

## Rechtsvacuum in Regional Regulations: Addressing the Gap in Tanah Ulayat Governance

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**Abstract:** The main issue discussed in this thesis is the rechtsvacuum in the protection of Tanah Ulayat rights in Nagari Palangki, Sijunjung District, and the implementation of West Sumatra Provincial Regulation No. 6 of 2008 in this area. The objective of this study is to explain and analyze the rechtsvacuum in the local government's handling of customary land rights protection, as well as the application of the regulation regarding the utilization of customary land in Nagari Palangki. This research uses a field study approach with a normative and juridical-empirical analysis. The research findings indicate that a rechtsvacuum occurs when there is no regulation to address a specific case or event, creating uncertainty in the application of legal norms. In Nagari Palangki, the rechtsvacuum manifests in the lack of specific regulations regarding government buildings on customary land, leading to issues for future generations of the Kalumpang tribe, who are unable to clearly assert their rights. Furthermore, the implementation of West Sumatra Provincial Regulation No. 6 of 2008 has not been effective in Nagari Palangki. Based on the regulation, concrete steps to address this rechtsvacuum include the recognition of customary land rights, the formulation of local regulations, the empowerment of the Nagari community, and the resolution of land disputes.

**Keywords:** Rechtsvacuum, Regional Regulations, Tanah Ulayat

### Introduction

Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, Article 1 Paragraph 6, defines public interest as the interests of the nation, state, and society that must be realized by the government for the prosperity of the people. Paragraph 7 states that management rights are state-controlled rights with some authority delegated to the holders. In West Sumatra Regional Regulation No. 6 of 2008, Article 8 Letter E regulates that tanah ulayat granted permission to individuals and managed continuously may be registered after fulfilling the customary requirement, "Adat Diisi Limbago Dituang." However, legal norm voids often become an issue when no legal rules govern certain cases, creating ambiguity in legal application (Lucas et al., 2022). Legal void (rechtsvacuum) occurs due to the imbalance between practical needs and the availability of positive law, even though the law is never entirely absent, as it encompasses written and societal laws. A concrete example of this legal void is found in IV Nagari Palangki Subdistrict, Sijunjung Regency, where several buildings do not comply with applicable legal requirements, triggering conflicts over the use of tanah ulayat by government agencies (UPTD) and school cooperatives. In this phenomenon, regulations regarding the protection of indigenous tanah ulayat rights, both nationally and locally, remain unclear, particularly concerning the use of tanah ulayat as part of efforts to reform national law.

## Literature Review

### 1. Legal Norm

In Indonesia, norms are classified into legal norms, social norms, religious norms, and moral norms (Qanti et al., 2022). Legal norms are further divided into written and unwritten norms, with written legal norms being distinguished by several characteristics. These norms are heteronomous, meaning they come from external sources rather than within ourselves, and can be enforced by the state through sanctions. Their creation follows specific procedures, they are made by authorized state officials or institutions, and they adhere to a hierarchical structure (Bench-Capon, 2020). Additionally, they are abstract and general in nature. Law is viewed as a set of mandatory rules or behaviors that are accompanied by sanctions for violations and are enforced by an authority. Legislation is one of the legal norms that apply in Indonesia, and a rule of law system ensures equal rights for individuals while recognizing and protecting human rights (Najicha et al., 2020).

