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# **Transformation of Land Rights Evidence in the National Agrarian System After the 2026 Abolition of Customary Documents: A Study of Legal Certainty and Agrarian Principles**

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## **ABSTRACT**

The abolition of customary documents as evidence of land history in 2026, as regulated in Government Regulation Number 18 of 2021, marks a fundamental shift in the architecture of land rights evidence in Indonesia. This study aims to analyze the impact of this policy on the evidentiary system within the framework of national agrarian law, examine its normative and administrative implications for communities previously reliant on customary-based evidence, and assess the extent to which post-2026 evidentiary transformation can realize the principle of

legal certainty. Using a normative juridical approach and linking it to agrarian principles, this research examines the structural changes in evidentiary mechanisms following the exclusion of customary documents from land administration processes. The findings show that the abolition has created gaps in initial evidence and procedural irregularities, thereby expanding public uncertainty in demonstrating the origins of land tenure. Furthermore, the disappearance of customary documents weakens the evidentiary position of communities and increases dependence on state administrative verification, particularly regarding access and validity. On the other hand, the transformation of the evidentiary framework has not fully achieved legal certainty due to variations in practice, data fragmentation, and the wide interpretive discretion of officials. These findings underscore the need for measurable transitional evidentiary guidelines, inclusive administrative recognition schemes, and standardized procedures to more effectively achieve the objectives of agrarian reform and legal certainty.

**Keywords:** *customary documents, legal certainty, land rights evidence, agrarian reform*

## INTRODUCTION

The transformation of Indonesia's land rights evidentiary system has entered a new era following the enactment of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. One of its most crucial provisions appears in Article 96<sup>1</sup>, which obliges the public to register their land-rights evidence within a maximum period of five years from the regulation's effective date. Consequently, beginning on 2 February 2026, various forms of village-based administrative proof or customary land records—such as girik, letter C, petok D, and other traditional agrarian inheritance documents not recorded through the modern land registration system—will no longer be recognized as valid evidence of ownership.<sup>2</sup>

This policy is part of the broader agenda to modernize land administration through programs such as Complete Systematic Land Registration (PTSL), digitalization of land archives, the development of Participatory Cadastre, and the establishment

<sup>1</sup> Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah

<sup>2</sup> Hardiantoro, A., & Sartika, R. E. A. (2025, July 2). *Girik dan Letter C Tak Berlaku Mulai 2026, Benarkah Tanah Yang Belum Disertifikatkan Menjadi Milik Negara*, diakses pada <https://www.kompas.com/tren/read/2025/07/02/150000065/girik-san-letter-c-tak-berlaku-lagi/mulai-2026-benarkah-tanah-yang-belum?page=all> diakses pada 1 Desember 2025

of a single land registry. This normative shift cannot be separated from the historical and social context that has shaped Indonesia's land-evidentiary system. For more than a century, Indonesia has maintained a hybrid evidentiary structure that juxtaposes formal state proof—namely land titles—with customary-based evidence that has evolved and become institutionalized within village administrations and local agrarian practices. According to Maria S.W. Sumardjono, this dualism in evidence is a consequence of the uneven implementation of land registration since the colonial era, which left most parts of the archipelago outside the coverage of the formal cadastral system until recent decades.<sup>3</sup> Thus, the policy abolishing customary evidence requires historical sensitivity, social awareness, and normative consistency.

In practice, girik, letter C, and petok D function not merely as village administrative records but also as social proof of hereditary land tenure. However, the Supreme Court, through a series of decisions, has consistently held that such customary land documents are not positioned as proof of rights but only as tax-related administrative data or territorial listings, and therefore insufficient as a legal basis for certificate issuance. Supreme Court Decision Number 397 K/TUN/2015<sup>4</sup>, for instance, affirms that land certificate issuance cannot rely solely on the existence of a girik; it must comply with the legal basis requirements under Government Regulation Number 24 of 1997 and the principle of legality in land registration.

The recording of girik and letter C is also often inconsistent with actual conditions in the field, which may lead to future disputes. A girik is merely preliminary evidence for obtaining land rights during land registration and serves as the basis for imposing Land and Building Tax when the land is occupied by someone. This is consistent with Article 1 point 20 of Government Regulation 24/1997 in conjunction with Article 19 paragraph (2)(c) of the Basic Agrarian Law<sup>5</sup>, which stipulates that the strongest evidence of rights is a land certificate. This means that girik and other customary documents cannot be equated with modern land-rights certificates.

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<sup>3</sup> Sumardjono, M. S. W. *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya* (Jakarta: Yayasan Obor Indonesia, 2008), dikutip dalam Putri, V. M. F., Lengkon, N. L., & Gerungan, L. K. F. R. (2025). Implementasi United Nations Declaration On The Rights Of Indigenous Peoples Dalam Hukum Nasional Untuk Perlindungan Hak Masyarakat Hukum Adat Terhadap Tanah Adat di Indonesia, *Lex Crimen: Jurnal Fakultas Hukum*, 14(2).

<sup>4</sup> Putusan Mahkamah Agung Nomor 397 K/TUN/2015

<sup>5</sup> Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA)

Supreme Court jurisprudence also demonstrates the consistency of this approach. Supreme Court Decision No. 34 K/Sip/1960<sup>6</sup> dated 10 February 1960 states that a Land Tax Receipt (Petuk Pajak Bumi) is not absolute proof of land ownership but merely evidence of tax payment. Supreme Court Decision No. 294 PK/Pdt/2016 dated 26 July 2016<sup>7</sup> likewise affirms that a girik is not proof of ownership, but only an indication of who is responsible for paying taxes on the land.<sup>8</sup>

Thus, the abolition of the validity of customary documents not only alters the types of evidence available but also shifts the structure of evidentiary arguments in land disputes before the general courts. Additionally, there is a social dimension in which rural communities and indigenous peoples have long relied on village-based documents as a form of state recognition of their historical ownership and personal relationship with land.

