
Grant Money with a Legal Certainty by Regional Government to Traditional Villages in Bali

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Abstract

The regulations governing the allocation of finances for customary law community units are missing in the context of Law Number 23 of 2014 about Regional Government. Therefore, the primary objective of this study is to examine how the Regional Government can establish precise legal instructions for granting financial assistance to Traditional Villages in Bali. This investigation employs a normative method, involving a thorough analysis of Law Number 23 of 2014, Minister of Home Affairs Regulation Number 14 of 2016, and Bali Province Regional Regulation Number 4 of 2019, all related to Traditional Villages in Bali. The research findings indicate that the implementation of Minister of Home Affairs Regulation Number 14 of 2016 has not adequately ensured legal clarity. To bridge the gaps in existing norms, it is essential to reformulate both the regulations in the Law on Regional Government and the Minister of Home Affairs Regulation Number 14 of 2016. Concerning the Law on Regional Government, it's vital to amend Article 298, paragraph (5), by introducing supplementary provisions that can later be defined through Ministerial Regulations.

Keywords: Grant, Traditional Village, Regional Government, Legal Certainty

I. INTRODUCTION

The Provincial Government of Bali has officially recognized the presence of Desa Adat in Bali. This recognition began with the enactment of Regional Regulation of Level I Area of Bali Number 06 of 1986, which addresses the "Position, Function, and Role of Desa Adat as a Unity of Customary Community in the Special Region of Bali." This regulation, hereafter referred to as Perda Desa Adat, was introduced (Adi, 1981).

The Regional Regulation concerning Traditional Villages stipulates that a Traditional Village, known as Dresta Village, represents a cohesive entity of customary law communities within Level I Region of Bali Province. Affixed by the connection of Kahyangan Tiga (Village Temples), this entity holds a shared tradition and societal standards of the Hindu community that have been perpetuated for generations. These villages occupy specific geographical areas, hold assets, and have the authority to manage their local affairs. In the Indonesian context, Kahyangan Tiga refers to three sacred regions with spiritual and religious significance in Hinduism. These three kahyangans are pivotal sacred sites in the Indonesian Hindu worship system, particularly on the island of Bali.

Later on, Bali Provincial Regulation Number 3 of 2001 in conjunction with Regional Regulation of the Province of Bali Number 3 of 2003 impacted Pakraman Villages (henceforth referred to as Perda Desa Pakraman), thereby superseding the earlier traditional village regulations. According to Article 1 Number 4

of the Regional Regulation regarding Desa Pakraman, a Pakraman Village signifies a consolidated unit of customary law communities within Bali Province. These communities uphold a shared tradition and social practices of the Hindu community, which have been transmitted across generations through the bond of Kahyangan Tiga or Kahyangan Desa (Village Temples). Each village possesses a designated territory along with its assets and retains the responsibility of managing its local affairs.

Moreover, in order to enhance the status and role of the Traditional Village, the Provincial Government of Bali introduced the Regional Regulation of the Province of Bali Number 4 of 2019 concerning Traditional Villages in Bali (referred to as Perda Desa Adat in Bali hereafter). This new regulation replaced and annulled the previous Regional Regulation of the Province of Bali No. 3 of 2001 in conjunction with Desa Pakraman, which was covered under Bali Province Regional Regulation No. 3 of 20013. As outlined in Article 1 number 8 of the Perda Desa Adat in Bali, a Desa Adat represents the sole customary law community in Bali that possesses a designated territory, established position, original composition, traditional entitlements, distinct wealth, cultural practices, and social etiquettes within the precincts of a sacred site (referred to as Kahyangan Tiga or Kahyangan Desa). It bears responsibilities, authorities, and rights to manage and oversee the domestic and communal affairs of its people across generations.

The enactment of the Perda Desa Adat marks a pivotal historical juncture, signifying the official acknowledgment of a traditional village, a paramount cultural institution in Bali, as a legal entity endowed with well-defined status and jurisdiction. Governor Koster stated, "The promulgation of this Perda Desa Adat is a historical moment because for the first time a traditional village, the most important cultural institution in Bali, has been recognized as a legal subject with a clear position and authority."

