
Development of Balinese Customary Law in the Perspective of Local Wisdom "Tri Hita Karana"

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Abstract

This research article explores the development of Balinese Customary Law within the context of the profound local wisdom known as "Tri Hita Karana." The study delves into the distinctive features of customary law in Bali and its evolution in the contemporary era. This article aims to describe regarding customary law in Bali and how it develops in the modern era. Its unique raises some discussion for some jurist and academic community, how the legal system works in the dominate of customary law in Bali. This article also trying to identified what is insist in Bali's customary Law. Bali is a very popular tourism destination in the world. The arrival of millions foreign tourists per year with diverse backgrounds. The presence of these foreign has created a cross of cultures in the society, furthermore with advances in science and technology. Over the years those phenomena happened in Bali. Nevertheless, Balinese culture is very strongly applied by its citizens. The activities of religious ceremonies, arts and customs are very strong as daily activities. This is what is unique to Bali in the perception of the world, not solely because of the beauty of its panorama. Customary Law is still applied in Bali which binds the community in addition to the applicable Positive Law. Recognition of this customary legal entity is accommodated in several forms of legislation. Each indigenous community, referred to as an Indigenous Village, has its own customary laws. They are the ones who compile customary laws that have implications for the respect of their society for the customs in Bali. Enriched by Balinese local wisdom, notably the revered philosophy of "Tri Hita Karana," Customary Law stands as a cornerstone of the island's legal and cultural identity.

Keywords: Customary Law, Indigenous People, Customs, Tourism, modernization, legislation, Local Wisdom, Tri Hita Karana

I. INTRODUCTION

As a nation-state, diversity in multiple dimensions is a necessity. The differences that occur in Indonesia cannot be separated from the topography of the archipelagic state. One of the prominent diversities concerns beliefs. There are 6 recognized religions and many belief systems that color the lives of Indonesian people. They also live with various customs and traditions that govern each indigenous community. However, this phenomenon often results in conflicting interests between one religion and another, between indigenous customs, or even disputes over customary land boundaries. Nevertheless, as the history of the country proves, the maturity of the ancestors and founding fathers in managing diversity by placing national interests above all else has created a strong and enduring unity of Indonesia and the Republic of Indonesia which can coexist in tolerance and consultation.

The uniqueness of the legal dynamics in the Republic of Indonesia can be seen in the history of the enforcement of law Aulia, (2020). Since the colonial government era and the early days of Indonesia's sovereignty, the government in addition to enforcing national laws, also recognizes the applicability of customary law and religious law Soekanto, (2005). This phenomenon raises many questions about how

these three types of law can coexist and simultaneously bind their respective communities. Certainly, it is not an easy matter, because there are also many cases arising from differences in perspectives Soekanto, (1988). However, thus far, Indonesian citizens greatly appreciate history, including the events of the Youth Pledge, Proclamation of Independence, Reformation and other historical moments that have become the bond in building brotherhood.

Among Indonesia's provinces, Bali stands out as a unique jewel, acclaimed on the international stage. Its uniqueness emanates from the intimate fusion of its inhabitants' daily lives with traditional customs and practices within the tapestry of the *banjar*, or village community, governed by a distinctive customary law known as "*awig-awig*". This customary law regulates the unity of the indigenous community. However, the application of *awig-awig* does not reduce the respect of the community for the national law, and in fact, the people highly uphold positive law in their actions. On the other hand, with the influx of Western culture as a consequence of Bali's existence as an international tourist destination, Bali's customary law faces serious challenges in enforcing customary rules and regulations that are filled with norms that are in line with Bali's traditions and customs, complete with customary sanctions that bind its community. These regulations and sanctions are generally magical and religious in nature and have been highly respected by the people of Bali based on their *Desa* (village), *Kala* (time), and *Patra* (circumstance). Preserving Bali's traditions with the enforcement of customary law is not easy, due to the effects of the wave of globalization that brings with it advances in science and technology and western culture that is filled with hedonism such as nightlife, drugs, and prostitution, which has created a new civilization that potentially shifts the perspective of young people towards their ancestral heritage, resulting in the threatened preservation of Bali's customs and traditions.