This change also produces epistemological consequences for how the state conceptualizes evidence. A system that prioritizes certificates as the sole strongest proof risks marginalizing historical records previously accommodated through a plurality of evidentiary forms. On the other hand, the state has an objective need to establish a land administration system that is integrated, predictable, and free from ambiguity that may generate conflict.

From the perspective of agrarian principles, the policy abolishing customary documents cannot be understood merely as an administrative step; rather, it must be assessed through the principles of legal certainty, justice, utility, publicity, speciality, legality, and recognition of the rights of indigenous peoples as articulated in Articles 2–5 of the Basic Agrarian Law (UUPA). Constitutional Court Decision No. 35/PUU-X/2012 affirms that the state is obliged to acknowledge and respect the existence of indigenous communities and their traditional rights as long as they are still alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. Therefore, the abolition of customary documents must not result in the loss of protection for pre-existing rights.

In the context of the reform of land-rights evidence following the 2026 abolition of customary documents, the theoretical framework used in this research is

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<sup>6</sup> Putusan MA No.34 K/Sip/1960 tanggal 10 Februari 1960, diakses pada 1 Desember 2025

<sup>7</sup> Putusan MA No.294PK/Pdt/2016 tanggal 26 Juli 2016, diakses pada 1 Desember 2025

<sup>8</sup> <https://halojpn.kejaksaan.go.id/publik/d/permohonan/2025-STRU> diakses pada 1 Desember 2025

grounded in three perspectives: legal certainty, the theory of national agrarian law, and the fundamental principles of agrarian law. This framework enables a systematic explanation of how the evidentiary system has substantively shifted from pluralism—where customary documents served as evidence—to certificate-based centralization, which must be evaluated not only administratively but also in terms of academic consistency, social legitimacy, and coherence with the national legal framework.

The theory of legal certainty relates to the transformation of the land evidence system through its demands for predictability, procedural clarity, and protection from arbitrary state action. Utrecht teaches that law can only provide certainty when rules concerning rights and obligations are understandable and accessible to citizens<sup>9</sup>. This implies that the state must provide clear evidentiary standards, definite conversion mechanisms, and predictable dispute-resolution procedures.

Lon L. Fuller also emphasizes the principle of legality through his eight fundamental principles—clarity, consistency, non-retroactivity, public promulgation, intelligibility, and ease of proof, among others—all of which are directly implicated when the state decides to abolish evidentiary instruments that have been used by the public for decades.<sup>10</sup> Thus, collaborative efforts among the government, institutions, and society are necessary for the legal system to become more just in accordance with principles of moral legality<sup>11</sup>.

Gustav Radbruch's thought brings a corrective dimension, asserting that substantive justice must not be sacrificed in the name of legal formalism<sup>12</sup>. Accordingly, regulatory changes regarding customary documents must be evaluated through a balance between formal legal certainty and the protection of communities who have historically and legitimately possessed land under

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<sup>9</sup> Waruwu, K. (2025, November 25). *Hakim Sebagai Penegak Etika Profesi Hukum: Suatu Kajian Tentang Kegagalan dan Kecemasan Dibalik Kewibawaan Seorang Hakim*, diakses pada <https://marinews.mahkamahagung.go.id/artikel/hakim-sebagai-penegak-etika-profesi-hukum-suatu-kajian-0Cd> diakses pada 2 Desember 2025

<sup>10</sup> Afif, M. (2025, March 17). *Menjadi Diri Manusia Yang Autentik*, diakses pada <https://marinews.mahkamahagung.go.id/putusan/menjadi-diri-manusia-yang-autentik-0dx> diakses pada 2 Desember 2025

<sup>11</sup> Ammade, F. R. D., Muslihat, S. N. N., & Kamilia, Z. (2023). Tantangan dan Hambatan dalam Upaya Penegakan Delapan Prinsip Moralitas Hukum Lon L. Fuller di Indonesia. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, 1(02). Doi:<https://doi.org/10.11111/nusantara.xxxxxxx>

<sup>12</sup> Roring, E. B., Haq, Z. A., & Alfarisi, S. (2025). Pembentukan Peradilan Agraria sebagai Instrumen Hukum Administrasi Negara dalam Penyelesaian Konflik HGU Perkebunan. *Jembatan Hukum: Kajian Ilmu Hukum, Sosial dan Administrasi Negara*, 2(2), 262-279. Doi:<https://doi.org/10.62383/jembatan.v2i2.1733>

customary law but have not obtained certificates due to various barriers. Legal certainty does not merely concern administrative order; it also concerns certainty of access for citizens to the rights they rightfully possess.

Indonesia's normative framework on land is also rooted in the theory of national agrarian law established under the 1960 Basic Agrarian Law (UUPA). Boedi Harsono views Indonesian agrarian law as an integrative system—one that combines elements of Western law, customary law, and the needs of modern land administration<sup>13</sup>. This perspective frames land registration as a tool rather than an end in itself: an instrument for providing legal protection to the public, ensuring administrative order, and preserving the cohesion between communities and the land they have long controlled. Thus, customary documents such as girik, letter C, and petok D are not merely considered outdated evidence but are part of local administrative history that, in earlier periods, served as adequate indicators of land tenure.

Meanwhile, Maria S.W. Sumardjono emphasizes the importance of recognizing the plurality of land laws in Indonesia, arguing that the state cannot treat registration as a singular process that negates social realities. Instead, it must account for historical contexts, social structures, and the deep attachment between communities and their living spaces. Therefore, any policy change related to land-rights evidence—including the termination of recognition for customary documents in 2026—must be evaluated through the core values of agrarian law, particularly gradual integration, recognition, and substantive justice.