All these endeavors were undertaken in pursuit of fortifying the presence of Traditional Villages in Bali. According to Governor Koster (2019), the reinforcement of Traditional Villages in Bali under the framework of Regional Regulation 4 of 2019 seeks to extend recognition and reverence to the standing and role of traditional villages, which have maintained their diversity prior to and following the establishment of the Unitary State of the Republic of Indonesia (NKRI). These traditional villages are geographically located within the confines of the Unitary State of the Republic of Indonesia and possess legal recognition as entities within the administration of the Provincial Government of Bali.

Drawing from the perspectives and conceptualization embodied in the regional regulations concerning Pakraman Village and Traditional Village, the Traditional Village embodies the attributes and elements of a communal entity rooted in customary law principles in Bali, with a socio-religious nature that has thrived and evolved over centuries. These villages possess inherent rights of traditional origin and exercise autonomy in overseeing their internal affairs. Presently, each Traditional Village in Bali is known to house a Kahyangan Tiga Temple (comprising the Puseh Temple, Desa Temple, and Dalem Temple) which is believed to be intertwined with the cycles of birth, life, and death within the Hindu faith.

The issue of grants to customary law community units was addressed by Minister of Home Affairs Regulation Number 14 of 2016, bridging the gap in standards. In contrast, Minister of Home Affairs Regulation Number 32 of 2011 solely focused on grants to local governments. Consequently, an intriguing subject of study emerges: "Facilitating legally assured financial grants from the Regional Government to Traditional Villages in Bali." As such, the central objective of this research lies in dissecting the mechanisms of providing financial grants with legal assurance from the Regional Government to Traditional Villages in Bali.

II. METHOD

This research employed a doctrinal (normative) legal approach to examine legal materials. The chosen method centered on the use of primary legal materials, such as Law Number 23 of 2014 concerning Regional Government and Minister of Home Affairs Regulation Number 14 of 2016. Additionally, secondary data sources were included, such as Bali Provincial Regulation Number 4 of 2019 regarding the Enhancement of Traditional Villages in Bali. The latter regulation, Bali Province Regional Regulation Number 4 of 2019, was also part of the research.

The secondary data encompassed journal articles and books pertinent to the case under investigation. The analytical process involved a normative analysis, which entailed a comprehensive review of Law

Number 23 of 2014, Minister of Home Affairs Regulation Number 14 of 2016, and Bali Province Regional Regulation Number 4 of 2019 related to Traditional Villages in Bali. The primary objective was to assess the legal grounds for providing financial grants from the Regional Government to Traditional Villages in Bali, ensuring a solid foundation of legal certainty.

III. RESULTS AND DISCUSSION

3.1 Aspect of Legal Certainty in Giving Grants

Ensuring legal certainty stands as the cornerstone of a rule of law, as highlighted by Marzuki in 2008. In the context of a contemporary and democratic legal framework, legal certainty is a near imperative, as noted by Suseno in 2016. The discourse surrounding legal certainty is intricately tied to a nation's legal system. In the case of Indonesia, operating as a rule of law, there exist two legal systems: the civil law system and the Continental European legal system, as elucidated by Sulaiman in 2017. Owing to the Continental European legal system, Indonesia inclines towards the principles of legal positivism. As per this perspective, law is a written directive containing broad regulations, crafted by duly authorized entities, and the populace is bound to adhere, following established procedural norms.

The formulation of the Regional Government Law, serving as the foundation for governing local administration, pursues the expeditious realization of community welfare through accelerated regional development. In this light, the provisions within the Law on Regional Government ideally should mirror the embodiment of Pancasila values and correspond with the essence of the articles within the 1945 Constitution of the Republic of Indonesia. According to Appendix I of Law Number 12 of 2011, the sociological basis is the reason behind making regulations to meet the needs of society in various aspects (Redi, 2018). Therefore, the sociological foundation focuses more on empirical facts related to the evolution of society. According to the sociological basis, the Regional Government Law does not fully reflect the sociological aspect because customary law communities are needed in areas that have not been accommodated, especially in terms of local government grants. required by the customary law community as part of the community. In line with this meaning, Soetandyo Wignyosoebroto (In Indrati, 2017) argues that law is also conceptualized as a social institution that is real and functional in the system of social life so that it plays a role in the process of restoring order, resolving disputes and the process of forming patterns of people's behavior.