To defend against the influence of foreign culture, the Balinese people, who are aware of the dilemma between economic progress and the frontal threat of modernization that clashes with their culture, strengthen themselves by implementing customary law in each customary area and prioritizing a local wisdom approach known as *Tri Hita Karana*. "*Tri Hita Karana*" is a concept rooted in Balinese culture and philosophy. It embodies the idea of achieving harmony and balance in three aspects of life: human relationships with God, human relationships with fellow humans, and human relationships with the environment Wiana, (2007). This approach is believed to have the power to balance natural turbulence, thus upholding the authority of *awig-awig* as a regulation that is adhered to by the indigenous community, which in turn is expected to preserve Bali's customs and traditions in the context of modernization. Therefore, this article discusses three main issues, namely, first, how is customary law positioned in relation to the implementation of national law? Second, how can customary law entities preserve Bali's customs and traditions? And third, how can *Tri Hita Karana*'s local wisdom inspire the implementation of customary law in Bali?

II. METHOD

This research is conducted using the normative legal research method. As Diantha, (2017) stated, the normative legal research method examines legal rules from an internal perspective, where the object of research is legal norms. In line with this approach, the study also employs a conceptual approach that utilizes statutory materials. These materials include primary legal sources, such as the 1945 Constitution, national laws, and Bali Regional Regulations. Additionally, secondary legal materials drawn from pertinent literature are employed to examine secondary data, including customary law principles specific to Bali, along with principles sourced from literature and regulations. This research uses legal materials that are relevant to the issues examined in this study, including primary legal materials as authoritative or authoritative materials, secondary legal materials as relevant to the problems discussed in this study, and tertiary legal materials that support other primary or secondary legal materials through documentary and literary studies of primary, secondary, or tertiary legal materials, which will be analyzed using systematic interpretation techniques involving laws related to other laws.

III. RESULTS AND DISCUSSION

The statement "*Ubi Societas, Ubi Ius*" by the renowned Rome philosopher Cicero carries a profound meaning when contemplated philosophically Rasjidi, (2004). Textually, it simply means that where there is

society, there is law. However, Cicero was actually elaborating on what law means in society. Etymologically, he details how the law goes through the process of making rules for its citizens and naturally identifies the purpose of law in society. Cicero tries to explain the implicit meaning of this sentence, not just about the law itself, but how the society adapts to nature and forms its own culture. Throughout history, humans were wolves to one another (*Homo Homini Lupus*), but then they formed a communal culture (*geestestructuur*) and created their own laws as a means to lead a better life at that time and in that place. Another fact is that other communal entities also make agreements on their own culture based on their own space and time, as recognized by their *geestestructuur* entity. Therefore, as we can witness, the law that forms in society has various norms, sanction variations, and policies that regulate their customary life. Each society has its own taste of justice. What is considered fair in Village A may not necessarily be fair in Village B, and vice versa.

The premise above is strengthened by the opinion of Frederick Von Savigny who stated that the law follows the *volkgeist* of the society where the law applies. What this German philosopher means is that law arises not because of orders from the authorities or because of custom, but because of the sense of justice that lies within the soul of the nation. The soul of the nation or (*volksgeist*) is the source of law. As he expressed in the phrase "law is an expression of the common conscience of the spirit of people".

The historical approach above ultimately makes us realize that in the highly varied dynamics of Indonesian history, it has resulted in the richness of customary law in Indonesia, each of which regulates the unity of its indigenous communities. Whether it's the Papuan indigenous community, the Dayak indigenous community, the Balinese indigenous community, or others, who translate their own sense of justice through customary law in their respective regions. It is very interesting to discuss customary law in Indonesia because in parallel there is religious law that is followed by the community in building their religious spirit and relationship with the Creator, as well as positive law entities that originate from Western countries and have validation until now. Before delving into a more inherent discussion between customary law and positive law, it is good for us to understand the definition of customary law itself, which is referenced by several legal experts as follows: According to Haar, (1983), customary law is a set of regulations that embody the decisions of legal functionaries (in the broad sense) who have authority and influence, and are implemented and obeyed with wholeheartedness. Meanwhile, according to Notopuro, (1930) customary law is an unwritten law of customary habits with a distinctive feature that serves as a guideline for people's lives in organizing justice and the welfare of society, and is characterized by justice. On the other hand, Pudjosewojo, (1984) explains that customary law is not a separate field of law, but covers all fields of law. Thus, it can be interpreted that there are customary state law, customary civil law, customary commercial law, customary criminal law, and so on that are embodied in customary law. The development of customary law in Bali itself has progressed significantly, where along with the vitality of the Pekraman Village that oversees the existing customary law in Bali, not only at the village level, but also many banjars have their own written *Awig-Awig*.

