



Traditional Fishing Rights for *Bendega* (Balinese Traditional Fisherman)

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Abstract

Bendega is one of the cultural heritage of Balinese ancestors is a social organization whose existence has begun to decrease. This existence is closely related to their rights and obligations as part of the main community members in the coastal areas of Bali. This study aims to determine the rights and obligations of fishermen based on applicable regulations and to find out whether these rights and obligations have gone in harmony. This study used the normative-empirical legal research method. Normatively, this study is done through literature studies and empirically conducted by distributing random questionnaires to several fishermen in Bali. Based on the analysis, the results of this study showed that some fishermen have never read Local Government Regulations of Bali Number 11 year 2017 about *Bendega*. Some of them feel the right to catch fish is a result of business activities in other sectors. The effectiveness of legislation has not been running optimally. The community, especially the fishermen, need re-socialization related to their knowledge of Local Government Regulations of Bali Number 11 year 2017 about *Bendega*, so that they can find out more about their rights and obligations as *Bendega*.

Keyword: *Bendega*; The Law of The Sea; Traditional Fishing Rights

INTRODUCTION

Bali Province is one of the provinces in Indonesia which has a coastal area. The coastal areas of Bali are utilized in such a way in various industrial sectors, including the tourism, fisheries and salt industries. This utilization depends on the potential that the area has in a particular area. For example, Buleleng district is located in the northern region of the island of Bali. In 2016, the eastern region of Buleleng Regency tried to build a fishery tourism model, namely *Mina Wisata* (Yudasmara, 2017).

The potential of coastal areas has been exploited since ancient times for the fisheries sector. One of the sources of livelihood for Balinese people that still exist today is fishermen. There is even a song that tells about fishermen, who are famous among Balinese people, namely the song *Juru Pencar* (Fisherman). The song *Juru Pencar* has existed since the days of a fisherman who was around 90 years old (interviewed in 2006) and he said this song has been around since the time of his grandfather (Sejarah Bali, 2018). In Tuban Village, one of the villages on the south coast of Bali, it is known that the existence of *bendega* had developed before the 1930s, at that time *bendega* became a valuable profession (Trisnadiasa, Sulistyawati, & Arthadana, 2020). It can be estimated that the livelihoods of the coastal communities of the island of Bali as fishermen have been going on for a long time now, and their existence needs to be preserved because they are the cultural heritage of their ancestors.

The livelihoods of the coastal communities in this area of Bali are starting to become

less popular and have decreased. Based on data obtained from the Central Bureau of Statistics of Bali Province from 2010 to 2019, the decline in fishery production in Bali Province in tonnes has decreased by more than 50%. The following table shows the production of the fisheries sector in Bali province and each district in the province of Bali.

Table 1
Fishery Production in Bali Province (Badan Pusat Statistik Provinsi Bali, 2019)

Kabupaten/Kota	Produksi Perikanan (Ton)									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Kab. Jembrana	42256	19338.50	11873.80	15293	25365.60	22051.90	12089.70	7606.27.00	14840.30	28208.07
Kab. Tabanan	1827.60	2941.90	3434.10.00	4183.70	4784.10.00	3760	3665.70	3877.50.00	3967.40.00	3732.99
Kab. Badung	31225.90	38388.50	48564.70	49094.70	6620.50.00	7059.50.00	11628.10	6077.40.00	16970.10	5233.29.00
Kab. Gianyar	2364.20.00	2341.90	2772.50.00	2605.90	2638.80	1383.30.00	1388	1359.10.00	1394.60	1513.54.00
Kab. Klungkung	103577	108715.60	102312.60	103002.90	85791.50	108216.80	108027.90	1859.23.00	2575.40.00	2253.26.00
Kab. Bangli	2029	2464.80	4705.50.00	6148.50.00	7326.90	7266.90	7204.50.00	6021.80	5181.50.00	4844.13.00
Kab. Karangasem	17122.20	18814.90	18446.10	21394.40	22122.10	25371.30	24414.40	42207.40	27085	27056.67
Kab. Buleleng	14389.40	15005.50	14456.40	16304.90	19863.40	19148.50	19350.20	20125.51	20837.60	20660.45
Kota Denpasar	31014.80	44645.50	31077.60	45943	46193.60	34615.20	45759.30	40941.21	34680.20	18750.08
Provinsi Bali	245806.10	252657.10	237643.30	263971	220706.40	228873.50	233527.80	130075.42	127532.10	112252.48

