

LAND DISPUTE SETTLEMENT ACCORDING TO LOCAL WISDOM IN THE TENGANAN PEGRINGSINGAN TRADITIONAL VILLAGE, BALI

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ABSTRACT

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Except for people with customary rights, not all customary law communities have the power to make, implement, and enforce existing regulations. As long as it does not conflict with national interests, the existence of this right in land law is still acknowledged. Disputes arising inside its territories are likewise not prohibited from being addressed using local customary law. Because 'custom or customary law' is one of the roots of state law. In comparison to state rules, the state strives to resolve civil issues by consensus in order to accomplish justice for all parties. The results of this study are also similar, however dissatisfied parties (citizens) are not prohibited from settling through state courts. In this case, the recognition of state law is not only positive, even the judge can cancel the claim of the plaintiff who is not willing to be resolved first through the village judge. It is just that the articles that give strict orders are rarely used in practice.

KEYWORDS

Disputes, Customary Land, Local Wisdom



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INTRODUCTION

When the "Tenganan Pegringsingan customary village" in Bali is mentioned, both Balinese people and tourists from across the world, both local and foreign people, think of ancient villages, unique villages, and so on. The term "uniqueness" refers to the fact that this study site is unlike any other in Bali Province, despite the fact that this village shares many characteristics with Bali villages in general. The population, for example, are both

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Hindu and speak Balinese (Runa, Raka, & Warnata, n.d.) This customary village attracts both domestic and international tourists due to its uniqueness. Even though the Governor of Bali declared this traditional village as a tourism village in 1986, there were social changes but no significant change ones. Therefore, until the research was carried out, it still appeared as an ancient and unique traditional village, meaning that it had its own form compared to villages in Bali in general (Bachri, Irawan, & Kurniawati, 2020)

For example, Article 130 of the HIR provides that the judge must reconcile the plaintiffs prior to the investigation of a case in order to streamline the provisions of civil procedural law. Even the Supreme Court of the Republic of Indonesia has released Regulation No. 1 of 2016 on Court Mediation Procedures (Kurniawan, 2020) In the consideration, it was stated that mediation is a peaceful dispute resolution method that is effective and can open wider access for the parties to a satisfactory and fair settlement (Menkel-Meadow, 1994)

Based on the preceding background, this study will examine the issue of how land disputes are settled in the traditional village of Tenganan Tegringsingan and how the village judge's ruling is recognized by the national legal system. The goal of this study is to assist the government in demonstrating its efforts to reduce the number of civil cases that accumulate in a court. Laws, customs (customary law), treaties, jurisprudence, and doctrine are the sources of formal law in Indonesia. Even if they have been designated as the rights of the Indonesian people, Article 3 of the UUPA firmly supports the customary rights of customary law communities in the material law on land (Luthans, Luthans, & Luthans, 2021).

RESEARCH METHOD

The variables 'land dispute settlement' and 'customary village local wisdom' were used in this brief study, which is a 'descriptive analysis.' The subject of this study was approached from two perspectives: a normative approach based on local customary rules and state rules, and an empirical (sociological) approach (Avruch, 1998).

Document studies were used to collect preliminary data from a variety of reading sources. Although empirical research was undertaken, the assumptions (allegations), which served as the theoretical foundation for the discussion argument, were not established in advance. Interviews with six traditional chief informants and several ordinary informants were conducted in the field, using mobile phones that operated as cameras and tape recorders. The data is presented and analyzed entirely utilizing qualitative analytical methods, including both secondary and primary data, and is presented descriptively (Mizrachi, 2010).

RESULT AND DISCUSSION

A. Local Wisdom of Tenganan Pegringsingan Customary Village

1. Location and Natural Environment

This study took place in Tenganan Pegringsingan, a customary village in Manggis District, Karangasem Regency (Amlapura), Bali Province. This location is 10 kilometers from Denpasar, about 2 kilometers from the beach or the Denpasar-Amlapura road, with an altitude of approximately 70 kilometers above sea level and an average temperature of 28 degrees Celsius. This customary village is located in a valley that runs from north to south, surrounded by two hills (Davison, 2014).

