

Penglipuran Tourist Village, Kubu Village, Bangli Regency, Bali in Maintaining the Sustainability of Cultural Values and Bamboo Forests: A Legal Sociology Perspective

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ABSTRACT

The development of the Penglipuran tourism village based on culture ensures the welfare of the Penglipuran indigenous community. The profit-sharing management pattern with the Bangli Regency government Based on the Cooperation Agreement with the Penglipuran Traditional Village Concerning the Management of Tourism in the Penglipuran Tourism Village Number 415.4/23/PKS/PKKP/2020; Number 01/S.P/X/2020; concerning the Management of the Penglipuran Tourism Village. The Penglipuran traditional village is entitled to a reward of 60% (sixty percent) of the gross levy results. Deposit all levy results (gross) every week/7x24 (seven times twenty-four) hours to the Regional Treasury through the Receiving Treasurer at the Bangli Regency Tourism and Culture Office. This Cooperation Agreement is valid for five (five) years starting from January 1, 2021. No later than 2 (two) months before this cooperation agreement ends, the parties agree to notify each other of their intentions if they wish to extend this cooperation.

INTRODUCTION

Dialectics and the battle of management concepts between the Bangli Regency government and the Penglipuran Traditional Village regarding compensation, then the Cooperation Agreement Number 415.4 / 23 / PKS / PKKP / 2020, Number 01 / S.P / X / 2020, Penglipuran Traditional Village receives compensation of 60% (sixty percent) of the results of the broto levy. Deposit of all results of the broto levy every week / 7x 24 (seven times twenty-four) hours to the Regional Treasury through the Recipient Treasurer at the Bangli Regency Tourism and Culture Office.

The fame of the Penglipuran Indigenous Community in managing a tourist village, by the potential of the unique culture of "angkul-angkul" and bamboo forests, adds to the charm of the Penglipuran traditional village to be visited by foreign and domestic tourists. Penglipuran Village has also been named the cleanest village in the world. The Penglipuran Indigenous community has a culture of respecting the value of monogamous marriage, meaning that women are respected because there are village rules that prohibit men from practicing polygamy. If a man has another wife, he is placed in Karang memadu (this man is ostracized). In addition to having a culture of respecting nature, the residents of Penglipuran Bangli village also have a culture and tradition of respecting women. Because there are village rules that prohibit men from practicing polygamy, if caught practicing polygamy, they will be punished by being ostracized from the village.

Penglipuran Tourism Village has a traditional community culture centered on the village temple, which is a beautiful environment. Furthermore, the Penglipuran custom of Kubu Village, Bangli Regency, Bali has a unique cultural aspect located on a plateau at sea level of 600-800 meters, so the air is cool. The government determined in 1995 that this traditional village was the first tourist village in Indonesia. The village area is around 112 hectares, and not all village land is used as houses. Around 40% of the village land is bamboo forest. Cutting down bamboo trees in this village cannot be done carelessly without permission from local community leaders.

According to I Wayan Wesna Astara, in managing a tourism/ecotourism village, there is a cultural and legal political struggle in managing cultural assets. Justice in managing the Penglipuran tourism village if legal certainty becomes a legal norm in the legal process. (I Wayan Wesna Astara, 2022). Development of tourism villages The strategy for developing tourism villages in Bali requires local wisdom value management to provide meaning that the potential of tourism villages in Bali is that each traditional village has its uniqueness (I Wayan Wesna Astara et al., 2020). Penglipuran traditional village to improve human resources in managing tourism villages by strengthening human resources and developing existing potential (I Nengah Arya Wibawa, 2022).

Penglipuran Tourism Village was established during the New Order, but the dynamics for the continuity of the development of the potential of traditional villages in realizing cultural-based tourism villages with an emphasis on local wisdom values immediately got the attention of devotees in

managing cultural assets, the environment, the economic potential of local communities, and community empowerment. The potential in Penglipuran Village is important to be fostered for 3 (three) years in the Partner Village development program by focusing on cultural potential and "designing" solutions to potential "agreement conflicts," which are legal issues in cases of hidden tourist villages behind the empowerment of Indigenous communities in Penglipuran. Legal deconstruction and the process of the birth of "agreements" can be studied from a historical, sociological, and juridical perspective in the legal practice of "agreements" for the efficiency of implementation and empowerment of local communities.

The main points of the formulation of the research problem and/or community service as a legal issue that is being questioned are: (1) How are the history, sociology, and legal aspects of the birth of the Penglipuran tourist village in the context of local wisdom values; (2) The management model of tourist villages from the sociological, legal, and practical aspects of tourist villages in the dynamics of cultural tourism in Bali..

LITERATURE REVIEW

Bali has local laws (awig-awig) to regulate tourist villages because the Bali provincial government protects the rights of traditional villages through Regional Regulation Number 4 of 2019 concerning Traditional Villages. Furthermore, Bali has the uniqueness of having traditional villages that are different from the provinces in the Republic of Indonesia. That UURI Number 15 of 2023, concerning the Province of Bali, was enacted in Jakarta on May 4, 2023, State Gazette of 2023, No. 62; in Article 6, in the territory of the Province of Bali there are traditional villages and subaks, which are regulated in Regional Regulations by the Laws and Regulations; and in Article 8, paragraph (2), the central government can provide funding support to strengthen the advancement of culture, traditional villages, and subaks through the Regional Government. The legal issue in traditional villages in Bali related to the strengthening of "traditional villages" is a "legal vacuum." The explanation of Law Number 15 of 2023 concerning the Province of Bali refers to Article 6, the explanation that what is meant by "customary village" is the unity of the Balinese indigenous community, which has a unity of customs, customs, traditions, arts, and Balinese culture with the same or different areas as intended in the Law concerning villages and has its institutional structure "and has the authority to organize affairs" of customs, traditions, and Balinese culture based on local wisdom. In this case, the legal vacuum referred to here is that the customary village has original rights that need to be expanded with "the right to manage tourist villages," and in this article, the authority to manage tourist villages is not given in the text of this article.