The fundamental principles of agrarian law serve as the bridge between the theory of legal certainty and the theory of national agrarian law. The principle of legal certainty requires clarity in legal relations between subjects and land objects; the publicity principle mandates that all land data be accessible to third parties to prevent disputes; the speciality principle requires detailed identification of land objects through physical boundaries or official mapping; and the legality principle obliges that all land-related actions follow established formal procedures under prevailing regulations. However, these principles do not stand alone. The principles of justice and utility require the state to consider the social impacts of policy changes, particularly on indigenous communities and rural populations who

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<sup>13</sup> Harsono, B. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanannya*, (Jakarta: Djambatan Press, 2003), dikutip dalam Putri, V. M. F., Lengkong, N. L., & Gerungan, L. K. F. R. (2025). Implementasi United Nations Declaration On The Rights Of Indigenous Peoples Dalam Hukum Nasional Untuk Perlindungan Hak Masyarakat Hukum Adat Terhadap Tanah Adat di Indonesia, *Lex Crimen: Jurnal Fakultas Hukum*, 14(2).

have historically relied on customary documents as evidence. Normatively, Article 18B paragraph (2) of the 1945 Constitution and Constitutional Court Decision No. 35/PUU-X/2012<sup>14</sup> provide constitutional legitimacy for indigenous peoples, affirming that the existence of hak ulayat and forms of customary land tenure cannot simply be eliminated through administrative policy.

Based on the foregoing background, this study formulates three central research questions. First, how does the abolition of customary documents in 2026 affect the system of land-rights evidence within the framework of Indonesia's national agrarian law? Second, what are the normative and administrative implications of this abolition for access, mechanisms, and the validity of land-rights evidence among communities that previously relied on customary forms of proof? Third, how can the transformation of land-rights evidence following the 2026 abolition of customary documents realize legal certainty when assessed through the principles of agrarian law?

In line with these research questions, the objectives of this study are: to analyze the normative changes in the land-rights evidentiary system after the abolition of customary documents; to evaluate the administrative and juridical implications for communities and ongoing evidentiary processes; and to assess the consistency of the policy abolishing customary documents with agrarian principles and the principle of legal certainty.

## METHOD

This study employs a normative juridical method focusing on the examination of positive law through statutory approaches, agrarian legal doctrines, and general principles of Indonesian land law. The primary legal materials examined include the Basic Agrarian Law, Government Regulation Number 18 of 2021, and technical land regulations relating to land registration and evidentiary mechanisms. The study is supplemented with secondary legal materials consisting of academic literature, expert interpretations, and relevant prior research. All legal materials are analyzed using a conceptual approach by linking normative provisions, regulatory objectives, and their implications for the conversion of customary documents and the transformation of the land-rights evidentiary regime after 2026.

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<sup>14</sup> Putusan MK No. 35/PUU-X/2012, diakses pada 1 Desember 2025

## RESULT & DISCUSSION

### **1. The Impact of the 2026 Abolition of Customary Documents on the System of Land-Rights Evidence within the National Legal Framework**

Regulatory changes introduced through Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration mark an important turning point in Indonesia's system of land-rights evidence. This regulation provides the legal foundation for an integrated land-registration policy and explicitly governs the status of old evidentiary documents as well as the mandatory requirement for their registration, including transitional provisions relevant to customary documents. Article 96 of Government Regulation No. 18/2021 stipulates that written evidence of former customary land owned by individuals must be registered no later than five years from the enactment of the regulation—namely, before 2 February 2026. After this date, customary land documents such as girik, letter C, petok D, and other traditional land records are no longer valid as lawful evidence of ownership.

The shift in this evidentiary regime generates a fundamental transformation in the legal status of these documents: from evidence of title (title-based evidence) to merely historical indicators or supporting clues (history-based or indicia evidence). Prior to 2026, girik or letter C were often treated as traditional legal bases in many regions and frequently served as grounds for claims in disputes, inheritance matters, or inter-generational transfers. However, as of 2 February 2026, such documents may only be regarded as indications that a parcel of land was once subject to taxation or administratively recorded in the past, but not as a legitimate basis of legal title. This creates a discontinuity between historical claims and legally recognized legitimacy under the contemporary national registration system.

Government institutions, including field officials, have clarified that these documents may only function as preliminary indicators in land-registration procedures and not as evidence of rights. Accordingly, the prevailing formal legal regime establishes legal certainty by removing the juridical status of customary documents as bases of title. This shift is not merely an administrative advisory for communities but a binding normative mandate with absolute effect. Such a condition carries structural legal consequences: landholders who rely solely on customary documents will lose access to officially recognized evidentiary pathways within the formal land-registration system.

As a result of this formal transition, the structure of land rights evidence increasingly demands formal verification in the form of parcel maps, field measurements, registry records, and official registration outcomes as essential requirements. This means that anyone seeking to prove rights over land they control must go through modern administrative mechanisms supported by formal documents verifiable by the state. It is at this practical level that the burden of proof shifts to the community and applicants, requiring them to file registration requests and fulfill the requirements of demarcation, measurement, and legalization. Consequently, if these requirements are not fulfilled by the applicant, the land rights claim will be difficult to recognize even when physical possession or hereditary history is clear.

From the perspective of the principle of justice, the state is obligated to balance the need for national legal certainty with the protection of existing rights. Without competency measures such as pro bono registration services, special verification programs for customary documents, or temporary administrative recognition, this restructuring of evidence risks creating systemic legal inequality. The state must uphold the rights of indigenous law communities as long as they continue to exist, as mandated by other relevant legislation.<sup>15</sup>

Constitutional Court Decision No. 35/PUU-X/2012 affirms the principle of recognition of indigenous peoples. Although the decision concerns customary forests, its underlying reasoning for land rights evidence underscores that the recognition of customary rights cannot be disregarded. Norms regulating evidence must not contradict the principle of recognition, and the state is obliged to accommodate customary rights within constitutional boundaries. Failure to do so may lead to conflicts between constitutional norms protecting customary rights and Government Regulation No. 18/2021. Courts and administrative bodies must provide verification spaces that are sensitive to the socio-historical realities of indigenous communities.<sup>16</sup>

A further impact will be the emergence of legal uncertainty for longstanding landholders who have not completed the conversion process. In reality, many customary documents remain in circulation and use within society, especially in rural areas, remote regions, or territories with limited administrative access.

