

# **Kerta Desa as a Customary Judicial Institution in the Settlement of Customary Conflicts Based on Bali Provincial Regulation Number: 4 of 2019**

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## **ABSTRACT**

Customary conflicts that occur in indigenous communities in Bali are caused by social changes in the community that have an impact on changes in behavior, lifestyle and a shift in values and culture. Therefore, ways and efforts are needed to resolve and reconcile disputes over conflicts or customary cases that occur. The legal issue in this study is the extent of the authority of the village Kerta institution in resolving conflicts or customary cases. This research is to use normative legal research. The regulations examined in this study are Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages in Bali which is related with the existence of Kerta Desa as a customary judicial institution in the resolution of traditional conflicts. The handling of adat conflicts is carried out by Kerta Desa as a Village Peace Judge by providing customary sanctions aimed at regulating the balance or restoring the disturbed adat order in the community.

**Keywords:** Kerta Desa, Conflict, Justice, Sanctions, Society

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## **1. INTRODUCTION**

In the era of globalization like today there are many improvements in various fields of life to support the quality of life, such as an increase in science and technology that can simplify life and obtain various desired information. This will indirectly affect socio-cultural changes in society and lifestyle. With an increase in various areas of life, it does not always have a positive impact but can also have a negative impact felt by everyone.

In its development, intentionally or unintentionally, sooner or later, consciously or unconsciously, values will always experience a shift. The shifting of these values includes actions that violate existing norms in Indonesian society, especially Balinese. Then an act that violates the law and must be resolved through a valid legal process considering that Indonesia is a State

of Law in accordance with the sound of article 1 paragraph (3) of the 1945 Constitution "The State of Indonesia is a state of law." conducted through justice in an adat village or through state justice.

Traditional villages in Bali play an important role in managing and fostering the lives of indigenous peoples and in the development process. The area of the customary village can be fully regulated and managed by the village leadership apparatus based on the right to regulate the area which in legal terms is better known as the customary village customary rights. According to the Bali Provincial Regulation Number 4 of 2019 regarding Customary Villages in Bali, Customary Villages are customary law communities in Bali that have territories, positions, original arrangements, traditional rights, own assets, traditions, and social relationships of people

in their communities (Dharmayuda, 2001). hereditary in the ties of the holy place (heaven three or village heaven), the duties and authorities as well as the right to regulate and manage their own households.

In the life of the customary law community in Bali, there is awig-awig which is the basis for the customary village in the administration of government which aims to create order and peace in the community. Balinese citizens who are Hindus or called Krama Desa as supporters of the rights and obligations of customary villages strive to fulfill the interests of living together in social life based on the principle of kinship so that a harmonious relationship can be realized. This particular characteristic relates to the Hindu philosophical foundation that animates the lives of the customary law community in Bali, known as the Tri Hita Karana philosophy which linterlijk means three (tri) causes (karana) of happiness (hita) namely Ida Sanghyang Jagatkarana (God the Creator), bhuana (the universe) and humans (humans). In the belief of Hindus in Bali, the welfare of human beings in this world can only be achieved if there is a harmonious relationship between the tri hita karana elements, namely:

- a. The harmony of human relations with the One True God.
- b. The harmony of human relations with the universe.
- c. The harmony of human relationships with one another.

In the life of a traditional village, the translation of the philosophy of Tri Hita Karana is manifested in the three elements that form a traditional village, namely:

- a. Parhyangan, namely the existence of village heaven (Kahyangan Tiga: Pura Desa or Bale Agung, Puseh Temple and

Pura Dalem) as a place of worship together with God Almighty;

- b. Palemahan, as an area of residence and a place to make a living as a projection of the existence of bhuana that is subject to the territorial power of Bale Agung.

The life of indigenous people in Bali cannot be overlooked by the influence of Hindu teachings. Because the teachings of Hinduism have a great influence on its followers, it will give a pattern to the behavior or behavior of its followers. Such behavior or behavior is evident in the social life of the Balinese community (Geertz, 1959). With the rapid development of the era, various conflicts or disputes arise between residents or village manners because of differences or conflicts of interests between village manners as individuals or groups with traditional villages. The background of customary conflict in Bali is caused by social changes in the community that have an impact on changes in behavior, lifestyle and the occurrence of shifts in values and culture. In the event of a conflict or custom case, methods and efforts are needed to resolve and reconcile disputes over the conflict or custom case that occur to restore the balance that has been disturbed.

The most important aspects of customary village culture include the above three elements, the parishioner or religious aspect (religious order), the parishioner or the religious aspect (the village council), and the aspect of civilization or community (including the government). law and order matters), in addition to other issues such as resolving legal issues, both in the form of public and private lawsuits (speech and speech).

