



Land Dispute Settlement of *Laba Pura Tanah Ayu* in Sibang Gede, Badung Regency

I Putu Suantika, I Made Suwitra and I Made Sepud

Universitas Warmadewa, Denpasar, Bali, Indonesia

psuantika17@gmail.com, made_suwitra@gmail.com and sepud_made@yahoo.com

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Abstract

Land is one of the productive sources that play a very important role for humans because of its function as one of the sources of life. Land has become a vulnerable source of disputes between people, especially of the tenure or ownership over it. This study was carried out to reveal how the conversion of the land function of Tanah Ayu Pura Tanah in Badung Regency is made and to describe how the dispute in making a certificate for the land is carried out. To achieve the objectives of this study, empirical juridical method was applied by making use of the statute approach, conceptual approach, and case approach. Data in the form of primary and secondary data were collected by applying *note-taking technique* and *documentation technique*. Data analysis was carried out through the application of descriptive qualitative data analysis methods. From the results of the data analysis, it is found that the conversion of land of *Laba Pura tanah ayu* in Badung Regency is begun with the issuance of certificate, that is the new Notification of Tax Due (SPPT) for one plot of land and for two certificates of two plots of land that are not at the same location. In fact, the SPPT issued was not for land located in the *Laba Pura tanah ayu*. There has never been an agreement from the comparator in the issuance of the said land certificate, so that the certificate issued is legally defective. The settlement of the dispute over the issuance of the land certificate of *Laba Pura tanah ayu* is carried out through deliberation at the Office of the National Land Agency. If the dispute cannot be settled under government assistance, it shall be done through court institution.

Keywords: Dispute Settlement; Laba Pura; Land Conversion; Tanah Ayu.

INTRODUCTION

The land is not only a vital livelihood asset but also indispensable for the enjoyment of several human rights including the right to life, the right to food, the right to housing, the right to property, the right to development, and the right to self-determination (Tura, 2018). Land use change is the oldest anthropogenic environmental intervention and is referred to as an aspect of 'the global change' (Cegielska et al., 2018). A large portion of the population in developing countries lives on land that it does not formally own (Hawley, Miranda, & Sawyer, 2018). However, although land reforms have advanced in many developing countries, some continue to suffer from a lack of effective land use and management (Ekpodessi & Nakamura, 2018).

Collective land one-time buyout means that the collective transfers the collective land right to the land users within a certain period of time, and the land users need pay land-transferring fees to the collective (Ye et al., 2018). Self-governed forest resources would be those that are governed entirely by the users of the forests and not at all by external authorities (Caballero, 2015). The extreme version of this systematic-titling argument even

led part of the “land administration” literature to propose “holistic” objectives, according to which surveying each land parcel was considered a requirement for good titling (Arruñada, 2018).

Land is a gift granted by God Almighty to all nations to carry out their lives. In Indonesian constitution of agrarian sector that regards the provisions contained in Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution, it is stated, “The earth, the water and the natural richness contained therein are to be controlled by the state and to be exploited for the greatest benefit of the people.” The provision is then elaborated in several laws and regulations so that they can be used as a basis for the state rights on land and the state right to utilize the natural resources (land)¹. As a follow up to Article 33 paragraph (3) of the 1945 Constitution relating to the earth or land, Act Number 5 of 1960 concerning Basic Agrarian Law (hereinafter referred to as UUPA) was issued.

One of the principles adopted in the Basic Agrarian Law is the recognition of rights to land from customary law communities called *communal rights*. In connection with the existence of customary law and the rights of indigenous peoples over land in their territory (communal rights), governing provisions to it explicitly have been regulated in Article 3 and Article 5 of the Basic Agrarian Law. Article 3 reads, “The implementation of the “communal right” (The Communities, in so far as they still exist, shall be adjusted as such as to fit in the National and Property right of communal property of an customary society) and rights similar to that of customary-State’s interests, based on the unity of the Nation, and shall not be in conflict with the acts and other regulations of higher level.”. In addition, Article 5 reads, “The agrarian law applicable to the earth, water, and airspace is *adat* provided that it is not contrary to the national interest and the interest of the State, which are based on national unity, to Indonesian socialism, to the provisions stipulated in this Act, nor to other legislation, all with due regard to elements which are based on religious law.” According to Article 5, customary law is used as a basis for national agrarian law with several conditions, namely being not in conflict with national and state interests, Indonesian socialism, and legislation by heeding the elements that rely on religious law.

