

# THE CONCEPT OF RESOLUTION OF PELABA PURA ULAYAT LAND THROUGH THE BALI TRADITIONAL JUSTICE SYSTEM

I WAYAN EKA ARTAJAYA<sup>1</sup>, MELLAISMELINAFARMARAHAYU<sup>2</sup> and

I WAYAN GDEWIRYAWAN<sup>3</sup>

<sup>1,2</sup> Faculty of Law, Tarumanagara University, Jakarta.

<sup>3</sup> Faculty of Law, Mahasaraswati University Denpasar.

Email: ekaartajaya@unmas.ac.id<sup>1</sup>, mellaismelina@yahoo.com<sup>2</sup>, gdewiryawan@unmas.ac.id<sup>3</sup>

## Abstract

The concept of settlement of customary land disputes in pelaba pura through the Balinese customary justice system, Land has a very important value in people's lives or in the lives of indigenous and tribal peoples because land has economic value, as well as a cosmic magical-relegio. The existence of customary law communities is inseparable from the ownership of customary rights of each indigenous community. Land is one of the main elements in the occurrence of a conflict in society, this can be seen from the increasing human development, while land cannot be developed or reproduced. This research is to analyze the concept of settlement of customary land disputes in pelaba pura through the Balinese customary justice system. This research uses the method Empirical legal research using a sociological juridical approach, the data collected in this study is primary data through interview data collection techniques. The results of this study are that the concept of dispute resolution carried out by the kerta desa customary justice system in resolving pelaba pura land disputes refers to the philosophy of the Balinese indigenous people, namely tri hita karana. In the decision to resolve customary disputes, it must refer to three elements, namely prahyangan, pawongan, and pekahan.

**Keywords:** Dispute Resolution, Pelaba Pura, Indigenous Courts

## 1. INTRODUCTION

Customary culture is the basis of life for the Indonesian nation, this can be seen from the various races, ethnicities and religions that exist and develop in Indonesian society. The island of Bali is one of the islands in the country of Indonesia with a traditional cultural system which is still carried out by indigenous peoples for generations. The existence of customary culture cannot be separated from indigenous peoples and land ownership rights that are controlled by individuals or groups by indigenous peoples. Land has a very important position in human life, especially for customary law communities. Local wisdom is an ancestral heritage that has life-order values that are integrated in religious/magical forms of culture and customs. In its development, the community carries out adaptation activities in the territory of customary law communities which cannot be separated from the existence of land.

Land has a very important value in people's lives or in the lives of indigenous and tribal peoples because land has economic value, as well as a cosmic magical-relegio. The prominent role of adat in land law in Indonesia goes back to the colonial period, when Law Professor Leiden Cornelis van Vollenhoven used this concept to attack land policies carried out by the Dutch East Indies government. According to the view of the Indonesian people, the land often gives vibrations in peace and often creates shocks in society, then it also often causes stumbling

blocks in the implementation of national development. There are two types of ownership of land rights in Indonesia, namely private or individual ownership of land rights and ownership of land rights owned or controlled by a group of customary law communities. The existence of customary land is inseparable from the existence and existence of the customary law community itself.

In the development of society, land is one of the main elements in the occurrence of a conflict in society, this can be seen from the increasing human development, while land cannot be developed or reproduced. The island of Bali is one of the world's tourism destinations, of course a lot of land is needed to support tourism development. The existence of land is inseparable from the existence of traditional villages in Bali, land tenure in traditional villages is controlled by private ownership rights or controlled by traditional villages, such as pelabe pura land, village essay land, and village father land.

In Weber's view of society, conflict occupies a central position, conflict is a basic element of human life. Opposition cannot be separated from human life and cannot be eliminated. One can change the means, the object, the basic direction or the supporters, but one cannot get rid of the conflict itself.

The resolution of a conflict in Indonesia is known as two dispute resolution systems through litigation and non-litigation systems. Settlement The litigation system is usually carried out in the state justice system, while the non-litigation system is carried out outside the state court system. In the settlement of customary disputes, especially customary land disputes which have recently occurred frequently and given rise to conflicts among indigenous peoples, they are resolved using a non-litigation system that exists and grows in customary law communities. Until now, several indigenous peoples in Indonesia still have systems or institutions that grow and develop within each indigenous community to regulate the community and resolve customary disputes that occur in the territorial environment of indigenous peoples.

