



Model of Traditional Land Registration in Bali

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ABSTRACT

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With the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 276/KEP-19.2/X/2017 Regarding the Appointment of Pakraman Village as the Subject of Joint Ownership Rights (Communal) Overland (the decree of the minister No. 276/KEP-19.2/X/2017) in the Province of Bali, Desa Pakraman/Desa Adat has been named as a customary law community. The discourse on strengthening the traditional village became relevant with the Bali Province Regional Regulation No. 4 of 2019 concerning Traditional Villages in Bali, which gave traditional villages legal standing as a legal subject. This research aims to determine how the model of customary land registration as communal ownership rights in Bali and the impact of land registration on the existence of land in Bali. Empirical research is used, and a legal approach, a conceptual approach, a case study approach, and a sociological approach are all used. Based on the research results, it was found that the customary land registration model of communal (or shared) ownership rights in Bali was registered as property rights using the minister's ATR/Ka decree as the legal basis. BPN No. 276/KEP-19.2/X/2017, so that the name of the right holder on the property rights certificate is the name of the traditional village. When customary land in Bali is registered as property rights, land registration makes it more likely that ownership rights can be moved.

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1. INTRODUCTION

Land plays a vital role in the life of a nation. The rights of the Indonesian people to land are the highest tenure rights. They cover all of Indonesia's land, are shared, last forever, and are the parent of all other land tenure rights, so they need to be managed and regulated. With regard to Ulayat land in particular, Bali, as one of the customary law alliances referred to as the Adat Village or Pakraman Village in the Regional Regulation of Bali Province No. 3/2001 jo 3/2003, retains a number of secrets. Nationally, the government wants to be a source of prosperity for everyone. It is impossible to carry out the task of managing all the common lands alone by the entire Indonesian Nation, so in implementing this, the Indonesian Nation as the right holder and bearer of the mandate at the highest level is carried out by the Republic of Indonesia as the authority of all the Indonesian people. Article 33, paragraph 3 of the 1945 Constitution of the Republic of Indonesia (1945

Constitution of the Republic of Indonesia) is one of the building blocks for national land development. Recognition of customary law communities is constitutionally legitimized as contained in Article 18 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In the dissertation research I Made Suwitra, it was found that a portion of ulayat land in the majority of Pakraman villages had been converted into full individual land which was registered through conversion according to state law (Suwitra, 2010). Sudantra (2018) in his paper entitled "certification of customary land in Bali", diagnosing the implications of the appointment of Pakraman Village as the subject of communal rights to land "said that the appointment of Pakraman Village as the subject of joint ownership rights (communal rights) on land resulted in juridical, sociological and philosophical.

Organic regulations regarding land in Indonesia are regulated in Law Number 5 of

1960 concerning the Basic Agrarian Law, recognition of customary community rights is further regulated in Article 3 of the basic Agrarian Law, land law that applies to land and natural wealth is customary law, as mandated by Article 5 of the Bali Government Regulation No. 24 of 1997 of the Republic of Indonesia concerning Land Registration (PP No. 24 of 1997) does not regulate the registration of customary land rights.

Since the Basic Agrarian Law was passed, the rules in Book II of the Civil Code about western land rights have been changed and are no longer in effect. The Basic Agrarian Law is an agrarian reform to regulate and create national agrarian law, as stated in the general explanation of the Basic Agrarian Law, which is based on the law adat regarding land, as the original law of the majority of the Indonesian people (Boedi Harsono, 2018).

Regarding customary rights, previously regulated through the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Ulayat Rights Issues (Government Ordinance ATR/Ka.BPN No. 5 of 1999), this regulation also does not regulate the registration of ulayat rights land, explained that regional governments have the authority to determine whether ulayat rights still exist in their respective areas through the establishment of provincial regulations. This regulation was amended and then revoked, and the latest is the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights on Land of Customary Law Communities and Communities Residing in Certain Areas (Government Ordinance ATR/Ka.BPN No.10 2016).