Although the area of the Tenganan Pegringsingan customary village was quite large, according to the village awig-awig, the Tenganan Pegringsingan people were not allowed to live outside the fence in the form of a wall that looked like a fortress with

each door in each cardinal direction. Inside the fence (the area of the pattern of settling they made the house so neat and uniform that was lined up from north to south which was grouped into 6 rows (Astawa, Budiarsa, & Simpen, 2019) The six rows were grouped into 3 customary Banjars. Each Banjar consisted of two rows, namely from west to east, rows 1 & 2 belonged to Banjar Adat Kauh, rows 3 & 4 were Banjar Adat Tengah and rows 5 & 6 were Banjar Adat Kangin, which became the location of this study. Between the two rows of residential areas, there was a field and on the right side, there were village buildings such as Bale Agung, Bale Banjar, Bale Petemon, and others.

Each resident's land area was nearly identical, ranging from 4-5 acres to 4-5 acres, with pre-determined buildings and a consistent shape. Bale Boge, Bale Tengah (Bale Adat), Pawon (Kitchen), and a separate structure named Bale Meten were the buildings. There was a Tebe (pig drum) behind the Pawon (kitchen). A religious building known as Kemulan can be seen in front of Bale Boge.

In detail, it is stated in Article (Pawos) 12 Awig-awig of the village, this customary village area is not only used for residential areas, but also for agricultural land, fields, rice fields, grave land and forests in the Kangin and Kauh hills, with certain boundaries. nature, such as large trees, rivers, large rocks and others. Especially for residential areas, it is surrounded by a wall that looks like a fortress with doors (lawangan) in the four cardinal directions. The entire territory of this traditional village in its awig-awig is called prabumian desa (customary rights), which is under the authority of the traditional village.

2. Village Regulations (Awig-awig of the Village)

In customary village governance in Bali, village's awig-awig are the basis or guidelines for controlling village governance. In customary Balinese villages in general, village's awig-awig in written form was only carried out in 1986 based on Perda Dati I Bali No. 6 of 1986, while the awig-awig of the customary village of Tenganan Pegringsingan was made in written form long ago, which is a record of the memories of the Tenganan people after the village charter was burned in 1764 Caka (1841 AD). The writing of the memory was carried out in 1764 Caka (1842 AD) by royal clerks named I Made Gurit and I Made Gianyar, and was perfected in 1847 Caka (1925 AD). It is regarding the existence of the village, namely the village rules in various aspects of life, not only the lands in the village, the inhabitants and the behavior of life and life, even regulating foreigners (people outside the village), who came to the village. Meanwhile, the contents of the awig-awig of customary Balinese villages are generally not as complete as the awig-awig of the customary village of Tenganan Pegringsingan (Joniarta, Pinatih, & Pratiwi, 2019)

3. Residents

The residents of the Tenganan Pegringsingan customary village, who were distinct from Balinese customary villagers in general, are the next distinctive characteristic. Because of that characteristic, the population groups were divided into two types, namely the Tenganan people and the immigrants.

- a. The Tenganan people group were the original inhabitants of the Tenganan village, domiciled as Krama Desa who were members and administrators of the Tenganan Pegringsingan customary village (they had the same impression as a trade organization named Firma) and lived in Banjar Adat

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- b. Kauh and Banjar Adat Tengah. This group of residents who occupied traditional village positions, in return were entitled to the distribution of "tika" (sharing of village land). If they violated awig-awig, their status was reduced to krama gumi and their residence was removed/transferred to row 5 or 6 (Banjar Adat Kangin) which was no longer the status of Krama Desa and was no longer entitled to the division of tika.
- c. Group of Immigrants also known as krama gumi, were people who came to the village to look for work and certain people who were brought in because they were needed by the village and were placed in Banjar Adat Kangin, also called Banjar Pande. This group could not hold positions in the village government, nor receive tika shares, but still obey village's awig-awig, such as the prohibition on buying and mortgaging rice fields, maintaining and repairing temples, financing for temple services, mutual cooperation and others. It was explained by Kliang Adat on December 15, 2021.

