

The Authority of Customary Village In Managing Tourism Objects

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Abstract. The development of tourism in Bali provides a great magnet for increasing sources of economic income, including customary village in Bali. The research type of normative research. Customary village have natural resources and customary, religious and cultural resources participate as active players in the tourism industry in Bali, especially in managing tourism objects. Customary law should also be interpreted to strengthen state law in regulating customary villages, so that the relationship between the two is a parallel relationship, or co-existence not a hierarchical relationship. The research result, arrangements for the management of tourism objects that originate from State law and customary law are forms of legal pluralism. Customary villages have authority in managing tourism objects based on legal pluralism. State law and customary law have given this authority. However, the negative effects of tourism must still get attention, must be able to distinguish between the sacred and profane.

Keywords: Authority, Customary Village, Managing, Tourism Objects

1. Introduction

Customary village in Bali as a customary law community grows and develops for centuries and has original rights, traditional rights and original autonomy rights governing its own households based on the '*tri hita karana*' philosophy which is elaborated in the local wisdom of *sad kerthi*, imbued with the teachings of Hindu religion and cultural values and local wisdom living in Bali. The customary village in Bali has a very big role in the development of society, nation, and country so it needs to be protected, fostered, developed and empowered to realize the life of *krama* Bali that is sovereign politically, economically independent, and has a personality in culture in accordance with the *tri sakti* teachings Bung Karno the proclinator of independence of the Republic of Indonesia.

Customary village has a life order with a distinctive / unique high culture which is a world attraction, especially as a tourism destination, in the form of: customs, religion, traditions, arts and culture, and local wisdom. All of that is spirit, inner strength that provides endurance, adaptability and innovation in facing the dynamics of changing times.

The development of tourism in Bali provides a great magnet for increasing sources of economic income, including customary village in Bali. Customary village have natural resources and customary, religious and cultural resources participate as active players in the tourism industry in Bali, especially in managing tourism objects.

Based on the background description above, questions can be submitted including: 1) does the customary village in Bali have the authority to manage tourism objects in their area? And 2)

How is the model of the authority of customary villages in the management of tourism objects in Bali.

2. Method

This is a type of normative research. The data examined are secondary data using primary and secondary legal materials. The approach used is a conceptual approach, a statutory approach and a case approach. Data analyzed with description analysis.

3. Discussion

3.1 Authority of Customary Villages in Managing Tourism Objects

Argues that there is a difference between the understanding of authority and power. Authority is a formal power granted by legislation and power is defined as a certain part of authority [1]. Stated that authority is a mastery over a certain field of government, or certain groups of people in which there are authorities, and whereas authority is defined as the power granted to certain people or groups to carry out a public action [2].

Authority is closely related to power, legitimate power breeds an authority. Authority is a legitimate power because the rules set it. Authority can be exercised if it is regulated and in accordance with applicable regulations. This is in accordance with the principle of legality which aims to ensure legal certainty. The authority that is owned so that it is not carried out arbitrarily. Also related to the principle of accountability, who carries out their authority is responsible.

At least in theory there are 3 (three) ways to obtain authority [3], namely attribution, delegation and mandate. Attribution is the granting of governmental authority by lawmakers to these government organs. This means that the authority is inherent to the designated official for the position he is assigned to. This attribution refers to the original authority on the basis of the constitution or legislation. Delegation is the delegation of governmental authority from one government organ to another government organ. Or in other words there is a delegation of authority. So the responsibility / accountability lies with the recipient of the delegation / delegate [4]. A mandate occurs if an organ of the government allows its authority to be carried out by another organ on its behalf. In the mandate there is no transfer of responsibility, but the responsibility remains inherent in the mandator.