Source: Bali Province Central Bureau of Statistics, (edited by the researchers)

One of the causes of the decrease in production from the fisheries sector is the development of other sectors which causes fishermen to shift their interest in going out to sea to catch fish. As an example of fishermen in Kuta Traditional Village, the existence of fishermen groups in the village still exists today. However, not many fishermen in Kuta Traditional Village are full-time fishermen. The tourism industry that continues to develop on Kuta beach provides another option for fishermen as a source of income.

From the results of interviews with the head of Kuta fishermen, even though the fishing area on Kuta Beach has narrowed drastically, they have a fairly stable organization with a total of 150 members, of which 138 people (92%) are the main additional fishermen while the rest are full fishermen. The main additional fishing activity is as a service provider to tourists to take them to the deep sea (offshore) in order to carry out people for surfing activities. The new activity of fishermen on Kuta beach has provided a more profitable and stable livelihood than being full-time fishermen. This activity also makes their existence as fishermen continue to grow and develop, while in other places in Bali many have switched professions (Rajendra, 2017). Referring to the above phenomenon, all parties concerned should pay attention to alternative activities that are still in progress. In the realm of fishery activities, the rights and obligations of traditional Balinese fishermen especially are part of the property, can be realized harmoniously and sustainably to make the property as a sovereign traditional local organization.

The study about *Bendega* has been conducted previously by some researchers, such as Siki (2018), Trisnadiasa et al. (2020) and Wibawa (2020). The study conducted by Siki (2018) that discussed the characteristics of the form and content of Local Regulation on *Bendega*, showed that the formation of the Bali Regulation 11/2017 was based on philosophical, sociological and juridical considerations. The establishment of the Bali Regulation 11/2017 is based on attribution authority and delegation. The content character of the Bali Regulation 11/20 is discretionary, in the sense of giving the Governor and the Regency / City Government the freedom of space. Bali Regional Regulation 11/2017 has addressed the character of responsiveness to pluralism in the legal order that applies in areas that have certainty and fulfill people's desires. The certainty of the rules of traditional socio-cultural and religious institutions in the field of fisheries is part of the culture of traditional Balinese society. Meanwhile, a study conducted by Trisnadiasa et al. (2020) that examined the legal position of fishing groups in Desa Adat Tuban after issuance of Peraturan Daerah Provinsi Bali No 11 Tahun 2017 tentang Bendega; and the state's

recognition of fishermen groups in Desa Adat Tuban as the legal subject in charge of management of coastal areas, showed that the position of the Tuban Fishermen group cannot be qualified as Bendega based on Provincial Regulation no. 11 of 2017 concerning Bendega. Considering that the Wanasari Fishermen Group does not fulfill the bendega elements as contained in the Bendega Regional Regulation. Furthermore, the Wanasari Tuban fisherman group is not a legal subject with authority over coastal and coastal areas. There are 2 reasons for this, namely: (a) The Wanasari Tuban fisherman group is not classified as traditional and/or bendega fishermen; (b) The Wanasari Tuban fishing group does not have a permit for the utilization of the coastal and coastal areas of Tuban, which are Tahura areas. The similar study conducted by Wibawa (2020) that examined protection and preservation of *bendega* as a traditional fisherman organization in Bali, revealed that the protection and preservation of bendega (fishermen) as traditional fishing organization has been regulated in the Bali Provincial Regulation Number 11 of 2017 concerning *Bendega*. Then based on the provision of article 4 the regulation has been spelled out in Denpasar Regency Regulation Number 6 of 2019 concerning Protection and Preservation of Bendega and Badung District Regulation Number 6 of 2019 concerning Protection and Preservation of Bendega as a follow-up rule. The Bali Provincial Regulation Number 11 of 2017 concerning Bendega contains the principle of legal pluralism.

Based on the background and the previous study above, it can be stated that the study about *Bendega* need to be discussed in-depth, especially related to the right and obligation of *bendega*. Thus, this study aims to determine the rights and obligations of fishermen based on applicable regulations and to find out whether these rights and obligations have gone in harmony.