## **2. PROBLEMS**

Based on the background mentioned above, the problems studied are: How is the concept of settlement of customary land disputes in pelaba pura through the Balinese customary justice system.

## **3. RESEARCH METHODS**

This study uses an empirical legal research method with a sociological juridical approach. The data collected in this study is primary data through interview data collection techniques. The data source used in this paper is no single but diverse. The data sources in it are conditional on values, and are also dialogic in nature, meaning that they are correlated with one another, especially in the sense of science as a network, various theories/concepts will be very closely related. The analysis was carried out through qualitative analysis. Through internal coherence, we can see the interrelationship of all the elements in the aspects studied to find out which elements are central and dominant, and which are marginal so that conclusions can be obtained

through inductive syllogisms. This study examines the problem of the concept of dispute settlement over customary land disputes in pelaba pura through the Balinese customary justice system.

## **4. RESEARCH RESULTS AND DISCUSSION**

### **4.1 Recognition of Indigenous Peoples in the Indonesian Constitution**

Land has a very significant vibration in people's lives, especially among indigenous peoples. Article 18 b paragraph 2 of the Constitution of the Republic of Indonesia states that the state recognizes and respects customary law community units along with 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. . The existence of customary law communities cannot be separated from the existence of customary lands which are controlled within their territorial scope. In addition, land is a permanent property, because it is planned for future life and cannot be renewed. This will later lead to increased control over land and cause conflict in society. The word ulayat comes from Arabic which means 'managed' and 'supervised'. Thus customary rights are the power to manage, supervise and also control.

With this provision, customary rights are clearly regulated in the provisions of Law No. 5 of 1960 concerning the Basic Agrarian Regulations in article 3 which states "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, it must be in such a way 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". The provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations do not provide a clear explanation regarding customary rights, except to state that what is meant by customary rights is beschikkingsrecht in the customary law literature.

The understanding of customary land in the Balinese customary community is better known as customary village land, customary village land which can be divided into:

1. Land Padruen Traditional villageare all the assets of the traditional village, both immaterial and material, such as market land, cemetery land, and customary village land. This provision is regulated in article 1 paragraph 33 of the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages.
2. Pura Pelaba Landis land that used to belong to a traditional village, and its use was only for the purposes of the temple, as well as land controlled by the temple that was used to finance the needs of the temple, such as financing routine ceremonies, to repairing the temple.
3. Village Yard Landis land controlled by a customary village that is given to krama for a place to live with an attached father.

4. Village Landis land that is controlled by a traditional village whose cultivation is handed over to local adat village krama with the right to be enjoyed with a certain agreement and the obligation to provide a father to the traditional village.

Customary justice is a non-litigation justice system that is owned/grows within the customary law community to resolve customary disputes. Customary courts certainly have a basis for recognition from the 1945 Constitution of the Republic of Indonesia to the Regional Regulation of the Province of Bali No. 4 of 2019 concerning Traditional Villages. In particular, the term "customary justice" has also been recognized before Indonesia's independence, at least through the laws and regulations of the Dutch East Indies Government. At that time, five types of courts were known, namely Governor's Courts (Gouvernements-rechtspraak), Indigenous Courts or Customary Courts (InheemscheRechtspraak), Swapraja Courts (Zelfbestuurrechtspraak), Religious Courts (Gods-dienstigeRechtspraak) and Village Courts (Dorpjustiie). The existence of customary courts has existed since the Dutch Colonial era. The court was regulated in article 130 IndischeStaatsregeling, a basic regulation in the Dutch government which stipulated that in addition to having courts conducted by the Dutch government, the original courts were recognized and allowed to apply, both in the form of customary courts, in some areas that were directly under the Dutch East Indies government and the Swapraja court.

Customary justice as part of the traditional rights of community units is in fact still alive and used by the community in resolving disputes, this is a sociological fact which unfortunately does not get recognition in the legal politics of judicial power. Specifically sees the role of village peace judges as a vessel to accommodate the interests of the community in an effort towards progressive law. In this case customary justice is regulated in Article 103 Letter e of aw No. 6 of 2014 concerning Villages, which states that the holding of customary village court peace hearings is in accordance with statutory provisions.