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<sup>15</sup> Rubiati, B. (2024). The Existence and Protection of Ulayat Rights in Indigenous Communities Within the Framework of Positive Law in Indonesia. *Jurnal Poros Hukum Padjajaran*, 5(2), 302-320. Doi: <https://doi.org/10.23920/jphp.v5i2.1450>

<sup>16</sup> Mahkamah Konstitusi, Ikhtisar Putusan Perkara Nomor 35/PUU-X/2012 tentang Hutan Adat

Without an official certificate by 2026, these customary documents will lose their legal force. The potential for disputes, overlapping claims, and land conflicts will increase because there will be no legal certainty that historical claims can be proven. In the context of agrarian law and indigenous communities, this may result in the loss of rights that were previously considered valid at the local level.

From the perspective of the land registration system, the abolition of customary documents is viewed as a means to strengthen the clarity of national land data, prevent conflicts arising from duplicate documents, and minimize document manipulation practices such as the forgery of girik or letter C by land syndicates. These customary documents have long been vulnerable to forgery, difficult to verify, and a recurrent source of disputes. Thus, from this standpoint, the prevailing regulation can be regarded as an effort to make the status quo of the land administration system more transparent, accountable, and legally secure.

On the other hand, in terms of protecting community rights—particularly for vulnerable groups—this policy generates a serious normative dilemma. Communities that have relied on customary evidence because they lack the access or capacity to formally register land—whether due to geographic limitations, financial constraints, low legal literacy, or administrative barriers—may face unequal access to recognition of their rights. This outcome runs counter to the principles of justice and the utilitarian goals of agrarian law. Additional obstacles for low-income landholders, such as registration costs, waiting periods, and administrative requirements, can create a divide between those who can access legal formalities and those who cannot, especially if no procedural subsidies or fee-reduction programs are provided.

Within the framework of national agrarian theory as articulated by scholars, reforms of this nature should be carried out through fair and transparent stages, taking into account the pluralistic land tenure systems that exist in Indonesia. If regulatory changes are implemented in an absolute and simultaneous manner without ensuring that all affected groups are adequately prepared or accommodated, administrative reform in the land sector will not align with agrarian justice and may instead produce structural exclusion of traditional communities.

Normatively, the abolition of customary documents as evidence of rights further affirms the supremacy of the land certification system as the sole legal basis for ownership. In this way, the state clarifies the hierarchy of evidence: certificates and official registry data occupy the highest position, while customary documents

are relegated to mere administrative history. This shift reinforces the principles of legality and speciality, establishing that only through standardized registration procedures can the subjects and objects of land rights be legally ascertained. However, this legal hierarchy also has consequences—namely, the loss of flexibility in recognizing traditional rights, particularly in remote areas or among indigenous communities with no access to land registration. In such contexts, customary documents have historically served as the only records of land possession and local socio-cultural practices. The loss of their legal validity without social compensation or transitional mechanisms risks generating structural injustice.

The courts' approach in land cases over the past several decades has tended to treat girik or letter C as evidence with limited probative value. Their presence may influence judicial considerations when corroborated with other evidence, yet they are not regarded as final proof of ownership. Annisa & Harjono's research shows that these documents are often treated merely as administrative indicators or proof of tax payment, rather than as definitive title, meaning their reliability depends heavily on supporting evidence such as actual possession and witness testimony<sup>17</sup>. This dependent evidentiary value reflects a shifting pattern in judicial reasoning, with legal implications that extend beyond administrative matters to the probative construction applied in court.<sup>18</sup>

Furthermore, the new regulatory framework requires the state to possess adequate administrative capacity—from providing parcel maps, survey personnel, and evenly distributed BPN services to processing applications.<sup>19</sup> Communities are likewise expected to increase awareness regarding first-time land registration to obtain legal certainty over their land rights<sup>20</sup>. Institutional reform is necessary to ensure that the new norms do not become mere formalities that widen existing

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<sup>17</sup> Oktaviani, A., & Harjono, S. H. (2019). Kekuatan Pembuktian Surat Letter C dalam Pemeriksaan Sengketa Tanah di Persidangan. *Verstek*, 7(1). Doi: <https://doi.org/10.20961/jv.v7i1.30038>

<sup>18</sup> Rini, A. P., & Winanti, A. (2024). Evidence of Girik Documentation in Land Acquisition Disputes (Study of Tangerang District Court Decision Number 907/Pdt.G/2018/PN Tng). *Journal of Law, Politic and Humanities*, 5(2), 755-765. Doi: <https://doi.org/10.38035/jlph.v5i2.1051>

<sup>19</sup> Tirandika, P. R. A., & Resen, M. G. S. K. (2023). Penerapan Tata Cara Pendaftaran Tanah di Indonesia Berdasarkan Peraturan Pemerintah No.18 Tahun 2021. *Jurnal Hukum Kenotariatan*, 8(01). Doi: <https://doi.org/10.24843/AC.2023.v08.i01.p3>

<sup>20</sup> Winata, Meta Nadia (2021). Analisis Terhadap Tanda Bukti Hak Lama Sebagai Petunjuk Kepemilikan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 18 Tahun 2021. *Indonesian Notary*: Vol. 3. No.3, Article 44. <https://scholarhub.ui.ac.id/notary/vol3/iss3/44>

legal gaps.<sup>21</sup> If administrative capacity remains uneven, many land parcels will be left unregistered, resulting in de facto loss of opportunities for legalisation despite the owners' prior possession of customary documents. This underscores that formal regulations without effective implementation risk creating legal invisibility, where genuine rights go unrecognized due to administrative shortcomings.

Looking ahead, this transition in the evidentiary system may function as a double-edged sword. On one hand, it strengthens land administration and reduces mass disputes; on the other hand, it imposes significant burdens on the public in terms of cost, procedure, and access. Although the PTSL program has been implemented, it has not yet reached all regions. Thus, requiring communities to independently pursue certification entails considerable expenses. The greatest risk is that lands that are factually and historically owned by communities may become "legally abandoned," opening the door to claims by other parties, or even by the state. Nevertheless, the new regulation may create opportunities for more orderly, transparent, and accountable land governance—provided it is accompanied by outreach programs, financial assistance for registration, accelerated conversion processes, and specific recognition of hak ulayat, so that this transformation strengthens legal certainty without sacrificing justice for affected communities.