The existence of customary law is recognized by the Constitution of the Republic of Indonesia as stipulated in the 1945 Constitution Article 18 B section (2) which states as follows: "The state recognizes and respects customary law peoples units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in law." Likewise, Article 28 I section (3) which states: "Cultural identity and traditional people rights are respected in accordance with the development of the era and civilization". So as stated in the articles above, it can be concluded that customary law is recognized for its existence as long as customary law is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. In the Land Law, in Article 3 of the Basic Agrarian Law: "By bearing in mind the provisions in Articles 1 and 2, the implementation of customary rights and similar rights from customary law communities, as long as in reality they still exist, must be in such a way so that it is in accordance with national and state interests, which are based on national unity and may not conflict with laws and other higher regulations." Likewise with Legislation no. 41 of 1999 concerning Forestry, which in Article 4 section (3) regulates: Forest authorization by the state continues to pay attention to the rights of indigenous and tribal peoples, as long as they still exist and are recognized, as well as not in conflict

with national interests. Legislation no. 48 of 2009 concerning Judicial Power in Article 5 section (1) reads: the judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. In Law Number 17 of 2007 concerning the 2005-2007 National Long-Term Development Plan, customary law as a local wisdom in the development of national law is recognized and respected. Law Number 6 of 2014 concerning Villages, in its preamble it is stated that customary villages have the right of origin and traditional rights to regulate and manage the interests of the local peoples and play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia. In order to organize national law, customary law is increasingly getting a place as material for preparing and making statutory regulations. Bali Province itself on a *De Yure* basis is part of the territory of the Unitary State of the Republic of Indonesia which was formed based on Law Number 64 of 1958 concerning the Formation of Level I Regions of Bali, West Nusa Tenggara and East Nusa Tenggara. However, the renewal of law as needed at this time has ratified the Law on the Province of Bali which was recently hammered out by the DPR RI on April 4, 2023 through a plenary session. The study of the draft which has been critically and in-depth discussed, has placed customs as a priority in the life of the Balinese people as stipulated in Article 7 Section 1 which reads: The development of the Province of Bali is carried out in a planned manner by taking into account the characteristics of the Province of Bali with a thematic, comprehensive and integrated between nature, people and culture in a unified area, pattern and governance in order to create a prosperous and happy life for the Balinese people by paying attention to the glorification of customs, traditions, arts and culture, as well as local wisdom. How does this breeding process take place, of course by upholding customary law for indigenous peoples. What is Eugen Elrich's theory in making laws above has paid attention to legal aspects that live in society. The Living Law is firmly recognized in the application of Positive Law, so that it has changed the stigma of customary law which has so far been discussed only as unwritten law, in fact traditional values which are often referred to as the soul of the nation have become part of the Indonesian Legal System. In this context it proves that Legal Renewal is based on the soul of the nation which was embodied by the previous legal peoples in the dimension of Customary Law.