Customary conflicts that occur in indigenous communities in Bali cover many aspects of life. Customary conflicts occur

that are criminal in nature such as the theft of sacred objects, some delusions of morality (violations, sexual intercourse, gamia gamana, karmic dramas) and delusions of contempt (wakparusya). There are also conflicts of a purely customary nature such as wrongdoing, failure to perform customary obligations and other acts (Widnyana, 1993).

With the occurrence of various conflicts in various aspects of the lives of indigenous peoples in Bali, the solution is very relevant to using a customary law approach, which integrates all community interests in the rule of law as outlined in awig-awig. The customary conflict in its resolution was resolved by village prajuru through adat institutions called Kerta Desa. But to what extent is the authority of the Kerta Desa in resolving conflicts or customary cases that occur in an adat village. Then the legal issue is the extent of the authority of the village Kerta Desa in resolving conflicts or customary cases because not all settlement of customary cases can be fully resolved through Kerta Desa due to some customary cases requiring government intervention to get the right solution and in accordance with the needs of indigenous peoples.

## 2. METHODS

The method used in this study is to use normative legal research or referred to as doctrinal research which is a study that refers to legal analysis both in the sense of law as it is written in the book, or in the sense of law is it is decided by the judge through judicial process is. Doctrinal research is carried out or demonstrated by written regulations or other legal materials. The regulations examined in this study are the Regional Regulation of the Province of Bali Number 4 of 2019 concerning

Customary Villages in Bali which has to do with the existence, duties and functions of the Kerta Desa as an adat justice institution in resolving adat conflicts.

## 3. RESULTS AND DISCUSSION

Jurisdiction of the position of indigenous institutions in Bali is very strong in light of the basis of Article 18 B of Section (2) of the 1945 Constitution which reads: The State recognizes and respects the unions of the customary law community and its traditional rights as long as it lives and in accordance with community development and the principles of the United State of the Republic of Indonesia, which are governed by law.

The phrase "Issues of customary law in the affairs of parish, patron and parish" in the definition of the concept of customary matters illustrates the scope of legal questions which include the scope of customary matters. It covers a very broad aspect as it encompasses all elements of Triitea Karana, a Hindu philosophy that forms the basis of the formation of a traditional village. Based on the definition of the definition:

1. First, customary matters cover all questions of customary law relating to parole matters. This affair concerns the human relationship with God, in connection with the devotional karmic devotion to the Almighty God / Almighty One (Article 6 paragraph (2) letter a). Examples of customary legal issues related to parliamentary matters, for example, violations of the prohibition of acts of contempt in the holy court (such as), such as, massacre (quarrel), quarrel (superstition), etc.
2. Secondly, customary matters also cover all legal matters pertaining to the field of service. Sexual affairs are matters that

concern the relationship between human relationships, related to togetherness, concern, and social / social relationships between Krama and others (Article 6 paragraph (2) letter b). Examples of legal issues related to field service matters are village disputes, such as settlement disputes (over reef boundaries), defamation (defamation), and more.

3. Third, customary matters also include legal questions in the field of law enforcement. The field of affairs involves all human relations with the environment, in order to maintain harmony, harmony, and the Krama's understanding of nature and environment (Article 6 paragraph (2) c). Examples of customary law violations related to farmwork include: killing animals, birds or protected fish (damaging axial boundaries, mines), etc (Sudantra, 2019).

Kerta Desa as one of the Prajuru Adat Village's partner organizations that carries out the function of resolving adat / speech cases based on customary law in force in the local Adat Village. What is meant by traditional justice here is the event that applies according to customary law in examining, considering, deciding or resolving an adat customary case. Whereas Sudantra (2016: 40) outlines the concept of customary justice as follows:

1. Customary justice is the justice system that lives in the customary law community units in Indonesia;
2. Traditional justice based on customary law;
3. Customary justice is not part of the state justice system;
4. The customary court has the authority to adjudicate customary cases, whether in

the form of disputes or violations of customary law;

5. Customary tribunals have the authority to adjudicate matters between the citizens of the customs union (Sudantra et al, 2017).

Kerta Desa which is an institution that carries out the function of traditional justice. However, if there are villagers who are suspected of committing a violation of the law and then tried in a forum provided for that, then the residents are said to be "kasangkepang", "sangkepang banjar" or "paumang banjar". Therefore, the term Kerta Desa can be considered to be used as a local Balinese term to refer to a customary justice system that lives and is practiced in the units of the adat law community of pakraman village. The use of this term is considered appropriate, in addition to being mentioned in a number of awig-awig adat villages, grammatically the term Kerta Desa can represent the concept of adat justice. Grammatically the term kertha means judge or court, with the addition of the word "village", being formed by the word Kerta Desa which means "village judge" or "village court". Thus, the term Kerta Desa is very appropriate to be used to refer to the customary justice system that lives and is practiced in the customary law communities of customary villages in Bali (Sudantra et al, 2017).

