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## INDIVIDUALIZATION OF RIGHTS ON PURA PROFIT LAND

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### Abstract

This research aims to analyze the validity of the transfer of land rights Pura profit in the perspective of legal certainty and protection of the law in the conservation of land Pura profit in Badung regency. This research is an empirical law study using primary data and secondary data. An Approach used in the form of the approach of legislation analysis, case and custom law. Based on the results of the research can be analyzed that the sale and purchase of land Pura profit executed after the fulfilled special terms and general terms according to the customary law and law of the country. The purpose is for the legal certainty and legal protection for both the buyer and the existence of the temple itself. Therefore, for Pura profit is expected to be innovatively able to manage temple income to be useful to support the activities of temple balance.

**Keywords:** Land of Pura Profit; Legal Certainty; Right transfer

### 1. INTRODUCTION

In Bali land authority rights are based on customary rights or indigenous rights. This condition will be relevant if related to the relationship between the occurrence of the traditional village and village land in its historical perspective. Besides that, it is also relevant to natural laws theory and occupation in the sense of the mastery and the joint ownership (communal) and also mastery and ownership individually. The relationship between communal rights and individual rights also seems to be pressing, thickening, and thinning, far apart. Even more dominated by individual rights, particularly in the utilization of yardland and its taxation (Ramaputra, Suwitra, & Sudini, 2019).

The ratification of law number 5 of 1960 concerning basic agrarian principles on September 24th, 1960 which was promulgated in the sheet of the Republic of Indonesia number 104 in 1960, was a crucial milestone in history agrarian development or land in Indonesia

(Harsono, 2003). The recognition of customary law on agrarian principle law can be observed from the start, namely through consideration or opinion stated that it is necessary national agrarian law, which based on customary law concerning land. Furthermore, in article 5 agrarian principle law was found in a statement, "Agrarian Law that applied to the earth, water, and space were customary law".

For customary law society, the land has a crucial function, without human land cannot live. According to Sukanto, as quoted by Sunindhia and Nanik Widiyanti: "The relationship between alliance land and its land (customary) encompassed by a characteristic called magical religio", which means: the fellowship citizens (society) related to nature which their mind was still strongly influenced by the spirit that created the illustration that everything related to the utilization or misappropriation of land should be done carefully since there were magical potential" (Sunindhia & Widiyanti, 1988).

According to Nurhasan Ismail, agrarian principle law is seen from its social values contained categorized as prismatic law, since it was successful to make traditional social values and modern simultaneously as the fundamental of establishing its principles (Sitorus & Sierrad, 2006). Its condition will be better if occurred coexistence between the local interests and national interests, between customary law as folks law and state law as national law (Suwitra, 2010).

Customary law considered land have a crucial position, namely: because of its nature and its fact. Land according to its nature is the only of wealth thing which despite experiencing any circumstances, still fixed in its condition, even occasionally it became more profitable. Because of the fact, which means functioning as a residence, providing a livelihood, a place of ancestor spirits and providing the protection to its citizen (Muhammad, 1983).

Land in its function as a space to grow and develop the custom and culture as well as the place of ceremony to behold as well as a spiritual activity, causing the land to be seen as having a sacred value. The other party, the development of development and amount of resident caused of increasing needs of the land. This is affected by the value of land economically so that the deviations were frequently occurred in the process of the ownership as well as to the land function. It seems to be what Karel Phil Erari meant by his opinion namely: "disharmony of relations between human and land occurred, caused by the land was seen as a thing which has a mere economic value, so that in the long run land get lose its sacred value (Erari, 1999). Interestingly this research can be formulated as how the legitimate the transfer of rights to Pura land in the perspective of legal certainty?"

## **2. METHOD**

This research was an empirical law which means to the research that focused on examining the phenomenon or a state

of research object in detail by collecting the fact occurred and developing the existing concept (Amiruddin & Asikin, 2004). Therefore, this research moved on from the gap between *das sollen* and *das sein* namely the gap between theory and fact or the gap gap between theoretical and the existing a law fact, namely concerning between the nature of customary land that could not be transferred by practicing occurred namely the number of transition with the sale purchase of Pura profit land. But as the first step of the research was done by observing the secondary data, the continued by observing the data in the location or the other party regarding the object of the research to obtain the primary data.

## **3. RESULTS AND DISCUSSION**

### ***The Existence of Pura Profit Land***

Customary land in Bali called "Village land" or "Druwe land" namely the land which is owned or controlled by the customary village that can be obtained through buying and other venture. There are two things causing the land has a crucial position on customary law. If it was seen from the nature of the land was the only buried treasure, however, still provided the benefits to the owner. If it was seen based on the fact, the land was the residence and provide the life and a place to the members of the alliance buried then when he died.

This customary land was in the power of customary village with the right to regulate, maintain, and keep it intact. Related to this power, Assip K. Flechtm stated "social power is the sum total of all those capacities, relationship and processes by which compliance of others is secured for ends determined by the power holder ", which means social power was the whole of ability, relations, and the processes produced obedience from others determined by the power holder (Flechtem, 1952).

In the customary law known two kinds

of property rights namely:

Bound property rights namely restricted property rights by others, for example, communal the land where a piece of land belongs together to the villagers. This belonging together lands in Bali called *druwe* village, in Manado called *kintal kalakeran*, in Minangkabau called inheritance, di west Java called *kasikepan*. The village members (alliance) who entitled to the land only to have the use of rights.

Free property rights or unbound was individual property rights that were not the intervention from village rights. For example, rice field owned, *yasa* rice field and so forth (Saragih, 1980).