Mahfud MD (2006) asserts that political influences have a significant influence on and frequently interfere with the function and role of law. Changes in political configurations always influence or determine the nature of legal products. A democratic political configuration will give birth to responsive/populist legal products, whereas when the political configuration shifts to the authoritarian side it will give birth to conservative/orthodox/elitist legal products or oppress.

The making of laws and other laws and regulations thus starts from a need, as can be caused by the absence of norms, disharmony of norms and the existence of things that require new arrangements to address legal issues and social problems in people's lives. Therefore, in forming a law or other statutory regulations, comprehensive knowledge and skills are needed with regard to various existing laws and regulations as well as those related to legal regulations to be formed and the root causes that require improvement or formation of new legal regulations.

For a law or statutory regulation that is formed, the material content must be comprehensive and the formulation does not give rise to multiple interpretations so that the matters regulated in the law provide legal certainty. To obtain a comprehensive formulation and provide legal certainty, the role of drafters of laws is very important. The formation of laws and regulations is not only interpreted as a technical process of forming legal norms which are then wrapped in a regulation or legislation text. The formation of laws and regulations is not only interpreted as a process or stage of formation, but in it there is a ritual activity of channeling the ideas of the drafter of laws and regulations into the articles they make. Laws are statements of will from state agencies that are given the task of making laws. Therefore, it is appropriate, when in an effort to determine what is the intent of the law, it is traced to what the maker wanted with that formulation, which is nothing but an interpretation of the history of the law.

Referring to the view above, giving grants to communities governed by tradition is not regulated in Law Number 23 of 2014 concerning Regional Government which cannot be separated from the role of the designer. There are several possibilities that lead to the non-regulation of giving grants to customary law community units in the Regional Government Law, namely the designer's lack of accuracy in embodying the philosophical meaning of the articles in the 1945 Constitution of the Republic of Indonesia as a basic norm, deliberately ignoring the existence of customary law community units as a community entity an area or may also view the need for separate arrangements regarding customary law community units. Logically, the Law on Regional Government which forms the basis for administering regional government does not completely ignore the regulation of customary law community units, bearing in mind the existence of these customary law community units in the region and being part of the community of a region. In fact, from all the editorials in the Regional Government Act, not one of them found the words "Customary Law Community Units".

3.2 Grant Money with A Legal Certainty Given by The Regional Government to Traditional Villages in Bali

In the Regional Government Law, there is no specific clause that explicitly grants the Minister of Home Affairs the power to oversee the allocation of funds for grant expenditures within the regional Expenditure Budgets (referred to as APBD). However, Article 308 does contain a provision that states, "The minister establishes directives for formulating the APBD each year in consultation with the minister responsible for government matters in national development planning and the minister responsible for financial sector affairs." The term "Minister" mentioned here pertains to the Minister overseeing domestic government matters, as defined in Article 1, number 44 of the Regional Government Law. Because each APBD contains components like Regional Revenue, Regional Expenditure, which may include Grant Expenses, and Regional Financing, this Article 308 involves comprehensive jurisdiction over the administration of APBD. Consequently, the Minister of Home Affairs holds influence over substance; nevertheless, the arrangement of grants for customary law community units is not regulated within the Regional Government Act (Kariang, 2017).

According to the aforementioned structure, the allocation of monetary grants from the regional government to Traditional Villages is legally grounded, although it does not guarantee absolute certainty since it is based on the The amendment made through Regulation 14 of 2016 by the Minister of Home Affairs, which revises the earlier Regulation 32 of 2011 from the Minister of Home Affairs of Indonesia, pertains to the guidelines for distributing grants and social assistance funded by the local budget. Analyzing this within the framework of Law 12 of 2011 on the creation of legislation, Ministerial Regulations (as exemplified here by the Minister of Home Affairs' Regulation) possess legal validity, even if they aren't explicitly ranked in the legal hierarchy as defined in Article 7, section (1). This assertion is evident in the provisions of Article 7 and Article 8, sections (1) and (2) of Law 12 of 2011. Article 7, section (1) outlines the classifications and sequence of legislative instruments, including 1) the 1945 Constitution of the Republic of Indonesia, 2) Resolutions of the People's Consultative Assembly, 3) Laws/Government Regulations in Lieu of Laws, 4) Government Regulations, 5) Presidential Regulations, 6) Provincial Regulations, and 7) Regency/City Regional Regulations.