METHOD

The method applied in this study is normative research (literature) and empirical research (field). Normative research (literature) is legal research conducted by examining library materials or secondary data, while empirical (field) research is legal research conducted mainly by examining primary data (Soekanto, 2012). Furthermore, normatively, this study examines several related legal regulations as well as several articles that are used as a source of library material. Meanwhile, empirically, this study used a questionnaire method (google form) by taking random data (random sampling) on objects in Bali.

RESULT AND DISCUSSION

Balinese Traditional Fisherman (Bendega)

The definition of fishermen contained in article 1 number 11 of Law Number 45 of 2009 (Pemerintah Republik Indonesia, 2009) concerning Fisheries, amendments to Law Number 31 of 2004 concerning Fisheries are people whose livelihoods are fish catching. In Balinese society, people or traditional communities who carry out activities according to the explanation above are called *Bendega*. The meaning of *Bendega* in Article 1 number 3 of Bali Local Regulation Number 11 of 2017 concerning *Bendega* is a traditional institution in the marine and fisheries sector in the indigenous communities in Bali who live in coastal areas, which have been historically growing and developing according to with Balinese culture and local wisdom (Pemerintah Provinsi Bali, 2017).

Bendega has an organizational structure like other traditional Balinese social organizations, *Banjar* and *Subak*. *Bendega* consists of *Prajuru* (apparatus or organization administrator) and *Krama* (member of the organization). *Krama Bendega* is a person who carries out economic, social, cultural and religious activities on the coast which are traditional fisheries rights that have been carried out from generation to generation in accordance with Balinese culture and local wisdom. *Krama Bendega* in carrying out organizational activities based on the *Tri Hita Karana* philosophy which is arranged in such a way in *Awig-awig Bendega*. *Awig-Awig Bendega*, hereinafter referred to as *awig-awig*, is customary norms which are expressed and used as guidelines to regulate *Bendega*.

Tri Hita Karana is the philosophy of life of Balinese society which contains three

elements that build balance and harmony of human relations with God, humans and humans and humans with their environment which is a source of prosperity, peace, happiness for human life. The three elements are described as follows:

Parahyangan; *Parahyangan Bendega*, hereinafter referred to as *Parahyangan*, is a holy place for *Bendega* boarding house in dealing with *Ida Sang Hyang Widhi Wasa*. In general, *Parahyangan* element for *Bendega* boarding house is the *Segara* Temple.

Pawongan; *Pawongan Bendega*, hereinafter referred to as *Pawongan*, is the relationship between *Bendega* boarding house in carrying out economic, social, cultural and religious activities. It is hoped that a harmonious relationship can be created between *Bendega* boarding house.

Palemahan; *Palemahan* for *Bendega* is a place for economic, social, cultural and religious activities for *Bendega*.

Traditional Fishing Rights in Indonesia

The rights and obligations are two entities that cannot be separated from each other. When talking about rights, of course there are requirements or causes for obtaining a right through fulfilling obligations. In this section, the rights and obligations related to traditional fisheries which are regulated in several legal instruments are discussed.

In general, the right to catch fish is a permit that is granted by the government or a licensing regulatory agency to a fisherman to catch fish or other water products. In general, permits/licenses granted by the licensing agency are regulated in written legal instruments (Song & Soliman, 2019). Based on the provisions of article 1 number 10 of Law number 45 of 2009 concerning amendments to Law number 31 of 2004 concerning Fisheries, fishermen are people whose livelihoods are fishing. The background for the amendment to the aforementioned Law is because the utilization of fish resources has not yet provided a sustainable and equitable standard of living through fisheries management, supervision, and an optimal law enforcement system. However, the Law does not provide an understanding of traditional fishermen. The meaning of traditional fishermen can be seen in the provisions of Article 1 point 5 of Law No.7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Farmers and Salt Farmers. What are meant by traditional fishermen are fishermen who catch fish in waters which are traditional fishery rights have been used from generation to generation in accordance with local culture and wisdom (Trisnadiasa et al., 2020). In addition there are other legal instruments that are still related to the existence of objects, namely (1) Law of the Republic of Indonesia Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (Republik Indonesia, 2007). Article 62 the government recognizes respects and protects the rights of Indigenous Peoples, Traditional Communities, and Local Wisdom on Coastal Areas and Small Islands which have been used for generations. (2) Recognition of the rights of the Indigenous Peoples, Traditional Communities and Local Wisdom as referred to in paragraph (1) shall be used as a reference in the sustainable Management of Coastal Areas and Small Islands. In these provisions, it is quite clear how the arrangements regarding the management of coastal areas.