Apart from these provisions

#### **4.2 The Concept of Customary Justice in Resolving the Temple Pelaba Dispute**

Every indigenous people has a concept in managing and resolving disputes that exist within the territorial scope of indigenous peoples. This is confirmed in Article 18 b Paragraph 2 of the Constitution of the Republic of Indonesia states that the state recognizes and respects customary law community units along with 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 regulated in the Constitution. The main goal of resolving disputes carried out by indigenous peoples through the existing system in indigenous peoples is harmony.

Hilman Hadikusuma argues that; "What is meant by customary offenses are all actions or events that are contrary to obedience, harmony, security, a sense of justice and awareness of the people concerned, both as a result of actions committed by a person, group of people or the customary authorities themselves." Thus actions that are considered contradictory are seen as causing shocks to indigenous peoples and disrupting the balance of the cosmos and causing reactions from the community in the form of customary sanctions.

Dispute resolution through customary courts in the Balinese customary law community is based on the Tri Hita Karana philosophy, in its understanding tri hitakarana can be divided into three parts as follows;

1. Parhyanganis the relationship between humans and God (Sang Hyang WiddhiWasa) in this understanding humans must be able to maintain a good relationship with God and be able to implement it in everyday life. The application of prahyangan can be addressed by efforts to implement Dewa Yadnya. Because Parahyangan is a relationship between humans and God, its application can be carried out with Yadnya Gods. For example by cleaning up the pretense, diligently doing prayers and also by carrying out religious teachings and staying away from God's prohibitions.
2. Pawonganis the relationship between humans and humans. Humans are both individual and social so that they require relationships between humans with one another. An example of the application of pawongan is maintaining and establishing good relations between one human being and another human being. This can arise with an attitude of mutual tolerance between religious communities, respecting each other and helping each other with everyone. By mutually maintaining good relations between humans, these humans will be able to create an atmosphere of life that is safe, comfortable, peaceful and peaceful. So that the purpose of human life can be fulfilled properly.
3. Palemahanis to maintain a good relationship between humans and the environment, as a place where humans live and develop according to their nature. With the occurrence of a harmonious relationship between humans and God, humans and humans, and humans and nature, then as a cause of happiness and shared prosperity. Palemahan is a human relationship with the natural environment. As we know today there have been many natural disasters, the cause of which is none other than humans themselves. This is the main basis for the concept of Tri Hita Karana as the concept of life for the Balinese indigenous people to achieve the goal of a peaceful and prosperous life.

The term tri hitakarana first appeared on November 11, 1966, when the Regional Conference I of the Balinese Hindu Struggle Body was held at the Dwijendra College, Denpasar. The conference was held based on the awareness of Hindus about their dharma to participate in nation building towards a prosperous, just and prosperous society based on Pancasila. In Article 1 Paragraph 27 of Bali Provincial Regulation No. 4 of 2019 concerning Traditional Villages, it is stated that tri hitakarana are three causes of happiness, namely a balanced or harmonious attitude of life between serving God, serving fellow human beings, and loving the environment based on sacrifice. Holy (yadnya).

Based on the philosophy above, the purpose of customary justice is intended to restore balance in society, reconcile and harmonize those who are in dispute. Harmony, peace, and community harmony are the main goals in the implementation of customary justice in the Balinese indigenous people. The purpose of customary justice is to resolve problems between residents at the village level. However, decisions taken according to adat do not have formal legal force.

In the development of the theory of living law is the meaning of the law that lives in society. According to Eugen Ehrlich (1862-1922) the center of activity for legal development lies not in laws, not in jurisprudence, and also not in court decisions, but in society itself. In one perspective of legal science it is said that good law is law that is created based on living law in society (living law). As is the case in the customary justice system, kertadesa has an important role in deciding and resolving customary disputes within its territorial scope. Kertadesa is a legal institution that grows and develops in the Balinese customary community, has concepts, systems and values that form the basis of reference in steps to resolve Balinese customary disputes.