In the Cooperation Agreement between the Karangasem Regent and the traditional village in managing the tourist village, according to the original rights, authority should be given to Pinglipuran Village. Planning agreements and hidden conflicts need to get attention from the Bangli Regency government. For example, the emergence of conflicts in the development of tourist villages

due to the issue of hidden conflict "agreements" related to AYDs land. The history of the emergence of conflicts due to the transfer of land rights can occur against land that was originally controlled according to customary law and then converted according to the UUPA (Suwitra, 2020: 157). These lands in Bali are known as customary lands in various types, namely land that is controlled communally, such as *laba pura*, *laba banjar*, *laba desa* (adat), *tanah setra*, land market, open land, and land that is controlled individually, such as village yard land (PKD) and village ayahan land (AYDs) (Suwitra, 2020: 157). The bond of fellowship with the land it occupies has a very close relationship and is religious and magical in nature. The customary law community's rights to this land are called "beschikkingsrech" by van Vollenhoven. Regarding this customary law right, in each region of Indonesia, the terms are different, for example, *patuanan* (Ambon), *panyampeto* (Kalimantan), *wewenkon* (Java), *prabumian* (Bali), *ulayat* (Minangkabau), and *Nuru* (Buru). Furthermore, the prominent sector is regarding legal assistance related to revising the PKS management concept between the Bangli Regency government and the Penglipuran Traditional Village regarding compensation; then, under Cooperation Agreement Number 415.4/23/PKS/ PKS / PKKP / 2020, Number 01/SS.P / X / 2020, Penglipuran Traditional Village receives compensation of 60% (sixty percent) of the results of the broto levy. Depositing all results of the broto levy every week or 7x24 (seven times twenty-four) hours to the Regional Treasury through the Receiving Treasurer at the Bangli Regency Tourism and Culture Office.

Based on Bangli Regent Regulation No. 16 of 2014, concerning Tourism Villages, the tourism sector is a driver of the community's economy as one of the leading sectors that is expected to run sustainably. Furthermore, considering Bangli Regency Regional Regulation Number 2 of 2018, concerning the Master Plan for Regional Tourism Development in 2019-2025. Article 1 number 35: Rural areas that have uniqueness and special characteristics become tourist destinations, including natural environments, traditions, and cultures still held by the community, typical foods, agricultural systems, and kinship systems.

Penglipuran Village is a tourist village. How to implement the vision of the Bangli Regent, namely the RIPPARDA Vision as referred to in Article 2 paragraph (3) letter a, namely the realization of tourism development inspired by regional culture to improve the community's economy based on Tri Hita Karana (Article 6). Article 14, letter (d): increasing community participation in managing the DTW area. This is a priority in the PPDM community service in Penglipuran in the first year of 2021.



Figure 1. Angkul-angkul before renovation; Figure 2. Tourists

METHODOLOGY

This study focuses on legal issues related to the Cooperation Agreement Number 415.4/23/PKS/PKPP/2020, Number 01/S.P/X/2020, Penglipuran Traditional Village with the Bangli Regency government. Normative-empirical research is expected to be able to directly identify and analyze the issues of the interests of the parties in agreeing and can be practiced in community service activities in Penglipuran in managing the tourism village. The perspective used in the practice of contract law is the perspective of legal sociology, namely legal practice, and one party is suspected of default. Researchers conducted research with the participation of subjects and objects to realize the appreciation of human values and solve legal problems in the Penglipuran tourist attraction. Methodology: a collaborative form of action research as applied research. Researchers are involved in the community. The research cycle is also a fundamental process for exploring legal issues in the Penglipuran traditional village. This leads to critical subjectivity towards legal issues in the community and becomes the main way to increase the validity of the researcher's claims in revealing reality by conducting FGDs with the Prajuru of the Penglipuran traditional village, Sabha Village, Kerta Village, tourism village managers, and community leaders as action research with democratic dialogue.

RESEARCH RESULT AND DISCUSSION

Tourism Law, Penglipuran Traditional Village and Local Wisdom Values

Bali tourism, there have been ups and downs related to issues or when Covid 19, and Bali was extraordinarily depressed because Bali relies more on the economic aspect of tourism. This certainly affects the Penglipuran tourist village, especially in terms of tourist arrivals. In terms of ecotourism law, Bali has indeed planned a culture-based tourism law, or "cultural tourism." Cultural ideology in tourism activities guarantees welfare through the legal process, namely the Governor of Bali and the Bali DPRD, producing a legal policy of "Cultural Tourism," namely culture as a potential that is used as the basis for developing tourism as a complex that includes knowledge, beliefs, arts, morals, customary law, and abilities obtained by humans as members of society or order of life. For this reason, Bali sees the need to design a law on cultural aspects. The legal policy of "Bali Cultural Tourism" was first born with the

formation of Bali Regional Regulation Number 3 of 1974 concerning cultural tourism. In the context of Bali, of course, culture is used as a human strategy in adapting to their environment because different natural conditions have the potential to form a diversity of communities that inhabit it. Furthermore, in the Bangli Regency Regional Regulation Number 2 of 2018, concerning the Master Plan for Regional Tourism Development in 2019-2025, Article 1, number (25), special characteristics to become tourist destinations include the natural environment, traditions, and culture still held by the community, typical food, agricultural systems, and kinship systems.

