

Portrait of *Ulayat* Land Conflicts in Minangkabau Customary Law Community: Alternative Resolutions Under Islamic Law

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Abstract

This research aims to describe an overview of the existence of *ulayat* land in the Minangkabau customary law community, the characteristics of *ulayat* land conflicts that occur in the Minangkabau customary law community, and alternative solutions to conflict resolution of *ulayat* land in the Minangkabau customary law community according to Islamic law. This research is a normative legal research conducted using the comparative legal study approach method. The legal material used comes from library materials or secondary data, then the data is analysed qualitatively juridically. Based on the results of the research, it can be explained that the existence of *ulayat* land in customary law communities has been recognised in various laws and regulations. However, horizontal and vertical conflicts still occur in the community. Litigation settlement, it turns out, has not been able to bring justice to customary law communities. This is because the resolution of conflicts over *ulayat* rights tends to prioritise the aspect of formal legality alone. Therefore, in resolving various customary land conflicts that occur, it is a necessity for Minangkabau customary law communities that make Islam the only religion adopted to consider ways of dispute resolution based on Islamic law, such as through *ishlah* or peace. Thus, in the midst of legal pluralism that applies in Indonesia, in addition to State law, the provisions in Islamic law and customary law

should also be used as a reference in resolving any *ulayat* land conflicts in the community.

Keywords: Customary Law Community; Islamic Law, State Law; Ulayat Land Conflicts.

Introduction

Human life has been connected to the land since birth. This connection continues even after death. But people have different views of the land, says Otto Soemarwoto (2001), as cited by Sukirno. There are at least two different groups of perspectives, namely "immanent (holistic) and transcendent views." The holistic group argues that every human being basically cannot detach themselves from the biophysical systems around them, such as land, rivers, mountains, plants, animals, and so on, but they believe that they are connected to biophysical factors to form a socio-biophysical unity. This holistic view developed in traditional societies, such as eastern societies. Meanwhile, the transcendent view differs from the holistic view because it separates humans from their environment. Although ecologically humans are an inseparable part of their environment, the transcendent view considers humans as an inseparable part of their environment. According to the transcendent view, the environment is part of natural resources (SDA), and its existence should only be exploited in accordance with our abilities. This transcendent view is generally developed in the West.¹

For Indonesian society, this holistic view is very relevant to describe the relationship between society and land. This is because one of the most fundamental assets owned by the state is land, so it can be said that it is on the land that the Indonesian state and nation live and develop.² Land is also considered a symbol of a person's prosperity, so people who own large tracts of land are considered prosperous and well-established.³ Therefore, from both an economic and social perspective, land has significant value to Indonesian society. From an economic perspective, land is the most important agrarian resource apart from capital and skills. From a social perspective, land also serves as a determinant of social strata, so the more land a person owns, the higher the person's social

¹ Sukirno, *Politik Hukum Pengakuan Hak Ulayat*, 1st ed. (Jakarta: Prenadamedia Group, 2018).

² Husen Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Masyarakat Hukum Adat Atas Tanah*, 1st ed. (Yogyakarta: LaksBang PRESSindo, 2010).

³ Subhan Zein, "Reformasi Agraria Dari Dulu Hingga Sekarang Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2014): 121–35, <https://doi.org/10.35968/jh.v9i2.357>.

strata.⁴ In addition, the relationship between people and land is also fundamental as land is used for group life as well as for individual life.⁵

The relationship between people and land from a legal perspective is very important. This is due to the fact that land rights are not only communally owned but there are also rights owned by individuals. Communal rights are rights that humans intrinsically possess as members of the community; however, in order to survive, humans require assistance from intermediary or individual rights. The relationship between the community and the land, according to the provisions of customary law, is not only related to the law, but also related to cosmic, magical and religious aspects. It is not only the relationship between individuals and their land, but also the relationship between a group of customary law communities or *rechtsgemeenschap* with its *ulayat* rights.⁶

In certain customary law communities, *ulayat* rights is the highest right to own land that is jointly owned by its citizens. The concept of *ulayat* relates to the relationship of customary law communities with their land or natural resources. The concept of *ulayat* is derived from natural rights. In a modern state or constitutional democratic state, the concept of *ulayat* as a natural right is interpreted as a natural right in positive law.⁷

The ownership of customary law communities over *ulayat* land existed before Indonesia's independence.⁸ Thus, the state is responsible for protecting customary law communities as long as they are still recognised, still alive, and have institutions, communities, and institutions that oversee them to manage or cultivate the land they own.⁹ In fact, the recognition and protection of the *ulayat* rights of customary law communities has been around for a long time, since the archipelago was still in the form of kingdoms. This is shown by the fact that the

⁴ Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Masyarakat Hukum Adat Atas Tanah*.

⁵ Umar Hasan, Suhermi, and Sasmiar, "Eksistensi Hak Ulayat Dalam Masyarakat Hukum Adat," *Jurnal Sains Sosio Humaniora* 4, no. 2 (2020): 649–60, <https://doi.org/10.22437/jssh.v4i2.11523>.

⁶ Rosnidar Sembiring, *Hukum Pertanahan Adat*, 2nd ed. (Jakarta: PT RajaGrafindo Persada, 2019).; Inggir Deviandari, Kurnia Warman, and Zefrizal Nurdin, "Pengadaan Tanah Ulayat Untuk Pembangunan Perumahan Bersubsidi Di Kecamatan Harau Kabupaten Lima Puluh Kota," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 120–37, <https://doi.org/10.33760/jch.v7i1.416>.

⁷ Reanda Nelis and Lego Karjoko, "Model Pengaturan Hak Masyarakat Adat Pasca Keluarnya Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 (Studi Hutan Adat Tembawang, Kabupaten Melawi Kalimantan Barat)," *Jurnal Repertorium* 5, no. 2 (2018): 138–55.

⁸ Hilaire Tegnau, "Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure," *Journal of Legal Pluralism and Unofficial Law* 47, no. 2 (2015): 312–23, <https://doi.org/10.1080/07329113.2015.1072386>.

⁹ Dessy Ghea Herrayani, Lucky Faradila Soraya, and Oemar Moechtar, "Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Kebijakan Penataan Aset Reforma Agraria," *Jurnal Kertha Patrika* 41, no. 3 (2019): 283–99.

people of that time had "hak pertuanan"-the right of alliance over the land they owned.¹⁰ *Ulayat* rights were also recognised during the Dutch colonial era, especially in relation to the legal relationship between customary law communities and the land in their territory.¹¹ This recognition was intended to secure Dutch policies relating to *ulayat* land from interference by local communities.¹²

After Indonesia's independence, the 1945 Constitution of the Republic of Indonesia (UUD-NRI 1945) provides for the recognition and protection of customary law communities and their traditional rights. In the explanation of Article 18 of the 1945 Constitution before it was amended, it was explained that:

"...within the territory of the State of Indonesia there are approximately 250 *zelfbesturende landchappen* and *volksgetneenschappen*, such as villages in Java and Bali, negeri in Minangkabau, dusun and clans in Palembang and so on. These regions have an original structure, and therefore can be considered as special regions..."

Many legislations have been enacted since reformasi began in 1998 to recognise the existence and rights of customary law communities to land, natural resources and other basic rights. These laws and regulations comprise a wide range of legislation, whose applicability extends to all levels of society, from the constitution to village or *nagari* regulations.¹³

Furthermore, after the 1945 Constitution was amended four times, especially in the second amendment in 2000, the existence of customary law communities was recognised by the State through Article 18B paragraph (2) and Article 28I paragraph (3), but until now this recognition has not been fully derived into legislation under the basic law.

Article 18 B of the 1945 Constitution states that:

¹⁰ Alinapia, "Eksistensi Hak Ulayat (Bescikkingsrecht) Dalam Otonomi Daerah," in *Prosiding Seminar Nasional Laban Basab Tabun 2016 Jilid 1* (Banjarmasin: Lambung Mangkurat University Press, 2017), 306–14.

¹¹ B Purba, "Pengakuan Dan Perlindungan Hak-Hak Konstitusional Masyarakat Hukum Adat Suku Sakai (Studi Tentang Peraturan Hukum Dan Implementasinya Terhadap ...)" (Universitas Islam Indonesia, 2011), <https://dspace.uui.ac.id/handle/123456789/9430%0Ahttps://dspace.uui.ac.id/bitstream/handle/123456789/9430/DISERTASI%2075.pdf?sequence=1>.