In Government Ordinance ATR/Ka.BPN No.10 of 2016, customary rights are no longer regulated; instead, a new term, communal rights, appears. Article 18, paragraph (2) of this regulation stipulates that collective land rights can be registered at the local land office, which in practice is in the form of a certificate. With the revocation of Permen ATR/Ka.BPN No. 5 of 1999, whether Ulayat Land Rights arrangements can be equated with communal rights as intended by Ministerial Regulation ATR/Ka.BPN No. 10 of 2016 for land registration of Ulayat land rights

Since the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land

Agency issued Decree Number 276/KEP-19.2/X/2017 concerning the Appointment of Pakraman Village as the Subject of Joint Ownership Rights (Communal) Over Land (Kepmen ATR/Ka.BPN No. 276/KEP-19.2/X/2017), specifically in the Province of Bali, it means that Desa Pakraman/Desa Adat has been recognized as a customary law community by being designated as the subject of shared (communal) ownership rights over land.

Ulayat rights can be formulated as the authority according to customary law which is owned by certain customary law communities, over certain areas which are the environment of their citizens to take advantage of natural resources, including land, in that area, for their survival and life, arising from the outwardly and inwardly hereditary and uninterrupted relationship between the customary law community and the area concerned. In Bali, it is known as prabumian rights.

In the Awig-Awig Desa Adat, this customary land is written as *druwen desa*. In the communal concept, the term "*druwen desa*" is interpreted as a form of village (customary) rights that have both public and civil aspects. The public aspect implies that the traditional village has the authority to regulate and lead its designation. In traditional village money policy, the civil aspect implies that the village can use and utilize it according to the type of rights (the land), such as *setra* land, market land, field land, erect temples, erect houses (Village Yard/PKD), village *ayahan* land (AYDS), upright Banjar, road/*rurung*, and water channel (Suwitra, 2021).

The discourse on strengthening the Traditional Village became relevant with the issuance of the Bali Province Regional Regulation (Perda) No. 4 of 2019 concerning Traditional Villages in Bali (Perda No. 4 of 2019) which provides legal standing as legal subjects, as emphasized in Article 5: Traditional Villages have the status of legal subjects in the government system.

Mastery of land rights often creates conflicts both vertically and horizontally. Conflicts in the field of tenure over land rights can be caused by a number of factors, including: changes in people's mindsets from communal to individualistic, from religious communal to individual secular (Suwitra, 2010), there is also a change in the meaning of the concept of tenure to ownership; and there is an error in interpreting the concept used in the UUPA with the concepts they have inherited from generation to

generation. Also in general it can be stated, that land disputes occur because there are changes in the economic value of the land itself which is increasing (Suwitra, 2014). This research aims to determine how the model of customary land registration as communal ownership rights in Bali and the impact of land registration on the existence of land in Bali.

2. METHOD

This study uses empirical research, a statutory approach, a conceptual approach, a case study approach, and a sociological approach. Sources of data used include primary data, secondary data, and tertiary legal materials. Primary data collection used observation and interview techniques, while secondary data and tertiary legal materials were obtained using literature review techniques (study documents). The data sources were then analyzed using qualitative methods and interpretation techniques.

3. RESULTS AND DISCUSSION

3.1 Model of Registration of Traditional Land As Communal (Communal) Ownership In Bali

From the results of research conducted by the author in the Panca Bhuana Shanti Traditional Village and the Batuaji Batubulan Kangin Traditional Village, it was found that the registration model for Ulayat Lands belonging to traditional villages whose control was given to villagers (krama desa) as a place to live to build housing, which was previously known as Village Yard Land was registered in the form of Certificate of Ownership.