In Bangli Regent Regulation Number 16 of 2014 concerning Tourism Villages. It is stated in Article 7, paragraph (1) that the utilization and development of tourism villages are directed towards the development of special interest tourism that has an appreciation for art and culture and makes the daily activities of the village community a tourist attraction; paragraph (2) Tourism activities developed include: (a) agrotourism; (b) nature tourism; (c) cultural tourism; (d) culinary tourism; (e) water tourism; (f) spiritual tourism; (g) tourist attractions; and (h) historical tourism. Furthermore, in paragraph (3), the development of accommodation facilities in tourism villages is directed by utilizing residents' houses and unproductive empty land as supporting accommodation facilities and facilities for village tourism.

Considering the Penglipuran tourist village, in terms of managing the tourist village, it is regulated in the Decree of the Penglipuran Traditional Village No. 31/DA-Peng/V/2022, concerning the determination of the management of the Penglipuran Tourist Village in the Penglipuran Traditional Village. The composition of the tourism management of the Penglipuran Tourist Village in the Penglipuran Traditional Village includes the manager: I Wayan Sumiarta; operational manager: I Ketut Nurada; and financial manager: Made Alvin Boby Nugraha. That is a comparison with the Tengenaa Pegringsingan Tourist Village in managing the tourist village by issuing the Decree of the Prajuru of the Tengenaa Pegringsingan Traditional Village Number: 01/KEP-P.DA-TP/VIII/2020, concerning the composition of the management of the Tengenaa Pegringsingan Tourist Destination. In the Decree, the composition of the management of the Tengenaa Penggringsingan tourist destination is: 1. Head of management: Putu Wiadnyana, ST; 2. Secretary: Niluh Putu Ari Agustini; 3. Treasurer: I Ketut Pancawan. When examined from Satjipto Rahardjo's perspective, with progressive legal theory, tourism villages in Bali are produced for the local Balinese pro-people customary community, and the interests of the people (their welfare and happiness) must be the point of orientation and the ultimate goal of the implementation of the law. For progressive law, the process of change is no longer centered on regulations but on the creativity of legal actors to actualize the law in the right space and time. This can be proven that the creativity of the community to manage tourism villages is very enthusiastic, namely cultural tourism villages based on local wisdom and Hinduism with the philosophy of Tri Hita Karana. In the framework of thinking about creativity and social change in Bali, human actions are limited by two types of environments, each of which is physical and ideal:

the "physical nature of the organization" and "ultimate reality." In tourism villages as products of ideas, culture, and reality, Balinese society interacts with tourists. Interaction in activities in tourism villages can be reviewed in the structure of the action itself, which is broken down into several sub-systems, which means that sub-systems interact with each other in the environment. Each subsystem has its primary function as follows:

1. Social subsystems; their primary function is integration.
2. Cultural subsystems; their primary function is pattern maintenance.
3. Personality subsystems; their primary function is goal attainment.
4. Behavioral subsystems; their primary function is adaptation.

This can certainly be studied with Talcott Parsons' theory; individual actions in the first place are not seen as biological behavior but as meaningful behavior, which in Talcott Parsons' view uses the term action rather than behavior. In reality, in the process of community service activities, it was revealed that several things emerged in the discussion (FGD), namely the dissatisfaction of the traditional village leaders with the Cooperation Agreement Number 415.4/23/PKS/PKPP/2020; Number 01/S.P/X/2020 felt unfair in the distribution of profits. So something happened that needed to be "harmonized," especially related to the Bangli Regency Government regarding the agreement that had been made.

In the concept of non-litigation settlement, the partner (Penglipuran Traditional Village) needs to have synergy with the Bangli Regency Government, especially the Tourism Office regarding the distribution of results from the management of the Penglipuran Tourism Village. Prajuru customary village, Tourism Village Manager, Sabha Village, Kerta Village, and the Bangli Regency Tourism Office. The management of the Penglipuran Tourism Village is a product of an agreement between the Bangli Regency Government and the Penglipuran traditional village head. The Cooperation Agreement Number 415.4/23/PKS/ PKS / PKPP / 2020; Number 01/SS.P / X / 2020. The reality of the agreement in the implementation process requires evaluation.

In Bali Provincial Regulation No. 5 of 2020, concerning the standards for organizing Balinese cultural tourism, article 1, number (14) the implementation of Balinese cultural tourism is a series of tourism activities based on local wisdom, including products, services, and/or management. In the concept of this text, does it provide a guarantee in practice for the optimal implementation of the text in cultural tourism activities? If not, this text is only a symbol that is new at the level of normative regulation that is "hoping" unproductive and ineffective. When associated with Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages, Article 35, paragraph (5), Sabha traditional villages function to provide considerations to the prajuru of traditional villages; paragraph (5), number: a) preparation of customary village rules and/or regulations; b) planning for the development of traditional villages; c) implementation of the traditional village program. Penglipuran traditional village in managing tourism villages.

In the context of legal sociology, by studying Talcott Parsons' functionalism theory, the following functional requirements are required:

Adaptation; goal attainment (goal attainment, goal pursuit); integration; and pattern maintenance (latency or pattern maintenance). These functional requirements are often referred to by functionalists as the "AGIL" scheme, which is an abbreviation of A = adaptation; G = goal attainment, or goal pursuit; I = integration; L = latency. With Cooperation Agreement Number 415.4 / 23 / PKS / PKKP / 2020; Number 01 / S.P / X / 2020. That the state feels entitled and obliged to take care of legal development.