¹² Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia* 40 (1985): 57–74, <https://doi.org/https://doi.org/10.2307/3350875>; C.F.G. Sunaryati Hartono, *Analisa Dan Evaluasi Peraturan Hukum Kolonial* (Jakarta: Badan Pembinaan Hukum Nasional, 2015).

¹³ Yance Arizona, "Masyarakat Adat Dalam Kontestasi Pembaruan Hukum," *Seminar Pemberdayaan Sosial Komunitas Adat: Upaya Peningkatan Efektivitas Pemberdayaan KAT Saat Ini Dan Pengembangan Kedepan*, 2013; Kurnia Warman, *Hukum Agraria Dalam Masyarakat Majemuk: Dinamika Interaksi Hukum Adat Dan Hukum Negara Di Sumatra Barat*, 1st ed. (Jakarta: HuMa, 2010).

- (1) The State recognises and respects units of regional government that are special or special in nature, which are regulated by law.
- (2) The State recognises and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

Then in Article 28 I paragraph (3) of the 1945 Constitution, it is also stated that: "The cultural identity and rights of traditional communities shall be respected in harmony with the development of the times and civilisation."¹⁴

Referring to the above, it can be understood that the Constitution uses two words: Article 18B paragraph (2) mentions "Customary Law Community Units" and Article 28I paragraph (3) mentions "Traditional Communities". Neither of these words is explained in the constitution. Article 18B paragraph (2) of the 1945 Constitution defines "customary village" as equivalent to "customary law community unit" in Law No. 6/2014 on Villages (Village Law). However, there is a fundamental problem regarding the social units that exist within customary communities when implementing the Village Law. The term "customary village" used in the Village Law does not represent a complete definition of "Customary Law Community".¹⁵ Nevertheless, such recognition can

¹⁴ Fauzi Iswari, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, *Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative* (Atlantis Press SARL, 2024), https://doi.org/10.2991/978-2-38476-218-7_16; Yance Arizona and Miriam Cohen, "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence," in *Courts and Diversity* (Brill Nijhoff, 2024), 174–94, https://doi.org/10.1163/9789004691698_008; Kurnia Warman and Hengki Andora, "Pola Hubungan Hukum Dalam Pemanfaatan Tanah Ulayat Di Sumatera Barat," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 3 (2015): 366–81, <https://doi.org/10.22146/jmh.16031>; Gamal Abdul Nasir and Ade Saptomo, "Customary Land Tenure Values in Nagari Kayu Tanam, West Sumatra," *Cosmopolitan Civil Societies* 14, no. 3 (2022): 30–45, <https://doi.org/10.5130/ccs.v14.i3.8099>; Jonaidi, "Kajian Hukum Terhadap Kedudukan Tanah Ulayat Masyarakat Hukum Adat Minangkabau Di Sumatera Barat," *Lex Et Societatis* VI, no. 1 (2018): 97–106; Zuman Malaka, "Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat Dan Hukum Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 1 (2018): 101–24, <https://doi.org/10.15642/alqanun.2018.21.1.103-127>; Fauzi Iswari, "Hak Ulayat Masyarakat Hukum Adat Sebagai Sumber Kebijakan Pembangunan Hukum Nasional," in *Hukum Adat*, ed. Heral Yomi, 1st ed. (Padang: CV Hei Publishing Indonesia, 2024), 88–105, https://drive.google.com/file/d/1ipCRVMMMA4R8rOnN22UfZeba_Vr65RARM/view?usp=sharing.

¹⁵ DPR RI, "Naskah Akademik Rancangan Undang-Undang Tentang Masyarakat Adat," n.d., <https://www.dpr.go.id/dokakd/dokumen/RJ1-20171106-094054-1309.pdf>.

be used as an "entry point" to the process of formally recognising customary community rights.¹⁶

Recognition and respect for the units of customary law communities, as well as their traditional rights, is a false recognition. Philosophically, this recognition and respect can be interpreted as a consequence of the recognition and respect of all existing orders and institutions owned by customary law communities.¹⁷ At the practical level, the state's recognition and respect for the unity of customary law communities and their traditional rights have not been able to fully provide legal protection, especially regarding the customary rights of customary law communities. The state's recognition and protection of the rights of customary law communities has so far only been limited to discourse and only serves as a tool to reduce the demands of customary law communities for natural resource rights.¹⁸

In addition, customary law communities do not have the independence to defend their *ulayat* rights when they come into contact with the state.¹⁹ According to Maria S.W. Sumardjono, one of the reasons why the rights of customary law communities are underestimated or ignored is because there are no criteria for requirements relating to the existence of *ulayat* rights. A person can unilaterally deny the existence or existence of a customary law community if there are no objective criteria for the government and private parties in conflict with customary law communities. This is because the bargaining position of the government and the private sector as parties dealing with customary law communities is stronger politically and financially.²⁰ This fact causes conflicts in customary law communities, both vertical and horizontal. Vertical conflicts occur between customary law communities and the government and investors, while horizontal conflicts occur between one customary law community and another.²¹

Minangkabau society sees *ulayat* land as a collection of economic values, cultural heritage, and self-reliance protected by the constitution. However, local governments often grant *ulayat* land to attract investors to locate their resources in West Sumatra. *Ulayat* rights of customary law community are marginalised due to the absence of a clear legal and regulatory framework on *ulayat* land. In addition,

¹⁶ Herlambang P. Wiratraman, "Perkembangan Politik Hukum Peradilan Adat," *Mimbar Hukum* 30, no. 3 (2018): 490–504, <https://doi.org/10.22146/jmh.38241>.

¹⁷ La Syarifuddin, "Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana," *Risalah Hukum* 15, no. 2 (2019): 1–10, <https://ejournal.fh.unmul.ac.id/index.php/risalah/article/view/84>.

¹⁸ Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Masyarakat Hukum Adat Atas Tanah*.

¹⁹ Fokky Fuad, ed., *Negara Dan Masyarakat Hukum Adat*, 1st ed. (Jakarta: Pusat Penelitian Badan Keahlian DPR RI dan PT Dian Rakyat, 2016).

²⁰ Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*, 2nd ed. (Jakarta: Penerbit Buku Kompas, 2009).

²¹ Sukirno, *Politik Hukum Pengakuan Hak Ulayat*.

the legal certainty of *ulayat* land boundaries is also questionable as it relies on the personal memories of customary chiefs (*ketua adat*) rather than clear legal evidence. Disputes and debates over *ulayat* rights are caused by these conditions.

The customary law community of Minangkabau in West Sumatra, is one of the customary communities that introduced the term '*ulayat* rights'. In West Sumatra, *ulayat* rights have been officially recognised and incorporated into formal law by the local government. *Ulayat* land is considered by the Minangkabau customary law community as an existence, cultural roots, and economic asset protected by the state constitution. However, local governments often provide land derived from *ulayat* land to attract investors to invest in West Sumatra. The *ulayat* rights of customary law community are marginalised due to unclear laws and regulations regarding *ulayat* land. In addition, the boundaries between different *ulayat* lands are not legally certain as they largely depend on the 'memory map' of customary stakeholders. This condition has led to conflicts and disputes over *ulayat* rights in West Sumatra, especially in the Minangkabau community.²² Conflicts or disputes over *ulayat* land that are prone to occur in the Minangkabau customary law community are conflicts or disputes between the Local Government and the community, the community and investors, or between fellow community members.²³ All issues relating to *ulayat* rights must be considered thoroughly and efforts made to resolve them. Settlement efforts relating to *ulayat* rights should take the form that has the least impact or potential for conflict. The purpose of this settlement effort is to reduce all conflicts, both vertical and horizontal.²⁴

In the midst of the pluralism of arrangements related to agrarian and natural resource issues in Indonesia, and in West Sumatra in particular. So in resolving the various conflicts that occur, efforts are needed that not only prioritise State law, but also religious law and customary law. This is because the basis of the regulation related to agrarian issues is customary law and religious law.²⁵ This provision is clearly stated in Article 5 of Law No. 5/1960 on the Basic Agrarian Law (BAL), which states that:

²² Kurnia Warman and Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)," *Masalah-Masalah Hukum* 41, no. 3 (2012): 407–15, <https://doi.org/10.14710/mmh.41.3.2012.407-415>; Titin Fatimah and Hengki Andora, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat," *Jurnal Ilmu Hukum Riau* 4, no. 1 (2014): 36–74, <https://www.neliti.com/publications/9086/pola-penyelesaian-sengketa-tanah-ulayat-di-sumatera-barat-sengketa-antara-masyar>.

