

Protection of Human Rights on The Life of Indigenous Communities in Bali

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ABSTRACT

This study aims to analyze the protection of human rights within the life of indigenous peoples (*masyarakat hukum adat*) in Bali. This issue becomes particularly significant when examined in light of the constitutional recognition under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which acknowledges the existence and rights of indigenous communities. Such recognition entails not only an obligation to respect and protect these rights, but also to ensure their fulfilment. Human rights, as stipulated in Law Number 39 of 1999 on Human Rights, fundamentally represent inherent powers or entitlements possessed by individuals. Given their fundamental nature, the fulfilment of these rights is imperative. In practice, indigenous communities in Bali constitute organized social entities governed by customary law, residing within defined territories, possessing leadership structures, and holding both tangible and intangible assets, including control over natural resources within their territorial domain. This research employs an empirical legal method, conceptualizing law as a social phenomenon observable within real-life contexts. Referring to human rights enforcement, Article 6 paragraph (1) emphasizes that the needs of indigenous communities must be acknowledged and protected by law, society, and the government. Human rights protection for indigenous communities in Bali encompasses several key aspects, including: the rights of women and children; the prohibition of cruel and inhumane punishment in relation to customary sanctions; land rights associated with the protection of cultural identity and communal land rights (*hak ulayat*); and the rights of local communities in tourism development, considering Bali's position as a major tourism hub.

Keywords: Human Rights protection, indigenous peoples, customary law, Bali, legal pluralism

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1. INTRODUCTION

Human Rights are fundamentally the rights of all persons since they exist as human beings (biological). Human Rights give every person a moral assurance to be able to live in a state of dignity as creatures of the Lord God (the Creator of the

Universe). (Wignjosoebroto, 2002) Therefore, it cannot be given away or taken away arbitrarily or at all, including by states, because Human Rights are inherently inalienable rights. When an individual grants consent to their own

government to restrict or limit their own Human Rights through the representative act of enacting legislation for purposes of protecting the Human Rights of another is it appropriate for the state on behalf of the governed or “the people” to limit the Human Rights of that individual. Legally, this means that there is a shared moral and legal responsibility and obligation to protect Human Rights of every citizen between those who govern (the government) and those who are governed (the governed). Regarding to the perspective of one’s belief (s) in a God, as described in the writings of Franz Magnis-Suseno (Suseno, 1997), we see a clear connection between Human Rights, God’s servants on Earth treating His created beings with justice and kindness (as described throughout the Hindu religion concept “*Tat-Twam-Asi*” and “*Karmaphala*”).

The 1945 Constitution of the Republic of Indonesia is very clear about the Public’s duties regarding the legal obligations of individual citizens to the State, such as to respect, protect, and guarantee these very basic Rights and Freedoms. In relation to Indigenous peoples, this duty must be based on a fair and just civilized society on the foundation of the fifth principle of Pancasila. Although there is a constitutional recognition of Indigenous peoples in the Constitution, as of today, there is no specific comprehensive legal framework that can be utilized to determine the scope of Indigenous peoples. Indigenous laws are scattered throughout many statutory regulations within the Indonesian legal system.

Indigenous peoples, their rights and related issues are a global concern matter

that is becoming increasingly prominent at all levels of society, internationally, nationally and domestically, and particularly in the context of humanitarian crises involving violence and arbitrary acts of injustice. History shows that governments which experience instability are often willing to use imprisonment, persecution and even murder of anyone who opposes them to remain in power. All of these actions can be classified as violations of human rights, and are indicative of unjust, immoral, and in some cases barbaric, policies and procedures of governance.

The consequence of the recognition principle which derives from the Rule of Law is that when the existence, rights and interests of Indigenous Peoples are considered to be in direct conflict with state interests, or when customary law is thought to conflict with or to undermine statutory law, then they may be disregarded altogether; consequently, customary legal systems run the risk of being subordinated to formal state law. (Hendry, 2025)

Both at a theoretical level and a practical level, the implementation of human rights is widely faced with challenges due primarily to the continuing conflict between advocates of universal human rights and advocates of particularistic approaches. In Indonesia and the other member states of ASEAN, there continues to be a significant resistance to or re-interpretation of the universal principles of human rights and their replacement with particularistic approaches often described as “ASEAN-style human rights.” (Nasution & Zen, 2001) Although all nation-states have historically unique political, economic,

social, and cultural contexts in which the implementation of human rights is carried out, these unique contexts do not negate the universality of fundamental human rights. The universality of human rights is grounded in the principle that “Every human being, as a creation of Almighty God, possesses inherent rights from birth that are inalienable and shall not be neglected, curtailed arbitrarily, or violated under any circumstances”.