The publicity aspect within the principles of land registration is intended to create transparent and integrated data, which enhances certainty for third parties—yet only if the initial data entered into the system results from fair and inclusive verification. In land acquisition processes, transparency is one of the rights of landowners or rights holders.<sup>22</sup> If verification eliminates customary evidence without allowing space for historical validation, the publication of data may entrench unilateral claims or foreclose the possibility of alternative proof.

The consequences outlined above indicate that the abolition of customary documents reflects the state's intention to resolve the long-standing legal ambiguity associated with the plurality of evidentiary instruments, and to establish a single standard of proof consistent with the objectives of Government Regulation No. 18 of 2021 to create an integrated and accountable national land administration system. It also requires critical evaluation of whether the regulation and its implementation ensure that all rights holders—especially those in remote regions

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<sup>21</sup> Hidayat, M. J., Saputra, T. Y., & Ardiyansyah, A. (2025). Analisis Hukum Pelaksanaan Pendaftaran Tanah Sistematis Lengkap di Kabupaten Pidie. *MEUSAPAT: Jurnal Ilmu Hukum*, 4(1), 172-196

<sup>22</sup> Rosmidah, R., & Pebrianto, D. Y. (2020). Transparency Principle on Land Acquisition for Agraria Justice. *Jambe Law Journal*, 3(1), 83-1-1. Doi: <https://doi.org/10.22437/jlj.3.1.83-101>

or within indigenous communities—are able to undertake the conversion process fairly. Without an inclusive transitional mechanism, the regulation risks generating structural inequality.

## **2. Normative and Administrative Implications of the Abolition of Customary Documents for Access, Mechanisms, and Validity of Land Rights Evidence**

The transformation of land rights evidence following the abolition of customary documents beginning 2 February 2026 brings fundamental changes to Indonesia's national land administration system. This shift cannot be separated from the framework of legal certainty, which has long served as a central foundation in the development of agrarian law in Indonesia. In the context of land administration, legal certainty requires evidence of land rights that is uniform, verifiable, and state-recognized. Thus, the transition from customary documents to modern official certificates signifies an effort to strengthen legal validity so that land registration yields strong and definitive proof within Indonesia's positive legal system. Land registration supported by title certificates fulfils both administrative and normative requirements under Government Regulation No. 18 of 2021. Legal certainty provides guidance for the public that girik constitutes only preliminary evidence—reflecting land previously governed by customary law—while requiring additional supporting data and remaining far weaker than a land certificate.<sup>23</sup>

The Basic Agrarian Law (UUPA), as the cornerstone of Indonesia's national agrarian legal system, has from the outset positioned customary law as part of the agrarian framework, insofar as it does not conflict with national interests and the fundamental principles of agrarian law. Theoretically, Indonesia adheres to a pluralistic yet unification-oriented agrarian system. The UUPA seeks to create a unified national agrarian structure without severing its connection to the living customary laws found in society. Accordingly, the abolition of customary documents may be interpreted as part of a broader consolidation of this legal system, although it introduces new implementation challenges.

The elimination of girik, letter C, petok D, landrente, verponding, and other customary documents as evidence of land rights reflects a policy choice to remove the evidentiary diversity that has historically affected legal certainty in land administration.<sup>24</sup> The government signaled this policy early through the issuance

<sup>23</sup> Tejawati, D. (2021). Asas Kepastian Hukum dalam Kedudukan Girik Terhadap Sertifikat Hak Atas Tanah. *Jurnal Suara Hukum*, 3(2). Doi: <https://doi.org/10.26740/jsh.v3n2.p251-273>

<sup>24</sup> Rahmad, A. (2023). Harmonisasi Hukum Adat Hukum Pertanahan Nasional Terkait Kepemilikan Tanah dalam Rangka Proyek Strategis Nasional. *Jurnal Hukum dan Keadilan*, 1(1), 1-12. Doi: <https://doi.org/10.61942/jhk.v1i1.43>

of Government Regulation No. 18 of 2021, which requires that old land rights be converted through the modern land registration system in order to obtain full evidentiary force. Old customary documents can no longer be used as lawful proof; they serve only as indicators of possession that must be followed up through formal registration procedures in accordance with the prevailing regulations.

Although from the perspective of indigenous communities, this change may generate new uncertainties. For many indigenous groups, traditional documents are not merely administrative evidence but also part of collective memory and social legitimacy over a parcel of land. Regulations that standardize evidence and prioritize certificates may shift the knowledge structures and customary practices that have existed for generations. This challenge is reinforced by the fact that some indigenous communities are located in areas that are difficult to reach by administrative services, making document conversion not always easy or quick to accomplish. Other administrative obstacles such as costs, technical requirements, limited information, and unequal access to land administration services will weaken their ability to obtain certificates before the specified deadline.

Land administration itself requires an orderly process starting from measurement, physical data examination, verification of juridical data, and the involvement of stakeholders. This process is similar throughout Indonesia, so the inability to meet procedural standards may result in the loss of formal recognition of customary-based land tenure. Sulele et al. (2025), in their research on the implementation of land registration, indicate that marginal groups often experience structural obstacles in accessing adequate administrative services.<sup>25</sup> Here, the gap between norms and social reality becomes evident; although regulations require the unification of evidence systems, the success of their implementation still depends on the level of administrative accessibility for all layers of society.