It can be seen that the basis for registration of rights in the form of a Property Rights Certificate is carried out on the legal basis of appointing Pakraman Village as the Subject of Joint (Communal) Ownership Rights over Land as referred to in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 276/KEP-19.2/X (2017). By designating Panca Bhuana Shanti Traditional Village and Batuaji Pakraman Village based on Ministerial Decree ATR/Ka.BPN Number 276/KEP-19.2/X/2017 is the subject of joint (communal) ownership rights to land, so Panca Bhuana Shanti Traditional Village and Batuaji Traditional Village are stated as the name of the right holder on the certificate of ownership.

To separate the ownership of village krame (village residents) from one another in proof of ownership in the Freehold Certificate, the same pattern was applied to the two villages studied, namely by recording it in the column of instructions explaining that this plot of land is occupied or used by writing the name of the village krame (village residents) concerned. This means that each village krame (village resident) is given a Certificate of Ownership by.

Viewed from the aspect of legal certainty:

They used the theory put forward by Gustav Radbruch, which provides two notions of legal certainty: certainty due to the law and certainty in or within the law. Guaranteeing certainty because of the law is the duty of the law. Laws that ensure a great deal of certainty in social relations are helpful.

"Certainty by law" means that the law guarantees certainties for one party against another. Whereas confidence in or within the law is achieved when the law is as much as statutory law, there are no conflicting provisions in the act (the law is based on a logical and definite system), the law is based on *rechtswerkelijkheid* (fact law), and there are no legal terms that can be interpreted differently in the law (Utrecht, 1959).

Examined in two aspects:

- 1) Registration of customary land that is registered in the form of Property Rights will certainly provide legal certainty and clarity regarding customary land parcels owned by the Traditional Village itself, including for village krame (village residents) whose names are recorded in the instructions column in the Property Rights Certificate as parties who occupy/use the land belonging to the Traditional Village, because the purpose of land registration is indeed that way, so that legal certainty can be achieved. The point of view of legal certainty in the aspect of Ulayat Rights.
- 2) Registration of customary village customary land rights that are registered in the form of ownership rights does not achieve certainty in law or within the law itself, in the opinion of the author it is the same as there has been a shift in the fundamental concept from customary rights to communal rights which results in no certainty. law on the existence of Ulayat Rights. In fact, the communal

right itself is part of the civil rights owned by customary law community members over land collectively, not individually. So customary rights cannot be replaced with communal rights.

From the perspective of legal benefits:

The theory put forward by Jeremy Bentham, known as individual utilitarianism, states that the good or bad of an action will be measured by whether the action brings happiness. Bentham tries to apply it in law, namely legislation, where this measure also determines good and bad. As a result, laws that benefit most of society will be considered good laws. As a result, legislators are expected to craft fair laws for all community members individually. "Bentham further argues that the existence of the state and the law is merely a tool to achieve essential benefits, namely the happiness of the majority of the people" (Rasyidi & Rasyidi, 2004).

Examined in two aspects:

- 1) Regarding the benefits, each krame Desa (village member) gets benefits only on paper in terms of legal certainty. This benefit is in the form of confidence about who occupies/uses the customary land by what is recorded in the guidance column for freehold certificates.
- 2) The point of view of legal expediency for the existence of customary land Traditional villages as holders of land rights that can be proven ownership of their rights based on a Certificate of Ownership will open up space and provide the potential to transfer ownership to other parties. Get the approval of the desa krame. If the krame desa has agreed to sell the land belonging to *dasa adat*, the transition will occur because the necessary conditions have been fulfilled. If this happens, it will undoubtedly reduce the area of land ownership by the *adat* village. It will have an impact on the further erosion existence of customary land in Bali.

3.2 The Impact of Land Registration on the Existence of Balinese Customary Land

Referring to the legal force attached to land ownership rights whose ownership can be proven by the name of the right holder listed on the Certificate of Property Rights, of course,

opens space and provides the potential for transferring ownership to other parties.