In the Indonesian context of this principle, the Preamble to the 1945 Constitution establishes it, particularly as evidenced in the language of the phrase “Freedom is, in essence, the rightful entitlement of all nations; therefore, any form of colonial domination must be brought to an end, as it stands in contradiction to the principles of humanity and justice.” The phrase “in essence” provides evidence to demonstrate that the Indonesian philosophical view of human rights is to be viewed as natural rights therefore further supporting their universality in context of international-global in 1948 (10 December 1948).

The United Nations established Universal Declaration of Human Rights which functions as Internasional Bill of Rights to be an international moral basis for protecting human rights in the world today. Afterward, it is then followed by the International Covenant on Civil and Political Rights (first generation of Human Rights, 1966), the International Covenant on Economic, Social and Cultural Rights (second generation of Human Rights, 1966), and then the emergence of third-generation Human Rights, which include developmental and peaceful aspirations. Additionally, the development of self-determination which is defined as a right to

self-governance for all people has been one of the principles upon which many of the countries that were part of the decolonizing struggle through the use of their sovereignty adopted the principle of self-determination (as articulated in the Bandung Declaration of 1955). Self-determination is also closely connected to the natural rights that were enumerated in the 1945 Constitution’s Preamble. Therefore, as a nation-state, Indonesia appropriately embraces universal human rights principles, while still acknowledging the influence of political, economic, social, and cultural variables, whether as independent or dependent factors. (Atmaja, 2002)

The Human Rights belong to everybody, regardless of race, including indigenous people; recognition and respect for this peoples’ rights are essential and must be adhered to. The principle of Human Rights conveys to the person whose inherent entitlement cast the right of that individual or group to be protected; Therefore, these rights must be adhered to as well. Article 18B(2) of the 1945 Constitution expresses the belief that indigenous peoples of Indonesia will continue being recognized formally by the State’s laws as having certain rights, by having Article 18B(2) state: “The State recognises and respects units of Indigenous Peoples, including their traditional rights, as long as such units exist, have societal development and conform to the principles of the Unitary State of the Republic of Indonesia; being subject to the law”.

Each of Indonesia’s provinces has their own indigenous peoples, with separate characteristics that have been established over the years. These groups operate as organized social entities, live in

particular areas of land, follow customs based on their own traditional laws, are led by their own leaders, and have property rights in both physical and intangible forms, including control of the resources from the land within their domain. (Taqwaddin, 2010)

A nation-state that has a multicultural character, with constitutional jurisdictional arrangements for regional autonomy based on the principles of democracy, public participation, equity and justice, and taking into account regional capability and diversity as stipulated in Law No. 23 of 2014 regarding Regional Government imposes a duty on Regional Governments to assess and contextualise public policy as part of the broader framework of human rights protection, including consideration for relevant international and domestic human rights instruments. Locally created human rights issues arise from the presence of many different cultures in each specific region or area, it has been known as “local Human Right issues”.

The implementation of the Nagoya Protocol presents new avenues for regulating fairly and equitably the traditional knowledge traditionally held by Indigenous peoples, through the application of policies related to customary laws.

The International Labor Organization’s Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989) addresses “issues affecting the local population and their human rights” at a global level. This convention indicates that Indigenous Human Rights must also be protected as Indigenous peoples’ traditional legal systems, values, and ways of living

continue to be marginalised by the majority of contemporary nation states. (Baehr & Tsany, 2001)

The issues related to “local Human Rights issues” in Bali are addressed in this research primarily concerning women and children, the right “not to suffer from cruel and inhumane punishment” regarding customary punishment, the right to customary land, and the rights of local communities in tourism development are all grouped into four primary categories. All of these issues are analyzed through a comprehensive methodology that includes international and customary legal frameworks along with references to the primary Human Rights instruments that apply at both national and global levels.

2. METHODS

This research implemented empirical legal research methods to consider legal questions from an empirical point of view by observing how laws are part of social life through actual practices. This study draws from secondary sources, such as laws, and relevant literature on laws, while primary data comes from field observations. Although empirical in nature, the research remains within a normative framework of law, using laws namely Law No. 39 of 1999 concerning Human Rights and customary law called *awig-awig* to interpret results.