²³ Fatimah and Andora, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat."

²⁴ Iwan Permadi, "Eksistensi Hak Ulayat Dan Model Penyelesaian Konflik," *Yustisia Jurnal Hukum* 5, no. 2 (2011): 227–40, http://law.ub.ac.id/wp-content/uploads/2013/09/Eksistensi-Hak-Ulayat-dan-Model-Penyelesaian-Konflik-Dr.-Iwan-Permadi-SH.-M.Hum_.pdf.

²⁵ Lutfi El Falahy, "Tarik Ulur Hukum Adat Dan Hukum Islam Dalam Hukum Positif Di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (2020): 89–104, <https://doi.org/10.29240/jhi.v5i1.1419>; Onny Medaline, Irma Fatmawati, and Siti Nurhayati,

“The agrarian law applicable to the earth, water and airspace is customary law, insofar as it does not conflict with the national and State interests, which are based on national unity, with Indonesian socialism as well as with the regulations contained in this Law and with other laws and regulations, all with due regard to the elements based on religious law.”

The definition of religious law in Article 5 is general and does not refer to a particular religion. The mention of ‘religious law’ in the Article is a message or warning to the legislative authorities in developing national land law and does not constitute a prohibition or impermissibility of the BAL contradicting religious law.²⁶ To understand the religious law referred to in the BAL, particularly Article 5, we can consider the existing legal systems in Indonesia: customary law, Islamic law, and Western legal systems (both civil law and common law or Anglo-Saxon law). These three legal systems are recognised by legislation, developed in society, studied in science, and applied in the Indonesian courts.²⁷ Therefore, it is clear that the components of religious law mentioned in Article 5 of the BAL are those of Islamic law.²⁸

In relation to Islam, it should be noted that in Islamic law there are provisions governing land matters.²⁹ According to scholars, Islamic law regulates land, with some essentials and some non-essentials. For example, if the BAL does not recognise a person's property rights over land, it would contradict one of the essential elements of Islamic law. While the non-essential is the agreement on yield, the provision will not be considered if it is overridden due to public interest or public benefit.³⁰

If we talk about land from an Islamic perspective, matters such as ownership rights (*milkiyah*), management (*tasharruf*), and distribution (*tauzi'*) must be considered.³¹ Regarding land ownership in Islam, the *Ulama* divide the three

“The ‘Social Advocacy’ Model Of Wakf Land Settlements Of Minangkabau Province West Sumatra,” *Journal of Positive School Psychology* 6, no. 9 (2022): 542–49, <https://journalppw.com/index.php/jpsp/article/view/12202%0Ahttps://journalppw.com/index.php/jpsp/article/download/12202/7916>.

²⁶ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*, 1st ed. (Jakarta: Penerbit Djambatan, 2003).; Mohammad Hatta, *Hukum Tanah Nasional Dalam Perspektif Negara Kesatuan*, 1st ed. (Yogyakarta: Media Abadi, 2005).

²⁷ Mohd. Idris Ramulyo, *Asas-Asas Hukum Islam, Sejarah Timbul Dan Berkembangnya Kedudukan Hukum Islam Dalam Sistem Hukum Di Indonesia* (Jakarta: Sinar Grafika, 1995).

²⁸ Fauzi Iswari, “Kewenangan Pemerintah Dalam Penertiban Dan Pendayagunaan Tanah Terlantar (Studi Perbandingan Hukum Negara Dan Hukum Islam)” (Universitas Andalas, 2013).

²⁹ Hatta, *Hukum Tanah Nasional Dalam Perspektif Negara Kesatuan*.

³⁰ Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*.; Effendi Perangin, *Hukum Agraria Indonesia Suatu Telaah Dari Sudut Pandang Praktisi Hukum*, 5th ed. (Jakarta: PT RajaGrafindo Persada, 1994).

³¹ Jamaluddin Mahasari, *Pertanahan Dalam Hukum Islam* (Yogyakarta: Gama Media, 2008).; Irma Mangar and Muhammad Rosyid Ridho, “Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam,” *El-Dusturie* 1, no. 1 (2022): 72–87, <https://doi.org/10.21154/eldusturie.v1i1.4176>.

concepts of ownership, namely: *first*, individual property rights (*al-milkiyyah al-kebassah*), namely the rights owned by individuals to use their property autonomously; *second*, collective property rights (*al-milkiyyah al-'ammah*), namely ownership rights owned by the community together over certain assets, and *third*, state property rights (*al-milkiyyah al-daulah*), namely the rights owned by the state as an institution mandated by God through the people to manage all assets for the common good.³² As for the *ulayat* land, in Islamic law it can basically be categorised as collective property. This is because communal land belongs to the general or collective community to utilise it together.³³

Although Islamic legal tradition does not recognize what *ulayat* land is, *ulayat* rights can be related to the terms *ibzharul mubabat* and *ihyā' al-mawāt* in the context of its cultivation. However, the three terms differ in several ways, as hak ulayat derives from the right to cultivate *ulayat* land based on the customary rules that apply in the area. However, in *ibzharul mubabat* and *ihyā' al-mawāt*, the right stems from the fact that a person owns no-man's land that is not controlled by anyone else, including the indigenous community, and then seeks to cultivate it.³⁴

With regard to land ownership, whether individual property rights, State property rights, or collective property rights, the three categories of ownership are very likely in the context of the state to conflict due to differences in interests.³⁵ Therefore, State law through its legislation, customary law through its unwritten provisions, and Islamic law through its sharia provisions have accommodated how to resolve these conflicts.

Based on the previous explanation, it can be underlined that the settlement of *ulayat* land disputes in the Minangkabau customary law community must prioritise aspects of legal pluralism that apply in the community. Given that the Minangkabau customary law community is part of the population inhabiting the Unitary State of the Republic of Indonesia, which normatively must be subject to the provisions of State law, but because the Minangkabau community is customarily subject to the provisions in Islamic teachings under the auspices of the philosophy of '*Adat Basandi Syarak, Syarak Basandi Kitabullah*'.³⁶ It is

³² Ridwan Ridwan, "Hak Milik Atas Tanah Dalam Perspektif Hukum Islam Dan Hukum Pertanahan Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2013, <https://doi.org/10.24090/mnh.v7i2.568>.; Siraj Sait and Hilary Lim, *Land, Law and Islam Property and Human Rights in the Muslim World*, Firs (London & New York: Zed Books, 2006), https://www.hlrn.org/img/documents/Sait_Lim_Land_Law&Islam.pdf.

³³ Iswari, "Kewenangan Pemerintah Dalam Penertiban Dan Pendayagunaan Tanah Terlantar (Studi Perbandingan Hukum Negara Dan Hukum Islam)."

³⁴ Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

³⁵ Ridwan, "Hak Milik Atas Tanah Dalam Perspektif Hukum Islam Dan Hukum Pertanahan Indonesia."

³⁶ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "Identity in Dispute: Law, Religion, and Identity in Minangkabau," *Asian Ethnicity* 13, no. 4 (2012): 341–58, <https://doi.org/10.1080/14631369.2012.710073>.

appropriate in resolving conflicts in the midst of the Minangkabau Customary Law Community, in addition to referring to the provisions of State law but should also guide the applicable provisions in Islamic law.

Research on the same subject has been carried out by previous scholars, but there has been no attempt to compare the conflict resolution mechanism of *ulayat* land rights in the Minangkabau customary law community according to State law and Islamic law to the best of the author's knowledge. The existing research, on average, only discusses how to resolve conflicts over customary land in the Minangkabau customary law community according to State law and according to customary law. For example: *first*, research conducted by Titin Fatimah and Hengki Andora related to 'Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa antara masyarakat dan investor)³⁷; *second*, research conducted by Kurnia Warman and Sofiati related to 'Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa antara Masyarakat vs Pemerintah)³⁸; *third*, research conducted by Oong Supono and Muhamad Hasan Sebyar, related to 'Konflik Hukum Agraria Terhadap Pembangunan Jalan Di Sumatera Barat'³⁹; *fourth*, research conducted by Rahmat Ramadani, M. Thahir Maloko, and Erlina related to 'Tinjauan Hukum Islam Terhadap Penyelesaian Sengketa Tanah Ulayat Secara Sederhana Dan Ekonomis yang dilakukan di Desa Bonto Birao, Kecamatan Tondong Tallasa, Kabupaten Pangkep'⁴⁰; *fifth*, research conducted by Alfin Rahman related to 'Penyelesaian Sengketa Tanah Ulayat Kaum Suku Adat Minangkabau Kabupaten Tanah Datar Sumatera Barat'⁴¹; and the *sixth* research by Fauzi Iswari, et al related to 'Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative'⁴². In addition, there are also other studies that try to simply compare or examine *ulayat* land in the perspective of positive law and Islamic law, such as research conducted by: Irma

³⁷ Fatimah and Andora, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat."