From the author's research on 2 (two) Traditional Villages in Bali, the author found that there is a potential for the transfer of customary land ownership rights that are registered as property rights, including:

- 1) The customary lands registered as the Traditional Village's property can be transferred based on the agreement of the village administration.
- 2) Customary land, which used to be AYDS land but in its development has been certified in the name of an individual, has the potential to change ownership.

For customary land certified in the name of a temple, as long as the legal unit of the traditional law community still exists and the typical village still exists, there is minimal possibility that this temple land will be the point of view transferred or change its function.

From the perspective of legal protection:

Using the theory put forward by Hadjon (2018), giving his understanding of the word legal protection, there is an attempt to provide protected rights by the obligations that must be carried out. Furthermore, regarding legal protection, Dillah (2013) distinguished two types of protection, especially for the people: preventive and repressive. In preventive legal protection, the people are allowed to submit objections (*inspraak*) or opinions before a government decision gets a definitive form. Thus preventive legal protection aims to prevent disputes from occurring. On the other hand, repressive legal protection seeks to resolve conflicts.

Viewed from legal protection as a result of the registration of customary lands as property rights, it does not provide legal protection either in a preventive or repressive manner.

In a preventive manner, so that customary lands continue to exist, traditional lands whose ownership rights have been issued when associated with efforts to maintain conventional grounds in Bali. This momentum has occurred. Certificates of Ownership Rights have been published in the name of Indigenous Villages, land registration Customary rights as property rights have an impact on opening up potential space for the transfer of customary land ownership itself, plus if you look at the reality of ancestral lands that used to be AYDS land but in its current development have been converted

as full individual property rights, of course, it does not provide protection. Law on the existence of customary land in Bali. Now it depends on the commitment of the Traditional Village and its government apparatus, together with the village administration, in keeping these ancestral lands stable as belonging to the Traditional Village through regulations/awig-awig in each Traditional Village as a legal instrument.

In a repressive/dispute settlement manner, if at any time there is a conflict between the adat village and krama or with other parties related to customary land ownership claims that have been certified either in the name of the adat village or in a personal name, then the legal position of the SHM holder is more advantageous in the sense of having legal force. Intense in its proof, in the law of evidence in the SHM court, it must be considered valid until a court decision states otherwise.

Regardless of the disagreements among academics and practitioners, whether lands with customary rights in current developments being registered in the form of property rights have an impact on strengthening or weakening the existence of ancestral land in Bali, the author sees something far more critical if land rights ulayat being certified in the name of a traditional village actually contains two consequences, in terms of certainty over ownership of course the customary village gets assurance over ancestral land in the form of ownership of a certificate of ownership rights, on the other hand there is a shift in the nature or character of ulayat rights which are related to the requirements of magical religious nature between customary law community unit with traditional land rights, in the sense that the land cannot be transferred or traded, by registering traditional land as property rights, it means that the character of property rights is also attached, one of which can be transferred to other parties, implicitly customary land registration through Property rights apart from being able to provide certainty over their ownership, can also be like a double-edged sword and become a threat to the traditional village itself if one day the customary land is transferred, of course it will erode the existence within the traditional village itself.

4. CONCLUSION (Uppercase, bold, 11pt)

Based on the research results as described in the discussion chapter, the following conclusions can be drawn:

1. Model for Registration of Customary Land as Shared (Communal) Ownership Rights in Bali

Registration of customary land as joint (communal) ownership rights is registered in the form of Property Rights. Lands designated as non-free individual tenure rights in the Panca Bhuana Shanti Traditional Village and Batubulan Kangin Village are in the form of Ulayat Rights lands belonging to traditional villages whose control is given to villagers (krama desa) as a place to live to build housing, previously known as Village Yard land (PKD), is registered in the form of Property Rights.