Based on the description above about the authority related to the authority of the customary village in managing tourism objects in Bali included in the authority that is attributed. The argument is that there are several legal rules starting from the level of the 1945 Constitution of the Republic of Indonesia to the level of regional regulations that give authority to customary villages in Bali to be able to manage tourism objects in their territory, in addition to that there is also original authority derived from the autonomy of their customary villages. The legal basis for the authority of traditional villages to manage tourism objects includes:

A. Constitutional Basis

The constitutional basis of customary village authority in managing tourism objects is contained in "Article 18 B paragraph (2) of the 1945 Constitution that the state recognizes and respects the customary law community units along with their traditional rights as long as they

are alive and in accordance with the development of the community and the principles of the unitary state of the Republic of Indonesia, which is regulated in law". The stipulation states that the unity of customary law communities (customary villages) along with their traditional rights as long as they are still alive get recognition and respect from the State in accordance with the principles of the unitary state of the Republic of Indonesia.

"Article 18B paragraph (2) of the 1945 Constitution stipulates that the state recognizes and respects the units of society customary law and traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State Republic of Indonesia, which is regulated in the Law". "This means that the existence of customary law community unit must still be recognized and given a guarantee of its survival in the Unitary State Republic of Indonesia". "Article 28I paragraph (3) of the Law Basic 1945 emphasizes, that: Cultural identity and community rights traditionally respected in harmony with the times and developments civilization".

Recognition and guarantee of the survival of the unit customary law communities and their traditional rights as wisdom Bali locality must be strengthened. This is in accordance with the provisions of Article 236 paragraph (4) of Law Number 23 Year 2014 concerning Government Regions, that local regulations can load local content according to the provisions of the legislation. This means that the region as a legal society unit that has autonomy has the authority to regulate and manage the Region in accordance with the aspirations and the interests of the people as long as they do not conflict with the order national law and public interest. In order to give wider space for the Region to organize and manage the lives of its citizens, the central government in forming policies must pay attention to local wisdom, and vice versa, when form regional policies both in the form of regional regulations as well as other policies should also pay attention to interests national. Thus a balance will be created between synergistic national interests and continue to pay attention to conditions, peculiarities, and local wisdom in the administration of the government whole. This shows clearly that even though it was realized in a way a unitary state needs homogeneity, but a unitary state The Republic of Indonesia continues to provide recognition and guarantees the existence of customary law community unit and rights the traditional.

In the Constitutional Court Decision, case decision 31/ PUU-V/ 2007 dated June 18, 2008 stated that a unit of customary law community could be said to be *de facto* still alive (actual existence) whether territorial, genealogical, or functional in nature. Contains elements of "(i) the existence of a community where the community has group feelings (in group feeling); (ii) customary government institutions; (iii) the presence of assets and/ or customary objects; and (iv) the presence of customary law norms. Particularly in territorial customary community unity there is also an element (v) of certain territories". It is also of the opinion that the unity of customary law communities and their traditional rights is seen in accordance with the development of the community if the customary law community unit:

1. "Its existence has been recognized based on laws that apply as a reflection of the development of values that are considered ideal in today's society, both laws that are general and sectoral in nature, such as agriculture, forestry, fisheries, etc. as well as in local regulation";
2. "The substance of these traditional rights is recognized and respected by members of the community concerned and the wider community, and does not conflict with human rights".

The customary law community unit that is determined to be a customary village carries out the function of government (local self-government), so there is an absolute requirement, namely the existence of a territory with clear boundaries, the existence of governance, and other

instruments, plus one of the other institutions in the life of the customary law community such as shared feelings, assets, and customary government institutions. So, based on the constitutional basis, customary villages in Bali have the authority to manage tourism objects as part of running their traditional rights based on applicable customary law.

B. Act of the Republic of Indonesia Number 10 of 2009 concerning Tourism

The provisions of Article 19 of the Tourism Act states in paragraph (1) that everyone has the right to have the opportunity to meet tourism needs, conduct tourism businesses, become tourism workers / laborers; and / or play a role in the process of tourism development. Whereas paragraph (2) states that every person and / or community in and around a tourism destination has priority rights: to be a worker / laborer; consignment; and / or management. The word everyone also includes traditional villages in Bali has the authority to manage tourism objects as part of running their traditional rights based on applicable customary law. Indigenous villages are also domiciled as legal subjects.