3. RESULT AND DISCUSSION

Following the amendments to the 1945 Constitution, “cultural identity and the rights of traditional communities” have been formally recognized as having to be preserved from a constitutional standpoint in Indonesia. This can be found in the 1945 Constitution (the Second Amendment to

the Constitution was issued on August 18, 2000) under Chapter VI regarding Regional Government. In particular, Article 18B paragraph (1) states that the state acknowledges and respects regional governing units with special or distinctive characteristics as determined by law. Article 18B paragraph (2) states that the state will acknowledge and respect customary law communities' traditional rights so long as they exist and are in keeping with the progress of society and the principles of the Unitary State of the Republic of Indonesia, according to law, and paragraph (3) states that cultural identity and the rights of traditional communities will be respected according to the progress of time and civilization. In addition, Article 32 section (1) states that "the State shall promote the national culture of Indonesia in relation to global civilization" and section (2) states that "the State shall respect and maintain the regional languages of Indonesia as part of the nation's cultural heritage."

Upon comparing the conceptual foundation for the world's international Human Rights instruments and the national Human Rights instruments of the world's 208 nations, we find a collective focus on the protection of local Human Rights within the overall framework for protecting Human Rights, both nationally and internationally.

The formal recognition of Indigenous Peoples in Indonesia has taken place in a gradual process of progression over a period of time. In studying the historical development of recognition of Indigenous Peoples in Indonesia, there are four significant phases of recognition that can be identified. The first phase of recognition of Indigenous Peoples in

Indonesia began after Indonesia gained independence in 1945 when the Indonesian founding fathers included recognition of Indigenous Peoples within the Indonesian Constitution (the 1945 Constitution) and in the founding principles of the Indonesian State. Within the Constitution, approximately 250 regions within Indonesia that have primitive or original social structures (*zeljbesturende, volksgemeenschappen*) are acknowledged, including *marga*, *desa*, *dusun* and *nagari*. This is the only explicit constitutional recognition of indigenous rights that has been included in the body of Indonesia's subsequent constitutional documents, the RIS Constitution and the Provisional Constitution (UUDS).

The second phase of recognition of Indigenous Peoples occurred with the passing of Law No. 5 of 1960 regarding the Basic Principles of Agrarian Law which formally recognizes indigenous customary law and the rights of indigenous peoples over customary law land (*hak ulayat* as the limited number of rights granted), subject to certain criteria, namely that the community still exists and that their traditional rights have been exercised continuously. (Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, 1960)

The third phase developed in the Early New Order era, The New Order government introduced many sectoral laws related to indigenous peoples and their rights to land. For examples are Laws No. 41 of 1999 regarding Forestry Law and No. 3 of 2020 regarding Mining Law.

Both of these statutes provide for the recognition of the rights of Indigenous Peoples, insofar as such communities continue to exist. In subsequent

developments, legislative instruments enacted during the New Order period consistently imposed conditions for such recognition, namely: (1) the community must demonstrably still exist in reality; (2) it must not conflict with national interests; (3) it must not contravene higher-ranking laws and regulations; and (4) its existence must be formally established through regional regulations. This framework is commonly referred to as a “multi-layered conditional recognition” model. In essence, for an Indigenous Peoples to be legally acknowledged, it must satisfy sociological, political, juridical-normative, and procedural requirements (the latter requiring formal recognition through a Regional Regulation). Consequently, such legal recognition does not grant unrestricted autonomy to indigenous communities; rather, it imposes defined limitations upon them.

The fourth phase emerged in the post-reform era, following the amendments to the 1945 Constitution. The Second Amendment in 2000 introduced explicit provisions concerning the recognition of Indigenous Law Communities and their rights. Based on Article 18B paragraph (2) of the amended 1945 Constitution, (Pasal 18B Ayat (2) UUD 1945 Hasil Amandemen Kedua., 1945) Article 41 of the People’s Consultative Assembly Decree No. XVII/MPR/1998 on Human Rights, the Human Rights Charter (Pasal 41 Tap. MPR No. XVII/MPR/1998 Tentang HAM II, n.d.), Article 6 of Law No. 39 of 1999 on Human Rights (Pasal 6 Undang-Undang No. 39 Tahun 1999, n.d.), as well as other relevant statutory provisions, it may be inferred that the recognition of Indigenous Peoples and their traditional rights in the

reform era continues to adopt a pattern similar to that of the New Order period, namely, a system of layered conditional recognition (Taneo, n.d.).