Indigenous peoples in each region have different groups name. Customary community groups in Bali are called *Desa Pakraman* (formerly was called *desa adat* ‘*traditional village*’). In the Bali Provincial Regulation Number 3 of 2001 concerning the *Desa Pakraman* Article 1 paragraph (4), *Desa Pakraman* is defined as:

“Customary law community in Bali Province which has a unity unit of tradition and manners of association of Hindu community for generations in *Kahyangan Tiga* or *Kahyangan Desa* bond which has a certain area and own assets and has the right to take care of its own household.”

According to Griadhi, the characteristics of the identity of a traditional village in Bali are:

1. There are certain areas with evident boundaries and the majority of *Krama Desa* resides in the area
2. There are sacred buildings belonging to the Village both in the form of *Kahyangan Tiga* and other *Kahyangan Desa* as a place of worshipping the *Sang Hyang Widi Wasa* (God Almighty), as the ruler of the universe by *Krama Desa*².

A pakraman village consists of three elements, namely parahyangan (in the form of temples or shrines for Hindus), elements of pawongan (villagers who are Hindus), and elements of palemahan (village areas in the form of rural rock and rich coral). Traditional village communities as elements of Pawangan have rights to the land in their territory and can apply the land both for benefits inside and outside the land. On the basis of the force of enactment outside, the community has the right to enjoy the land, and reject outsiders to enjoy the land. On the basis of the power of force within, the community has the right to

1. Husen Alting, 2010, *Dinamika Hukum Dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah (Masa Lalu, Kini, dan Masa Mendatang)*, Laksbang Pressindo, Yogyakarta, p. 4.
2. Ketut Wirta Griadhi, 1977, “Sekitar Identifikasi Terhadap Desa Adat di Bali”, *Kertha Patrika*, *Majalah Hukum dan Masyarakat FHPM UNUD*, Denpasar, p. 35.

regulate its members to exercise their rights in accordance with their respective parts. In addition to the validity of customary rights outside and inside, communal rights also have the following characteristics:

1. Only the legal alliance itself and its citizens are entitled freely use illegal lands in their territory.
2. Aliens are only permitted use the land with and under the permission of the alliance's authority; without the permission it is considered as breaking on the rule.
3. Residents of a legal alliance may benefit from the communal rights area with a restriction that it is used for the needs of *somah*, *brayat* or their own families. If the land is used for the benefit of others, the users are seen as foreigners, so they must obtain permission in advance. Meanwhile, foreigners are only permitted to take advantage of the communal rights area with the permission of the head of the legal alliance with payment of tribute, recognition (*recognitie*, *retributie*), to the legal alliance.
4. The legal partnership is responsible for everything that happens in the area, especially in the form of illegal actions, which is an offense.
5. A communal right cannot be released, transferred, exiled forever.
6. Communal rights also include the land that has been cultivated, which has been covered by individual rights³.

By the issuance of Regional Regulation Number 3 of 2001 concerning the Village of Pakraman which was later updated with the Regional Regulation Number 3 of 2003 concerning Amendments to the Bali Provincial Regulation Number 3 of 2001 concerning the Pakraman Village, the position of the Pakraman village is a recognized and respected area. This position is obtained because the Pakraman village has an original structure with regard to origins (based on customary law. This relates to the control of land within the Pakraman village area, called customary land.

Article I paragraph (1) of the second part of the UPPA governs the conversion of land title (*eigendom*) to ownership rights and Article II paragraph (1) stipulates that customary lands in Bali can be converted into property rights. This provision causes customary lands to be controlled by individuals and by alliances (in this case are by traditional villages). The customary lands of the Balinese society are divided into *druwe dewa*, *laba pura*, *pekarangan desa*, and *ayahan desa*. *Druwe desa* land is a land that is controlled by the community of traditional villages which is obtained by buying or by other ways. This land is in the form of agricultural land that will be cultivated by village officials. *Laba pura* or *pelaba pura* is the land owned by the village which is used for the purposes of the temple. The land of *pekarangan desa* is the land that is controlled by the village which is given to the community of the village to build a house. *Desa ayahan* land is a land that is controlled by the village which is given to the village community member, and with mutual obligation to provide compensation to *Desa Pakraman*. The ownership over these lands is regulated by *awig-awig* of the village so that those who control them are burdened with obligations (certain benefits by the village)⁴.

From the above explanation, due to the importance of land for humans, land is often a source of disputes or disputes. Based on the description, this paper examines the implementation of land conversion of *Laba Tanah Ayu Pura* in Badung Regency and the settlement of dispute in its certification issuance.