What also needs to be considered if the object is to manage other coastal natural resources is the scope and permits. This is regulated in Law of the Republic of Indonesia Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (Republik Indonesia, 2014). Every person who utilizes coastal waters and small island waters for activities:

- Salt production;
- Marine biopharmacology;
- Marine biotechnology;
- Utilization of sea water other than energy;
- Marine tourism;
- Submarine pipeline and cable installation; and/or

The lifting of the sinking ship's cargo must have a Management Permit.

Then regarding the Management permit for activities other than those referred to in paragraph above is given in accordance with the provisions of statutory regulations. (3) In the case of coastal waters and small island waters resource exploitation activities that have not been regulated based on the provisions referred to in the above paragraphs shall be regulated by a Government Regulation.

Another legal instrument that is closely related to objects as a customary entity, namely the Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Law Communities (Kementerian Dalam Negeri, 2014). Article 2 states, Governors and regents/mayors recognize and protect the customary law community. Where the recognition and protection as referred to in Article 2 is carried out through stages (which are regulated in Article 4):

Indigenous Law Community Identification;

Verification and Validation of Customary Law

Establishment of a Customary Law Community

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 8/Permen-Kp/2018 concerning Procedures for Establishing Management Areas for Customary Law Communities in Spatial Utilization in Coastal Areas and Small Islands (Kementerian Kelautan Perikanan, 2018). Article 2, the objective of this Ministerial Regulation is as a reference in determining the Management Area for Indigenous Peoples in the Zoning Plan for Coastal Areas and Islands Small (RZWP-3-K), National Strategic Area Zoning Plan (RZ KSN), Specific National Strategic Area Zoning Plan (RZ KSNT), and Zoning Plan (RZ) between regions and in Article 3 explains the scope of this Ministerial Regulation includes:

Proposal for Management Areas of Customary Law Communities; and

The process of determining the recognition and protection of Customary Law Communities (Halim et al., 2020).

In connection with the zoning/manage area referred to above, Article 51 of the United Nations Convention on The Law of The Sea, abbreviated as UNCLOS (United Nations, 1982) describes Traditional Fisheries Rights which reads as follows:

“Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.”

This means that each country has the right to independently regulate fisheries management for traditional fishermen. In certain sea areas bordering other countries, it is necessary to establish an agreement in the form of a bilateral agreement for access for traditional fishermen to catch fish. If there is a dispute regarding the right of access, historical factors can be used as a reference for the existence of an agreement between these countries, for example, the access of Indonesian fishermen to catch fish in Australian waters. These fishermen are given access because they have been fishing in the area from generation to generation since the time of their ancestors.

Bendega's Fishing Rights Implementation

According to Waddell (Waddell, 2012), there are five minimum requirements that can be used as benchmarks in formulating policy instruments:

Do not limit local people's access to resources or job opportunities;

It does not benefit those who have access to capital and technology so as to disadvantage those who on average have limited education and access to capital;

This will not lead to a concentration of resources in the hands of the private sector;

Will not discriminate against local communities (directly or indirectly); and

Does not reduce the level of community participation in determining the use of natural resources.

This is in line with the role of the government which intends to give respect, protection and empowerment to traditional fishermen in Bali. This is a form of elaboration of the concept of a welfare state, so that the existence of objects in Bali is maintained and their welfare will increase (Trisnadiasa et al., 2020).