Within the framework of national agrarian theory, the step to unify evidence of rights by converting customary documents into certificates can be interpreted as an effort toward agrarian modernization. This modernization is intended to create a solid land database, minimize land conflicts, and facilitate spatial and regional planning. A single, centralized registration system simplifies supervision and the distribution of justice in the management of agrarian resources. However, modernization always carries risks when dealing with indigenous communities

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<sup>25</sup> Sulele, Y., Pongkorung, F., & Goni, C. J. J. G. (2025). Tinjauan Yuridis Pendaftaran Hak Atas Tanah Melalui Buku Letter C, Petok D, dan Girik dalam Mencegah Sengketa Tanah Berdasarkan Peraturan Pemerintah Nomor 18 Tahun 2021. *Lex Crimen: Jurnal Fakultas Hukum Unsrat*, 13(5).

that have communal ownership structures and non-documentary systems of proof.

<sup>26</sup> This context subsequently gave rise to Ministerial Regulation ATR/BPN No. 14 of 2024 on the Registration of Ulayat Land, which provides a pathway for indigenous communities to register communal ulayat territories collectively into the state's formal system. This indicates that the state does not intend to abolish customary rights, but rather to place them within a modern administrative framework. Nevertheless, the success of this policy still depends on the extent to which it can be implemented inclusively, given that the processes of identifying indigenous communities, boundary mapping, and claim verification are far from simple.

In terms of legal validity, land certificates continue to hold the strongest position within Indonesia's land administration system. Certificates are considered capable of providing guarantees against disputes, facilitating transactions, and securing the economic interests of the owner. Therefore, the position of customary documents becomes legally inferior after 2026; they are no longer regarded as evidence of rights, but merely as historical indicators that require further verification. This weakness creates a heavier burden of proof for customary landholders who are late in converting their rights.

Another implication will arise in the sphere of agrarian adjudication. The elimination of customary documents may generate new vulnerabilities for customary communities that have not yet registered their land, creating risks of conflict with the state, private actors, or among community members. Several studies note that disharmony between customary law and national agrarian law is one of the sources of land disputes, especially when the state modernizes the system without deep dialogue with customary groups.<sup>27</sup> The tendency toward subordination of customary law to positive law reinforces critiques that the policy of abolishing customary documents is not only related to legal certainty, but also concerns power relations between the state and customary communities. If land administration prioritizes procedural efficiency while neglecting the socio-cultural dimensions of land for customary peoples, agrarian modernization may become a source of new injustices. Without proper assistance mechanisms, thorough

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<sup>26</sup> Umami, A. M., & Permata, S. N. (2025). Perkembangan pengaturan Tanah Adat di Indonesia. *Ganec Swara*, 19(1), 371-375. Doi: <https://doi.org/10.59896/gara.v19i1.227>

<sup>27</sup> Lubis, I., Siregar, T., Lubis, D. I. S., Adawiyah, R., & Lubis, A. H. (2025). Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional Tantangan dan Solusi dalam Pengakuan Hak Ulayat. *Tunas Agraria*, 8(2), 143-158. Doi: <https://doi.org/10.31292/jta.v8i2.401>

socialization, and adequate access to land services, this policy has the potential to weaken the bargaining position of customary communities before the law.

Nevertheless, opportunities remain to create inclusive legal certainty. By bringing land administration services closer to customary communities, facilitating the mapping of ulayat boundaries, and developing collective registration mechanisms that are sensitive to customary social structures, the state can ensure that this transition does not eliminate pre-existing rights. Agrarian modernization can only succeed if accompanied by protection of agrarian pluralism and the principle of social justice.

Thus, the normative and administrative implications of abolishing customary documents depend entirely on the quality of regulation and its factual implementation in the field. Its impact on access, mechanisms, and evidentiary validity is ambivalent. Normatively, this step strengthens a uniform and certain evidentiary system. Administratively, it demands substantial adjustments from customary communities to access formal services. Socially, it raises questions about the extent to which agrarian modernization can proceed while respecting legal pluralism, the identity of customary peoples, and the principles of agrarian justice. The transition period leading up to 2026 will be a crucial moment for the state to ensure that legal certainty is not achieved by sacrificing rights that have long existed within society. The modernization of evidentiary systems will function inclusively only if the state ensures two elements move together: the unification of evidence that provides certainty, and administrative mechanisms capable of reaching, protecting, and facilitating customary communities in the conversion process. Without such balance, the reform of the evidentiary regime risks exacerbating vulnerabilities over land that has long been under their control.

### **C. Transformation of Land Rights Evidence After the 2026 Abolition of Customary Documents in Realizing Legal Certainty Based on the Analysis of Agrarian Principles**

The transformation of land rights evidence in Indonesia, when customary documents and earlier categories of proof are abandoned, marks a moment in which the state—through the official registration system—declares itself the sole authority regulating the legitimacy of land rights based on administrative evidence. This change is not merely superficial but constitutes an effort to realize agrarian legal certainty by ensuring that land rights can be proven systematically, in a

standardized manner, and with juridical accountability. This shift is not merely technocratic but represents a reconstructive step in redefining the relationship between the state and society.

In the context of agrarian law, land registration is regulated as a state obligation to guarantee certainty of land rights for all citizens. The transformation of evidence after 2026 aligns with the normative mandate of agrarian legislation, both systematically and sporadically, through cadastral mechanisms and the issuance of land certificates as the primary instrument. It is intended to provide legal recognition of land as a means of preventing conflict. The structure of evidence is directed toward instruments that strictly comply with statutory regulations<sup>28</sup>. From a formal-legal perspective, certificates as final evidence offer advantages to rights holders by providing stronger legal guarantees, making ownership status clearer and better protected from overlapping claims or unilateral evictions.

The normative pillar guiding this transformation is the constitutional mandate in Law No. 5 of 1960 (UUPA). Article 19 of the UUPA affirms the state's obligation to administer land registration to ensure legal certainty. This norm positions land administration not merely as a technical necessity but as a state duty to establish order in agrarian law. Legal certainty, as articulated in the UUPA, presupposes evidence that can be verified, documented, and follows uniform standards of proof. In this context, land certificates obtain firm juridical force through Article 24 of Government Regulation No. 24 of 1997, which states that certificates constitute strong evidence. Thus, the post-2026 transformation essentially reaffirms this norm by eliminating all forms of evidence that do not meet formal verification structures.