³⁸ Warman and Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)."

³⁹ Oong Supono and Muhamad Hasan Sebyar, "Konflik Hukum Agraria Terhadap Pembangunan Jalan Di Sumatera Barat," *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 152–72.

⁴⁰ Rahmat Ramadani, M. Thahir Maloko, and Erlina, "Tinjauan Hukum Islam Terhadap Penyelesaian Sengketa Tanah Ulayat Secara Sederhana Dan Ekonomis Di Desa Bonto Birao, Kecamatan Tondong Tallasa, Kabupaten Pangkep," *Iqtishaduna: Jurnal Ilmiah Mahasiswa Jurusan Hukum Ekonomi Syariah* 5, no. 2 (2024): 186–96, <https://core.ac.uk/download/pdf/599232416.pdf>.

⁴¹ Alfin Rahman, "Penyelesaian Sengketa Tanah Ulayat Suku Adat Minangkabau Di Kabupaten Tanah Datar Sumatera Barat," *Recht Studiosum Law Review* 1, no. 2 (2022): 51–59, <https://doi.org/10.32734/rsr.v1i2.10032>.

⁴² Iswari, Handayani, and Karjoko, *Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative*.

Mangar dan Muhammad Rosyid Ridho⁴³, Galuh Rizki Tarananda, et al.⁴⁴, Arysman, et al.⁴⁵

Research related to 'Portrait of *Ulayat* Land Conflicts in Minangkabau Customary Law Community: Alternative Resolutions Under Islamic Law' is a normative or doctrinal legal research. This research was conducted using the comparative law study approach method. The legal materials used come from library materials or secondary data, which include primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials were obtained by reading, quoting, and analysing laws and regulations, articles or scientific papers, books, documents, and other information related to the research. Data processing was carried out by grouping and systematising existing data. Then, the processed data is interpreted by using legal interpretation and legal construction methods common in law, and then the data is analysed in a qualitative juridical manner. The purpose of this research is to describe an overview of the existence of *ulayat* land in the Minangkabau customary law community, the characteristics of *ulayat* land conflicts that occur in the Minangkabau customary law community, and alternative solutions to conflict resolution of *ulayat* land in the Minangkabau customary law community according to Islamic law.

Discussion

Ulayat Land in Minangkabau Customary Law Perspective

Juridically, the term *ulayat* rights was first introduced by Law Number 5 of 1960 concerning Basic Agrarian Law (BAL). Although the explanation regarding *ulayat* rights in the BAL is not yet complete because in the BAL, especially Article 3 and its explanation, it simply states "that what is meant by *ulayat* rights and other similar rights are *ulayat* rights which in reality still exist". Terminology used by BAL regarding *ulayat* rights is *beschikingsrecht*. *Beschikingsrecht* this is a popular term in legal literature. Van Vollenhoven was the first to introduce the term *beschikingsrecht*. According to Van Vollenhoven, "*ulayat* rights" is a term that was originally religious in nature, *beschikkingrecht* on the land of the Indonesian people. The use of the acronym "*ulayat* rights" is a technical term that cannot be found in *Burgelijk Wetboek*, nor can it be equated with *recht van heerschappij* some kind of lordship in Western countries. However, this is the

⁴³ Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

⁴⁴ Galuh Rizki Tarananda et al., "Pengaruh Hukum Adat Dan Hukum Islam Terhadap Penguasaan Tanah Ulayat Di Aceh," *Jurnal Kritis Studi Hukum* 9, no. 5 (2024): 180–84.

⁴⁵ Arysman et al., "Tanah Ulayat Perspektif Hukum Adat Dan Hukum Islam," *Supremasi: Jurnal Pemikiran Dan Penelitian Ilmu-Ilmu Sosial, Hukum, & Pengajarannya* XVIII, no. 1 (2023): 57–68.

highest right to land in the entire Indonesian archipelago."⁴⁶ Furthermore, according to Van Vollenhoven "*beschikkingrecht* cannot be separated from a right held by a customary community in the form of land in its territorial area."⁴⁷

According to Rosnidar Sembiring, "*ulayat* rights" is a term that comes from the words "rights" and "*ulayat*". In an etymological context, "*ulayat*" means "territory, area, clan and nagari". Meanwhile "rights" have the meaning "(the) right, property (belonging), authority, power to do something, right power or to demand something, degree or dignity." Therefore, in terms of the meaning of the letters, "*ulayat* rights can be interpreted as the authority of the customary law community over land in a certain environment/territory/region to control it in the sense of taking and utilizing the land for the benefit of the legal community and its members."⁴⁸

Meanwhile, the definition of *ulayat* rights given by Harsona is "a set of authorities and obligations of a customary law community relating to land located within its territorial environment as the main support for the livelihood and life of the community concerned throughout time".⁴⁹ Meanwhile, according to Kurnia Warman, the definition of *ulayat* rights is: "traditional communal rights of customary law communities in Indonesia to control and manage a certain area as a field of life in order to support the survival of members of their own community."⁵⁰ Meanwhile, according to Nia Kurniati, *ulayat* rights are:

"the right of a juristic community to use freely the lands which are still thick forests within its territory, for the benefit of the juristic community itself and its members, or for the benefit of external persons (future persons, foreigners) but with its permission and always with the payment of recognition, in that the juristic community continues to intervene, violently or not, also on lands which have been cultivated by persons located within its territory."⁵¹

Another opinion related to the definition of *ulayat* rights was expressed by Arba, namely "a series of authorities and obligations of certain customary law communities towards a certain area that is their *ulayat*, which is the *lebesraum* of

⁴⁶ Cornelis van Vollenhoven, *Orang Indonesia Dan Tanahnya (Terj. De Indonesier En Zijn Ground)*, 1st ed. (Yogyakarta: INSISTPress, 2020).; Iswari, "Hak Ulayat Masyarakat Hukum Adat Sebagai Sumber Kebijakan Pembangunan Hukum Nasional."

⁴⁷ Nurul Firmansyah, "Mengenal Hak Ulayat," <https://kumparan.com/>, accessed June 5, 2022, <https://kumparan.com/nurul-firmansyah/mengenal-hak-ulayat-1uKfdJkbVTD/4>.

⁴⁸ Sembiring, *Hukum Pertanian Adat*.

⁴⁹ Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*.

⁵⁰ Warman, *Hukum Agraria Dalam Masyarakat Majemuk: Dinamika Interaksi Hukum Adat Dan Hukum Negara Di Sumatra Barat*.

⁵¹ Nia Kurniati, *Hukum Agraria Sengketa Pertanian Penyelesaiannya Melalui Arbitrase Dalam Teori Dan Praktik*, 1st ed. (Bandung: PT Refika Aditama, 2016).

each of their citizens towards natural resources, including land within their territory in order to take advantage of it."⁵² From several definitions related to *ulayat* rights, it can be interpreted that "*ulayat* rights" is a term for land controlled by customary law communities. The mention of "*ulayat* rights" is a formal term, although in fact in each ethnic customary community the term used is different.⁵³ Regarding the different terms of *ulayat* rights, according to Kurnia Warman, that:

"...the implementation of *ulayat* rights and similar rights of customary law communities, as long as they exist, must be in such a way that it is in accordance with national and state interests." By considering the term *ulayat* rights which is used throughout the various regions of Indonesia, the UUPA does not limitatively refer to them as *ulayat* rights alone, but "*ulayat* rights and similar rights".⁵⁴

Thus, apart from the various terms of *ulayat* rights, based on several definitions that have been written previously, it can be understood that *ulayat* rights are a series of authorities that customary law communities have to take advantage of the land in their environment and/or territory. This authority is specifically related to managing or organizing, as well as determining control, allocation, use and maintenance of the availability of natural resources in the agrarian sector in the areas of customary law communities.