C. Act of the Republic of Indonesia Number 6 of 2014 concerning Villages

In Article 97 (1) The determination of a customary village must meet the following requirements: “a). the traditional law community unit and its traditional rights are actually still alive, both territorial, genealogical and functional in nature; b). customary law community unit and their traditional rights are seen in accordance with community development; and c). customary law community unit and their traditional rights in accordance with the principles of the Unitary State of the Republic of Indonesia”.

Next in Article 103 the authority of customary villages based on original rights includes: “a). governance arrangements and implementation based on original arrangement; b). regulation and management of customary or customary territories; c). preservation of the cultural and social values of the customary village; d). settlement of customary disputes based on customary law in force in the customary village in an area that is in harmony with the principles of human rights by prioritizing settlement by deliberation; e). the holding of a tribal peace court hearing in accordance with the provisions of the legislation; f). maintenance of peace and order of the customary village community based on customary law in force in the customary village; and g). the development of customary law life in accordance with the socio-cultural conditions of the customary village community”.

D. Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning regulations for the Implementation of the Act of the Republic of Indonesia Number 6 of 2014 concerning Villages

Article 34 (1) states that village authority based on original rights consists of at least: “a). indigenous peoples' organization system; b). fostering community institutions; c). fostering institutions and customary law; d). Village cash land management; and e). development of the role of the village community”. Furthermore, Article 35 states that the exercise of authority based on original rights by customary villages includes at least: “a). structuring the organizational and institutional systems of indigenous peoples; b). customary law institutions; c). ownership of traditional rights; d). traditional village treasury land management; e). customary land management; f). agreement in the life of indigenous village communities; g). filling the position of the head of the customary village and the customary village apparatus; and h). term of office of customary village head”.

E. Government Regulation of the Republic of Indonesia Number 47 Year 2015 concerning Amendment to Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning Regulations of Act Number 6 of 2014 concerning Villages

Article 34 paragraph (1) Village Authority based on the right of origin consists of at least: “a). indigenous peoples' organization system; b). fostering community institutions; c). fostering

institutions and customary law; d). Village cash land management; and e). development of the role of the village community”.

F. Bali Provincial Regulation Number 2 of 2012 concerning Cultural Tourism of Bali

Article 16, management of tourist attractions can be carried out by the Provincial government, customary village, traditional institutions, individuals and business entities. Furthermore, Article 25 customary village and / or other traditional institutions, can work together with the regional government to make efforts to prevent tourism activities that are not in accordance with the cultural tourism of Bali.

G. Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages

In Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages in Article 21 contains settings about customary village has the task of realizing *kasukretan* customary village which includes peace, prosperity, happiness, and peace of the *sakala* and noetic. Next in Article 22 contains settings about the task of customary village in realizing *sakukretan sakala* and *niskala* includes: “a). organize, manage, and protect the implementation of *parahyangan*, *pawongan*, and *palemahan* customary village; b). maintain and develop systems and implementation of customary law; c). organize *sabha kerta* and *kerta desa*; d). promote customs, religion, traditions, arts and culture, and local wisdom customary village community; e). carrying out activities in accordance with *sad kerthi's* values; f). organizes Hindu-based *pasraman* for development of identity, moral integrity, and quality of Balinese society; g). maintain the security of customary village; h). developing the economy of customary village; i). maintain the continuation of the status of land rights in *padruwen* customary village; j). maintain the sanctity, preservation, cleanliness and order of *palemahan* customary village; k). carry out coaching and empowering *krama* in improving environmental responsibility; l). carry out waste management in *wewidangan* customary village; m). carry out *panca yadnya* activities in accordance with the guidance of literature Hindu religion; n). carry out other activities in accordance with *awig-awig* and / or *dresta*; and o). carry out other tasks assigned by the government and regional government”.