### 2. The Government Regulation (PP) Number 6 of 2008

In 2008, West Sumatra Province issued Regional Regulation Number 6 of 2008, which governs several aspects, including the principle of customary land that is permanent (Wulandari et al., 2021), based on the Minangkabau customary philosophy "*Jua Ndak Makan Bali, Gadai Ndak Makan Sando.*" This regulation also emphasizes the principle of utilizing customary land for the greatest possible benefit (Pulungan, 2023). The legal basis for Regional Regulation Number 6 of 2008 is derived from several relevant laws and regulations, including Law Number 13 of 1950, Law Number 10 of 2004, Law Number 32 of 2004 amended by Law Number 12 of 2008, Government Regulation Number 38 of 2007, and Presidential Regulation Number 1 of 2007. These legal foundations provide a strong basis for the issuance of Regional Regulation Number 6 of 2008 to regulate various relevant aspects according to the needs and context of West Sumatra Province at that time. Therefore, Regional Regulation Number 6 of 2008 has a philosophy underpinning the regulation of customary land, encompassing values such as recognizing land as a cultural heritage, balancing the rights of indigenous people and development, protecting the rights of indigenous communities, respecting customary law and culture, and managing natural resources wisely and sustainably (Rachmah, 2024).

### 3. Tanah Ulayat

Tanah ulayat is considered an integral part of the identity and sustainability of indigenous communities (Ma'ruf et al., 2024). The philosophy of customary land often reflects a harmonious relationship between humans and nature, as well as values of solidarity, justice, and sustainability in natural resource management. This concept emphasizes the importance of maintaining ecosystem sustainability, balancing nature, and ensuring sustainable land use for the common benefit of the community (Tanasescu, 2022). The legal foundation for customary land aims to ensure environmental sustainability and ecosystem preservation. Proper legal regulations enable sustainable management of customary land, safeguarding ecological balance and preventing environmental damage that could harm not only indigenous communities but also future generations. Additionally, the legal basis for customary land serves to promote inclusive and sustainable development by recognizing and protecting indigenous people's rights to their land (Kohsaka & Rogel, 2021). This legal framework ensures indigenous community participation in local development, equitable benefit-sharing, and preservation of cultural and environmental diversity. The legal basis for customary land refers to laws governing the ownership, management, and utilization of ancestral land inherited by indigenous communities. Rooted in customary law and local wisdom, it is recognized and respected by the state. In Indonesia, the legal basis for customary land is outlined in Law Number 5 of 1960 on Basic Agrarian Principles and Law Number 39 of 1999 on Human Rights, affirming the protection of indigenous land rights as part of human rights. This legal foundation aims to ensure sustainable management, environmental conservation, and equitable benefits for indigenous communities, who share a deep cultural, emotional, and spiritual connection with their customary land (Gordon (Iñupiaq) et al., 2023).

## Method

The type of research employed is field research with a normative and juridical-empirical approach. The research data were obtained from primary sources, including interviews with the Head of the UPTD, school cooperative managers, landowning community members, *Niniak Mamak*, and the *Wali Nagari*. Secondary data sources included various legal documents such as laws, West Sumatra Regional Regulation Number 6 of 2008, academic journals, data analysis, other scholarly works, and legal dictionaries. This approach aims to gain a comprehensive understanding of the application of laws related to ulayat land within the community by combining empirical and normative data.

## Results and Discussion

### 1. Rechtsvacuum in Regional Regulations: Addressing the Gap in Tanah Ulayat Governance

The rechtsvacuum in Nagari Palangki regarding the protection of *tanah ulayat* rights has created significant legal uncertainty. The absence of specific regulations on the use of communal land, such as the establishment of government buildings by UPTD and school cooperatives, has led to ambiguity for future generations, particularly the Kalumpang tribe, who cannot clearly access their rights. To address this issue, several measures are required, including legal advocacy, registration, and legal recognition of communal land, consultations with relevant authorities, and mobilizing community support (Matelski et al., 2022). Moreover, legal processes must be monitored to ensure transparency and fairness, involving non-governmental organizations (NGOs) and concerned parties to strengthen the position of indigenous communities. This rechtsvacuum also highlights the lack of attention to the protection of indigenous community rights at both national and local levels, as well as the absence of regulations specifically addressing the utilization of *tanah ulayat* in the effort to reform national law. From an Islamic legal perspective, Surah An-Nisa verses 58 and 59 emphasize the principles of trust, justice, and obedience to legitimate authority. These principles can serve as guidance in addressing legal vacuums to uphold justice, order, and harmony within society.

