5–6.

⁵² Sahide and Giessen, “The Fragmented Land Use Administration in Indonesia,” 96–110; Rodd Myers et al., “Coordinating Forest Tenure Reform: Objectives, Resources and Relations in Indonesia, Kenya, Nepal, Peru, and Uganda,” *Forest Policy and Economics* 139 (2022): 102718, <https://doi.org/10.1016/j.forpol.2022.102718>.

and legal consequences associated with each competence. Law No. 30 of 2014 on Government Administration distinguishes the acquisition of authority through attribution, delegation, and mandate, and limits the exercise of authority by reference to time, territorial jurisdiction, and the subject matter or scope of competence.⁵³ In the agrarian context, the fact that different authorities operate within the same physical space is therefore insufficient to establish identical competence; land and forestry authorities must instead be traced to the legal basis, objects, and actions assigned to the respective institutions. The same spatial area may generate an intersection of authorities, whereas an overlap becomes problematic when competing claims to exercise authority create uncertainty as to the institution legally competent to act or intrude into the substantive scope of another institution's competence. These criteria provide the basis for determining the institutional relationship between the Ministry of Agrarian Affairs and Spatial Planning/BPN and the Ministry of Forestry.⁵⁴

On the basis of these criteria, the relationship between the Ministry of Agrarian Affairs and Spatial Planning/BPN and the Ministry of Forestry is more appropriately constructed as a coordinative relationship between competences that rest on their own normative foundations, rather than as a hierarchical relationship in which one institution constitutes the source of another institution's authority. The BPN performs functions including the determination and registration of land rights, land-use administration, and control over land possession and utilization, while the Ministry of Forestry administers governmental affairs in the forestry sector, including the consolidation of forest areas.⁵⁵ These distinct normative foundations do not provide a basis for subordinating forestry authority to a prior conferral of authority by the Ministry of Agrarian Affairs and Spatial Planning/BPN. At points of intersection, coordination is instead required to ensure that action under one legal regime takes account of legal statuses and relationships falling within another regime without transferring competence between institutions. This approach preserves the allocation of authority while responding to administrative fragmentation where several institutions operate within the same space.⁵⁶ Such coordination becomes particularly important where the relevant space constitutes an *ulayat* territory, thereby bringing the legal relationship of customary law communities into inter-sectoral decision-making.

Within this coordinative model, customary law communities must be treated as legal subjects whose *ulayat* relationships are taken into account in inter-sectoral decision-making, rather than merely as parties affected by administrative decisions. Article 18B(2) of the 1945 Constitution and Constitutional Court Decision No. 35/PUU-X/2012 provide a constitutional basis for the recognition of customary law communities and their traditional rights, while Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 14 of 2024 places regional governments within the process for formally determining customary law communities and the Ministry of Agrarian Affairs and Spatial Planning/BPN within the administration and registration of *Ulayat Land*.⁵⁷ In the forestry sector, forest-boundary demarcation must likewise take account of third-party rights through their inventory and settlement.⁵⁸ This configuration demonstrates that an *ulayat* territory may constitute a point at which several competences intersect without reducing the customary law community to a mere object of administration. Such circumstances require inter-institutional

⁵³ *Undang-Undang No. 30 Tahun 2014*, as amended, art. 1(13), (22)–(24), and arts. 11–15; Gandara, “Kewenangan Atribusi, Delegasi dan Mandat,” 93–96.

⁵⁴ *Perpres No. 177 Tahun 2024*, arts. 3–4; *Perpres No. 175 Tahun 2024*, arts. 5–6.

⁵⁵ *Perpres No. 177 Tahun 2024*, arts. 3–4; *Perpres No. 175 Tahun 2024*, arts. 5–6.

⁵⁶ Sahide and Giessen, “The Fragmented Land Use Administration in Indonesia,” 96–110.

⁵⁷ *UUD 1945*, art. 18B(2); Constitutional Court, *Decision No. 35/PUU-X/2012*; *Permen ATR/Kepala BPN No. 14 Tahun 2024*, art. 14(1), (3)–(5).

⁵⁸ *PP No. 23 Tahun 2021*, as amended, art. 19(2)(d), (3).

procedures capable of linking relevant information and stages of decision-making without obscuring the competence of each institution.