Customary law as a legal system has its own pattern of resolving customary disputes which is different from other systems. Customary law was born and grew from society, so that its existence cannot be separated from society. The results of interviews conducted with customary village chief I Made Kumara Jaya in Tegalallang, Gianyar Bali, he explained the concept of resolving disputes over pelabe pura ulayat rights, it is mandatory that it must be carried out using the customary justice system through village papers, this aims at deciding on customary dispute resolution not prioritizing winning and lose, but rather the achievement of harmony between the disputing communities, of course the basis of Tri Hita Karana as the philosophy of the Balinese indigenous people. He added, the basis for settling disputes has been regulated in Article 18 b paragraph 2 of the 1945 Constitution of the Republic of Indonesia, Article 103 Letter e Law No. 6 of 2014 concerning Villages, and Bali Regional Regulation No. 4 of 2019 concerning Traditional Villages ,

In accordance with the results of the interviews, as well as the data obtained, the theory of living law is a theory that is very appropriate in its existence and its application in customary law communities. The settlement of customary disputes in customary law communities certainly uses a system that grows and develops in people's lives. In resolving customary disputes, the system used has different provisions between one indigenous community and another, and has different values and concepts. So if it is related to the living law theory, this theory is indeed very appropriate to be applied by the community as a reference in resolving customary disputes in indigenous and tribal peoples to achieve harmony.

The concept of customary justice in conducting dispute resolution in Balinese indigenous people known as KertaDesa, Village Paper regulated in article 1 paragraph 18, article 36 and article 37 of the Regional Regulation of the Province of Bali No. 4 of 2019 Tentang Desa Adat which states;

Article 1 paragraph 18

Village Paper Adat is a partner institution of Prajuru Desa Adat which carries out the function of settling customary/speech cases based on customary law in force in the local Traditional Village.

Article 36;

1. Village PaperAdat as referred to in Article 28 paragraph (2) letter c is formed by Prajuru Adat Village.
2. Village PaperCustoms as referred to in paragraph (1) consist of:
  - i. Village ChiefCustom; And
  - ii. Village StaffAdat who has commitment, experience and expertise in the field of customary law, sent by Banjar Adat.
3. Traditional Bandedabecame the chairman concurrently a member of KertaDesa Adat
4. In the event that the Chairperson/Member of the Customary Village Kerta has a relationship with a problem handled by the Customary Village Kerta, the Chairperson/Member concerned is not allowed to be involved in settling customary cases.
5. In the event that the Head of KertaDesa Adat has a relationship with a problem handled by KertaDesa Adat, the position of head of KertaDesa Adat is temporarily replaced by the oldest member of KertaDesa Adat.
6. The term of office for members of the Customary Village Kerta ends at the same time as the term of office for Traditional Village Prajuru.

Article 37

1. Village PaperAdat has the duty and authority to receive, examine, resolve customary/speech cases that occur in traditional villages based on customary law.
2. In resolving customary cases as referred to in paragraph (1) KertaDesa Adat prioritizes peace in accordance with the principle of sharing and sharing.
3. In the event that peace is not reached as referred to in paragraph (2), KertaDesa Adat makes decisions in accordance with the Awig-Awig and/or PararemDesa Adat
4. In the event that adat cases cannot be resolved by KertaDesa Adat, the parties can request a settlement from the MDA according to their level.

From the provisions of the concept of customary justice in resolving customary disputes, of course, it is based on the philosophy of the Tri Hita Karana Balinese people. The decision made by the kertadesaadat court must refer to three elements;

1. Prahyangan element, in this element the ultimate goal of dispute resolution must be based onGod (Sang Hyang WiddhiWasa). Disputes that are resolved and decided through the customary justice system certainly do not conflict with the elements of prahyangan, and always maintain good relations between humans and God, after the decision of the dispute to be able to return to normal.
2. The pawongan element, in the settlement of pelabe pura land disputes which have been resolved through the customary justice system, no longer causes conflict

between the disputing communities or individuals, this is very important for the purpose of resolving disputes and the establishment of good relations between one human being and another human being.