The authority of customary village based on original rights regulated in Article 24 includes: “a). the establishment of *awig-awig*, *pararem*, and other traditional regulations; b). determination of the development plan of the customary village; c). stipulation of customary village revenue and expenditure budgets; d). implementation of government based on original arrangement; e). development and preservation of traditional, religious, cultural, artistic and cultural values and local wisdom; f). management of the *wewidangan* and *padruwen* lands of the customary village; g). management of *padruwen* customary village; h). the development of customary law life in accordance with Balinese principles *mawacara* and *mawacara* customary village; i). establishment of customary legal organization and system systems; j). participate in decision making and implementation of development in the *wewidangan* customary village; k). maintaining the peace and order of *krama* in the customary village; l). the holding of a tribal / customary village speech dialogue session civil nature; and m). settlement of customary / speech cases based on customary law”.

Article 25 paragraph (1) regulated states that the local authority on the scale of the customary village covers the management of: “a). shrines and sanctuaries; b). customary forest; c). water sources; d). *pasisi* and *sagara*; e). *padruwen* customary village / customary territories; f). agriculture, plantation, fisheries, and animal husbandry; g). food and handicraft industry of the people; h). customary village market; i). boat moorings; j). public baths; k). art, culture and *pasraman* studio; l). library and reading garden; m). travel destinations and / or attractions; n). *krama* settlement environment”.

Theoretically in the management of tourism objects by customary village, customary villages have authority originating from more than one source of law, both state and customary law, this is a portrait of legal pluralism. Legal pluralism is a fact of legal life in multicultural Indonesian society. Therefore, in order to improve the purpose, function and role of law in the unitary state of the Republic of Indonesia, in order to maintain, strengthen, strengthen the integration of all components of the nation's children, there is no reason for the ruling government and legislative body to immediately reorient and reforming the legal development paradigm that is legal centralism to the adoption of legal development that has the ideology of legal pluralism, responsive legal type, and progressive legal characteristics in the packaging of national law.

Legal pluralism will reduce the tension between universalism and localism so that social stability will be maintained [5]. Pluralism is a legal concept that contains more than one principle and substance of law and looks at situations with different circumstances of existing social facts [6]. States that legal pluralism is everywhere, both at the level of local law, national law, transnational law, and international law [7]. That is, both local and national level law. The study of legal pluralism opposes the statement that state law has the highest authority compared to the others. Legal pluralism emerged as a challenge to legal concepts centered on the state. He criticized the idea that state law is the only form of law used to regulate society [8]. In fact, legal pluralism can be a mediator in the occurrence of normative conflicts [9]. Legal pluralism can see changes in law that occur in society because of the different legal systems that govern that society [10]. Law in the study of legal pluralism puts more emphasis on contextually in the law. Legal pluralism is a normative assimilation that occurs due to various interacting laws [11].

The theory of legal pluralism basically emphasizes the importance of recognizing that non-state legal systems, such as customary villages or religious systems can work together with state systems. It has been used mainly by experts to produce descriptive and non-comparative work [12]. Laws in the community must be diverse so there needs to be a meeting point [13]. Legal pluralism is a prominent feature in many development contexts with negative and positive implications for the rule of law [14]. Legal pluralism is a fact that cannot be avoided [15]. Legal pluralism approach is not contrary to constitutional [16]. Legal pluralism is a step towards respecting the collective recognition of human rights [17]. In the legal pluralism approach, the relationship between different legal systems should lead to strengthening their respective legal systems.

The relationship between customary villages and the state, even though the current law on customary village does not mean that customary villages are under the state structure, but must be interpreted that customary villages are actually outside the state structure which has the role of strengthening the state's existence based on traditional rights. Owned by an customary village. Thus, customary village regulations, in this case customary law in Bali specifically referred to as *awig-awig* (customary law), customary villages are certainly not under the hierarchy of laws and regulations in force in Indonesia. Customary law should also be interpreted to strengthen state law in regulating customary villages, so that the relationship between the two is a parallel relationship, or co-existence not a hierarchical relationship. Arrangements for the management of tourism objects that originate from State law and customary law are forms of legal pluralism.