Bank Indonesia, Ministries, Organizations, Institutions, People's Advisory Assembly, House of Representatives, Senate, Highest Court, Constitutional Court, Supreme Audit Board, Judicial Commission are just a few examples of the central institutions that can establish regulations. Article 8, paragraph (1) specifies that other forms of legislation, in addition to those listed in Article 7, paragraph (1), include a variety of other regulations. Various rules may be drafted at the regional level by organizations such as the Provincial Regional People's Legislative Council, Governors, Regency/City Regional People's Representative Councils, Regents/Mayors, Village Heads, or equivalent. As long as these regulations comply with more stringent statutory requirements or are created within their authority.

In cases where the local government intends to provide financial grants to Traditional Villages, it must first include these grants in the APBD, as stipulated in Article 298, paragraph (4) of the Regional Government Act, which states, "Allocations for grants and social assistance are integrated into the APBD in accordance with the regional financial capacity, prioritizing essential expenditures and optional

government matters, unless specified otherwise in legal and regulatory provisions. In the context of APBD formulation with provisions for grant allocation, the Regional Government Law empowers the Minister to establish guidelines for APBD preparation, as extensively outlined in Article 308. This clause outlines, "The Minister devises directives for APBD formulation annually, following consultations with the Minister responsible for government matters in national development planning and the Minister overseeing financial sector affairs."

Indeed, within the present regional government leadership, the instructions for formulating the APBD are established within Regulation from the Minister of Home Affairs signifies that the responsibility for supervising this issue is bestowed upon the Minister of Home Affairs as stipulated in the Regional Government Law. As a result, the Minister of Home Affairs utilizes this authority to govern the allocation of funds to customary law community units, specifically referring to Traditional Villages in Bali. In terms of content, the Minister of Home Affairs has exercised judgment to define the specifics of the aforementioned regulation.

Every Minister holds responsibility for particular affairs within the government, as stated in Article 7 paragraph 3 of Indonesia's 1945 Constitution. This aligns with the interpretation of Minister of Home Affairs Regulation Number 14 of 2016. To provide a solid legal foundation for financial allocations from local governments to Traditional Villages, recognized as community entities in Bali, and included in the regional budget (APBD), the role of the Minister of Home Affairs Regulation involves establishing overall guidelines. Specifically, this pertains to the process of formulating the APBD within the context of regional governance.

In addition to legal certainty as a consequence of regulating the granting of money by the regional government to traditional villages based on the Minister of Home Affairs Regulation, legal certainty is also obtained from the regional regulations on traditional villages II and the regional regulations on regional budgets, which budget allocations for grant spending. In the Regional Regulation on Traditional Villages in Bali Article 65 paragraph (1) it is determined that the Revenue Budget for Traditional Villages as referred to in Article 64 letter a, is sourced from the original income of the Traditional Village, the results of the management of the Traditional Village Padruwen (belonging), allocation of the provincial regional revenue and expenditure budget, government assistance district/city, central government assistance, non-binding third-party grants and donations and other income from customary villages.

Regarding Village Traditional income originating from the provincial, district/city governments, its management and use will even be regulated by a Governor's Regulation as regulated in Article 65 paragraph (4) of the Regional Regulation on Traditional Villages in Bali. Thus, there are two Regional Regulations which are regional legal products that can be used as a basis for providing legal certainty, namely the Regional Regulations for Traditional Villages in Bali and the Regional Regulations concerning Provincial APBD and Regency/City APBD in each fiscal year. This is in line with the function of Regional Regulations, namely to carry out regional autonomy and co-administration tasks, accommodate regional special conditions, and as an instrument for elaborating higher laws and regulations.

Regarding the assurance of legal predictability in the allocation of funds from the local government to traditional villages, and in alignment with Indonesia's commitment to being a lawful state, all governmental actions in administration must be rooted in established laws or regulations (Suseno, 2016). This signifies that the provision of financial grants from the local government to traditional villages must similarly adhere to established laws or regulations. The presence of these guidelines and their actual implementation establish a sense of legal assurance. Gustav Radbruch, credited with formulating the fundamental principles of legal purpose, further underscores that legal assurance predominantly centers on legal aspects or perspectives, whereas justice leans more towards a philosophical standpoint—namely, that justice entails equal rights for all individuals in front of the law and that the advantages of the law reflect these two preceding principles (Manan, 2005). Simultaneously achieving these three principles is a complex endeavor, potentially even unattainable, as each principle has distinct conceptual foundations.