Based on the Regional Regulation of the Province of Bali Number: 4 of 2019 concerning Customary Villages in Bali, article 36 reads:

- 1) The Customary Villages as referred to in Article 28 paragraph (2) letter c are formed by the Customary Villagers.
- 2) Customary Villages as referred to in paragraph (1) consist of:
  - a. Prajuru Adat Desa; and

- b. Krama Adat Village, which has commitment, experience and expertise in the field of customary law, sent by the Banjar Adat.
- 3) Bandesa Adat became the chairman and concurrently a member of the Kerta Adat Village.
- 4) In the event that the Chairperson / Member of the Adat Kerta Village has a relationship with the problem handled by the Adat Kerta Village, the Chairperson / Member concerned is not allowed to be involved in the settlement of adat cases.
- 5) In the event that the Chairperson of the Adat Village Kerta has a relationship with the problem handled by the Adat Village Kerta, the position of chair of the Adat Village Kerta is temporarily replaced by the oldest Adat Village Kerta member.
- 6) The service period of the Kerta Desa Adat Members ends at the same time as the service of the Prajuru Adat Village. Whereas the duties and authority of Kerta Desa as an adat village justice institution are regulated in Article 37, which reads:
  - 1) Also the Customs Village shall be responsible and responsible for receiving, examining, resolving custom / speech matters occurring in the Customs Village under customary law.
  - 2) In resolving customary matters as referred to in paragraph (1) Also, Indigenous Village prioritizes peace in accordance with the principle of co-operation.
  - 3) In the absence of peace as referred to in paragraph (2), the

Customs Village shall make the decision in accordance with the Awig-Awig and / or the Customs Village Pararem.

- 4) In the event that customary matters cannot be resolved by Kerta Inda Village, the parties may seek resolution to the MDA according to its level.

In carrying out its duties the Kerta Desa as a customary judicial institution which is part of the adat village has the power to settle disputes that indicate conflicts between the interests of the customary villagers or in the form of actions that deviate from established rules which can be judged as acts that disturb social life, both through peace and by giving customary sanctions (Widnyana, 1993).

Conflicts that are both criminal and non-criminal in nature, such as theft of sacred objects, some offenses of decency, offenses for defamation, and conflicts that are purely customary, such as when they are wrong, do not carry out customary obligations and other actions. to restore cosmic balance or restore the disturbed traditional order in society. In general, according to Soerjono, there are 3 (three) types of dispute handling patterns that are applied to customary law communities:

- a. First, the pattern of negotiations, namely negotiations between disputing parties using the methods that they think is good.
- b. Second, the pattern of mediation, namely the customary head acting as mediator or mediator for the parties to the dispute.
- c. Third, adjudication, namely the customary head acting as a judge who will give a decision on the case being submitted (Dharmayuda, 2001).

The handling of adat conflicts is carried out by the adat Bandesa, which is the top traditional leader, is part of the Kerta Desa, who functions as the leader of the traditional village sangkepan (meeting), and also as a Village Peace Judge in the event of a conflict in an adat village. Imposition of sanctions by adat Bandesa is given to regulate the religious-magical balance in the local traditional village. Sanctions that can be given in the resolution of adat conflicts can be in the form of a tri danda consisting of:

- a. Artha danda, which is a legal action in the form of a fine (in the form of money or goods)
- b. Soul danda, legal actions in the form of the imposition of physical and spiritual suffering for violators (physical and psychological punishment).
- c. Sangaskara danda, in the form of legal actions to restore the magical balance (punishment in the form of performing religious ceremonies).

If the decision of the customary Bandesa as the top of the traditional leader who is part of the Kerta Desa as a customary court is considered unfair or the litigants cannot accept the decision, then these parties can seek justice as already stated in the regional regulation on the customary village in Bali is resolving adat conflicts through the Customary Village Assembly (MDA).

With the explicit recognition of traditional justice in the Adat Village Law, it is hoped that it will be able to strengthen the autonomy of the adat village while at the same time strengthening the existence of the adat village itself. In addition, if the customary court (kerta adat village) can function effectively, the customary court will be an effective filter for the entry of

cases to the Court (State), so that the Court (State) can function more effectively and efficiently because it avoids the burden of the case case buildup (Sudantra, 2019).

#### 4. CONCLUSIONS

Kerta Desa as one of the Prajuru Adat Village's partner organizations that carries out the function of resolving customary cases based on customary law in force in the local Customary Village. The task and authority of the Kerta Desa is to examine, consider, decide or settle an adat case or customary mistake. The handling of adat conflicts is carried out by the adat Bandesa, which is the top traditional leader, is part of the Kerta Desa, who functions as the leader of the traditional village sangkepan (meeting), and also as a Village Peace Judge in the event of a conflict in an adat village. Imposition of customary sanctions by adat Bandesa is given to regulate the religiousmagical balance or restore the disturbed customary order in the community.

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