4. Village Governance System

If the traditional village government structure in Bali consisted of a chairman (Kliang), treasurer, and secretary (the three are known as prajuru/ administrator), then all members of the Tenganan indigenous group (Krama Desa) occupied positions in the government in the Tenganan Pegringsingan traditional village, which are as follows:

- a. Mangku (1 person), the highest position and was considered a descendant of Sanghyang, was considered sacred and highly respected, including his descendants. To obtain this position, one had to go through the lowest level of office (Pengeladuhan). The function of this position only existed if the previous position had difficulty carrying out its duties, and sought advice from this position. At the time the study was conducted, the position was vacant.
- b. Luanan (6 people), the position was the same level as Mangku, and the six were based on the order of marriage age, the one who marries first occupied a higher position. This position was seen as a teacher for the customary village community. In addition to being highly respected, their attendance and returning from village meetings (Sangkepan) had to be helped by other people by having them picked up and taken to their destination. The function of this position was to organize ceremonies and provide advice inside and outside the meeting.
- c. Bahan Duluan (6 people), also called Kliang (chairman), which was a position at the level below Luanan, two of them were Tamping Takon (spokespersons), another person was a writer. The task of this position was the most difficult, because they took care of daily village work.
- d. Bahan Tebanan (6 people), a position at the level below Bahan Duluan, whose job was to help Bahan Duluan manage the village.
- e. Tambalapu Duluan (6 people), a position level below Bahanan Tebanan, whose job was to carry out orders from the village Kliang as planned in the meeting (Sangkepan).
- f. Tambalapu Tebanan (6 people), a position at the level below Tambalapu Duluan, who was basically obliged to help Tambalapu Duluan, namely leading and ordering village workers.
- g. Pengeladuhan (unlimited), an unlimited number of positions below Tambalapu Tebanan, originated from Krama Desa members either married, but not yet occupying a position or who were not yet married.

The positions mentioned above were held indefinitely, because the shift (increase) only occurred if the position above it was vacant. due to death or punishment (Interview with Kliang Desa, 15 December 2021).

5. Marriage System

If the marriage was classified in the Tenganan Pegringsingan traditional village, then there would be:

- a. Endogamous marriage: the implementation of marriage that was justified based on the provisions of village's awig-awig, namely marriages carried out by young men and women between Krama Desa members only. Any acts of violation would be punished, based on the provisions of awig-awig and decided at a village meeting (sangkepan) in Bale Agung. This true marriage brought the husband and wife to the position of Pengladuhan, over time they obtained a higher position.
- b. Exogamous marriage: a marriage that was prohibited on the basis of village's awig-awig, if it was carried out by youth from the indigenous group (Krama Desa) with women from immigrant groups, the marriage was called an internal exogamous marriage. Another type of violation is when a man from the indigenous group of Tenganan (Krama Desa) married a woman from outside the village, the sanction was they would be expelled to Banjar Adat Kangin (Banjar Pande), and lost their Krama Desa status as well as the tika sharing. Their marriage was regarded as external exogamous marriage as explained by Kliang Adat, 15 December 2021.

6. The Land and its Benefits

All land in the area of the Tenganan Pegringsingan customary village, whether it had been acquired by a resident or not, was under the control of the Tenganan Pegringsingan customary village under the supervision and management of the village's Prabunian, as explained earlier.

Except for privately owned land, communal land in the forms of rice fields/farm was managed by migrants for wages, while the proceeds were distributed to members of Krama Desa, the amount of which was based on the level of their position in the customary village government. When this study was conducted, the form of division of tika was already efficient, because it was no longer in the form of rice/grain, but had changed in the form of money, so it was a kind of salary that was given every month. Because those who did not dare to violate awig-awig generally had low education and were not employees, they also received monthly income called tika in the form of monthly money. On the other hand, those who violated, generally educated, there were those who worked in the city both as employees and Civil Servants did not receive the division of tika and house repairs.