Society viewpoint generally seeing Pura profit land was ordinary land such as other agriculture lands. From this viewpoint then, causing the society was free to transfer such as agriculture business lands in general. Pura profit land held based on a certain framework of thinking which meant philosophy-religio. The conception of philosophy religio means that there was a spiritual fundamental philosophy in which the result between Pura and its Pura profit land being a unity that is interconnected with one another so that it needs an understanding of cultural values to preserve the existence of Pura profit land. This understanding can strengthen national identity in general, and Balinese society in particular, as part of the development of national culture.

### ***The Benefits of Pura Profit Land***

The style of Balinese society in the container of traditional villages as an institution of "social religion", which means that all aspects of their behaviour were always based on religious teachings. It can be seen in the use of customary lands, which have three functions, namely:

#### *Customary land functions economical*

Customary lands particularly in the form of agriculture (rice field, moor) since a long time ago was used as the main means and supported in domestic life. The

result that can be enjoyed from those lands as much as possible was used to fulfil the needs of daily life and endeavoured to increase the standard of customary villagers economy.

#### *Customary land functions social*

This social function can be seen in the provision of land belongs to the village to use by the school, office field and so forth. The use of this land should be helpful for social welfare and state, therefore the utilization of lands by the village *krama* (village members) was a part of the social functions above. This social function has existed before the issuance of agrarian principle law specifically article 6, this can be seen from the nature of communal rights themselves, where the emphasis was on the public interest (alliance), but still protect and pay attention to the personal interests of their citizens.

#### *Customary land functions spiritual*

The spiritual function can be seen from the burden of the obligation of "*ngayahang*" which accompanied village *krama* (village members) which cultivated customary lands by traditional village associations. The obligation of *ngayahang* can be:

Personnel, namely participating/providing themselves to *ngayah* (providing services) to the village and *ngayah* to Pura/village *khayangan*, for example, mutual cooperation to clean the village/village Pura.

Material, which is providing money or other objects. For example, paying for descent (contributions), *pepeson* (rice, coconut milk, fruits, etc.) used for the activities in the village or in Pura.

#### *The Transition of Pura Land Profit Rights*

In accordance with the customary law and agrarian principle law Article 20 paragraph (2), a sacred building is an institution permitted to own land. This right can be changed and transferred to another party after going through a legal process and getting approval from the

keeper of the holy building (pengempon) (Ruchiat, 1992). Courts and the Supreme Court in deciding cases relating to customary land are always guided by the traditional village awig-awig and customary laws that apply in the area of origin of the case. As with legal objectives, awig-awig is made with the aim of realizing peace (kasukertan) in society, namely an atmosphere that is orderly (physically) and peaceful (inwardly) (Windia, 2010).

The village Paruman is the incarnation of the consensus agreement principle. Customary law essentially prioritizes consensus building, both within the family, kinship relations, and resolving disputes involving traditional villages. To get a mutual agreement regarding the sale of land owned by Pura, a village Paruman must be held which must be attended by all the karma pengempon Pura. A crucial meeting is held on matters relating to joint ownership. Pura profit land is the land owned by pengempon Pura, so there must be a mutual agreement from the landowner to sell the land.

Based on an interview with pengempon Pura Batu Pageh in Ungasan Village, South Kuta District, the reasons that caused all pengempon and customary society to decide to sell Pura profit land are as follows:

Associated with the amount of the annual ceremony they carry each year in the amount of Rp. 30,000,000.00. (thirty million rupiahs) while the yield of rice fields (Pura profit) covering an area of 12.5 HA from the total amount of rice fields 34.5 HA only produces an average of Rp. 9,000,000.00. (Nine million rupiahs). The remaining 22 HA produces absolutely nothing (unproductive dry land), then every year the members of pengempon society for self-sufficient to reach an amount of around Rp.20,000,000.00 (twenty million rupiahs).

The proceeds from the sale of Pura profit land will be used for the construction and physical rehabilitation of less or

damaged Pura.

In addition, funds obtained from the proceeds of the sale will be used to carry out the religious ceremonies (piodalan) and increase the routine costs (cash) of Pura.

In connection with that, so that the ceremony in Pura Batu Pageh can be held on an ongoing basis, and also the construction of Pura that are still lacking or damaged can be repaired, then the only way that can be taken and reduce the burden pengempon Pura is to sell (pengempon used the term "exchange" ) dry land of Pura profit with more productive rice fields, namely 10 HA of dry land with 15 HA of paddy fields.

For the implementation of this purpose, paruman (the results of the meeting's decision) has authorized the Pura management to take all necessary actions in connection with the transition.

The village paruman is the incarnation of the consensus agreement principle. Customary law essentially prioritizes consensus building, both within the family, kinship relations, and resolving disputes involving traditional villages. As well as in terms of making decisions concerning the sale of profit land. To get a mutual agreement regarding the sale of land owned by Pura, a village paruman must be held which must be attended by all krama pengempon Pura. A crucial meeting is held on matters relating to joint ownership. Pura profit land is a joint land owned by pengempon Pura, so there must be a mutual agreement from the landowner to sell the land.

#### **4. CONCLUSION**

The legitimate the transfer of rights to Pura profit land in the perspective of legal certainty is the same as the transfer of land ownership rights in general, but there are a number of requirements set out by circular regent head of the local area for pengempon Pura who wants to sell his Pura profit land, as follows: permission from all pengempon Pura administrators.

National Land Agency Number 5 of 1999 concerning guidelines for resolving communal rights of customary law communities. If all these requirements have been fulfilled, then the transfer deed can be made by land titles registrar. In the transition of Pura profit land must fulfil the principle of light and cash which is realized by the existence of a deed made before the land titles registrar authorized according to the laws and regulations (provision of article 37 paragraph (1) government regulations number 24 of 1977).

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