METHOD

The study was carried out using empirical juridical method based on the condition of the existence of a gap between *das solen* and *das sein* namely the gap between the theory and the reality. The research approaches made use of for this study were the legislative approach, conceptual approach, and case approach. Data sources consisted of primary

3. Imam Hidayat, 1981, *Hukum Adat Sketsa Asas*, Cet. Ke-2, Liberty, Yogyakarta, p. 2-3.

4. I Made Suasthawa Dharmayuda, 2001, *Desa Adat, Kesatuan Masyarakat Hukum Adat Bali di Propinsi Bali, Upada Sastra*, Cetakan Pertama, Denpasar, p.136

data sources and secondary data sources. Data was collected by applying note-taking technique and documentation technique. Data were analyzed by descriptive method with qualitative approach.

RESULT AND DISCUSSION

Pura tanah ayu was founded by the late Pangeran Mas Sepuh in 1764 who was the Son of the First Mengwi King. Then, the control of the land of *Pura tanah ayu* was handed over to I Gusti Agung Kamasan Dimade (deceased), a Third King of Sibang. In the customary rules (*awig-awig*) of *Desa Pakraman Sibanggede Indik Warisan*, Article 57 (*pawos* 57) verse 2, part (1), it is stipulated "The object called inheritance land is *karang desa*, *empon-empon pura/sanggah*, and *ayah-ayahan*. *Pura tanah ayu* is an the temple *empon-empon* which is also a legacy of the plaintiff's ancestors whose existence shall be maintained and preserved by the plaintiff; the plaintiff is the legitimate heir of the King of Sibang who is entitled to the object of dispute I and the object of dispute II⁵.

The Plaintiff, as the Chairperson of the *pengempon* of *Pura tanah ayu*, inherits the temple from generation to generation, controls, works on and collects the results the from the land located on the west and the *karang suci* (sacred reef) which is located in east of Tanah Ayu Temple, for the sake of *piodalan* (annual religious ceremony) in Tanah Ayu Temple. The *pengempon* itself is a Pakraman Village community group that has the duty to conduct or hold obligations that must be carried out in relation to the shrine (*pura*). Tugas Pengempon is taking care of *Pura tanah ayu*, repairing damaged temple buildings which are funded by itself, carrying out *piodalan* ceremony every six months, covering all costs related to ceremonies on both small and large scale. The land of the object of dispute I is exactly in outside the *Pura tanah ayu* and the object of dispute II is right in Karang Suci (Pada Suci) of *Pura tanah ayu*. In addition, at the time when the defendant takes measurements at the location of the object of dispute I and the object of dispute II, he or she must have known that the location to be measured is where the Tanah Ayu Temple was established, so that the defendant's action is to issue the object certificate of dispute I and the object of dispute II.

Karang suci (holy place) is at the eastern part of the temple. Its function is as a storage place for the queen ash of *Gegaluh/dedari* during the *Pujawali* ceremony and as a place for the preparation for large-scale *karya*/ceremony. In this place, the object certificate of dispute II is issued. *Jaba Sisi* (Nistaning Mandala) is located in the western part of the temple. It serves as a place for ceremonial preparation, *tabuh rah*, a landfill as well as a place to grow plants that are used as materials to help the ceremony. In this place, the object certificate of dispute I was issued.

In addition, based on the provisions of article 3 paragraph 1 part a of Law Number 12 of 1985 and the Amendment to Law Number 12 of 1994 concerning Land and Building Tax (PBB), it is stipulated, "Tax objects that are not subject to land and building tax (PBB) are tax objects that are used solely to serve the public interest in the sectors of worship, social, health, education, and national culture that are not intended to gain profit. *Pura tanah ayu*, *Jaba Sisi* and *Karang Suci*, measuring 2900 m², are an integral part of *Pura tanah ayu*. Therefore, in accordance with the Law concerning places of worship, *Jaba Sisi* and *Karang Suci* are not taxed, so the defendant mistakenly appoints the *jaba sisi* and sacred reef of *Pura tanah ayu* as a tax object.

Article 67 paragraph 2 of Act Number 5 of 1986 concerning State Administrative Courts which states:

"The plaintiff can submit an application so that the implementation of the state's administrative decision is postponed, as long as the examination of state administrative disputes is ongoing, until there is a court decision that obtains permanent legal force."

Article 67 paragraph (3) of Law Number 5 of 1986 and on amendments to Law

5. Putusan Pengadilan Tata Usaha Negara Denpasar Nomor: 08/G/2015IPTUN.Dps

Number 9 of 2004 and the amendment to Law Number 51 of 2009 concerning State Administrative Courts states, "The application as referred to in article 67 paragraph 2 can be submitted at once in the lawsuit and can be decided in advance in the subject of the dispute."