According to the above discussion, the recognition of Indigenous Peoples’ rights through legislation in Indonesia has not produced effective results. Consequently, scholars and advocates for Indigenous Law Communities are advocating for a separate law to govern Indigenous Law Communities. Until such a law can be enacted, as is currently proposed through the draft law, Indigenous Law Communities will continue to rely on the current body of law. However, the legislation that currently exists indicates that the rights of Indigenous Law Communities in Indonesia should be able to be fulfilled more effectively.

One specific area where this can be observed is concerning land. Land is of enormous importance, in both a spiritual and practical sense, for Indigenous Law Communities. Not only is land where they reside or farm, but it is also an area where members of their community can be buried, as well as where spiritual beings and the spirits of their ancestors are believed to exist. As explained in Article 3 of the Indigenous Law, Indigenous Peoples can continue to exercise *hak ulayat* or community land rights and other similar rights over any areas of land they have been granted these rights to.

G. Kertasapoetra et al. define the single highest form of land ownership in their book “*Hukum Tanah, Jaminan Undang-Undang Pokok Agraria Bagi Keberhasilan Pendayagunaan Tanah*” and determine that *Hak Ulayat* is separated from regular individual title ownership by virtue of being a collective right of a

customary law community, like a village or a tribe. The Head of the Community administers this right to all members of the Customary Law Peoples, but ultimately the individual members are responsible for their use of the land (Kaban, 2016). It means that *Hak Ulayat* of Indigenous Law Peoples secures an exclusive, irreplaceable, inherent, fundamental right to the members of Indigenous Law Peoples. It is not a right granted by the state, but rather a constitutionally guaranteed basic right of all people, i.e. the right to life, is inherited by all people and does not stem from the state. (Zein & Nurvianti, 2017)

The management of customarily owned forests is one of the many rights of Indigenous Law Peoples connected to the laws governing Indigenous Rights. The recognition of Indigenous Rights over the management of Forest Lands within and outside of a Customary Law Community is a key aspect of Law No. 41 of 1999 on Forests (Mawardi, 2013). It is apparent from the relevant provisions that the first provision states that the State clearly defines the rights of Law Indigenous Communities relative to the use and protection of forest areas; and second, that the State creates an inclusive process by which such communities participate in planning, establishing, and developing forest lands under the authority of the state.

The Constitutional Court Decision No. 35/PUU-X/2012, which came from a case that related to a judicial review of Law No. 41 of 1999 regarding forestry, has provided additional reinforcement of statutory provisions concerning the management and establishment of customary forests as provided under Forestry Law. The Court decided that “Customary Forests are forests that are

found within the territory of Indigenous Law Communities”. The ruling provides many opportunities for further recognition of the existence and rights of Indigenous Law Communities as well as recognition and appreciation of their local wisdom. However, there are many obstacles that prevent this decision from being implemented. One major challenge is the unavailability of sufficient baseline data to confirm the existence of Indigenous Law Communities and their respective local knowledge systems.

The Rights of Women and Children are guaranteed, both explicitly and implicitly, as stated in Articles 2 and 3 of the Universal Declaration of Human Rights 1948, especially through the reaffirmation of the non-discrimination principle. The obligations of the state parties under international human rights treaties is to ensure the principle of equality and non-discrimination for both men and women when they enjoy their full range of civil and political, and economic, social and cultural rights, which include the rights to development and peace. Additionally, the International Labour Organization (ILO) has developed special legal recognition of the rights of women and children, including children with disabilities, due to their increased vulnerability in many situations.

The Indigenous Law Communities of Indonesia hold the same rights as all other members of society under the overall human rights framework established by the State of Indonesia as set forth in the Constitution of 1945 and enacted in law or statute. The State has an obligation to ensure that the rights of all individuals within its jurisdiction are fulfilled. This obligation arises from the fundamental

human rights principle, which requires that the State promote and provide for the realization of the rights of all persons, including Indigenous Peoples, living within its boundaries.

One of the rights of Indigenous Peoples in Indonesia that is recognised and provided for in the laws of the State is communal land (*hak ulayat*) rights as they relate to both the management of forests and the use of forest resources and their ecosystems. Both the Central Government and Regional Governments are charged with the responsibility of upholding or safeguarding these rights within their jurisdictions.