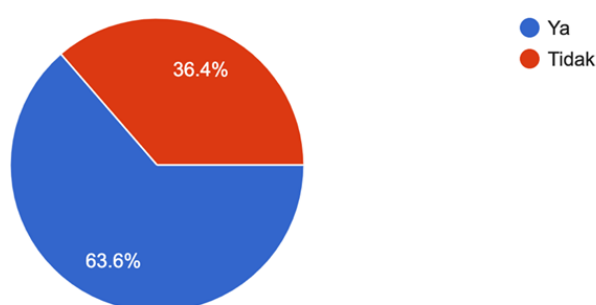
Philosophically, what is contained in Local Government of Bali number 11 of 2017 is the concept of the meaning of *Tri Hita Karana*, balance and harmony of life that consisting of *Parahyangan*, *Pawongan*, and *Palemahan*. *Parahyangan* is a holy place (*Pura Segara*) as *Pura Swagina* which functions as a place for *Bendega* manners in worship of *Ida Sang Hyang Widhi* (Siki, 2018). The existence of *Pura Segara* in *Bendega* organization is fundamental, namely the temple which is functioned to worship Lord *Baruna*. However, not all objects have their own *Segara* Temple in their territory. Based on a survey conducted on several fishermen in Bali, as many as 36% answered that their organizations do not have a *Segara* Temple.

Table 2

Survey Results of Segara Temple Existence at Bendega Organization

4. Apakah kelompok/komunitas anda memiliki Pura Segara tersendiri?

55 responses



In a study it was explained that the existence of *Bendega* began to be disrupted after the construction of *I Gusti Ngurah Rai International Airport* around 1969. The scope of work of *Bendega* became increasingly narrow and in the end many *Bendega* members switched professions in the tourism sector. In the 1970s, there was silting of the sea due to the expansion of the airport land. This again weakens the existence of *Bendega* in the Traditional Village of Tuban, but does not mean that it will erase the presence of *Bendega* in the area. The peak was in 1990, when the bypass was widening in the Tuban area. *Bendega* is experiencing suspended animation. Moreover, the development of the tourism industry in southern Bali is getting stronger. The *Bendega* profession was eventually abandoned by most of the manners of Tuban Traditional Village (Trisnadiasa et al., 2020). Based on the facts in this field, it means that the provisions regarding the existence of *Pura Segara* in each of *bendega* organizations are not yet ideal. Then the second element in *Tri Hita Karana* on *Bendega* is *Pawongan*. *Pawongan* is a relationship between manners in carrying out economic, social, cultural and religious activities (Siki, 2018). *Pawongan* itself can be interpreted as how a social group interacts in a balanced and harmonious manner in their daily lives.

Regarding the social interaction of *bendega*, there is a unique phenomenon occurring in the coastal area of Buleleng, so that it attracted a group of researchers to study this with the research title "*Sor Singgih Basa Bali Bendega Magama Islam Ring Banjar Kauman, Seririt District, Buleleng Regency*" (Ningsih, Paramarta, & Martha, 2016). The study aims to analyze the grammatical use of Balinese used in the daily lives of residents in that location.

The purpose of this study actually has nothing to do with this research, but what is interesting is the object of the research, namely "*bendega magama Islam*" (object that is Muslim). This research shows the existence of fishermen in the pluralistic north coast of Bali since the 13th century, but the question is whether these Muslim fishermen qualify to be referred to as objects or are they just fishermen? concerning the *Parahyangan* elements that must be fulfilled from this traditional organization.

In other traditional organizations, for example *Subak*, there are exceptional conditions in certain areas in Bali. There has been social activism in several areas where community members are of different religions. For example, *Subak Air Satang* in Jembrana district, whose members are Hindu and Muslim. Muslims in *Subak Air Satang* also perform the *Ngusaba ritual*, but in a different way. They also came to the prayer room adjacent to the *Bedugul Temple*, and prayed together. If Hindus use *banten* as a means of ceremony, Muslims use offerings, namely *tumpeng* which contains side dishes. After they finished praying, they enjoyed the *tumpeng* together. The meaning of *tumpeng* is the same as that of the Hindus, which is an expression of gratitude, when the rice is 105 days old, hopefully with this ritual their rice can flourish and their crops are abundant (Susanti, 2018).

In other areas, namely Tegallinggah Village, Sukasada, Buleleng, research has also been carried out related to the heterogeneity of *subak* membership. This research shows that the integration of Hindus and Islam occurs because of the borrowing of Balinese-Islamic identities, such as *ngejot*, *Subak Bali-Islam*, and the borrowing of Balinese cultural identities. The process of integration between Hindus and Islam cannot be separated from the intense interaction between Hindu and Muslim communities because of the same economic and social interests. There are three factors of integration between Hindus and Islam as a source of learning, namely: social factors, economic factors, and cultural factors (Shobah, Pageh, & Arta, 2019).