In the West Sumatra provincial context (Minangkabau customary law community) with regard to *ulayat* rights, it was initially regulated in Regional Regulation Number 6 of 2008 concerning *Ulayat* Land and its Utilisation. However, because the regional regulation is no longer in accordance with the development of law and the needs of the community, it is then replaced by Regional Regulation of West Sumatra Province Number 7 of 2023 concerning *Ulayat* Land. In Article 1 point 7 of the Regional Regulation on *Ulayat* Land, it is stated that "*Ulayat* Rights are the rights of Customary Law Communities that are communal in nature to control, manage and/or utilise, and preserve their customary territories in accordance with the prevailing values and customary laws." Meanwhile, what is meant by *ulayat* land as stated in Article 1 point 8 of the Regional Regulation on *Ulayat* Land is that "*Ulayat* land is communal land located in the territory of customary law communities which in reality still exists."

In the Minangkabau community, the scope of *ulayat* rights cannot be separated between land, water and the natural resources contained therein. This is in accordance with the Minangkabau traditional proverb which states:

⁵² Arba, *Hukum Agraria Indonesia*, 6th ed. (Jakarta: Sinar Grafika, 2019).

⁵³ Dian Aries Mujiburohman, *Penegakan Hukum Penertiban Dan Pendayagunaan Tanah Terlantar* (Yogyakarta: STPN Press, 2019).

⁵⁴ Warman, *Hukum Agraria Dalam Masyarakat Majemuk: Dinamika Interaksi Hukum Adat Dan Hukum Negara Di Sumatra Barat*.

*"Sekalian nego hutan tanah, mulai dari batu/pasie nan saincek, rumpuik nan sahalai, jirek nan sabatang, ka atebnyo taambun jantan, ka bawah sampai takasiak bulan, pangkek penghulu punyo ulayat."*⁵⁵

(Everything in the forest land, from a single stone/sand, a single blade of grass, a single jarak tree, up to the sky, down to the bottom of the earth is ulayat land.)

Thus, according to Kurnia Warman "although the scope of *ulayat* rights in Minangkabau Customary Law includes all natural resources on the surface and inside the earth, the most common term for such is land. Furthermore, the mention of the term "land" seems to be a representation of all the agrarian resources that exist within the customary law community."⁵⁶ Agreeing with Kurnia Warman, according to Iza Hanifuddin, ulayat is often defined as "land".⁵⁷

Meanwhile, related to the types of *ulayat* land in Minangkabau as contained in Article 6 paragraph (2) of the Regional Regulation on *Ulayat* Land, it is stated that: "*Ulayat* Land consists of: a. *Ulayat Nagari* Land; b. *Ulayat Suku* Land; and c. *Ulayat Kaum* Land." Furthermore, further provisions regarding the three types of customary land are regulated in Articles 7, 8, and 9 of the Regional Regulation. *First*, *Ulayat Nagari* Land, controlled by *ninik mamak* in *Nagari* which is gathered in *nagari* customary density (KAN). *Ulayat Nagari* Land includes natural resources as a reserve for the *Nagari* community. *Second*, *Ulayat Suku* Land; owned by all members of a particular tribe led by a Tribal *Penghulu*. *Ulayat Suku* Land; is heirloom land and reserves for all members of a particular tribe in *Nagari*. *Third*, *Ulayat Kaum* Land, owned by all members of the family led by a *Mamak Kepala Waris*. *Ulayat Kaum* Land is cultivated land whose control is according to *Ganggam Bauntuak Pagang Bamasiang* for members of the community.

Ulayat land that still exists today in all *nagari* in Minangkabau is *ulayat kaum* land or commonly known as land originating from *harato pusako tinggi*. This land comes from ancestors passed down through the female line.⁵⁸ *Ulayat suku* land

⁵⁵ Idrus Hakimi, *Rangkaian Mustika Adat Basandi Sarak Di Minangkabau* (Bandung: Remaja Rosdakarya, 1997).

⁵⁶ Warman and Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)."

⁵⁷ Iza Hanifuddin, "Posisi Perempuan Minangkabau Dalam Sistem Ulayat Menurut Adat Matrilineal Dan Syarak," *JURIS (Jurnal Ilmiah Syariah)* 10, no. 2 (2011): 94–111, <http://ojs.iainbatusangkar.ac.id/ojs/index.php/Juris/article/view/927>.

⁵⁸ F. Colombijn, "Dynamics and Dynamite: Minangkabau Urban Landownership in the 1990s," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 148, no. 3 (2013): 428–64, <https://doi.org/10.1163/22134379-90003145>; Ilda Hayati, Fathurrahman Djamil, and Busman Edyar, "Utilization of Land Pawning Objects in Minangkabau in The Perspective of The Scholars of Schools of Thought," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 597–616, <https://doi.org/10.29240/jhi.v7i2.5457>; Zefrizal Nurdin, "Legal Protection of Customary Rights under Legal Pluralism and Its Impact on the Minangkabau Society: An Empirical Study in the District of Lima Puluh Kota, West Sumatra," *Cogent Social*

has structurally shifted its existence to *ulayat kaum* land, which is managed individually by members of the community in the form of *ganggam bauntuak*.⁵⁹ The *ganggam bauntuak* is a form of distribution of *ulayat* land by the *mamak kepala waris* to members of the clan hierarchically according to the mother's lineage.⁶⁰

In order to maintain the existence of *ulayat* rights in Minangkabau, Minangkabau *ulayat* land cannot be sold because the law is *haram*, because it includes *ẓdurriyyi* waqf (waqf for *salingka kaum*) and waqf for descendants. Therefore, there is no suggestion in the Minangkabau *tambo adat* that the *ulayat* land should be utilised for sale, but instead it should be utilised for other purposes. As the traditional expression says "*aianyo nan buliah drink, buahnyo nan buliah eat, nan batang tatap tingga*". This means that only the right to benefit and the right to cultivate, either by the first party or the second party, apply to the *ulayat* land. Therefore, *ulayat* land is referred to as "*dijua indak dimakan bali, digadai indak dimakan sando*". This means that the *ulayat* land cannot be sold or mortgaged,⁶¹ except for explicitly stated and specific reasons.⁶²

Customarily, in Minangkabau, in relation to *ulayat* land if you want to transfer it such as mortgaging, it must be motivated by provisions that are justified by custom. There are conditions that according to custom can be used as a basis for the customary land to be mortgaged, namely if it fulfils one of four conditions,

Sciences 8, no. 1 (2022): 1–10, <https://doi.org/10.1080/23311886.2022.2045722>; Afnaini Afnaini and M. Syamsudin, "Changes In The Inheritance System Of Pusako Tinggi Assets And Their Impact On The Minangkabau Traditional Inheritance System," *Prophetic Law Review* 4, no. 2 (2022): 222–40, <https://doi.org/10.20885/plr.vol4.iss2.art5>; Mohamad Sabri bin Haron and Iza Hanifuddin, "Harta Dalam Konsepsi Adat Minangkabau," *Juris* 11, no. 1 (2012): 1–13; Hanifuddin, "Posisi Perempuan Minangkabau Dalam Sistem Ulayat Menurut Adat Matrilineal Dan Syarak."; Rahman, "Penyelesaian Sengketa Tanah Ulayat Suku Adat Minangkabau Di Kabupaten Tanah Datar Sumatera Barat."

⁵⁹ Helmy Panuh, *Pengelolaan Tanah Ulayat Nagari Pada Era Desentralisasi Pemerintahan Di Sumatera Barat*, 1st ed. (Jakarta: PT RajaGrafindo Persada, 2012).; Onny Medaline, "Wakaf Tanah Ulayat Kaum Di Sumatera Barat," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam*, 2016, <https://www.jurnal.bwi.go.id/index.php/awqaf/article/view/86>.

⁶⁰ Wahyudi and Najmi, "Peralihan Hak Milik Atas Tanah Karena Pewarisan Terhadap Tanah Ganggam Bauntuak," *Lambung Mangkurat Law Journal* 4, no. 2 (2019): 190–202, <https://doi.org/https://dx.doi.org/10.32801/lamlaj.v4i2.127>.

⁶¹ M Sayuti Dt Pangulu, "Hak-Hak Masyarakat Atas Tanah Ulayat," Badan Wakaf Indonesia, 2012, <https://www.bwi.go.id/705/2012/01/06/hak-hak-masyarakat-atas-tanah-ulayat/>; Tegnan, "Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure."