3.2 Tourism Object Management Models by Customary Villages in Various Places in Bali (Autonomous Model and Partnership Model)

Customary village is a customary law community unit in which indigenous peoples are included. Customary law communities are divided into territorial societies and *geneology*

societies [18]. Indigenous peoples are groups of people whose ancestors are beginners in that place, whose relationship with agrarian sources is governed by local customary law. In their consciousness, agrarian sources are not only an economic source, but also a cultural base. That is, if these sources disappear (or move control over to other groups), then the ones who disappear will not only be their economic power, but also cultural identity [19]. Regarding the traditional rights function stated that there were four functions relating to traditional rights in the communion of the customary community regarding the maintenance of harmony between the community and the universe, including: the function of government, the function of caring for spirits, the function of preserving religion, and the function of fostering customary law [20].

In the management of tourism objects by customary villages at least there is an outline of relations between traditional villages, local governments and other private parties. Customary villages can exercise their authority to manage tourist attractions independently, customary villages can work together with the local government, customary village can work together with the private sector or even have cooperation from three parties at the same time in managing tourism objects, both from the customary village itself, local government and private parties. Below are several tourism management models that involve customary villages.

A. Kutuh Customary Village Manages Pandawa Beach

The customary village of Kutuh manages Pandawa beach tourism objects, besides having 8 (eight) business units namely, LPD (Customary Village Credit Institution), Pandawa beach management, Gunung Payung tourism management, Paragliding attractions, cultural arts attractions, *Yadnya* device units, service goods and transportation units (Pandawa Mandiri Transportation) which is still in the form of a stub. Kutuh customary village income from existing business units reaches Rp 12.6 billion per year (2017). With the achievements currently achieved, the village manager is committed to optimizing the existing human resources (HR). The village prepares a number of scholarships for the community who continue their studies up to bachelor. Even this year it began to open scholarships for master. There is the decision of the Bendesa Kutuh customary villages as a result of *perarem* in the management of Pandawa beach. Synergy of BUMDA (company which is owned customary villages) and BUMDES (company which is owned villages), Kutuh customary village opportunities to be able to participate in managing the land owned by customary villages. There are two options given related to the use of land/ land belonging to the customary villages. First he gave the choice of capital participation or cooperation, where later businesses that stood on customary village land would be managed by BUMDES and customary villages in this case the obligation and the right to supervise. The second option is a contract system, where businesses that stand on customary village land are contracted by BUMDES. Surely the value of the contract will not be equated with the contract in force with investors or other entrepreneurs, because this involves the empowerment of the people of customary villages Kutuh itself.

B. Customary Village Attack Has BUMDA Turtle Breeding

The Turtle Conservation and Education Center (TCEC) and managed by a customary villages also functions as a tourist attraction. A single model, only managed by the customary villages of Serangan.

C. Seminyak Customary Village Managing Seminyak Beach

To explore the potential of villages in the Seminyak customary villages, especially in the economic field and maintain order, the Seminyak customary village customary villages formed an institution called BAPEDES (Village Development Agency), which was established in 2003. The length of the beach managed by the Seminyak customary villages is more or less 1.9 km. along the beach there are 186 beach traders. Beach traders offer various types of goods that are included in five categories, namely: (1) Umbrella traders or so-called longcer (2) Food and

beverage traders (3) Souvenir traders (4) Fabric and massage merchants and (5) Pedicure / hair tie plates.

D. Customary Village of Beraban Manages Tanah Lot Temple

The collaboration of government and community forces became a new force constructed in the form of a management body and operational management of Tanah Lot tourism attraction. The attraction of Tanah Lot tourism is managed by three components, namely the customary villages of Beraban, the private party and the local government of Tabanan regency with a profit sharing pattern. This agreement was finally stated in the Tanah Lot tourism management Agreement Letter No: 01 / HK / 2000 dated June 30, 2000. And the issuance of the Tabanan Regent Decree Number: 644 of 2000 concerning the Establishment of the Tanah Lot tourism object management agency. Until now, the Tanah Lot tourism object management cooperation agreement letter has been revised once, namely in 2002, which became the Tanah Lot tourism object management cooperation Agreement Letter Number: 01 / HK / 2002. Substantially, in this agreement, there was a change in the determination of operational costs. The Tanah Lot Tourism Attraction Operations Agency (BODTW) which manages the Tanah Lot tourism object in Tabanan, Bali, in 2017 managed to record an opinion of around Rp 147 billion.