Desa Pakraman in Bali is known as a traditional village, which is a community of customary law that has a unity of traditional customs and culture (*pararem*) in the social life of Hindu society from generation to generation in the three realms of the universe. They have sovereignty over their territory and the ability to manage their own assets. Based on this territoriality, there are almost 1,493 Pakraman villages in Bali with their own village apparatus. The village apparatus, which is generally referred to as *Jero Bendesa*, *Petajuh*, *Penyarikan*, *Petangen*, *Upadesa*, and others, are structures that are elected in the local democratic process called *paruman*. The customary people highly uphold this *pararem*, as well as the *awig-awig* regulations imposed on them. It is no wonder that the indigenous people in Bali are much more afraid of customary sanctions than legal sanctions because the punishment does not only concern physical aspects but also involves the obligation to purify the microcosm from pollution caused by the violation. For example, the customary law of *kasepekang*. Someone who is deemed to have exceeded the limits of acceptable behavior, as determined by the village *paruman*, will be subject to customary sanctions called *kasepekang*. This punishment is considered severe for Balinese people even though the offender is still breathing freely (not in captivity). In fact, he will not be able to talk to the entire customary community, cannot use customary facilities (*ayahan desa*), and cannot carry out his socio-spiritual activities. He cannot access sacred places and even cannot use the village cemetery. This punishment is extremely feared because the offender will be completely isolated, even humiliated. And this punishment still applies until now, even in urban areas. Based on the above explanation, for an act to be considered a violation of custom, it must cause a disturbance in the balance of society. This imbalance not only occurs when legal regulations in a society are violated but also when ethical, religious, and social norms are violated. Nevertheless, the function of Pakraman village was initially established to ease the burden of life for its citizens. They share joys and sorrows together.

Pakraman village has the authority to establish its own customary law called *awig-awig*, as stipulated in Law Number 6 of 2014 concerning Villages, which in its consideration states that traditional villages have the right of origin and traditional rights to manage and govern the interests of the local community and

play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia. The preparation of village awig-awig is sourced from various local wisdoms, among which the prominent one is the philosophy of Tri Hita Karana, an effort to create harmony in the relationship between humans and the Almighty, between humans with each other, and the balance between humans and the natural environment, both flora and fauna. Other local wisdoms are also believed to be the spirit of the formation of customary law in Bali, such as the teachings of Tat Twam Asi, Tri Kaya Parishuda, and other teachings of goodness. In the event of a dispute between citizens, efforts are made to resolve it in the Kerta Desa (Customary Court) with its officials called Upadesa. This process reflects how the existence of customary law is important to preserve its own tradition.

Upholding customary law is not an easy matter, especially with the progress of the times like today. The community and customs undergo a very high dynamic of life that sometimes changes the concept of customs that have been continuous and obeyed together by the indigenous community. The development of the modern era has changed the social order of the community. Banjar, which used to be a gathering place for young people to express themselves in artistic creations and advance in sports, as well as actively raising funds through bazaars, has built a sense of ownership. But now the solidarity of the indigenous community is no longer in the romanticism of the indigenous community in the 70s-80s. Young people spend more time socializing in the virtual world through activities on gadgets, so they often ignore real social activities. Moreover, many young people migrate to work in big cities, some even work abroad or become cruise ship crews to seek a more prosperous economy, so that the quantity of indigenous people decreases. Therefore, these challenges become a heavy task for customary officials (*prejuru*) and their community to find the best solution so that all interests can run in balance and proportion. Awig-awig is then compiled without being as harsh as before. There are many pardons and understandings of Village Officials and the community towards residents who seek fortune outside the area. Their participation is still considered through representation of their relatives who are still in the village area, and they are still subject to administrative fees collected once a month called *Pacingkremen*. Changes happen very quickly regarding technology and lifestyle. Finally, to anticipate these changes, new things that reduce the value of customs occur. For example, in the implementation of the *Ngaben* ceremony towards the cemetery, the bodies of indigenous people who have passed away are now mostly lifted using a cart pushed by residents, which was not possible in the past when the indigenous community still lived in the village, and they would come down to lift the coffin together. Even the *Ngaben* ceremony, which is often done through the cremation process, the process of burning the body carried out simply through cremation is now even more simplified, especially with the case of Covid-19. Indigenous community activities such as fundraising also indicate social changes. Youth activities in the form of bazaars to raise funds no longer have to be done in their respective Banjar, but in the form of meal coupons in collaboration with fast food restaurants, and many more social phenomena that occur due to modernization. Nevertheless, the entity of Awig-awig is still felt to be very important as the last barrier in upholding customs in Bali.