⁶² Hans-Dieter Evers, "Changing Patterns of Minangkabau Urban Landownership," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 131, no. 1 (1975): 86–110, [papers2://publication/uuid/12983561-2815-4A52-BA21-CE69D514F0DF](https://publication/uuid/12983561-2815-4A52-BA21-CE69D514F0DF); Medaline, "Wakaf Tanah Ulayat Kaum Di Sumatera Barat."; Prihatini Purwaningsih, Latifah Ratnawaty, and Zulmi Hendri, "Proses Pelaksanaan Pendaftaran Hak Ulayat Masyarakat Hukum Adat Minangkabau," *Yustisi* 4, no. 1 (2017): 80–111.; Haron and Hanifuddin, "Harta Dalam Konsepsi Adat Minangkabau."

including: first, *maik tabujua tangah rumah* (a corpse lying in the house); second, *gadiah gadang indak balaki* (a woman who is an adult but not yet married); third, *rumah gadang katirisan* (*rumah gadang* is thin); and fourth, *mambangkeik batang tarandam* (raising submerged stems).⁶³ However, it should be understood that the transfer of *ulayat* land should only be done in urgent situations, such as when the matrilineal family is threatened with danger or embarrassment.⁶⁴

***Ulayat* Land in Islamic Law Perspective**

Talking about land and its relationship with Islamic law, we must first look at the terms used in the Qur'an. The word *al-ard* is used in the Qur'an and is usually interpreted with words such as earth, soil, land, etc. Land is one type of property that can be owned. This is due to the fact that it is a component of things that can be controlled, pursued, and utilized.⁶⁵

However, when it comes to ownership, Islam holds that Allah SWT solely owns everything, including land. In the Qur'an Surah an-Nur chapter 42, he says, "And to Allah belongs the kingdom of the heavens and the earth, and to Allah is the return (of all creatures)." In the Qur'an Surah al-Hadith chapter 2, Allah SWT also says, "To Him belongs the kingdom of the heavens and the earth, He gives life and death, and He is the Lord of all." These verses show that Allah SWT is the sole owner of everything, including land.⁶⁶

As the real owner of the land, Allah SWT gives power (*istikhlaf*) to humans to manage it in accordance with His laws. The word of Allah SWT in the Qur'an Surat al-Hadid chapter 7 which means: "And spend some of your wealth which Allah has made you master of." Imam Al-Qurthubi said in relation to this verse that it is a proof that the origin of ownership goes back to the property of Allah SWT, and that humans have no rights except to utilize (*tasharruf*). Thus, a common thread can be drawn that philosophically land ownership has 2 (two) points, namely: *First*, the real owner of the land is Allah SWT. *Second*, Allah SWT as the ultimate owner has authorized humans to manage land according to Allah's laws. This means that humans are only as managers.⁶⁷

⁶³ Pangulu, "Hak-Hak Masyarakat Atas Tanah Ulayat."; Siti Raga Fatmi, "Permohonan Tanah Ulayat Di Minangkabau Menjadi Tanah Hak Milik," *Lentera Hukum* 5, no. 3 (2018): 415–30, <https://doi.org/10.19184/ejllh.v5i3.8291>.

⁶⁴ Fatmi, "Permohonan Tanah Ulayat Di Minangkabau Menjadi Tanah Hak Milik."

⁶⁵ Ria Fitri, "Tinjauan Tanah Terlantar Dalam Perspektif Hukum Islam," *Kanun Jurnal Ilmu Hukum* 13, no. 3 (2011): 1–16.; Ahmad Munif, "Iḥyā' Al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia," *Al-Ahkam* 18, no. 1 (2018): 73–96, <https://doi.org/10.21580/ahkam.2018.18.1.2347>; Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."; Arysman et al., "Tanah Ulayat Perspektif Hukum Adat Dan Hukum Islam."

⁶⁶ Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

⁶⁷ Mangar and Ridho.; Iswari, "Kewenangan Pemerintah Dalam Penertiban Dan Pendaayagunaan Tanah Terlantar (Studi Perbandingan Hukum Negara Dan Hukum Islam)."

In the context of *istikhlaf* from Allah SWT to humans, ownership (*milkiyah*) in Islamic sharia is defined as the right established by Allah SWT for humans to utilize an object (*idẓn ash-Shari' bi al-intifa' bi al-'ayn*).⁶⁸ Therefore, in Ghani's terms, as cited by Mangar and Ridho, ownership in Islam derives from Allah's legal stipulations about an object, not from its physical reality. However, this does not mean that man is not allowed to have ownership administratively, which means having worldly possessions as part of his estate.⁶⁹

Basically, every person living on land or a community has the right to own land to the extent of the means permitted by Islamic law to acquire it. Therefore, Islam also recognizes the right of a group of people to land, known as customary rights or *ulayat* rights. The development and utilization of this common property is comparable to the provisions in *shirkah* or cooperation, where each tribe has equal rights and responsibilities.⁷⁰

In the field of *fiqh*, studies that discuss land rights fall into the category of *fiqh muamalah*.⁷¹ In general, the *fiqh* rules on land introduce various terms, such as land law, land law, and land law in sharia (Islam).⁷² However, the author is more interested in using the term land law (*ahkam al-Aradh*). *Ahkam al-Aradh* is a term used in Islamic law regarding land in relation to the rights of ownership (*milkiyah*), management (*tasharruf*), and distribution (*tawzi'*).⁷³ Therefore, land law according to Islamic law is a set of rules governing the ownership, management, and distribution of land.⁷⁴

Because our discussion relates to rights (*ulayat* rights), it is closely related to ownership, which in Edella Schlager and Elinor Ostrom's theory of 'property right', *ulayat* rights is included in 'property owned and defended by the community of resource users'.⁷⁵ Meanwhile, if we refer to the 'property right' of Islamic thinkers, such as Ibrāhīm al-Khatib, Muhammad Bāqir Sadr (1353-1400 H./1935-1980 M.), Wahbah Zuhaili, and Taqiuddin al-Nabhani, although not exactly the

⁶⁸ Taqiuddin An-Nabhani, *An-Nizham Al-Iqtishadi Fi Al-Islam*, VI (Libanon: Daar al-Ummah, 2004).

⁶⁹ Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

⁷⁰ Arysman et al., "Tanah Ulayat Perspektif Hukum Adat Dan Hukum Islam."

⁷¹ Sait and Lim, *Land, Law and Islam Property and Human Rights in the Muslim World*; Ridwan, "Hak Milik Atas Tanah Dalam Perspektif Hukum Islam Dan Hukum Pertanahan Indonesia."

⁷² Iza Haniffuddin, *Hukum Tanah Dalam Fiqih* (Batusangkar: STAIN Batusangkar Press, 2012), [https://repository.iaiponorogo.ac.id/632/1/Hukum tanah dalam fiqh.pdf](https://repository.iaiponorogo.ac.id/632/1/Hukum%20tanah%20dalam%20fiqh.pdf).

⁷³ An-Nabhani, *An-Nizham Al-Iqtishadi Fi Al-Islam*.

⁷⁴ Iswari, "Kewenangan Pemerintah Dalam Penertiban Dan Pendayagunaan Tanah Terlantar (Studi Perbandingan Hukum Negara Dan Hukum Islam)."

⁷⁵ Edella Schlager and Elinor Ostrom, "Property-Rights Regimes and Natural Resources : A Conceptual Analysis," *Land Economics* 68, no. 3 (2010): 249–62.

same, but the *ulayat* rights can be categorised as *al-milkiyyah al-'ammah* (collective/communal property rights).⁷⁶

According to Islam, land ownership can be due to a number of reasons, such as preserving or reviving dead land that has no owner, giving or granting. In addition, it is common knowledge about the inheritance of property, including land, and the origin of land ownership can come from a covenant or sale. According to the terms used by Hasbi Ash Shiddieqy, there are at least four ways of acquiring property that are permitted in Islam, namely: *ibrazul mubahat* (taking property that has no owner), *al-uqud* (making agreements), and *al-kehalafiah* (giving inheritance or compensating for losses).⁷⁷

Therefore, when it comes to *ulayat* land, it is no longer a strange thing because opening up no man's land for utilization has been around in Indonesia for a long time. The position of ordinary *ulayat* land is ultimately the same as land acquired through the process of *ihzarul mubahat* or perhaps *ihya' al-mawāt*.⁷⁸

According to Ibn Hazm, “*al-mawāt* land” means land that has no owner and it is not known who manages it. According to Ibn Hazm, the person who first revives or utilizes such land is logically considered the owner. Fuqaha' later embraced this view. According to Sayyid Sābiq in *Fiqh al-Sunnah*, *ihyā' al-mawāt* is an attempt to revive or cultivate dead (abandoned) land that has never been managed to be used for useful purposes such as housing, cultivation, and so on.⁷⁹

This understanding of *ihyā' al-mawāt* is no longer relevant to the circumstances and existing land regulations in Indonesia. This is because, in general, Article 33(3) of the 1945 Constitution of the Republic of Indonesia states that, “The land, water, and natural resources contained therein shall be under the control of the state....”, and the Basic Agrarian Law and other land regulations have explained the various types of land that exist in Indonesia, where land in Indonesia “does not require” the existence of land that is completely free of ownership. This is because Indonesian law divides land into several categories: land owned by individuals (private), land owned by legal entities, *ulayat* land, and

⁷⁶ Ridwan, “Hak Milik Atas Tanah Dalam Perspektif Hukum Islam Dan Hukum Pertanahan Indonesia.”