Coordination mechanisms should operate before sectoral decisions are issued, rather than only after disputes over authority have arisen. Part of the normative infrastructure necessary to support such coordination already exists through the One Map Policy, which serves as a reference for spatial planning and utilization, conformity and licensing of spatial utilization in individual sectors, the settlement of overlapping spatial uses, and improvement of geospatial information, as well as through One Data Indonesia, which emphasizes data standards, metadata, interoperability, and reference codes.⁵⁹ On the basis of this framework, the model proposed here requires cross-verification of land status, forest-area status, and *ulayat* territories before decisions capable of producing legal intersections are issued, together with inter-institutional coordination where discrepancies in data or claims of authority are identified. Where such intersections develop into disputes over authority within government, Article 16 of the Government Administration Law provides for settlement through coordination among the superiors of the officials concerned and, where no agreement is reached, a final decision by the President, unless otherwise provided by legislation.⁶⁰ These preventive and corrective mechanisms constitute the operational components of the institutional model developed in this analysis.

Taken together, the analysis supports an institutional reconstruction based on differentiated but coordinated authority. Under this model, each institution continues to exercise authority according to its own source, legal object, scope of action, and legal consequences, while coordination becomes necessary where different authorities intersect within the same physical space or legal relationship.⁶¹ The Ministry of Agrarian Affairs and Spatial Planning/BPN continues to perform land-related functions without being positioned as the general source of forestry authority, while the Ministry of Forestry exercises its functions on the basis of its own normative foundation while taking account of land status and existing legal relationships, including the *ulayat* rights of customary law communities. Integration of information prior to decision-making and mechanisms for resolving disputes over authority connect these competences without eliminating institutional boundaries.⁶² This construction revises the *single authority* model by demonstrating that, in the land–forestry relationship examined here, institutional problems are more appropriately addressed through a clear allocation of competence combined with coordination at points of intersection than through the centralization of authority.

CONCLUSION

⁵⁹ Republic of Indonesia, *Peraturan Presiden Nomor 9 Tahun 2016 tentang Percepatan Pelaksanaan Kebijakan Satu Peta pada Tingkat Ketelitian Peta Skala 1:50.000* [Presidential Regulation No. 9 of 2016 on the Acceleration of the Implementation of the One Map Policy at a Map Scale Accuracy of 1:50,000], as amended by *Peraturan Presiden Nomor 23 Tahun 2021*, <https://peraturan.bpk.go.id/Details/164964/perpres-no-23-tahun-2021>; Badan Informasi Geospasial, *Peraturan Badan Informasi Geospasial Nomor 3 Tahun 2024 tentang Mekanisme dan Tata Kerja Berbagi Pakai Data dan Informasi Geospasial Kebijakan Satu Peta*, <https://peraturan.bpk.go.id/Details/297828/peraturan-big-no-3-tahun-2024>; Republic of Indonesia, *Peraturan Presiden Nomor 39 Tahun 2019 tentang Satu Data Indonesia* [Presidential Regulation No. 39 of 2019 on One Data Indonesia], arts. 3 and 9–10, <https://peraturan.bpk.go.id/Details/108813/perpres-no-39-tahun-2019>.

⁶⁰ *Undang-Undang No. 30 Tahun 2014*, as amended, art. 16(1)–(4).

⁶¹ Sahide and Giessen, “The Fragmented Land Use Administration in Indonesia,” 96–110; Myers et al., “Coordinating Forest Tenure Reform,” 102718.

⁶² *Perpres No. 9 Tahun 2016*, as amended by *Perpres No. 23 Tahun 2021*; *Peraturan BIG No. 3 Tahun 2024*; *Perpres No. 39 Tahun 2019*; *Undang-Undang No. 30 Tahun 2014*, as amended, art. 16.

This study concludes that, within the land–forestry interface examined, institutional problems in Indonesian agrarian governance cannot be adequately resolved by concentrating authority in a single institution. The State’s Right of Control constitutes public authority whose exercise is distributed among governmental institutions according to their respective legal bases, objects, scopes of action, and legal consequences; therefore, the exercise of land and forestry authority within the same physical space does not in itself constitute an overlap of competence. The Right of Management (*Hak Pengelolaan*, HPL) operates as a specific legal instrument for land management and cannot be treated as the general source or prerequisite of sectoral authority independently conferred by legislation. Likewise, *ulayat* rights cannot be reduced either to a delegation of the State’s Right of Control or to the outcome of administrative recognition and land registration, because their existence must be distinguished from the administrative mechanisms through which Ulayat Land is formalized and afforded legal certainty. On this basis, the study proposes a model of differentiated but coordinated authority, under which land and forestry institutions retain their respective competences while coordination, information integration, and mechanisms for resolving jurisdictional disputes operate at points of intersection, including where *ulayat* rights are implicated. This model revises the *single authority* proposition by locating institutional coherence not in the centralization of agrarian authority, but in the clear delimitation of competences and effective coordination where distinct legal regimes intersect.

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