The basis for registration of rights in the form of a Property Rights Certificate is carried out on the legal basis of the Appointment of Pakraman Village as the Subject of Common (Communal) Ownership Rights on Land as referred to in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 276/KEP-19.2/X/2017. By designating Panca Bhuana Shanti Traditional Village and Batuaji Pakraman Village based on Ministerial Decree ATR/Ka.BPN Number 276/KEP-19.2/X/2017 is the subject of joint (communal) ownership rights to land, so Panca Bhuana Shanti Traditional Village and Batuaji Traditional Village are stated as the name of the right holder on the certificate of ownership.

The same pattern was applied to the two villages studied to separate the ownership of village krama (village residents) from one another in proof of ownership in the Freehold Certificate, namely by recording it in the column of instructions explaining that this plot of land is occupied/used by writing the name from the village krama (village residents) concerned, this means that each village krama (village resident) is each given a Certificate of Ownership by the plot of land occupied/used.

The author can conclude that on sufficient grounds, from the references to the results of research on 2 Traditional Villages in Bali, the same pattern, of course, also applies to other Traditional Villages in Regencies/Cities throughout Bali on customary lands that are registered in the form of Property Rights, because it refers to the same legal basis, bearing in mind that the origin of the registration of rights into a certificate of ownership results in the final product being issued by the competent authority, in this case, the land office in each Regency/City in the Province of Bali.

By registering ulayat lands into communal rights, the character of ulayat rights shifted from those previously public and private to collective rights, which were only remote. The ownership in communal rights is part of civil rights owned by customary law community members over ulayat land collectively, not individually. So traditional rights cannot be replaced with collective ownership.

2. *The Impact of Customary Land Registration on the Existence of Customary Land in Bali*

The relation to maintaining the existence of customary land in Bali, if existence is interpreted as existence or existence, is connected with the recognition of everyday law communities and Ulayat Rights as stipulated in Article 18 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and Article 3 of the UUPA which requires recognition as long as in fact still alive and there. So to be able to maintain the existence of customary land in Bali, the existence of land belonging to traditional villages is necessary.

Preventing the potential to result in the transfer of customary land ownership rights is an absolute requirement for maintaining the existence of ancestral land and the presence of traditional villages in Bali because land/palemahan is the most crucial element within a traditional village in Bali, which is based on Tri Hita Karana. The customary land registration model must be equated as communal rights, and their rights registered as property rights or recorded in the land plot map at the local land office.

Referring to the legal power attached to land ownership rights whose ownership can be proven by the name of the right holder listed on the Certificate of Property Rights, of course, opens space and provides the potential for transferring ownership to other parties.

The potential for the transfer of customary land ownership rights that are registered as property rights, including:

- 1) The customary lands registered as the Traditional Village's property can be transferred based on the agreement of the village administration.
- 2) Customary land that used to be AYDS land but, in its development, has been certified in the name of an individual has the potential to change ownership.

SUGGESTION

1. For Academics and Practitioners

The research results and the author's thoughts in this thesis can be developed in further research by academics or other practitioners to find the ideal land registration model for maintaining customary land in Bali.

2. For the Government

Land registration should mean that only some customary lands must be registered as their property rights and communal property rights. As a policy maker, the government should be able to accommodate regulations and provide solutions and reflect on the condition of customary-owned lands, which are increasingly shrinking over time. ulayat", and its existence is limited to historical stories. It is essential to review the customary land registration model to determine whether it should be equated as communal rights and rights registered as property rights or be recorded in the land plot map at the local land office. In each Adat Village, a regulation/awig-awig is made as a legal instrument to arrange it.

In the author's opinion, lands with customary rights do not have to be registered as communal property rights. Certificates of ownership rights are issued, with data collection on the land plot map showing that the land is registered as customary land, so it is felt that it is sufficient to achieve orderly land administration, although not in the form of registration of property rights and have a letter of proof of rights (certificate).

3. For Traditional Villages and Village Cramas

There is a need for the common will of the Traditional Village and its government officials, together with the village administration, to protect customary lands that have already been issued based on their rights in the form of Property Rights Certificates, both on behalf of the Traditional Village and behalf of individuals so as not to transfer them to other parties.

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