⁷⁷ Yanto Sufriadi, “Konsep Hak Kepemilikan Berdasarkan Hukum Adat Dan Hukum Islam,” *Syar Hukum: Jurnal Ilmu Hukum* 19, no. 1 (2021): 1–24, <https://doi.org/10.29313/shjih.v19i1.7008>; Mangar and Ridho, “Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam.”; Arysman et al., “Tanah Ulayat Perspektif Hukum Adat Dan Hukum Islam.”

⁷⁸ Sufriadi, “Konsep Hak Kepemilikan Berdasarkan Hukum Adat Dan Hukum Islam.”; Mangar and Ridho, “Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam.”; Arysman et al., “Tanah Ulayat Perspektif Hukum Adat Dan Hukum Islam.”

⁷⁹ Munif, “Ihyā' Al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia.”; Mangar and Ridho, “Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam.”

state-owned land. As mentioned in the hadith and fuqahā's understanding of *ihyā' al-mawāt*, there is no longer any free land.⁸⁰

Therefore, in the provisions of Islamic law, customary rights in the context of the right to cultivate land can be interpreted in line with the terms '*ihẓarul mubabat*' and '*ihyā' al-mawāt*'. However, there are some differences between *ulayat* rights, *ihẓarul mubabat*, and *ihyā' al-mawāt*. In the case of *ulayat* rights, the right comes from the right to cultivate *ulayat* land based on the customary rules that apply in a particular place. As for *ihẓarul mubabat*, the right comes from empowering or cultivating no man's land, which is not controlled by anyone. Whereas *ihyā' al-mawāt*, where a land right originates from an effort to revive or cultivate dead or abandoned land.⁸¹

Characteristics of *Ulayat* Land Conflict in Minangkabau Customary Law Community

Conflict comes from the English word *teminology*, which means "dispute, strife, contention or opposition." Conflict or dispute about something occurs between two or more parties. Conflict or dispute is almost inseparable from human life and society, so it is difficult to imagine a society without conflict.⁸² In a broad sense, dispute or conflict means something that causes a difference of opinion, quarrel, contention, contention, dispute, struggle between interested parties over an object. On the other hand, disputes or conflicts in the narrow sense are only cases that are resolved in court.⁸³

Conflict is a legacy of social life that can occur in a variety of circumstances as a result of the continual generation of a state of disagreement, controversy and opposition between two or more parties. Conflict is an expression of disagreement between individuals and other individuals, groups and other groups for several reasons. In this view, contention indicates differences between two or more individuals that are expressed, remembered, and experienced. Thus, it can be understood that conflict is a dynamic process and its existence is more about the perception of the person or party who experiences and feels it. Thus, if a situation is not perceived as a conflict, then basically the conflict does not exist and vice versa.⁸⁴

Land cases can basically be classified as conflicts of interest and conflicts of law. When they occur, they are called legal conflicts because they involve two

⁸⁰ Munif, "Ihyā' Al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia."; Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

⁸¹ Mangar and Ridho, "Tanah Ulayat Adat Perspektif Hukum Positif Dan Hukum Islam."

⁸² Permadi, "Eksistensi Hak Ulayat Dan Model Penyelesaian Konflik."

⁸³ Warman and Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)."

⁸⁴ Mukmin Zakie, "Konflik Agraria Yang Tak Pernah Reda," *Jurnal Ilmiah Hukum LEGALITY* 24, no. 1 (2017): 40–55, <https://doi.org/10.22219/jihl.v24i1.4256>.

(or more) parties who have different opinions about the legal status of land ownership or matters relating to the land. While conflicts of interest also involve two (or more) parties or groups, but are caused more by differences in interests rather than their claims as legally entitled parties.⁸⁵

According to Maria SW. Sumardjono, agrarian disputes are usually caused by the cultivation of land for forestry or plantations by the people, violations of landreform provisions, efforts to provide land for development, and various other civil issues.⁸⁶ Most of the land disputes are between indigenous communities claiming their *ulayat* rights and large-scale investors obtaining concessions for forest exploitation, mining (including oil and gas extraction), and agribusiness development under the PIR (Perkebunan Inti Rakyat) model.⁸⁷

According to Adonia Ivonne Laturette, *ulayat* land conflicts are caused by "differences in perceptions, values or opinions, interests regarding the status of *ulayat* land and customary law communities over certain areas, whether *ulayat* rights have been issued or not, but are controlled by other parties."⁸⁸ In addition, Iwan Permadi explained that there are several types of customary rights conflicts, including:⁸⁹

- a. Conflicts between *ulayat* rights holders due to unclear land boundaries;
- b. Conflicts over water source areas;
- c. The boundaries of *ulayat* rights land are unclear, so when investors use it, there will be conflicts;
- d. Some *ulayat* rights holders have asked the local National Land Agency to regularise their *ulayat* rights land. Some *ulayat* rights holders have asked the local National Land Agency to administer their *ulayat* land. This raises several issues, one of which is who has the authority to deal with the *ulayat* rights; and
- e. Customary inheritance law often conflicts with national inheritance law, which makes dispute resolution more difficult.

The problems of land and its resolution have been regulated in such a way, but each party involved in it has their own methods that they consider most effective for resolving land issues. Seeking to resolve land disputes requires an

⁸⁵ Warman and Syofiarti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat vs Pemerintah)."; Iswari, Handayani, and Karjoko, *Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative*.

⁸⁶ Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*.

⁸⁷ Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Ulayat Pada Kawasan Hutan," *Sasi* 27, no. 1 (2021): 102–12, <https://doi.org/10.47268/sasi.v27i1.504>.; Iswari, Handayani, and Karjoko, *Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative*.

⁸⁸ Zakie, "Konflik Agraria Yang Tak Pernah Reda."

⁸⁹ Permadi, "Eksistensi Hak Ulayat Dan Model Penyelesaian Konflik."

understanding of the various roots of land issues which are very complex.⁹⁰ The root causes of land disputes, according to Maria S.W. Sumardjono can be caused by the following things:

1. Conflict of interest, which is caused by competing interests related to substantive interests (e.g. rights to agrarian resources including land), procedural interests and psychological interests.
2. Structural conflicts, which are caused by, among others: destructive patterns of behaviour or interaction; unequal control of ownership or distribution of resources; unequal power and authority; and geographical, physical or environmental factors that hinder cooperation.
3. Value conflicts, caused by differences in the criteria used to evaluate ideas or behaviour; differences in lifestyle, ideology or religion/belief.
4. Relationship conflicts, caused by excessive emotions, misperceptions, poor communication or negative repetition of behaviour.
5. Data conflict, which is caused by incomplete information; erroneous information; different opinions on relevant matters; different interpretations of data; and different assessment procedures.⁹¹

As mentioned earlier, the issue of *ulayat* rights must be considered thoroughly and a fair settlement sought. This means that the settlement should minimise any negative effects or possible conflicts, so as to reduce vertical conflicts between *ulayat* rights holders and the government as well as horizontal conflicts between *ulayat* rights holders and other individuals.⁹²

The conflict of *ulayat* rights has been going on since the colonial era, especially in West Sumatra, the conflict began with the colonial government's policy of issuing a Domain Declaration for West Sumatra in 1874. However, the main issue of the conflict at that time concerned the control of *ulayat* land. The conflict continued until the era of Soeharto's government (new order).⁹³ In the reform era, the phenomenon of *ulayat* rights conflicts mostly arose as a result of land acquisition, especially the *ulayat* rights of indigenous peoples for the benefit of infrastructure development, industry, housing, tourism and large-scale plantations.⁹⁴ As a concrete example, although *ulayat* rights are inalienable, there

⁹⁰ Iswari, Handayani, and Karjoko, *Ulayat Land Disputes in Minangkabau Customary Law Community: Customary Courts As An Alternative*.

⁹¹ Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*, 3rd ed. (Jakarta: Penerbit Buku Kompas, 2020).