Traditional Villages, Customary Law, Village Sabha and Cultural Politics

Law can function as a tool of community control and guarantee order in Balinese cultural life. Traditional villages are a fortress of Balinese culture and are very thick with local wisdom values. This is certainly because traditional villages as legal subjects in the Bali provincial government system can carry out legal acts related to tourism activities and can manage tourist villages in their areas. Balinese customary law and culture can resolve conflict problems in traditional villages through deliberation and consensus. Traditional villages have the task of realizing the Kasukretan of traditional villages, which includes peace, prosperity, and happiness. Traditional villages as a fortress of Balinese culture as guardians of Nusantara culture have the potential to develop Penglipuran tourism villages based on culture to guarantee the welfare of the Penglipuran traditional community.

Local wisdom built by the Balinese Indigenous community in the form of customary village awig-awig in regulating its community is a historical process, not a fixed price that can condition the history of the community concerned. Local wisdom is a historical product of the local community adapting to its environment. The idea of submitting an original legal mainstream based on the values of Indonesian society. The socio-cultural authenticity of Indonesian law is a set of shared values that can be obtained from the customs of Indonesian society.

In the context of the social history of Balinese society, the relationship between custom, village, and state is influenced by Liefrink's study (1927) and Geertz's study (1959); Liefrink's idea of 'Village Republic' to describe the village is inseparable from the concept of the village, which was built by the Dutch colonial power in the 19th century until World War II. There is a village community that has characteristics that are monopolized by the authority to lay certain territorial boundaries. The traditional village is a small country and is generally called a "Small Republic." It has Prajuru and has awig-awig to regulate the community, related to the rights and obligations of krama, maintaining traditions and original autonomy, and supervising their respective traditional villages.

In the era of the Republic of Indonesia, the traditional village in Bali was a reality that unwritten customary law was regulated to be written (awig awig) based on the Regional Regulation of the Province of Bali as a village dresta, a unity of customary law communities in the Province of Bali Level I Region Number 06 of 1986, concerning the Position, Function, and Role of Traditional Villages as a Unity of Customary Law Communities in the Province of Bali

Level I Region. In Article 7, paragraph (1), every traditional village must have written *awig awig*. Furthermore, in Article 11, number (c) seeks peace in resolving customary disputes.

The legal politics of traditional villages and culture in Bali experienced dynamics related to power relations in Bali. When around 1998 the PDI Perjuangan Party tried to increase its position in the political arena in Bali, the value of local wisdom (*Pacalang*) was given a role to become security related to party activities. In the Bali Provincial Regulation, the Indonesian Democratic Party of Struggle included the legal substance of *Pecalang* in Bali Provincial Regulation Number 3 of 2001, concerning *Pakraman Villages*, Article 17, paragraph (1) Security and order in the *Pakraman Village* area are carried out by *Pacalang*. The regulation on traditional villages as a value of local wisdom of the archipelago based on the *Tri Hita Karana* philosophy is strengthened by Bali Provincial Regulation Number 4 of 2019 concerning traditional villages by including traditional villages as legal subjects in the Bali Provincial government system (Article 5). Furthermore, the Regional Regulation regulates the products of legislators and policymakers who side with the community, history, and culture of the Balinese Indigenous People as a legal theory with cultural meaning as an effort to build a local culture that lives in the Balinese Indigenous People into a legal product protected by the state. Theory of Law with Cultural Meaning *Wayan Wesna Astar*, as a tool to dissect the legal facts of customary law issues, customary villages, and customary law, and agreements can be used as an analytical tool in building and developing tourist villages in customary villages in Bali and the archipelago. Legal products that are excavated from local cultural values and local wisdom values do not conflict with community expectations and the ideological vision of the Constitution as a representation of the soul and general interests of the Indonesian people. Furthermore, it also does not conflict with community expectations and the ideological vision of the Constitution as a representation of the soul and general interests of the Indonesian people. The legal system that is formed should adapt to the community of Indonesian society, *Bhineka Tunggal Ika*.

The most important thing in the context of changes or addendums to the Cooperation Agreement is the role of the customary Village Sabha to provide legal opinions related to the context of the agreement, whether a legal product (agreement, etc.) is appropriate or is in favor of the people of the *Penglipuran* customary village.



Figure 3. I Wayan Wesna Astara Provides Legal Counseling on Agreements to the Prajuru of Penglipuran Traditional Village. (2024 Document; I Wayan Wesna Astara)

In carrying out the function of the village head of Penglipuran, Sabha Desa is a partner institution for the village head of the customary village that carries out the function of consideration in the management of the customary village. The customary village has the authority to manage the jurisdiction and land of the customary village padruwen, including the development of customary law by the principles of Balinese *mewacara* and *Desa Mawacara*.