Based on the description above, the arrangement for granting money by the regional government to customary law community units and customary villages in Bali already has a juridical basis including the Minister of Home Affairs Regulation and the Bali Province Regional Regulation concerning Traditional

Villages in Bali which were formed on the basis of authority, and regulations Region regarding APBD which includes grant spending. In order to strengthen the recognition and protection of customary law community units in the implementation of the regional government system, it is necessary to reconstruct norms, namely the improvement of the Law on Regional Government (Isdiyanto, 2017). Reconstruction of norms or changes in law needs to be done because it is felt that there is a correlation gap between society and the law that regulates it. After all, the law cannot be separated from the development of the society it regulates because it will affect the effectiveness of the law's effectiveness and the purpose of the law itself. Accordingly, Sudikno Mertokusumo revealed that the law regulates events, but events often develop, while the law has not changed. Thus, the position of law is ensured to always be in the midst of society, because its existence is to regulate people's lives. According to Plato, laws are not absolute but can vary in accordance with demands, therefore when people's lives undergo changes, portions of what are categorized as rules will also undergo modifications.

The Law governing Regional Government should establish precise and comprehensive regulations for the allocation of funds to customary law community units. This is imperative due to the significant standing of customary law community units within both the state constitution and our regional community structures. These units cannot be dissolved by the government or the state, as opposed to other institutions that are grant recipients. Given this context, it becomes essential to enhance or revise the Regional Government Law to ensure that financial grants from local governments to Traditional Villages possess stronger legal assurance. This adjustment should transcend the reliance on Ministerial Regulations (issued by the Ministry of Home Affairs), which do not hold the same hierarchical status as statutory regulations.

This proposal for legal amendments should be aimed at establishing a more stable environment, enabling every citizen to experience an orderly and legally secure atmosphere. Numerous legal scholars advocate for a dynamic conception of the law, asserting that it should evolve to safeguard individuals who themselves are dynamic in their lives. Consequently, the formulation of laws should be future-oriented, equitable, and certain. In modern society, laws are generally universally applicable, structured hierarchically, and administered bureaucratically. Instead of being static, laws possess inherent dynamism and political characteristics, rendering them susceptible to continuous adaptation and updates in response to changing circumstances and societal progress.

Hence, it becomes plausible to revise the Regional Government Law to foster legislation that ensures protection for all segments of society, fairness, and legal certainty. Nur Hasan Ismail underscores that creating legal certainty, particularly within laws and regulations, necessitates attention to the inherent structure of legal norms. Each law and regulation must incorporate certain elements—such as safeguarding, humanitarianism, national identity, kinship, unity in diversity, justice, legal equality, order, legal certainty, balance, harmony, and coherence—outlined in Article 6 of Law Number 12 of 2011.

Developing an ideal law and regulation is a complex endeavor, but at the very least, it must embody the essence of these aforementioned principles. When viewed through the lens of customary law community units as integral components of regional communities, Law Number 23 of 2014 concerning Regional Government falls short of fully embodying the values enshrined in this framework. Article 8, sections (1) and (2) of Law Number 12 of 2011 appear to offer an avenue to address legislative limitations or shortcomings in crafting content. This is now governed by operational laws and regulations, specifically the Minister of Home Affairs Regulation. Consequently, Minister of Home Affairs Regulation Number 14 of 2016 possesses binding legal potency, instilling legal certainty pertaining to the allocation of funds from local governments to Bali's traditional villages.

Regarding the content matter, Article 5 of Law Number 12 of 2011 outlines the essential aspects to be taken into account when crafting statutory regulations. The core element emphasized is the adherence to principles that promote the development of effective laws and regulations. These principles encompass the clarity of intent, appropriate institutional or official establishment, alignment between categories, hierarchies, and content, feasibility and effectiveness, clear formulation, and transparency.