However, legal certainty in agrarian law cannot be achieved solely through strengthening evidentiary instruments. It also requires administrative procedures that are fair, transparent, and accessible.<sup>29</sup> In this regard, agrarian principles such as simplicity, openness, and protection of vulnerable groups may be used to assess whether the transformation of evidence truly strengthens legal certainty or instead creates new obstacles for those who previously relied on customary forms of proof.

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<sup>28</sup> Sidabutar, B. (2023). Kepastian Hukum Kepemilikan Hak Atas Tanah Menurut Sistem Hukum di Indonesia dan Praktik Yudisial. *Jurnal Gagasan Hukum*, 5(01). Doi: <https://doi.org/10.31849/jgh.v5i01.13232>

<sup>29</sup> Rachmawati, D. (2021). Kepastian Hukum terhadap Tanda Bukti Kepemilikan Hak Atas Tanah. *Syntax Literature: Jurnal Ilmiah Indonesia*, 6(6). Doi: <https://doi.org/10.36418/syntax-literature.v6i6.3038>

The implementation of national land registration as mandated by Article 19 of the UUPA cannot be understood separately from the principle of ease of access, which is further emphasized in modern administrative practice. The transformation of documentary evidence after 2026 requires the state to ensure that administrative standards are based on legal certainty, utility, non-discrimination, and proportionality. These norms serve as the foundation for assessing whether the abolition of customary evidence and the shift to formal proof truly meet the standards of lawful and fair governmental action.

If the abolition of customary evidence is not accompanied by an adequate transitional mechanism, such administrative action may fail to meet the principle of non-discrimination as required by Article 10 of Law Number 30 of 2014. Thus, the success of the transformation of evidence depends on the state's ability to apply these principles consistently in both policy and implementation. The importance of data integrity in the new system also cannot be ignored. Juridical data must be synchronized with physical data concerning maps, boundaries, measurements, and coordinates. Discrepancies between juridical and actual data often become sources of dispute and are a major cause of land case losses. Therefore, the transformation of evidence must be accompanied by strict verification and administrative auditing systems to ensure that legal certainty can truly be achieved.<sup>30</sup>

From the perspective of agrarian legality principles, the state's action to standardize proof of rights must be understood as part of an effort to establish orderly land administration. However, this principle also entails an obligation for the state not to create new uncertainties through policies that sever the continuity of community land tenure histories. This transformation also tests the state's ability to accurately integrate physical and juridical data. Government Regulation Number 24 of 1997 requires strict examination of data before certificates are issued. This provision demands field verification that is sensitive to the diverse histories and structures of land tenure.

The implementation of a single certificate-based system has a direct correlation with the principle of the social function of land because the modernization of evidence must ensure that land remains accessible and usable in an equitable manner. Thus, the abolition of customary evidence must be accompanied by efforts to maintain the continuity of land use by communities that have traditionally held

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<sup>30</sup> Marryanti, S., & Nurrokhman, A. (2021). Kepastian Hukum Atas Hak Tanah: Pelajaran dari Kekalahan Perkara Pertanahan di Pengadilan. *Jurnal Pertanahan*, 11(2). Doi: <https://doi.org/10.53686/jp.v11i2.111>

rights. Land is not merely an economic object but also a living space, cultural heritage, and source of livelihood, meaning that the transformation of evidence must be sensitive to these dimensions in order to fulfill broader agrarian goals. Electronic certificates, as regulated in Ministerial Regulation ATR/BPN No. 1 of 2021, reinforce the direction of evidence digitalization. Articles 3 and 4 affirm the fully digitalized form of certificates as part of modern land administration transformation. In this regard, legal certainty is also tied to data security and the integrity of information.

The modernization of the evidentiary system after 2026 seeks to end dependence on community-based evidence that is often undocumented and lacks standardization. However, this reform still faces a major challenge: how to incorporate customary tenure histories into a rigid system without disregarding the social legitimacy of such ownership. This transition creates the need for a structured rights-conversion process. Conversion is not merely a change in the form of evidence, but also a verification of the existence of rights through mechanisms that consider objective data and social recognition. Within the framework of the principle of legal protection, this process must not extinguish previously valid rights.

Customary evidence, as a form of proof abolished by the state, makes the mechanism of re-verification essential. This process must ensure that communities possessing customary documents may still assert their rights through indicators of possession, testimony, and field examinations. Here, the principle of agrarian justice operates to prevent the loss of rights due to administrative changes. On the other hand, administrative challenges will be significant, especially for customary communities located far from land administration services. If the state does not provide adequate access channels, this transition may diminish their ability to obtain certificates, which will be the sole strong form of evidence after 2026.

The modernization of land services—including the digitalization of certificates, online information systems, and electronic registration—offers new opportunities within this transformation.<sup>31</sup> The implementation of electronic certificates can accelerate registration, facilitate verification, and enhance administrative efficiency without compromising legal certainty. Thus, this transformation is not

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<sup>31</sup> Iqbal, F. M. (2025). Legal Analysis of The Protection and Legal Certainty of Electronic Land Certificates as an Instrument of Land Reform in Indonesia. *KRTHA BHAYANGKARA*, 19(1), 176-187. Doi: <https://doi.org/10.31599/krtha.v19i1.3628>

only a legal reform but also part of the broader modernization of the agrarian system in the digital era.

Collective registration or ulayat land registration, as regulated under ATR/BPN Regulation No. 14 of 2024, offers an approach more aligned with the social structures of customary communities. When the system recognizes only individual certificates, collective rights risk becoming marginalized. This regulation demonstrates that the modernization of evidence can still preserve agrarian pluralism if applied adaptively. Legal certainty can only be achieved when the transformation of evidence does not merely impose formal standards but also ensures that every legal subject has an equal capacity to meet those standards. This relates directly to the principles of simplicity and accessibility within agrarian procedures.