Related to the Penglipuran Tourism Village has not been able to socialize the Village Fatherland (AYDs) as a customary right that must be maintained from the deviation of "unlawful acts" from the *krama* who certifies the customary village fatherland. There needs to be an explanation and evidence (documents) so that it is easier to conduct a legal audit and provide legal opinions. Then, from the side of the dedicated lecturer, explain and then assist and provide a legal opinion for the solution to the legal incident. Based on the principles of customary law that underlie national land law, including: a) religious principle; Based on Law Number 5 of 1960 concerning Basic Agrarian Principles in Article 1, paragraph (2), all the earth, water, and space, including the natural resources contained therein in the territory of the Republic of Indonesia, as a gift from God Almighty as an embodiment of the first principle of Pancasila. Then, the principle of Nationality, reflected in Article, 9 paragraph (1) UUPA; The principle is controlled by the State about the granting of Land Rights; the principle of "controlled by the State" is stated in Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 paragraph (1) and paragraph (2) of the UUPA; the principle of social function about land utilization; the explanation in this case, that is reflected in Article 5 of the UUPA which states, "all rights to land have a social function", the principle of non-discrimination about land ownership; the principle of non-discrimination is reflected in UUPA Article 21 and Article 29 which have the same meaning as Article 27 of the 1945 Constitution, which is the Basic Regulations in the legal order of the Republic of Indonesia in the agrarian sector; and finally the Principle of Horizontal Separation (*Horizontal Scheiding*) about ownership and control of land and buildings.

Penglipuran Tourism Village Harmonization and/or Political Dialectics for the Interests of the Bangli Regency Government

Penglipuran Tourism Village maintains the value of local wisdom by continuing to build and maintain the local culture of the traditional village community. Traditional villages through the prajuru must maintain traditional rights, traditional property rights, their wealth, traditions, manners of social interaction of the community from generation to generation in the bonds of sacred places (Kahyangan Tiga or Kahyangan Desa), duties and authorities, and the right to regulate and manage their households. (Bali Provincial Regulation Number: 4 of 2019, concerning Traditional Villages Article, 1 number 8). The Bangli Regency Government seeks to regulate its interests to obtain contributions from the Cooperation Agreement with the Penglipuran Traditional Village concerning the Management of Tourism in the Penglipuran Tourism Village Number 415.4/23/PKS/PKPP/2020; Number 01/S.P/X/2020; concerning the Management of the Penglipuran Tourism Village. The Penglipuran traditional village is entitled to a reward of 60% (sixty percent) of the gross levy. Deposit all (gross) collection results every week/7x24 (seven times twenty-four) hours to the Regional Treasury through the Receiving Treasurer at the Bangli Regency Tourism and Culture Office. This Cooperation Agreement is valid for five (five) years starting from January 1, 2021. De facto, there is a process that is considered necessary to have an addendum/revision to the substance of the agreement by the customary village officials that CHAPTER V: rights and obligations of the parties Article 4, paragraph (1): The first party, the Bangli Regency Government, has the following rights and obligations:

- a. Implementing the arrangement of Penglipuran Tourism Village;
- b. Implementing human resource development in Penglipuran Tourism Village;
- c. Implementing marketing of Penglipuran Tourism Village; and
- d. Entitled to receive non-tax regional revenue (PDBP) by applicable provisions.

Tax is a mandatory levy paid by the people to the state and will be used for the interests of the government and the general public. People who pay taxes will not feel the benefits of taxes directly because taxes are used for the public interest, not for personal interests. While levies are regional levies as payment for services or granting certain permits that are specifically provided and/or granted by the regional government for the benefit of individuals or bodies. Based on the two definitions above, we can explain the difference between taxes and levies. Levies are collected based on government regulations, ministerial regulations, or regional regulations.

Analysis of the Agreement in the Context of Hans Kelsen's Grundnorm and Stufenbau

Hans Kelsen opened his theoretical explanation of Grounnorm (basic norm) and Stufenbau (Eng: hierarchical structure; hierarchical structure; hierarchical building) in his famous book *Reine Rechtslehre* (1934/1960). Starting

from his postulate that formulates the relationship between what is in reality (ein sein) and what should be (ein sein).

Han Kelsens' stufenbau doctrine can be used to study the Cooperation Agreement with the Penglipuran Traditional Village Concerning Tourism Management of Penglipuran Tourism Village Number 415.4/23/PKS/PKKP/2020; Number 01/S.P/X/2020; concerning the Management of Penglipuran Tourism Village. That is the theory of hierarchical structure. Then formulate it as the following principles, which are also used by Kelsens to explain his theory:

1. The principle of Lex superior derogates Lex inferior; higher law (rule) overrides lower law (rule).
2. The principle of Lex posterior derogat legi priori: the law (rule) that applies later overrides the law (rule) that applies first.
3. The principle of Lex specialis derogate legi generali; the law (rule) that applies specifically overrides the law (rule) that applies generally.

In the legal reality used to analyze the agreement that Bangli Regency Regional Regulation Number 7 of 2010, concerning retribution and sports by referring to Article 3, paragraph (1): The object of retribution is the service of recreation, tourism, and sports places provided, owned, and/or managed by the regional government; and paragraph (2) Excluded, and the object of retribution as referred to in paragraph (1) is the service of recreation, tourism, and sports places provided, owned, and/or managed by the regional government, BUMN, BUMD, and the private sector. Article 4: The subject of retribution is an individual or body that uses or enjoys services at recreation and sports places provided, owned, and/or managed by the regional government. In the text "owned" related to the Tourist Destination Area is the Penglipuran Traditional Village, the owner of the tourist destination and/or attractions, there is a conflict of norms with the Bali Provincial Regional Regulation Number 4 of 2019 concerning Traditional Villages in Bali. Article 23: The authority of traditional villages includes authority based on original rights and local authority on a traditional village scale. Article 25 paragraph (1) local authority on a traditional village scale (letters, m and n) is tourist destinations and/or attractions; and the environment of the krama settlements. Likewise, it is strengthened by Article 24: the authority of traditional villages is based on original rights and local authority on a traditional village scale.