The Indigenous Law Community of Bali also has a similar legal system by which it establishes and enforces its own legal system, in the case of Bali, forming and enforcing Balinese customary law. The Indigenous Law Community of Bali consists primarily of Balinese people who practice Balinese Hinduism and are inextricably linked to one another through their common land-based (*desa*) and genealogical (*soroh*) customary law units. As a result, their social organisation exists only at the interrelationship between the various districts (*desa*) and the various lineages (*soroh*) and the interrelationship between the descendants of those two customary law units.

Basically, the basic principles of customary law in Bali are the same. However, their application is flexible and conforms with the concept of *desa kala patra* (place, time and circumstances) that is contextually where customary law applies. Reflecting the practices and values of Balinese Indigenous Law Communities, when there are divergences, focus is on the commonalities rather than differences.

These differences are given space and practiced on an individual basis as per the different beliefs of each community without any hindrance or foisting.

The principles contained in the customary law of Bali, generally can be described as follows:

1. Propriety and Balance

Principles of propriety and balance are among the basic criteria of customary law. Such principles belong to societies oriented around the community. Indigenous Law Communities are communal societies concerned with togetherness and social harmony in collective life. To this end, individual interests are subordinated to the public interest.

The principle of propriety leads the members of community in a way that is right, decent and consistent with natural order. On the other hand, the principle of balance advances harmony in behavior, allowing human-to-human relations to remain balanced within reasonable grounds of equity and commensurateness. The concept of “correct balance” is contrasted with true equality; it does not mean equal allocation in any respect but rather a distribution or state that is appropriately related to each party’s situation.

In this regard the Balinese customary law more performance duty first that be in line with the rights that owned. In more individualistic societies, where rights figure first, the opposite tends to be true from a legal standpoint.

2. *Tri Murti* as a belief

As one of the core beliefs within Balinese Indigenous Law Communities, where the concept of *Tri Murti* believes

that all human beings will go through a cycle, namely birth, life, and death. It expresses that this threefold division is a natural and necessary part of the being human experience. The doctrine of *Tri Murti* is the realization of this belief, which acknowledges three deities governing those phases of existence. The gods are: *Brahma*, as Creator of the universe and all life; *Wisnu (Vishnu)* as preserver and sustainer; *Ciwa (Shiva)*, as transformer who brings everything back to its origin. This bhakti towards *Tri Murti* is, however, tangibly represented by the presence of three plays a major influence everywhere temple in Bali and even each *desa pakraman* or customary village of Balinese called with:

Pura Desa or *Pura Bale Agung* is a place for *Brahma* as the creator of the universe. *Pura Puseh*, also known as *Pura Segara*, is dedicated to Lord *Wisnu*, the Preserver of the Universe. *Pura Dalem*, which is devoted to Lord *Ciwa* as the energy of destruction, transferring all beings back to zero point.

The three temples refer to as *Kahyangan Tiga* or *Kahyangan Desa*. These three temples are ubiquitous in every *desa pakraman* (customary village) and they are an integral sign of the existence of that village. The members of the village community (*krama desa*) may act as *penyungung* (custodes or devotees), with rights and obligations to maintain and carry on the existence of these temples.

Besides the belief in *Tri Murti*, there are some essential principles forming of every community as a basic guideline on how to conduct social live within the Indigenous Law Communities in Bali, they follow all this principles here are as follows:

Tri Hita Karana is a principle that communicates that well-being or happiness is achieved through three sources: peace between humans and God, peace between human beings, and peace between humans and nature. The presence of these harmonic consistencies is vital and such harmony is considered the basic unit of collective good.

Tat Twam Asi is literally translated into "you are me." It embodies the philosophical principle that no man should cause harm to others except when he would inflict those same harms on himself. Thus, Indigenous Law Communities hope to enhance communal living based on principles of harmony and peaceful co-existence for their collective prosperity.

Tri Kaya Parisuda includes three core moral mantras: to be good, to do good and to say kind words. Following these moral principles, the community members are expected to role-model righteous life everyday life and so that social order is preserved and peace prevails within the society.

The above fundamental principles form the normative duties that must be followed by Indigenous Law Communities in life. These principles are reflected in rules of Balinese customary law that form an active part of Balinese Indigenous environmental practices.