### 2. Implementation of Regional Regulation No. 6 of 2008 on the Utilization of Tanah ulayat in Nagari Palangki

The implementation of West Sumatra Regional Regulation No. 6 of 2008 on *tanah ulayat* and its utilization, especially as regulated in the provisions of the Regional Regulation, highlights *tanah ulayat* as a vital element in the lives of indigenous communities in Indonesia. This regulation acknowledges customary law as an essential part of Indonesian society. However, the author's findings in Nagari Palangki reveal a lack of clear narratives and explanations regarding its application. Consequently, there is no evident implementation of this regulation in Nagari Palangki, either in the past or for future generations. Based on hereditary rights, *tanah ulayat* is a legacy from the past that remains valid and aligns with the Nagari's initiative to adapt to societal developments. This implies that Nagari Palangki's authority is not solely rooted in tradition and ancestral heritage but also involves the initiative and participation of the community in managing their lives amid changing times.

The regulation also grants Nagari autonomy to manage local affairs, including policies and regulations that align with local traditions, customs, and contemporary needs. Community-driven initiatives indicate that Nagari regulations are developed based on the aspirations and participation of the local people, adapting to changes in social, economic, and cultural life. By implementing Regional Regulation No. 6 of 2008 with attention to Nagari Palangki's unique needs and characteristics, it is hoped that a solid legal foundation and adequate protection for traditional *tanah ulayat* rights can be established. However, the situation in Nagari Palangki, particularly in IV Nagari Subdistrict, Sijunjung Regency, illustrates the complexities of *tanah ulayat* rights and intergenerational issues. The findings indicate that there has been no evident regulatory application of the provisions of Regional Regulation No. 6 of 2008.

Nagari Palangki's authority, based on hereditary rights, is rooted in both historical traditions and contemporary societal dynamics. This emphasizes the importance of active community involvement in

shaping local policies to address evolving challenges and demands. Communal land, as a living legacy, represents an integral part of Nagari traditions passed down through generations. Nagari's authority to manage tanah ulayat ensures the continuity of this heritage while aligning with the principles of the Unitary State of the Republic of Indonesia. To address these challenges, a thorough evaluation of the implementation of Regional Regulation No. 6 of 2008 in Nagari Palangki is necessary. Improvement measures should include involving relevant stakeholders, strengthening law enforcement, developing comprehensive local regulations, and increasing community understanding and participation in tanah ulayat management. These steps aim to ensure that the rights to tanah ulayat for future generations are well-recognized and protected, aligning with the demands of the times and the needs of the Nagari Palangki community.

## Conclusion

The rechtsvacuum in Nagari Palangki is characterized by a lack of understanding among landowners and their descendants regarding existing legal frameworks, coupled with the absence of clear regulations delineating boundaries between roads and tanah ulayat owned by indigenous communities. This ambiguity has led to unilateral actions by the UPTD (Technical Implementation Unit) and school cooperatives, which constructed buildings without seeking permission or establishing clear terms for the development. The implementation of West Sumatra Regional Regulation No. 6 of 2008 offers a potential legal framework for recognizing and protecting tanah ulayat in Nagari Palangki, aiming to empower the Nagari community and resolve land disputes. However, its application in Nagari Palangki remains unclear and ineffective. To address this, the UPTD and school cooperatives must gain a comprehensive understanding of tanah ulayat rights, ensuring sustainable and environmentally friendly land development while aligning their actions with the protection of indigenous rights. The Wali Nagari must enforce laws concerning tanah ulayat rights impartially and firmly, shielding indigenous communities from potential conflicts or exploitation, while ensuring that policies align with legal frameworks to protect these rights. Additionally, the local community must clearly understand their tanah ulayat rights as defined by tradition and customary law, actively participating in decision-making related to tanah ulayat management to ensure their rights are upheld and their interests are represented effectively. By addressing these gaps, stakeholders can work towards a sustainable and equitable resolution, ensuring that tanah ulayat rights are recognized, protected, and utilized in ways that benefit both the community and the environment.

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