The function of law, according to Bernd Ruithers, views law as an instrument of power needed to regulate, manage, and engineer the behavior of society in communal life. In the context of the agreement on the rights and obligations of the parties in Article 4, paragraph (1), the first party/the Bangli Regency Government has the following rights and obligations:

- a. Implementing the arrangement of Penglipuran Tourism Village;
- b. Implementing human resource development in Penglipuran Tourism Village;
- c. Implementing marketing of Penglipuran Tourism Village; and
- d. Entitled to receive Non-Tax Regional Revenue (PDBP) by applicable provisions as also regulated in the Tourism Management Agreement for

Penglipuran Tourism Village Number 415.4/23/PKS/PKKP/2020; Number 01/S.P/X/2020; concerning the Management of Penglipuran Tourism Village.

In the process of implementing the agreement, there was a breach of contract from the first party, the Bangli district government. Then the breach of contract model is as follows: (1) breach of contract in the form of not fulfilling the performance; (2) breach of contract in the form of being late in fulfilling the performance; (3) breach of contract in the form of not perfectly fulfilling the performance. In the case of a breach of contract in the form of not perfectly fulfilling the performance in the science of contract law, a doctrine is known as the "doctrine of fulfilling substantial performance." This doctrine teaches that even if one party does not carry out its performance perfectly, but he has carried out his performance substantially, then the other party must also carry out his performance perfectly. If a party does not carry out his performance substantially, then he is said to have not carried out the contract "materially" (material breach). If one party does not carry out the contract materially, fulfilling substantial performance, then the exception nondimple contracts doctrine applies, a doctrine that teaches that if one party does not carry out his performance, then the other party can also not carry out his performance.¹

That is based on Bangli Regency Regional Regulation Number 7 of 2010, concerning retribution and sports, with reference to Article 3, paragraph (1): The object of retribution is the service of recreation, tourism, and sports places provided, owned, and/or managed by the regional government; and paragraph (2) Excluded and the object of retribution as referred to in paragraph (1) is the service of recreation, tourism, and sports places provided, owned, and/or managed by the regional government, BUMN, BUMD, and the private sector. Based on Article 4, the subject of retribution is an individual or body that uses or enjoys the service at recreation, tourism, and sports places provided, owned, and/or managed by the regional government.

Article 3, paragraph (1) "owned" and/or managed" based on Bali Provincial Regulation Number 4 of 2019, concerning Traditional Villages in Bali, Article 25, paragraph (1) local authority on a traditional village scale (letters, m, and n) is a tourist destination and/or attraction; and the environment of the krama settlement. The concepts of "owned" and "managed" still contain vague/multi-interpretable norms because traditional villages in Bali have original rights based on their authority and can manage tourist villages.



Figure 4: I Wayan Wesna Astara Provides Legal Counseling

Figure 5: Legal counseling activities attended by ecotourism and contract law in Penglipuran Prajuru Tourism Village, Penglipuran Traditional Village, Sabha Village, Kerta

(Document of I Wayan Wesna Astara 2024). Village and Tourism Village Managers.

Building Tourism Villages through Customary Law and Agreements

The customary village customs in Bali have a flexible character towards the development of tourism in Bali. Penglipuran Tourism Village is the cleanest tourist village in the world, with the potential of culture, nature, traditions, customs, and local wisdom values. Then the cultural, natural, traditional, Padruwen, and Utsaha assets of the customary village are regulated in Bali Provincial Regulation Number 4 of 2019, concerning customary villages, article 55, paragraphs (1, 2, and 3). The development pattern of tourist village development is based on the Tri Hita Karana philosophy. Furthermore, the customary village has autonomy, which is associated with power in form of the autonomy of the customary village, which is transformed into a region and, of course.

Revenue sharing management pattern with the Bangli Regency government Based on the Cooperation Agreement with the Penglipuran Traditional Village Concerning Tourism Management of the Penglipuran Tourism Village Number 415.4/23/PKS/PKPP/2020; Number 01/S.P/X/2020; concerning the Management of the Penglipuran Tourism Village. The Penglipuran Traditional Village is entitled to receive a reward of 60% (sixty percent) of the gross levy results. Deposit all levy results (gross) every week/7x24 (seven times twenty-four) hours to the Regional Treasury through the Receiving Treasurer at the Bangli Regency Tourism and Culture Office. This Cooperation Agreement is valid for five (five) years starting from January 1, 2021. No later than 2 (two) months before this cooperation agreement ends, the parties agree to notify each other of their intentions if they wish to extend this cooperation. Based on the results of the FGD and the practice of writing contract and/or agreement laws on June 16-17, 2024, there are two (three) alternative ideas to provide solutions to the Bangli district government proposed by the Head of the Penglipuran Traditional Village (I Wayan Budiarta). First, Independent Management; Second, Continuing the PKS, by revising the articles that are detrimental to the traditional village. The first choice is that the traditional village is originally autonomous; the interests of