The implementation of Balinese customary law is manifested in a concrete sense is social life community, especially the arrangement of society as members (*krama*) *desa pakraman* (customary village). From day-to-day basis, Indonesian Indigenous communities as a member are tied within the foundation of *desa pakraman* (customary village) an innate legal association bases on

geographic principle and continued life experience and it constitute long sentence in harmony. *Desa pakraman*, or a local governmental unit within the legal community, has territory, members, rules for governance that govern themselves and laws of general application pertaining to their functional interests without any claim to private ownership by individuals would simply be nothing more than an extension of society.

Membership as a *krama desa* is generally acknowledge based on several grounds: (a) enjoyment or use of village land for residential and agricultural; (b) marriage; and (c) voluntary acceptance to become a member of the village community. As such, they take on both responsibilities and privileges as constituents of the village. These obligations include contribution namely *ayah-ayahan desa* (constitution duties or services to the village), whether in the form of material resources or labor. Conversely, members have rights to services and protection as residents of the village, to the benefits from communal property, such as residential plots (*pekarangan desa*) or agricultural land (*tanah ayahan desa*), access to common burial sites, and other rights according specifically to the circumstances of that particular village.

Many Indigenous communities in Bali have increasingly included provisions on “obligatory education” into their customary law (*awig-awig*) structures since strong regional autonomy opened a new possibility for those custom law societies. Another important document is the Convention on the Elimination of All Forms of Discrimination against Women (Law No. 7 of 1984) which is applied to

women in family and society life. Among its key affirmations are:

- 1) Acknowledging the fundamental role played by women in the welfare of both the family and society at large, (recognizing) motherhood as a social function of special importance to humanity that every effort should be made to ensure irrespective of women’s participation in income-earning activities. Furthermore, equally recognised is the shared roles of both parents in bringing up children;
- 2) Recognizing that reforms in the traditional roles of both men and women, within the household and society as a whole, are necessary to reach full equality between men and women

Provisions of the normative order such as this are, on the one hand, an expression of an ideal *das sollen* but need not be automatically realized at the level of *das sein*. However, their application is limited by patriarchal cultural patterns (gender bias) that have persisted throughout time and local law norms and even national laws. Another example is Law No. 1 of 1974 on Marriage that leads to gender inequality regarding who has power and structure over household roles, men as heads of households, while the role women play in homemaking are often sidelined especially in decision-making processes.

The position of Balinese women in terms of local law according to normative perspective both domestically and under the Convention on the Elimination of All Forms of Discrimination is a debatable

matter. A key point of contention relates to the question of whether or not Balinese women have any right to their inheritance from their parents.

According to Prof. Dr. I Gusti Ngurah Sudiana, Chairperson of Parisadha Hindu Dharma Indonesia (PHDI) Bali, with regards to inheritance rights under Hindu law, the person who has a right to inherit may be considered lose the right according to *Manawadharmastra* if the heir voluntarily decline it on the ground of already having sufficient wealth. Similarly, a child entering a *nyeburin* or *nyentana* marital relationship may also forfeit the right to inherit. He added that “A disobedient child (*kapatita*), that does not show loyalty to his ancestors or parental family, nor a child who has been adopted by another family, is not fit to inherit”.

Judicial decisions from the *Kerta* courts, such as the Denpasar *Kerta* Court decision 3/8 1922, *Kerta* Court decision 21/2 1938, Tabanan *Kerta* Court decision 18/7 1939, and Lombok *Cakranegara* court decision 3/10 1947, further reinforce that when a person converts to other religion outside of Hinduism could lose inheritance rights.

If the deceased belongs to *Kerta*, this means that if the family converts to another religion, then they are no longer religious contact so that it does not have an obligation towards the person who has died in terms of both obligatory rituals and obligations, such as *pura adat* (customary temples), *banjar* (communal) duties and other individual or communal responsibilities. Heirs in Hindu believe should enact several processes, namely *pitra yadnya* (ancestor ceremony), discharging the debt burdened by dying human beings, and carrying out *dewa*

yadnya (thanking the God) at family shrine called *sanggah kemulan*, performing all parents’ dutiful task inside traditional village like *desa adat* (e.g. banjar). Those who have converted from Hinduism, within this framework, are indeed stripped of their inheritance rights because such obligations remain unfulfilled. (Supatika, 2019)

In this regard, Law Number 39 of 1999 concerning Human Rights, Article 6 paragraph (1) states that “In the implementation of human rights, provisions should be taken in and protect the needs of indigenous law communities by law, society, and government.