In order to protect the interests of the Tanah Ayu Temple fans in this case as Defenders of the legal consequences of the issuance of the object dispute certificate I and the object of dispute II, the Plaintiff needs to ask the Chairperson of the Denpasar State Administrative Court or the Panel of Judges who examine this case to issue a postponement/suspension. The enactment of the certificate of the object of dispute I and the object of dispute II with the aim that he is not sold or guaranteed to a third party.

Provisions in Article 4 paragraph 2 of Bali Province Regional Regulation Number 3 of 2001 and amendments to Bali Provincial Regulation Number 3 of 2003 concerning Pakraman Village determine that Palemahan *Desa Pakraman*/Banjar Pakraman is an area of customary law community that has certain limits in Kahyangan Tiga/Village Paradise. In this case, Tanah Ayu Temple is the palemahan of Pakraman Sibang Gede Village which is the customary law community unit of the Pakraman Sibanggede Village which has certain limits in the Kahyangan Desa bond.

Based on the provisions of Article 9 paragraph 5 of Bali Provincial Regulation Number 3 of 2001 and amendments to Bali Provincial Regulation Number 3 of 2003 concerning Pakraman Village, it was determined that the land of Pakraman Village and/or the land owned by Pakraman Village could not be certified in private. This article means that the Tanah Ayu Temple is a land owned by Pakraman Sibanggede Village which cannot be transferred into private ownership, as exemplified, for instance, in the name of I Ketut Gede Arya Adnyana, SE. Reynold Darma Manullang, ST., I Wayan Gede Sudiarta, SPt., I Made Gede Sumarjan, and I Nyoman Gede Wenten Aryasa.

The fact that happened about the conversion of Tanah Ayu Temple Profit is that the land that is certified is Jaba Sisi and Karang Suci which is one unit that cannot be separated from Tanah Ayu Temple. This is an act that is contrary to the law. Therefore, the owners of Tanah Ayu Temple begged the Chairman of the Denpasar State Administrative Court or the Panel of Judges who tried the Tanah Ayu Temple case to cancel or at least state that the object certificate of the land dispute is invalid.

In the provisions of Law Number 5 of 1960 in Article 2 concerning the Right to State Control over Land, the authorities of the State in the control of land are already prescribed⁶. Based on the authority, although it is expressly not regulated, the authority of the state to resolve the conflict or dispute lies where the authority of the Republic of Indonesia is submitted to the Head of the Land Agency.

Provisions that can be used as an operational basis and function as a tool to resolve legal disputes over land, namely Government Regulation No. 24 of 1997 and Regulation of the Minister of Agrarian Affairs or Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Settlement of Communal Rights Issues of Customary Law Communities, PMNA No.3 of 1999, PMNA No. 9 of 1999 and the operational basis in Presidential Regulation No. 10 of 2006 concerning the National Land Agency.

Article 2 Presidential Regulation No. 10 of 2006 strictly regulates the tasks of the National Defense Agency (BPN) which states that BPN is tasked with carrying out government in the land sector nationally, regionally and sectorally. The next article in the regulation states that the function of BPN is to conduct an assessment and handling of problems, disputes, cases and conflicts in the land sector. To carry out this function, the Deputy for the Assessment and Handling of Land Conflict and Conflict was formed.

Cases in the land can be grouped into two groups: first, as a dispute that occurs outside the court, generally the BPN apparatus attempts to settle it. Second, disputes arising from civil disputes or State Administration disputes, the settlement of which is carried out through the district court or the State Administrative Court. The real reason for the ultimate goal of the dispute is the existence of parties who are more entitled (priority)

6. Rusmadi Murad, 1991, 1991, *Penyelesaian Sengketa Hukum Atas Tanah*, Alumni, Bandung, p. 14

than others to the disputed land.