The foundations for creating robust legislation are already evident in Every Minister holds responsibility for particular affairs within the government, as stated in Article 7 paragraph 3 of Indonesia's 1945 Constitution. This aligns with the interpretation of Minister of Home Affairs Regulation Number 14

of 2016. To provide a solid legal foundation for financial allocations from local governments to Traditional Villages, recognized as community entities in Bali, and included in the regional budget (APBD), the role of the Minister of Home Affairs Regulation involves establishing overall guidelines. Specifically, this pertains to the process of formulating the APBD within the context of regional governance. the facilitation of local governance.

Although Minister of Home Affairs Regulation Number 32 of 2011 does not explicitly address grants for customary law community units, there is room for interpretation and justification to extend grants based on Article 6 paragraph (4). This clause stipulates that the community mentioned in Article 5 letter d pertains to groups engaged in various domains like the economy, education, health, religion, arts, customs, and non-professional sports. The phrase "...groups of people engaged in customs..." can be seen as applicable to customary law community units, such as traditional villages in Bali. Nevertheless, due to the interpretive nature of this, it doesn't offer complete legal certainty and might undermine the significance of customary law community units, which extend beyond mere groupings.

In parallel, Article 5 letter d of Minister of Home Affairs Regulation Number 14 of 2016 (the Second Amendment to Minister of Home Affairs Regulation Number 32 of 2011) specifies that grants can be allocated to legal entities like organizations and social institutions recognized by Indonesian law. Article 6 paragraph (5) letter c clarifies that grants can be awarded to non-profit voluntary social organizations and institutions in the form of community groups or customary law community units, given their alignment with community development and recognition by central or regional governments through official approval or designation. This recognition hinges on the provisions of Article 5 letter d. Thus, customary law community units are eligible for grants provided they fulfill these criteria.

Traditional Villages, serving as customary law community units in Bali, conform to the stipulations in these provisions. They continue to thrive in accordance with community progress, validated by the Provincial Regulation of Bali Number 4 of 2019 regarding Traditional Villages in Bali. This regulation also bestows Traditional Villages with legal subject status within Bali's government system. Therefore, the allocation of cash grants by local authorities to Traditional Villages is grounded in the legal framework of Minister of Home Affairs Regulation Number 14 of 2016. Nonetheless, in practice, challenges and inequities persist due to existing laws and regulations that enable continuous grants to entities established through statutory frameworks.

This is because, as stated in Article 42 paragraph (4) of Minister of Home Affairs Regulation Number 39 of 2012, amending Minister of Home Affairs Regulation Number 32 of 2011 concerning Guidelines for Distributing Grants and Social Assistance from Regional Budgets, the distribution of regional grants is governed by separate laws and regulations. This law emphasizes how grants and social assistance are allocated in accordance with local budgets and spending.

These exceptions could serve as inspiration when formulating a Law on Customary Law Community Units. In tandem with this, the issuance of Bali Governor Regulation Number 34 of 2019 on the Financial Management of Traditional Villages in Bali plays a pivotal role in sustaining and fortifying Traditional Villages as integral to Balinese heritage. Adequate funding support is essential for Traditional Villages to fulfill their responsibilities effectively. Consequently, Bali places Traditional Villages within its provincial governance system while respecting their autonomy.

The arrangement for utilizing Traditional Village revenues, established through Traditional Village consultations and documented in the Traditional Village Pararem, manifests the autonomy of these villages. This approach encourages effective, efficient, transparent, and accountable financial management, rooted in two principles: adherence to applicable laws and regulations and respect for the principle of autonomy for traditional villages.

IV. CONCLUSION

According to the description above, there is a gap in the Regional Government Law's provisions governing the granting of grants to community units governed by customary law. As a result, the local government's provision of cash grants to Traditional Villages in Bali does not yet have legal certainty. Regulation 14 of 2016 concerning the Minister of Home Affairs' presence has not yet provided legal

certainty because the substance of the Minister of Home Affairs regulation should be under the umbrella of the Regional Government Law. In that context, to fill the void in the norms that occurred, it is necessary to reconstruct the norms of the Law on Regional Government and Regulation of the Minister of Home Affairs Number 14 of 2016. Regarding the Law on Regional Government, it is necessary to reconstruct Article 298 paragraph (5) by adding the substance "regulated further with Ministerial regulations.

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