This provision may be understood as suggesting that one should apply local law, in this case Balinese customary law, and tackle local human rights matters. This separation is then codified into Balinese customary inheritance law, distinguishing status for men (*purusa*) and women (*predana*). Heirs entitled to inheritance rights to both movable as well as immovable property, assets and obligations (including secular/ intangible and spiritual), include children and/ or the immediate descendants according to *purusa* status.

From a statutory interpretation (Article 6 of Law No. 39 Of 1999) and contextual interpretation (Balinese customary law), both men and women who have *predana* status cannot inherit parental assets. Thus, women are not gender barred from inheritance but rather they are barred due to being a *predana*. As I understand it, on the other hand where a woman is elevated to *purusa* position she has inheritance rights; such women are denoted as *sentana rajeg*. A son under *predana* status (a type of marriage

nyeburin or *nyentana nyeburin*) is likewise excluded from the right to inherit. As result, Balinese kinship is usually described as one that is relatively strongly patrilineal. (Ihromi, 1978) This means that, legally, the regulation of inheritance rights in this specific context cannot be easily interpreted as an infringement of local Human Rights or a form of gender discrimination pertaining specifically to inheritance.

With respect to prohibition on torture and cruel, inhuman or degrading treatment or punishment as provided for in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified under Law No. 5 of 1998, it is appropriate to consider particular types of customary sanctions within Balinese Indigenous communities. One such sanction is *kesepekang*, which exists in varying degrees of severity. The more severe form includes social exclusion in which an individual, family or community is voluntarily ignored or banned from the *banjar* (*kesepekang banjar*), or even local village (*desa adat/pekraman* or *kesepekang desa*).

The most severe sanction might be banishment (*kesah*) from the community (*banjar* or village), and it might include prohibition to hold burial or cremation rights (*mendem sawa/ ngaben*) of own family members in customary village cemetery or *Setra desa adat/ pekraman*.

In contrast, *manak salah* sanction (sanction given to a woman who gives birth to twins of different sexes and there will be a punishment for this sanction), *anglangkahi karang hulu* sanction, *asu mundung* (dealing with inter-caste marriage in which the male was from the *jaba* group originally or caste from below,

while the female comes from *triwangsa*) have been repealed by Bali Regional House of Representatives (DPRD Bali) in 1950 under Regional Regulation No.11/1950 as archaic legislation that violate human rights then considered discriminatory and inhumane.

Commonly raised public issues about locally held Human Rights are generally concerned with rights to customary land, and definitions of what this means legally differ from country to country. One of the types of customary land rights that are often acknowledged is PKD (*Pekarangan Desa*) which is a residential plot for members (*krama*) in the *banjar* or customary village. In a more anthropological approach, this is reflected in the traditional village settlement pattern known as the “settlement system” of indigenous communities, such as the settlement system of *Tenganan Pegringsingan* community in Karangasem Regency which located around 65 kilometres East Denpasar. Then, *druwen desa*, which means village lands, such as gardens, dry fields, hills and rice fields owned by the customary village (*desa adat/pekraman*). The third category is *tanah ayahan desa*, or more specifically a kind of *tanah catu*, in the form of rice fields whose origins are historically connected with the era of traditional kingdoms. Various customary land tenure forms, in phases of agrarian law with particular reference to Law No. 5 of 1960 about the Basic Agrarian Principles, generally admitted through *hak ulayat* (Communal Land Rights).

In terms of protection of Human Rights, the existence of Indigenous Peoples, as groups distinguished from other people with specific characteristics

are reflected in legislation on national human rights itself contained in Article 28I paragraph (3) of the Constitution of 1945. These communities are acknowledged as possessing traditional rights (including customary land rights or *hak ulayat*) over their cultural identities and communal land in accordance with Article 18B of the Constitution. More explicitly, this recognition is also encapsulated in People's Consultative Assembly Decree No. XVII/MPR/1998 on Human Rights Article 41 which states that "the identity of traditional communities including rights over communal land shall be protected according to the development of the times." Likewise, the Law No. 39 of 1999 on Human Rights states Article 6 paragraph (2), "the cultural identity of Indigenous Law Communities along with their rights over communal land must be respected in harmony with the development of society."