The above situation is a sociological reality that cannot be avoided as a result of the social interactions of indigenous peoples. If we look at conditions like what happened in several *Subak* organizations in Buleleng and Jembrana areas, then it is possible to take these conditions into consideration in the context of *krama bendega* membership, considering the sociological aspect in the Local Regulation on *Bendega* is to see that *Bendega* is a traditional organization in in the marine and fisheries sector in the harmonious indigenous communities in Bali (*pawongan*).

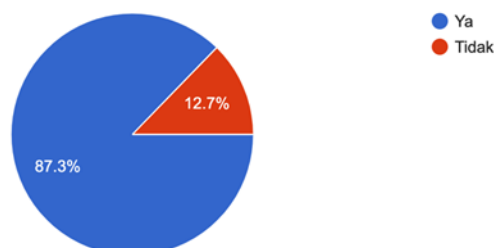
Creating harmony in an organization can be realized through regulations or policies related to organizational management, this is where the juridical aspect of Local Regulation plays a role. Based on Article 1 point 5 of Law 7/2016, it can be interpreted that the right of traditional fishermen in waters to carry out fishing by utilizing local culture and wisdom. Furthermore, in Article 1 point 28 of Law 7/2016 it can be interpreted that fish cultivator institutions, or salt farmers are grown and developed from fishermen, by fishermen and for fishermen, based on local culture and wisdom. In addition, based on the institution, it is regulated in Article 54 of Law 7/2016 in relation to articles regulating "*awig-awig*" (written customary rules), which is a form of regulation related to the protection of objects in social and religious activities as a reflection of the concept "*Tri Hita Karana*"(Siki, 2018).

To find out how the implementation of fisheries rights is carried out in the property organization, a survey has been carried out on the ownership of *awig-awig* in the property organization. As many as 12.7% of items stated that they did not have *awig-awig* in their group. This means that not all object organizations have met the criteria in the provisions contained in Local Regulation of Bali No. 11 of 2017, meaning that every member who doesn't have *awig-awig*.

Table 3

Results of Awig-awig Ownership Survey in Bendega Organization

2. Apakah kelompok/komunitas anda memiliki awig-awig?
55 responses



The *awig-awig* referred to above includes all *Krama* rights and obligations in running the wheels of a traditional Balinese marine organization. For example, related to fishing areas. To avoid internal and external conflicts, a regulation related to territory is needed so that all interested parties and involved in the fishing process in the sea. Apart from harming some parties, illegal fishing can also threaten the ability of aquatic systems to continue to provide vital ecosystem services and important food sources (Ma, 2020). In the other hand, there are hopes of traditional fishermen through conducting surveys regarding their rights which are disturbed by development activities in the tourism sector. The following is a screenshot of the survey results:

The government's efforts in implementing fishery rights in accordance with what is implied in the local regulation on *Bendega* can be realized with good coordination with the *krama damega* and the *prajuru*. Government attention can be focused on the following: (Chapsos et al., 2019).

Ocean governance: lack of local government or authority, turning a blind eye, corruption, lack of support, favoritism;

Illegality: a series of illegal activities taking place at sea; use of illegal fishing methods, crossing borders, selling fish at sea, human trafficking;

Economic difficulties and the future of the marine environment: a concern for the next generation; nothing left for fish, degradation of the sea, lack of alternative economic activities;

Education: limited educational opportunities, no skills training, especially for women, lack of knowledge of regulations).

So that what is needed from the society can be conveyed properly and systematically. This is at the same time a manifestation of the implementation of the functions of the government as protector of traditional *bendega* community organizations.

CONCLUSION

Based on the results and discussion explained above, thus it can be concluded that *Bendega* is a Balinese social organization whose activities are closely related to the management of coastal areas, especially fisheries. As a traditional social organization, *Bendega* also has *awig-awig* like *Subak* and its legality is regulated in Local Regulation No. 11 of 2017 about *Bendega*. Traditional fishing rights in Indonesia have been a concern of the government for a long time. The government, in an effort to preserve the existence of marine cultural customs, has issued several related policies. In its implementation, the fishery rights owned by *bendega* in Bali still have several obstacles. Whether coming from within the object organization or from outside. Harmonization is needed (the implementation of *Tri Hita Karana* conception) to realize fair and sustainable fisheries rights.

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