CONCLUSION

Based on the description above, the conclusions are drawn, namely: firstly, the conversion of Tanah Ayu Pura land in Badung Regency begins with the making of the Tanah Ayu Pura land certificate in the form of a new Notification of Tax Due (SPPT) for one parcel of land but for two certificate and two different plots of land, namely the object of dispute I on Jaba Sisi *Pura tanah ayu* in the western part of the *Pura tanah ayu* and the object of dispute II at Karang Suci *Pura tanah ayu* located in the eastern part of *Pura tanah ayu*. The SPPT made is not in the block in the *Pura tanah ayu*. At the time of the process of issuing the land certificate, there was never agreement from the plaintiff and the *pengempon pura*. The Statement Letter (attachment to the application) which contained a sketch drawing of the plot of land which states that the land was adjacent to the housing, not stating that it in adjacent to the *Pura tanah ayu*, so the certificate issued is legally defective. Secondly, the settlement of the dispute over the issuance of the land certificate of *Laba Pura tanah ayu* is carried out through deliberation at the Office of the National Land Agency. If the dispute cannot be settled under government assistance, it shall be done through a court institution.

REFERENCES

- Alting, H. (2010). *Dinamika Hukum Dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah (Masa Lalu, Kini, dan Masa Mendatang)*. Yogyakarta: Laksbang Pressindo.
- Arruñada, B. (2018). Evolving practice in land demarcation. *Land Use Policy*, 77(October 2017), 661–675.
- Caballero, G. (2015). Community-based forest management institutions in the Galician communal forests: A new institutional approach. *Forest Policy and Economics*, 50, 347–356.
- Cegielska, K., Noszczyk, T., Kukulska, A., Szylar, M., Hernik, J., Dixon-gough, R., Cover, C. L. (2018). Land Use Policy Land use and land cover changes in post-socialist countries: Some observations from Hungary and Poland. *Land Use Policy*, 78(April), 1–18.
- Dharmayuda, I. M. S. (2001). *Desa Adat, Kesatuan Masyarakat Hukum Adat Bali di Propinsi Bali*. Denpasar: Upada Sastra.
- Ekpodessi, S. G. N., & Nakamura, H. (2018). Land use and management in Benin Republic: An evaluation of the effectiveness of Land Law 2013-01. *Land Use Policy*, 78(November 2017), 61–69.
- Hawley, Z., Miranda, J. J., & Sawyer, W. C. (2018). Land values, property rights, and home ownership: Implications for property taxation in Peru. *Regional Science and Urban Economics*, 69, 38–47.
- Hidayat, I. (1981). *Hukum Adat Sketsa Asas* (Second Edi). Yogyakarta: Liberty.
- Murad, R. (1991). *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni.
- Saragih, D. (1980). *Pengantar Hukum Adat Indonesia*. Bandung: Tarsito.
- Tura, H. A. (2018). Land Use Policy Land rights and land grabbing in Oromia , Ethiopia. *Land Use Policy*, 70(October 2017), 247–255.
- Wirta Griadhi, K. (1977). *Sekitar Identifikasi Terhadap Desa Adat di Bali*. Denpasar: Kertha Patrika, Majalah Hukum dan Masyarakat FHPM UNUD.
- Ye, L., Huang, X., Yang, H., Chen, Z., Zhong, T., & Xie, Z. (2018). Effects of dual land ownerships and different land lease terms on industrial land use efficiency in Wuxi City, East China. *Habitat International*, (January 2017).
- Putusan Pengadilan Tata Usaha Negara Denpasar Nomor: 08/G/2015IPTUN.Dps

Legal Sources:

1945 Constitution of the Republic of Indonesia

The book of Civil Code

Law Number 5 of 1960 concerning Basic Agrarian Regulations (State Gazette of 1960 Number 104, Supplement to the State Gazette Number 2043).

Government Regulation Number 38 of 1963 concerning the Appointment of Legal Entities That Can Have Ownership Rights on Land (State Gazette of 1963 Number 1).

Republic of Indonesia Government Regulation No. 40 of 1996 concerning Right to Cultivate, Right to

- Build and Right to Use of Land (State Gazette of 1996 Number 58).
- Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette of 1997 Number 59, Supplement to the State Gazette Number 3696).
- Government Regulation Number 37 of 1998 concerning Regulation of the Position of the Land Deed Making Officer (State Gazette of 1998 Number 52, Supplement to the State Gazette Number 3746).
- Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for the Settlement of Communal Rights Issues in Customary Law Communities.
- Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 1 of 1999 concerning Procedures for Handling Land Disputes
- Minister of Home Affairs Decree No 556/DJA /1986 concerning Appointment of Temple as a Religious Legal Entity That Can Have Ownership of Land
- Bali Province Regional Regulation Number 3 of 2001 concerning *Desa Pakraman* (Regional Gazette of 2001 Number 29).
- Bali Provincial Regulation number 3 of 2003 concerning Amendment to the Bali Provincial Regulation Number 3 of 2001 concerning the Pakraman Village (Bali Provincial Gazette Number 11 of 2003).