the local community are based on community initiatives, original rights, and/or traditional rights that are recognized and respected by the government of the Republic of Indonesia. In the context of the cooperation agreement between Bangli Regency as party I (first) and the Penglipuran traditional village as party II (second); Article 3: the scope of this cooperation agreement includes: a. management of tourist attractions; and b. collection of recreation and sports levies in the Penglipuran tourist village. Article 4, paragraph (1): The First Party has the following rights and obligations: a. implementing the arrangement of the Penglipuran tourist village; b. carrying out human resource development in the Penglipuran tourist village; c. carrying out tourism village marketing; d. having the right to receive non-tax regional revenue (PDBP) for each levy paid by tourists from the Second Party by applicable provisions. Article 4, paragraph (2) The Second Party has the following rights and obligations: a. maintain the cleanliness, beauty, and sustainability of the Penglipuran tourist village; b. collect levies from every tourist, including vehicles entering the Penglipuran tourist village; d. provide the best possible service to tourists entering the Penglipuran tourist village; e. deposit all levies (gross) every week 7x24 (seven times twenty-four) hours to the regional treasury through the receiving treasurer at the Bangli Regency Tourism and Culture Office; and f. have the right to receive compensation of 60% (sixty percent) of the gross levy results. Article 6, paragraph (4): If the Second Party does not comply with this Cooperation Agreement, then the First Party can terminate this agreement individually. The legal fact is that there is no equality in this agreement; only the First Party is protected in this agreement. If a legal problem arises related to the obligations of the parties specifically for the Second Party, then in this agreement, if one of the parties does not fulfill its obligations, there is a default, then Article 9, paragraph (2) will apply, written changes in the form of an addendum.

Legal substance related to the addendum contains the reality of the field, whether the pattern is entirely to manage the Penglipuran traditional village (100%) with various rational reasons and/or the traditional village is 80% (net) after deducting operational funds, and 20% is the Bangli Regency government; this is the first office. Then the second office remains with the pattern of 60% Penglipuran traditional village, and 40% is the Regency Government, but this 40% is managed again by the Penglipuran traditional village, which is used for interests previously managed by the First Party because it was not implemented, and then the task was handed over to the Penglipuran traditional village by Article 4, paragraph (1). With the standard of justice for the interests of the Indigenous Community and the progress and sustainability of the Penglipuran tourist village. This is by the resolution of disputes through deliberation and consensus. (Article 8, paragraphs (1, and 2).

Penglipuran Village, Cultural and Bamboo-Based Tourism Village

The traditional village of Penglipuran has an area of 112 ha, consisting of 5.5 ha of yards and 45 ha of bamboo forest, and the character of the Penglipuran traditional community is the attitude of maintaining the bamboo forest, which

is part of the attitude of the residents to maintain the uniqueness of Penglipuran as one of the Bali Aga, or old Bali villages. This potential, by the Penglipuran traditional community, is utilized for the benefit of the tourism village by synergizing aspects of tradition, culture, Hinduism, and bamboo forests. Furthermore, it can be explained that bamboo in the Penglipuran traditional village can be utilized for sustainable development materials; for that, bamboo is preserved as a full function.¹

In the context of the Penglipuran Traditional Village managing bamboo forests, the Traditional Village Council, based on Bali Provincial Regulation Number 4 of 2019, concerning Traditional Villages, also plays a role as a working partner of the government. In the drafting of Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages, the legal substance regulated in the Regulation in Article 34, paragraph (2), in resolving customary/dialectical cases as referred to in Article 30, (e), the customary village head is accompanied by the customary village kerta. The problem that arises is that in Article 37, paragraph (1), the customary village of Kerta is tasked and authorized to receive and resolve customary/dialectical cases that occur in the customary village based on customary law. These articles have not provided an explanation; seen from the sociology of law and the procedure for litigation in the customary village, it is an empty norm. Likewise, Article 76, paragraph (e), carries out counseling on customs, traditions, culture, and local wisdom of the Balinese community as a whole. In this context, the village customary officials must ask for consultation with the Bali Provincial Village Customary Assembly in the context of the MDA's duties and authorities. In the Development of Cooperation between Customary Villages: Article 82, paragraph (1) Customary villages may enter into cooperation with other customary villages, villages, and/or other parties; paragraph (3) Cooperation as referred to in paragraph (1) is stated in the form of a joint agreement or written agreement.

Penglipuran and Kelian Traditional Villages Traditional villages have a progressive leadership model in developing the Penglipuran tourist village, related to legal issues and customary issues related to the management of traditional villages. Kerta Penglipuran Traditional Village has local wisdom values (cultural values) and customs (*desa masecara*). Each traditional village has the original right to manage its household but must not conflict with state power. If we borrow the theory put forward by Montesquieu *trias politica*, traditional villages have had original powers similar to the powers possessed by a modern state, which include legislative, judicial, and executive functions.

Natural and cultural factors of Penglipuran Traditional Village make Penglipuran Traditional Village the cleanest tourist village in the world. In addition, the constitutional factor of the 1945 Constitution, Article 18 B, states, "The State recognizes the unity of customary law communities along with their traditional rights as long as they are still alive and by the development of society and the principles of the unitary state of the Republic of Indonesia." The bamboo forest that grows in Penglipuran Traditional Village strengthens the synergy of culture and nature in the sustainability of tourist villages.

The Kelian Desa Adat, Sabha Desa, and Kerta Desa in Penglipuran Adat Village must have the authority to build and develop a tourist village by synergizing with the Bangli Regency Government. Penglipuran tourist village in terms of cultural values has the advantage of maintaining the value of local wisdom economically in the global tourism community. This strength contains legal issues regarding AYDs Land, the ideal Master Plan for Tourist Villages, and Perarem Kerta Desa related to their duties and authorities. The development of Penglipuran tourist village requires assistance and/or a "group of experts" at the customary village level to study and provide input to the Prajuru Desa Adat.

Furthermore, related to AYDS, based on the values of local Balinese wisdom in terms of managing customary village land and managing the tourism village, researchers and community service provide planned assistance so that the Penglipuran traditional village becomes a global tourism village that provides welfare to the Indigenous Community. The follow-up to the PPDM program in the Penglipuran Traditional Village will be carried out for three years from 2024 to 2025. This is by giving meaning that legal and cultural issues continue to develop through the dynamics of cultural tourism and the country's legal politics.