3. Palean element Palemahanis to maintain a good relationship between humans and the environment, as a place where humans live and develop according to their nature. In the customary court decision regarding the Pelaba Pura land dispute, of course, it is based on the Palabahan element so that there is a harmonious relationship between humans and God, humans and humans, and humans and nature, then as a cause of happiness and shared prosperity.

## CONCLUSION

The concept of settlement of customary land disputes in pelaba pura through the Balinese customary justice system which is based on the philosophy of tri hitakarana. The tri hitakarana philosophy is the basis for resolving disputes carried out by kertadesa which in their decisions refer to the elements of prahyangan, elements of pawongan, and elements of Palembang. The settlement of disputes carried out by kertadesa is based on the Bali Regional Regulation system No. 4 of 2019 concerning Traditional Villages, where article 1 paragraph 18, article 36 and article 37 clearly explain the concept of the Balinese customary court in resolving disputes over customary rights of pelaba pura .

## BIBLIOGRAPHY

### Book:

- 1) Adrian Bedner and Yance Arizona. Adat in Indonesia Land Law: A Promise for the Future or a Dead End. The Asia Pacific Journal of Anthropology, ISSN: 1444-2213 (Print) 1740-9314 (Online) Journal homepage: <https://www.tandfonline.com/loi/rtap20.417>
- 2) Abdurrahman, Several Aspects of Agrarian Law, (Bandung: Alumni, 1980),
- 3) Achmad Ali, 2013, Revealing Legal Theory and Judicial Prudence Including Legisprudence, Vol-1 Early Understanding, 5th Edition, Jakarta, Jakarta, Kencana Prenadamedia Group
- 4) Hilman Hadikusuma. Customary Criminal Law, (Bandung, Alumni, 1989)
- 5) I Wayan Padet and Ida Bagus Wika Krishna, Philosophy of Life in the Concept of Tri Hita Karana Cosmology, (Mpu Kuturan Singaraja State High School of Hinduism, Genta Hredaya Volume 2, No, 2 September 2018. ISSN: 2598-6848)
- 6) Janesick, Valerie J. 1994. The Dance of Qualitative Research Design; Metaphor, Methodology, and Meaning, in Norman K. Denzin and Yvonna S. Lincoln. California: Hand Book of Qualitative Research, Sage Publication.
- 7) John Salindeho, Land Problems in Development, Sinar Graphic, Jakarta, 1998.
- 8) Laeyendecker, Change and Inequality Adjustment, (PT. Gramedia, Jakarta, 1983)
- 9) Mella Ismelina Farma Rahayu, Anthon F. Susanto. The Paradigm of Human Relations and the Legal Environment Based on Local Wisdom during the Covid-19 Pandemic. Environmental Law Development P-ISSN 2541-2353, E-ISSN 2541-531X Volume 5, Number 3, June 2021 DOI: <http://dx.doi.org/10.24970/bhl.v5i3.212>.



- 10) Miranda Nissa, AtikWinanti. Customary law community rights in the implementation of customary land procurement for development in the public interest. *Social and Cultural Journal Syar-I*. Volume8 Number 1 (2021). ISSN: 2356-1459. E-ISSN: 2654-9050. 163
- 11) Muhammad Mardani, *Civil-Civil Procedure Law for Religious Courts*, (Jakarta: Sinar Graphic, 2009)
- 12) Syahmunir, "The Position of Women in Ownership of Ulayat Rights in Minangkabau" in *Alfan Miko, Nagari Government and Ulayat Land*, (Andalas University Press Publisher, Padang, 2006),
- 13) Tresna, *Justice in Indonesia from Century to Century*, (Pradnya Paramita, Jakarta, 1978)
- 14) Tedy Sudrajat, Aspirations of "Legal Reform and Progressive Law Enforcement through Village Peace Judges", *Journal of Dinamika Hukum*, Volume 10 No. 3 December (2010).
- 15) Urip Santoso, *Agrarian Law Comprehensive Study*, (Jakarta: Kencana Prenadamedia Group, 2012)

#### **Legislation**

1. The 1945 Constitution of the Republic of Indonesia
2. Law No. 5 of 1960 concerning Basic Agrarian Regulations
3. Law No. 6 of 2014 concerning Villages
4. Bali Regional Regulation No 4 of 2019 Concerning Traditional Villages