Indigenous communities in Bali have a wide range of local wisdom that guides them in carrying out their status as part of the indigenous community. However, the scope of this article is limited to the issue of Customary Law in the dimension of Tri Hita Karana, as this local wisdom is highly relevant to the dynamics of indigenous life in Bali from the past, present, and future. *Pekraman* village is deeply influenced by Hinduism, and thus the basic concepts of Hinduism are used as the foundation for empowering *Pekraman* village. The village is connected to the three *Kahyangan* or village temples, which are based on the Tri Hita Karana concept, a philosophy of balanced relationships between village residents with the Creator (*Parahyangan*), fellow human beings (*pawongan*), and the natural environment (*pelemahan*).

The Bali Provincial Law, in Article 5, even states that: (1) Bali Province has the characteristics of: a. Tri Hita Karana, which is the Balinese philosophy about the three causes of happiness, namely a harmonious way of life between humans and God, between humans, and between humans and the environment based on sacred offerings (*yadnya*); and b. *Sad Kerthi*, which is the value of Balinese local wisdom as an effort to purify the soul (*atma kerthi*), purify the sea and coastlines (*segara kerthi*), purify water sources (*danu kerthi*), purify plants (*wana kerthi*), purify humans (*jana kerthi*), and purify the universe (*jagat kerthi*). (2) These characteristics as mentioned in point (1) are exempted for religious reasons. As the three keys to happiness

mentioned above, each indigenous village in Bali has at least three main elements: the area, the community, and the sacred place to worship God/Sang Hyang Widhi. The combination of these three elements in a harmonious way is the basis for creating a comfortable, peaceful, and spiritually fulfilling life, and its implementation is regulated in Customary Law. Customary Law is the frontline for the people of Bali to preserve the environment (palemahan), as harmonization cannot be achieved without devotion to God (parhyangan), and spreading love to fellow human beings (pawongan), thus the "pararem" is made for villagers to perform communal service (ngayah) for the village. Since people worldwide have diverse religious beliefs and practices, the Tri Hita Karana concept can be adapted to each religion and belief. This local wisdom concept is essentially universal and full of virtuous values, but it is most effective when formulated in Customary Law because of its linear connection to the magical nature of Balinese culture and reverence for God, the Creator. Tri Hita Karana can actually be adapted to each religion and belief. Because the concept of local wisdom is actually very general in nature and full of virtuous values, it becomes very effective if it is formulated in customary law because it is linear with its magical properties and highly upholds God the Creator.

IV. CONCLUSION

The conclusion of the research article effectively summarizes the key findings and implications of the study on the development of Balinese Customary Law from the perspective of local wisdom "Tri Hita Karana." However, there are a few suggestions to enhance the clarity and coherence of the conclusion: Positive Law, Islamic Law, and Customary Law. In Bali, the relationship between Customary Law and Islamic Law is relative. The implementation of customs is greatly influenced by Hinduism, the religion of Bali. As Van Vollen Hopen stated, customary law is the whole set of behavioral rules that apply to native Indonesians and are enforceable without being codified. Customary Law in Bali is highly respected by the indigenous Balinese people who gather in several Pekraman villages. Because Customary Law is said to have validity for native Indonesians, this is truly The Living Law that arises from the soul of the Balinese people. It has its own definition of justice that runs alongside Positive Law in Indonesia. The coherence of these legal domains can occur because in the case of legal events (casusitis) that are customary norms, judges often ask the Customary Officers for their opinion as a consideration for all their decisions based on the judge's authority in conducting Recht Finding. However, the Balinese indigenous community also has its own justice system called Rad Kertha. The immense power of Balinese customary law in the eyes of the Balinese people makes the existence of Customary Law a potent medium in facing the challenges of modernization and technology. The uniqueness that occurs in Bali has become an international discussion about how an area that is the world's number one tourist destination can still maintain its customs. The answer is only one, the Balinese indigenous community highly regards the Customary Law that is enforced in each Pekraman village. The modernization of the law that has occurred has clearly accommodated customary law in the Constitution of the Republic of Indonesia. Several laws have been outlined above, but the most interesting is the enactment of the Bali Provincial Law in March 2023, which strengthens Bali as a part of the province in the Republic of Indonesia by recognizing several Balinese characteristics in the context of customs along with some autonomous regional authority and special assistance because Bali has raised the country's name in the international arena. Local wisdom, especially Tri Hita Karana, is recognized as the spiritual values of the nation that can be applied nationally to preserve the environment and Balinese customs.

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