Related to legal practices at the customary village level, then the companion from the legal, cultural, and economic aspects in the management of the tourist village, which empirically has progressed, but in terms of the distribution of results is still not considered fair by the Penglipuran Traditional Village. The Bangli district government takes the gross proceeds from the activities, which is 40%, and the customary village 60%. This requires legal assistance in demanding justice from the Bangli Regency government. In a strategic step, the Village Sabha, as planning for the development of the tourist village, can further negotiate with the Bangli Regency government. This can also be accompanied by the Kerta Desa as the Village Peace Judge at the customary village level in Bali. It is necessary to place the best krama in the customary village, especially those who have legal disciplines and insights into customary law and state law, for the empowerment of the Kerta Desa in carrying out their duties and functions as a peace judge. In addition to this, it can also be accompanied by a legal advisor. The normative issue is that there is protection that assistance, counseling, and technical guidance for Kerta Desa in Bali, as mandated by Bali Provincial Regulation Number 4 of 2024, concerning traditional villages, Article 37, paragraphs (1, 2, 3, and 4), should be immediately followed up by the Bali Provincial Government.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Sabha village and Kerta village, Penglipuran traditional village, "there is a conflict" regarding legal issues related to the cooperation agreement that was not implemented by the First Party (Bangli Regency Government). This can be done by holding a meeting of the parties to find a non-litigation solution (ADR) to the legal issues of default related to the implementation of the agreement and also related to AYDs Land that certifies land belonging to the Penglipuran

traditional village so that it does not become a source of conflict in managing traditional village assets. Penglipuran traditional village has cultural resource values and socio-historical uniqueness, culture, and bamboo forests based on local wisdom.

Prajuru of Penglipuran Traditional Village provides legal issues faced by Prajuru of Traditional Village, Sabha Village, and Kerta Village to be given legal assistance, legal assistance in matters of managing tourist villages. Furthermore, the success of this service is the awareness and understanding of the legal aspects of the rights of Prajuru of Traditional Village, Sabha Village, Kertha, and Managers of Tourist Village to carry out their duties, rights, authorities, and obligations in organizing Penglipuran Traditional Village as a tourist village based on local wisdom values, with the potential of the natural environment for the welfare of the customary community.

Recommendations

1. The Bangli Regency Government can socio-legally provide legal certainty and justice in the management of tourist villages in the Penglipuran Traditional Village.
2. Penglipuran Tourism Village and Prajuru of the traditional village, Sabha Village Kerta Desa, and the traditional village administrators synergize with the Bangli Regency Government to resolve cases of cooperation agreements with non-litigation efforts.

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REFERENCES

- Anonim, 2010, *Dinamika Sosial Politik Desa Adat Kuta dari Desa Adat ke Desa Pakraman, Perspektif Kajian Budaya* (Disertasi) Universitas Udayana Denpasar.
- Anonim, 2010, *Pertarungan Politik Hukum Negara dan Politik Kebudayaan, otonomisasi Desa Adat di Bali*, Udayana University Press, Denpasar.
- Anonim, 2014, *Pacalang dalam Pentas Budaya di Bali, Multikultur dalam implementasinya dalam kehidupan di Desa Adat Kuta*, Denpasar, LPM Universitas Warmadewa.
- Anonim, 2020, *Dinamika Politik Kebudayaan dalam Mempertahankan Eksistensi Desa Adat di Bali*, Pustaka Larasan, Denpasar.
- Arka, I Wayan, 2016, *Desa adat Sebagai Subyek Hukum Perjanjian*, Udayana Universit Press.
- Astara, Wesna I Wayan, 2022, *Pertarungan Budaya dan Politik Hukum dalam Mengelola Desa Wisata Berbasis Filosofi Tri Hita Karan* (Sebuah Refleksi).
- Bernard L Tanya, dkk, 2010, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta.
- Budiono Kusumohamidjojo, 2016, *Teori Hukum Dilema antara Hukum dan Kekuasaan*, Yrama Widya, Bandung.
- Darmayuda I Made Suasthawa, 2001, *Desa adat Kesatuan Masyarakat Hukum Adat di Propinsi Bali*, Upada Sastra, Denpasar.
- Koentaraningrat, 1996, *Pengantar Antropologi*, Renika Cipta, Jakarta.
- Nia Kurnia, 2016, *Hukum Agraria Sebgheta Pertanahan Penyelesaian Melalui Arbitrase Dalam Teori dan Praktik*, Reflika Aditya, Bandung.
- Peraturan Daerah Provinsi Bali, No. 4 tahun 2019. Tentang Desa Adat.
- Peraturan Menteri Dalam Negeri No. 33 Tahun 2009, Tentang Pedoman Pengembangan Ekowisata.

Satjipto Rahardjo, 2009, *Hukum dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, Yogyakarta, Genta Publishing.

Suasthawa, D, 1987, *Status dan Fungsi Tanah Adat Bali Setelah Berlaku UUPA*, Denpasar, CV Kayu Mas.

Suteki, Galang Taufani, 2018, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)* Rajawali Pers, Depok.

Suwitra, I Made, 2020, *Penguatan Desa Adat Dalam Pengelolaan Tanah Ulayat dalam Perspektif Koeksistensi*, Pustaka Larasan.

Undang-Undang Republik Indonesia Nomor 6 tahun 2014, tentang Desa.