⁹² Sumardjono.

⁹³ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "Ambivalent Identities: Decentralization and Minangkabau Political Communities," in *Renegotiating Boundaries* (Brill, 2007), 417–42, https://doi.org/10.1163/9789004260436_019.

⁹⁴ Laturette, "Penyelesaian Sengketa Hak Ulayat Pada Kawasan Hutan."

are still many disputes over the government's appropriation of indigenous peoples' *ulayat* rights.⁹⁵ The conflict in Nagari Air Bangis, West Pasaman district, in 2023, is a real example of the conflict of civil rights in western Sumatra. The conflict arose as a result of the state's unilateral claim to the land of communities under customary law. The conflict arose after the government established a National Strategic Project (PSN) for the construction of oil and petrochemical plants there.⁹⁶ The efforts that have been made by the community, NGOs and the government to reduce the occurrence of further conflicts are non-litigation, namely dispute resolution outside the court, by negotiation, mediation and consolidation. The litigation mechanism is applied because it is seen as more favorable to the community.⁹⁷

Alternative Settlement of *Ulayat* Land Conflict in Minangkabau Customary Law Community According to Islamic Law

In social life, for any form of land rights, there is always the potential for conflict. The factors behind conflicts in society related to land cannot be separated from the aspects of ownership, management and distribution. It all depends on the type of conflict that occurs. But broadly speaking, as described in the previous discussion, there are horizontal and vertical conflicts between *ulayat* rights holders and other parties outside the government, and vertical conflicts between *ulayat* rights holders and the government.⁹⁸

In the perspective of Islamic law, when there is a dispute over land (including *ulayat* land) in the community, there are two ways to resolve it, namely through *hakam* and *ishlah*. *Hakam* in its most concrete form transforms into *qadhi* (judge) or court (*qadha/ hukumah*), which decides cases legally. Meanwhile, *ishlah* is a legal institution that reconciles, whether through a third party or not.⁹⁹ Moreover, according to another opinion, there are actually three ways to resolve disputes: through peace (*shulh*), arbitration (*tabkim*), and finally the judicial process (*al-qadha*).¹⁰⁰ The difference between the two opinions above lies in the concepts of *hakam*, *tabkim*, and *al-qadha*. These terms are sometimes used for peaceful resolution of disputes with a third party acting as an arbiter or arbitrator. The definition has similarities with *shulhu*, the only difference being the presence of a

⁹⁵ Verlia Kristiani, "Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi)," *ADIL: Jurnal Hukum* 11, no. 1 (2020): 139–63, <https://doi.org/10.33476/ajl.v11i1.1449>.

⁹⁶ Fifi Wijayanti et al., "Manajemen Konflik Pemerintah Dan Masyarakat (Studi Kasus: Konflik Agraria Di Nagari Air Bangis Pasaman Barat)," *Trivikrama: Jurnal Multidisiplin Ilmu Sosial* 2, no. 9 (2023): 31–40.

⁹⁷ Wijayanti et al.

⁹⁸ Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*.

⁹⁹ Abu Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa," *International Journal Ihya' Ulum Al-Din* 18, no. 1 (2016): 49–63, <https://doi.org/10.21580/ihya.17.1.1731>.

¹⁰⁰ Rokhmad.

third party. However, based on their etymology, *hakam* and *tabkīm* can also be considered as legal dispute resolution with *al-qadha* as the venue.¹⁰¹

In language, the word '*al-qadha*' can mean to decide, settle, establish, etc.¹⁰² According to Madkur, a court is a place to decide disputes between people based on the provisions given by Allah.¹⁰³ The court serves to resolve disputes (*al-khusumat*) between fellow human beings in accordance with the rule of law prescribed by Allah SWT.¹⁰⁴ The two perspectives above utilise the courts as a place of resolution in cases of dispute, whether civil or criminal.¹⁰⁵

Based on the above, it can be concluded that in Islam, there are two paradigms of dispute resolution: litigation and non-litigation. The litigation paradigm holds that courts are the only appropriate way to resolve disputes. In contrast, the non-litigation paradigm argues that the law and courts are unnecessary to resolve disputes. Out-of-court methods are much more effective at resolving disputes without hurting the opponent. According to the spirit of Islam, dispute resolution should be done in a non-procedural manner, as explained by Umar bin Khattab by saying: '*radd al-qadha' baina dzami al-arham batta yashthalibu fa inna fashla al-qadha' yuritsu al-dhagain*' (return the case to the relatives so that they can make peace because actually resolving in court can cause bad feelings).¹⁰⁶

Many Qur'anic and al-Hadith texts support the peaceful resolution of conflicts. In the Qur'an, Surah an-Nisa' (4) verses 128, 35, 129, 2: 182, 224, 228, 731: 9, 10. Islamic teachings continue to encourage peace, even when conflicts or disputes have developed into open wars. As described in verse 61 of Surah al-Anfal (8): *...wa in janahu li al-salmi fa ajnah laha...* (...and if your enemy desires peace, you should also desire it...). Therefore, peace is a central principle of Islamic life. This concept forms a way of life that allows a person or community to solve and overcome various problems (including problems in the field of *ulayat* land) in an easy, smooth, balanced and fair way.¹⁰⁷

Although the above Qur'anic verses do not explicitly explain how to resolve land disputes (*ulayat* land) peacefully, the values they teach can be applied to resolve any problem, including *ulayat* land disputes. The Prophetic Hadith, as stated below: 'Peace between Muslims is permissible, except for agreements

¹⁰¹ Rokhmad.

¹⁰² Direktorat Pembinaan Badan Peradilan Agama Islam, *Kompilasi Hukum Acara Islam*, (Jakarta: Depag, 1994).

¹⁰³ Muhammad Salam Madkur, *Peradilan Dalam Islam* (Surabaya: Bina Ilmu, 1993).

¹⁰⁴ Sayyid Sabiq, *Fiqhus Sunnah, Jilid III* (Kuwait: Darul Bayan, 1971).

¹⁰⁵ Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa."

¹⁰⁶ Madkur, *Peradilan Dalam Islam*.; Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa."

¹⁰⁷ Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa."

(peace) to forbid the lawful and legalise the unlawful.’ (Imam Tirmidhi, Abu Daud, and Ibn Majah).¹⁰⁸

Thus, whatever the type of conflict relating to *ulayat* land, both horizontal and vertical conflicts, so far what is considered the best way to resolve it is through non-litigation mechanisms. However, the non-litigation mechanism that is applied in practice is guided by statutory regulations. In the future, so that the non-litigation mechanism that has been practiced so far is more effective in resolving *ulayat* land conflicts in West Sumatra, it is necessary to guide the provisions contained in Islamic law. One of the non-litigation mechanisms in accordance with the provisions of Islamic law can be achieved by means of *ishlah*. *Isblah* in the settlement of *ulayat* land disputes can be carried out at the initiative of individuals or groups of customary law communities or anyone involved in the dispute. *Isblah* can also be proposed by other parties or third parties commonly referred to as *bakam*. This *bakam* assists two or more disputing parties. *Hakam* is equivalent to a mediator or arbitrator in terms of non-litigation dispute resolution.

Conclusion

The existence of *ulayat* land in the Minangkabau customary law community has been normatively recognized in legislation. In fact, in West Sumatra itself, *ulayat* land has been regulated in Regional Regulations. With regard to customary land, it was initially regulated in West Sumatra Regional Regulation Number 6 of 2008 concerning *Ulayat* Land and its Utilization. However, because the Regional Regulation is no longer in accordance with the development of law and the needs of the community, it was later replaced by Regional Regulation of West Sumatra Province Number 7 of 2023 concerning *Ulayat* Land. However, in reality, the recognition of *ulayat* land from the State through legislation does not necessarily resolve *ulayat* land conflicts that occur in the Minangkabau customary law community, both horizontal conflicts and vertical conflicts. This is because, the resolution of *ulayat* land conflicts that occur in the community has been more likely to be carried out through judicial institutions (litigation), which in practice prioritizes the formal legality of *ulayat* land. Therefore, in resolving various *ulayat* land conflicts that occur, litigation settlement should be pursued if non-litigation settlement does not work effectively. Conflict resolution by non-litigation is also one of the alternative conflict resolution outlined by positive law and Islamic law. Thus, it is a necessity for Minangkabau customary law communities that make Islam the only religion they adhere to to consider ways to resolve disputes through non-litigation mechanisms based on Islamic law, such as through *ishlah* or peace.

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¹⁰⁸ Rokhmad.

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