B. Settlement of Customary Land Disputes

Because the customary village area of Tenganan Pegringsingan had the power to regulate it so tightly, the process of imposing sanctions for violations based on local wisdom (awig-awig) was also not arbitrary, meaning that it was decided through a village meeting (Sangkepan) in Bale Agung. It was where the meeting participants were all administrators, who then he acted as a village judge in Bale Agung. Especially for the presence of the administrator who held the position of "Bahan Duluhan" according to

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village's awig-awig and to maintain the authority, they should be picked up and should be taken to their destination. All disputes that arose in the customary village area, both private and public (including customary land disputes), were resolved in the manner and place of the Bale Agung.

a. Bad Credit Case at BPR Manggis:

According to the provisions of Article 7, each customary villager was prohibited from mortgaging land (privately owned) to people outside the village, but this prohibition was violated by Samudra, a citizen of Krama Desa, to Bank Perkreditan Rakyat (BPR) Manggis in 1998. Because the loan was not repaid, then the bank sold the Samudra land. In that case, Kliang Adat had made an appeal so that the villagers were willing to buy the land so that it was not bought by someone else, but none of the residents had money as big as Samudra's debt. Even according to the Kliang, the village tried to buy it using the village treasury, it was also not sufficient, in the end the land was bought by someone outside the village, namely from Nyuh Tebel village. Based on the awig-awig provisions, Samudra was demoted from the status of Krama Desa to Krama Gumi and exiled to the Banjar Pande and no longer entitled to tika.

b. Bad Credit Cases at BPD Amlapura:

A villager named SDM (45 years old), with a high school education, pawned his private land of 56 acres for Rp 85,000,000,- for the creation of an art shop, initially offered to residents, but because no one was willing, then mortgaged it to the Amlapura Regional Development Bank (capital of Karangasem district). After maturity and the debt had become Rp 95,000,000, - the bank reported to the village's Kliang. Kliang Desa tried as in the previous case, and the debtor never came to the meeting (sangkepan) at Bale Agung, so the Kliang Adat asked for the execution to be postponed, accompanied by a request to borrow money from BPD to redeem the debtor's land, also to no avail, finally the bank auctioned the SDM's land at a price of Rp. 100,000,000, - and bought by someone outside the village, namely from Ngis village. Based on the awig-awig of the SDM's village, finally the status was lowered to Krama Gumi and was expelled and did not receive any more tika distribution.

c. Cases of Changes in Cropping Patterns:

Based on the provisions of Article 8 of awig-awig of the village, the village people were prohibited from making sugar and planting shallots, if there was a violation, the village should be fined with 400 Kepeng, if not paid, the land where the plants were would be confiscated. In a village meeting (Sangkepan) objective information was obtained that before Mount Agung erupted (in 1963) the land could be planted with rice, but after that, the land could no longer be planted with rice, except for planting red grass. Based on that information, the awig-awig sanction was not applied.

d. Sacred Building Utilization Case:

Based on the village's awig-awig, any sacred buildings, both village-owned and private, should not be used other than for traditional and ritual purposes. In its development, especially since the traditional village of Tenganan Pegringsingan was appointed as a tourist attraction in one of the ancient villages in Bali, the benefits of the sacred building for the villagers had increased as a place to sell souvenirs. Not only sacred buildings belonging to the village, but also sacred buildings belonging to private residents, because it turned out that privately owned sacred buildings were affixed with merchandise for domestic and foreign tourists, so it was crowded with people, including people who had their periods, known as

impure. It was stated in awig-awig as a prohibited act but this phenomenon continued until now.

It was told by the Kliang of Tenganan Pegringsingan village in resolving customary land disputes in his territory (Interview, December 15, 2021). In this case, regarding the actions of citizens violating or not violating, Von Benda Backmann had predicted long ago, that it would be determined by the size of the social meaning that would be obtained from the act of violating/obeying, as was the case last revealed.