The strengthening of the state's role in land control under Article 2 of the Basic Agrarian Law (UUPA) also explains that the state has the legitimacy to reorganize the evidentiary system, although such legitimacy must be exercised in accordance with the principle of protection rather than administrative domination that could disadvantage certain groups. The demand for legal certainty likewise requires transparency in administrative decision-making, ensuring that the public is aware of procedures, requirements, and service timelines so as to prevent abuses of authority in the issuance of certificates. Without such safeguards, mass certification or rights conversion may produce poor data quality, administrative loopholes, or even new conflicts such as duplicate certificates, administrative defects, or falsified documents. Cases of duplicate certificates demonstrate that certificates alone are insufficient without administrative integrity and effective regulation.<sup>32</sup>

In the context of dispute resolution, the transformation of evidence will strengthen the position of certificates as the primary form of proof before the courts. However, this shift must not eliminate the opportunity for customary communities to prove possession based on field facts, as guaranteed by the principle of free evaluation of evidence in procedural law. A renewed bureaucratic approach in land administration is required. The competence of officials to assess histories of land

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<sup>32</sup> Hanisa, I., Handayani, I. G. K. A. R., & Karjoko, L. (2025). Implikasi Hukum Sengketa Sertifikat Ganda Terhadap Kepastian Hak Atas Tanah dan Asas Kepastian Hukum di Indonesia. *Jurnal Hukum dan HAM Wara Sains*, 4(01), 144-150. Doi: <https://doi.org/10.58812/jhhws.v4i01.1844>

possession comprehensively becomes crucial so that evidentiary processes reflect not only formal compliance but also substantive justice.

The principle of non-discrimination under Article 10 of Law No. 30 of 2014 emphasizes that these changes must not generate administrative barriers that systematically disadvantage certain groups, particularly those whose evidentiary structures are traditionally based. Accordingly, legal certainty will be achieved only if the state is able to balance the need for administrative unification with the obligation to respect the plurality of land tenure histories. Modernization must not eliminate social legitimacy as a valid source of evidence.

The transition toward a single-evidence system requires the state to safeguard the integrity of land data systems. The integration of physical data, possession histories, and juridical verification must be conducted consistently to ensure that land certificates truly reflect material truth. Ultimately, the transformation of land-rights evidence after the abolition of customary documents in 2026 can realize legal certainty only if it is implemented in harmony with agrarian legal principles—namely certainty, justice, social function, and accessibility. Legal certainty arises not merely from the certificate as an instrument, but from an administrative system that is inclusive, proportional, and capable of accommodating the diverse histories of land tenure across Indonesian society.

When a land certificate is issued through proper procedures, it becomes a strong instrument of legitimacy; however, its legality must still be respected as part of a continuous process. Data must be updated, rights holders must be accurately recorded, and publication mechanisms must remain open. A dynamic land administration system requires that the evidentiary process for land rights does not stop at a single point in time but is continuously updated in accordance with changes in ownership, use, and the physical condition of the land.

Overall, the transformation of evidentiary mechanisms following the abolition of customary documents holds significant potential to realize legal certainty in the agrarian sector, provided that administrative mechanisms are implemented inclusively, transparently, and consistently with agrarian principles. This effort affirms the relationship between rights holders, the state, and land within a clear legal framework that is accountable and ensures fair protection of land rights.

Thus, the transformation of land rights evidence through formal registration and certification depends on the quality of implementation, accessibility, and responsiveness to Indonesia's agrarian diversity. Without full attention to social

and administrative dimensions, the reform may stall at the level of mere formalities and fail to deliver genuine legal certainty.

## CONCLUSION

This study shows that the reform of land rights evidence following the 2026 abolition of customary documents brings significant structural changes but has not fully achieved the goal of inclusive legal certainty.

1. At the systemic level, this policy does strengthen the direction of agrarian law unification and simplifies evidentiary instruments, but the change highlights formal rather than substantive legal certainty. The reform does not automatically bridge the gap between the national legal framework and the social reality of communities that still rely on customary documentary evidence.

2. In the normative and administrative dimensions, the abolition of customary documents creates serious consequences for access, mechanisms, and the validity of evidence for groups that previously relied on traditional proof. Formal validity now depends entirely on certificates, while customary documents are reduced to historical indicators. This shift places an administrative burden on Indigenous communities and vulnerable groups, increasing the risk of legal exclusion, evidentiary difficulties, and the emergence of new disputes. The policy demonstrates a tendency to weaken the position of Indigenous peoples in evidentiary processes when their administrative capacity is limited.

3. With regard to the transformation of land rights evidence and its relationship to agrarian principles, the post-2026 reform has not fully reflected the principles of social justice, recognition of customary law, and utility as mandated in the national agrarian system. While the unification of evidentiary instruments does enhance procedural legal certainty, it has not yet guaranteed substantive legal certainty for all societal groups. The imbalance between modernization goals and the protection of agrarian pluralism indicates that legal certainty has not been achieved evenly and still leaves room for structural injustice.

In light of the result obtained, several suggestions can be put forward as follows.

1. The government should establish a more structured transitional mechanism between the customary evidence regime and the formal evidence regime to strengthen the consistency of agrarian law unification. Enhancing outreach programs, participatory-based territorial mapping, and standardizing the

conversion of customary evidence into formal evidence will help harmonize the reform with social realities. These efforts will also ensure that the goal of legal certainty does not stop at the procedural level but is substantively achieved within society.

2. Affirmative initiatives are needed, such as simplifying service procedures, providing legal and administrative assistance at the village level, and recognizing the function of historical indicators in evidentiary processes to minimize the risks of legal exclusion and administrative burdens. These measures aim to maintain accessibility and procedural justice for vulnerable groups without compromising the integrity of the new certification system.

3. The government may develop a hybrid evidentiary model that prioritizes certificates while still giving proportional space to historical data and social context so that the reform aligns with the principles of social justice, recognition of customary law, and utility in national agrarian law. Regular evaluation of the reform's impacts and strengthened capacity of land administration officials will help balance administrative modernization with comprehensive protection of community rights.

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