E. Batuan Customary Village, Gianyar Regency

Every time they receive a tourist visit to Batuan Temple, Batuan customary villages, they do not collect any contribution fees. Only a donation box is prepared, so that tourists who visit can give a generous donation of *Punia*. There is no charge with tickets or the like, because what is used is a donation system for the maintenance of temples, donation money given by tourists, is used to repair temple, and tourist comfort, for example officers who cross guests, in addition to cleaning services, cleaning of toilets, security personnel such as *pecalang* and operational costs. As for the details, the officers who are involved every day are *pecalang* 30 people who work alternately, janitor and gardener 5 people, *upakara* temple officers 8 people, and *jero mangku* who are on duty every day 2 people. In addition, the traditional village has also prepared manners that provide recurs or shawls to tourists who lead to temples. Tourists who visit here when going to enter the temple must wear a shawl and a recipe that has been provided by the committee.

Another management model is the management of Tegenungan waterfall which is under the customary village, but managed by CV. Tegenungan Wahana Tirta. Through this mechanism the manager can set a final entrance ticket. The tickets enter Rp 15,000 / person and are deducted by a 2 percent tax to be deposited to the Gianyar Regency Government. For children under 5 years is free. While for domestic tourists Rp 10,000. If the person from Sukawati visits by showing their KTP, they are free of charge. ' This ticket collection is also based on the results of a traditional village decision in the form of a *pararem*. In addition, this object is managed by CV. Tegenungan Wahana Tirta has paid taxes to the Gianyar Regency Government. There is a Basic Contract or Agreement as a legal basis.

F. Pecatu Customary Villages Managing the Tourism Objects

There are seven tourist attractions that are assets of the Pecatu customary villages, which are the outer regions of Uluwatu Temple, Suluban Beach, Padang Padang Beach, Labuhan Sait Beach, Bingin Beach, Nyang Nyang Beach and Dream Land Beach. Outside the Uluwatu Temple a direct management body has formed by the Pecatu customary villages. Pecatu customary villages has responsibilities, rights and obligations to maintain, maintain and manage existing beaches in an effort to preserve nature, customs, culture and religion and improve the welfare of its people. Indirect benefits that are felt by the community are where the results of the management of tourist attraction are used by the preacher of Pecatu customary villages to

finance various development programs both physical and non-physical as well as funding various religious ceremonial activities, so that citizens are not burdened with costs for development and religious ceremonies in the village of Pecatu customary villages. The pattern of the distribution of the results of retribution into the outer area of Uluwatu Temple amounting to 25% is deposited into the Badung Regency Regional treasury and 75% for the Pecatu customary villages as the manager. Revenue from the management of Uluwatu Temple's outer tourism attractions apart from tourist entrance fees also comes from rental of village government-owned merchant stalls, daily parking fees, parking fees on *piodalan*, special days levies and fees for *kecak* dance performances.

The management of attractions by traditional villages there are several problems that occur in practice in the field, including:

- a. The Issue of Customary Villages and Wild Charges in Tourism Objects (Country vs Customary Villages), Example of a case in Sanur, Tampaksiring
- b. Basic Legal Issues do not exist, if not regulated *awig-awig* or *perarem* may not run
- c. Issues of conflict between customary law and state law
- d. Share issues between customary villages and local government
- e. Issues of Financial Liability Reports

4. Conclusions

Tourism has an important role in the development of Bali, in addition to supporting the economy can also reduce unemployment in Bali. Customary villages have authority in managing tourism objects based on legal pluralism. State law and customary law have given this authority. However, the negative effects of tourism must still get attention, must be able to distinguish between the sacred and profane. The threat of capitalization to Balinese culture as a tourism commodity cannot be separated from the economic power that is an attraction. It must also be filtrated by a customary village with the authority it has in managing tourist objects that come into direct contact with tourists. Sustainable tourism based on customs and culture of Bali must from the beginning become a vision in the management of tourism objects by customary villages.

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