If it was questioned whether the settlement of customary land disputes through local wisdom was a final decision, the answer is as long as the word final is not interpreted the same as "a decision with permanent legal force (*inkracht van gewijsde*), then the settlement of customary land disputes through local wisdom was final, in the sense that the dispute for the parties involved had been resolved or there were no more problems. Because decisions were made through local wisdom (in this case village judges/*sangkepan desa*), justice was generally based on a win-win solution agreement, so the finalization (completion) could be accepted as completed for the parties, such as the statement of agreement contained in the agreement. Article 1338 paragraph (1) of the Civil Code (KUHPerd) states that "All agreements made legally apply as law for those who make them".

Conclusion: The settlement of customary land disputes through local wisdom in the traditional village of Tenganan Pegringsingan was based on local customary rules (*awig-awig*) which were decided at a village meeting (*sangkepan desa*) in Bale Agung. Not all *awig-awig* violators were given punishment because the village judge was aware of the development of a situation, the needs of the residents and the existence of the village in the the Republic of Indonesia were wise considerations.

C. National Law Recognition on Village Judge's Decisions

Since customary (*prabumian*) rights had been appointed as the rights of the Indonesian people, their existence was still recognized as long as they existed and did not conflict with national interests. This statement implied that in the event that the state guaranteed human rights for all Indonesian citizens, including the residents of the Tenganan Pegringsingan traditional village, for example seeking justice in the state court, the local village regulation (*awig-awig desa*) could not be prevented, because it means that it was contrary to national interest. In fact, the local wisdom of the Tenganan Pegringsingan customary village did not regulate it and the administrators (*Kliang Desa*) also did not prohibit it. In the perspective of the state, the decision of the village judge was not only to give appreciation, it was even more than explicitly stated through the norms they have, including:

1. In the field of civil procedural law at the time of the first trial, Article 130 of the *Herzien Indonesis Reglement (HIR)* which contains a statement that the judge is ordered before the examination procedure is carried out in a contradictory manner, meaning that it is based on right and wrong according to state law, so that the parties make peace first. If there is a peace agreement between the parties, then that will be the judge's decision, if there is no peace, then the examination based on state law will begin. It implies that how high the value of justice is if it is obtained through consensus, known as a win-win solution, which is generally obtained in customary law communities in rural areas. In other words, how high the value of rural justice is not only in the current era but also in the previous era which was even determined by the colonial state based on *Pancasila*.
2. Likewise in the next example, since the days of the Dutch colonial administration, the Dutch colonial government had provided regulations that strongly supported

the settlement of customary land disputes through Article 135a (1) HIR: "if the lawsuit relates to a court case that has been decided by a village judge, the district court must know the decision and the reasons as much as possible". In this case, the recognition of dispute resolution based on local wisdom was used as a requirement by court judges to examine land disputes that had been decided based on local wisdom. Based on the provisions of paragraphs 5 and 6 of the article, it states that if the judge feels the need for the lawsuit to be examined by a village judge, then the district court judge must order that it be examined first by the village judge, meaning that it is resolved first through local wisdom. Even a further statement from that article is, if the order is not carried out by the plaintiff, then the law authorizes the district court judge to dismiss the plaintiff's claim. It is the state legal recognition of customary land dispute decisions through village judges.

3. Except for both state acknowledgments of the village judge's decision as mentioned above, until now it is still a positive state law, supported again by the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016 Regarding Mediation Procedures in Courts, basically this regulation restores the nature of civil justice through decisions based on agreements, which are win-win solutions, in addition to avoiding the accumulation of disputes that must be resolved in court. It means that the highest law enforcement agencies in Indonesia want civil disputes, including customary land disputes, to be resolved through agreements imbued with win-win solutions, as is generally done with local wisdom.

CONCLUSION

Seen from the three examples above, the state legal recognition of the village judge's decision is not just support, it is even used as a condition for the continuation of the dispute examination at the state court level, meaning that if the plaintiff is not willing to settle the dispute with the village judge, the judge has the authority to abort the plaintiff's lawsuit. Again, it must be said that from the past until now, justice which is based on a win-win solution is in accordance with the feelings of rural communities and has high value.

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