Nonetheless, in terms of the enactment of The Basic Agrarian Law, even though indigenous communal land rights are formally recognized but it interprets that such *hak ulayat* comes under complete control of the State. One of the principal architects behind crafting The Basic Agrarian Law, Iman Sutikno, said:

"...because ethnic groups and Indigenous peoples are no longer free people but part of the Indonesian nation in the Unitary State of the Republic of Indonesia, which led to a transfer of authority from *hak ulayat*, which was previously entirely held by tribal heads or customary authorities as the supreme ruler in his territory, to the state (central government) that becomes the highest authority on community lands nationally". (Wijaatmaja, n.d.)

The practical consequence of this interpretation has been to invariably delimit the land rights of Indigenous peoples. At the most extreme, it has delimited power from the State enabling contravention of human rights where local communities are concerned, especially those whose *hak ulayat* lands have been dominated by the State and can be relocated to investors in terms of *Hak Guna Usaha* (Right of Exploitation) without their consent becoming possible. In the same vein, violations may take place with implicit approval of land certification mechanisms that re-make common village lands, *druwe desa*, *ayahan desa* and *pekarangan desa*, into property in individual titling for ex. under land registration programs like PRONA. From the Human Rights perspective of civil and political rights, which are also often called first-generation Human Rights, such actions may be classified as "state violations," which some have defined as "Human Rights by states," or violations of human rights made by states acting through their governing authorities.

The solution from a public policy standpoint, however, is much more radical. If a right to embrace local communities (culture identity and communal land rights/*hak ulayat*) under the term of safeguard of human right protection, then central and regional legislation must affirm that *hak ulayat* is the inherent rights of Indigenous peoples away from direct state control.

Moreover, to disallow private persons to individualize and certificate customary land, Regional Governments need to implement a process of land consolidation for traditional lands. This includes, among other things, the identification and establishment of a

shared understanding of the legal character of customary land (which has been initiated through collaborative research between the Provincial Government of Bali and Faculty Law, Udayana University). In the local governments, encourage in making registration customary village lands and as a legal entity under the Bali Regional Regulation Number 4 Year 2019 regarding Customary Villages law. Furthermore, vital is provision of legal defence for violated Indigenous community against actions encroaching their rights as specifically with respect to communal village land.

Mentions of the rights or claims even on the identity of local communities (Indigenous peoples) and tourism development like resort areas such as coastal zone continues to emerge, wherein according to Balinese Hindu belief those areas are blessed with sacred areas (holy area), which has in several cases could be perceived by their community see claim for not having their rights were neglected (*Padang Galak* case in Sanur and Bali Nirwana Resort in Tanah Lot case during 1995–1996). Basic Rights regarding those related to tradition or customs, such as conducting religious rituals are recognized as being protected basic rights under Article 18B Paragraph (2) of the 1945 Constitution and Article 6 Paragraph (1) of the Human Rights Law. Based on this, their maintenance as well as protection is assured within the Human Rights framework.

In order to avoid this from happening again in the future, policies of local government on human rights protection should be governed by four basic principles of regional autonomy with respect to:

1. While keeping in mind socio-cultural, economic and political contexts; Development shall observe the human rights dimension at its core.
2. Development needs to guarantee all the representation and engagement of original communities or Indigenous Peoples;
3. The life of development must respect the identity and culture associated with traditional communities or Indigenous peoples, as well as the ownership of land through customary rights (*hak ulayat*); and
4. Development is based on the will of policies ensuring that all sections of society benefit from development outcomes, so as to avoid disadvantage and discrimination.

4. CONCLUSION

The analysis above provides a first introduction to local rights issues showing that Human Rights have a universal character but the problems which arise in practice are determined by social, cultural, economic and political factors. There are four local Human Rights issues that often appear in academic spheres of various disciplines concerning Bali. These issues include; women and children, cruel and inhumane punishment (related to customary sanctions), rights over village land within the protection of cultural identity and communal land rights (*hak ulayat*) of local communities and finally but not least, basic human right on tourism development related with Bali as one of the main center for tourism development in Indonesia.

When greeted with a tourism development that favours tourism infrastructure and facilities to fulfil

tourists' need on the back of local Human Rights of such communities, it brings the vulnerability in particular the potential for abuse and or violation their rights which affect Indigenous Law Communities in Bali. The answer is found here in the realm of public policy, regional development strategies based on a Human Rights, based approach combined with implementation of international and national Human Rights standards, and agency in law enforcement impartially applied promotes the rule of law.

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