



Druwe Land Conservation in Strengthening Traditional Villages in Bali

I Made Suwitra

Faculty of Law Warmadewa University Denpasar Bali

Email: madesuwitra27@gmail.com

ABSTRACT

The druwe land in question is land controlled by a traditional village and scientifically-technically called ulayat land, customary land. The lands in the awig-awig of this traditional village are called druwe desa, which consist of spider temple land, field land, market land, setra land, hill land, AYDS land, and PKD land. Therefore, this study discusses two problems, namely how the right to control the village on druwe land, and how administration of druwe desa land and strengthening of traditional villages and alternative administrative patterns for customary lands as druwe traditional village. This research is a normative legal research based on primary and secondary data. The approach used in this research is the statutory approach and the legal concept analysis approach. The conversion of the village druwe land functions often leads to prolonged conflicts due to the late awareness of the importance of preserving the village druwe lands. The potential of the village druwe land if it is excavated and adapted to the development of tourism in Bali can be a bonus for the village government and its village manners in achieving prosperity. To achieve this goal requires a high level of awareness and commitment from village manners, village government (customs and services), local government and government through policies in fostering a culture of village manners in order to maintain the realization of the Tri Hitakarana philosophy in traditional villages which is used as a profit for investment, sustainable development and also in strengthening the existence of traditional villages.

Keywords: Conservation, Druwe Land, Villages

How to cite:

Suwitra, I Made. (2022). Druwe Land Conservation in Strengthening Traditional Villages in Bali. Law Doctoral Community Service Journal, 1(1), 19-24

1. INTRODUCTION

According to customary law, land has a very important position both because of the facts and because of its nature (Wignjodipuro, 1979). Due to the fact that there is a very close relationship between the alliance and the occupied land. Relationships that have a source and are religiously magical. Which relationship causes the partnership to obtain the right to control the land in question, to use the land, to collect produce from the plants that live on the land, and to hunt for the animals that live there. This right is called the right of lordship or customary rights. Van Vollenhoven called "*beschikkingrecht*". In Bali, it is called "*pribumi rights*". The objects of customary rights are: land (land), water (waters such as rivers, lakes, beaches and their waters), wild plants and wild animals (Suwitra, 2014).

In Bali, most of the land within the customary village area, except for full individual land, is customary land (land of *druwe desa*), both controlled communally and individually (Sastrawan, 2018). Control and ownership of land according to customary law is still recognized as long as it has not been fully regulated in the *hukum tanah nasional* (HTN), which is relevant to the provisions of Articles 56, 58 of Law no. 5 of 1960 concerning *Peraturan Dasar Pokok-Pokok Agraria* (UUPA). With this concept, it is hoped that there will be coexistence between customary law (folks' law) and state law. The contents of the provisions of Article 56 of the UUPA:

As long as the law regarding property rights as referred to in Article 50 paragraph (1) has not been formed, then the provisions of local customary law and other regulations concerning land rights that give authority as referred to in or similar to those referred to in Article 20, as long as it does not conflict with the spirit and provisions of this Law.

So, customary law will continue to color the model of land tenure and ownership in customary law communities such as in Bali. If there is a conversion of customary land (*druwe desa*) to be carried out, the

right choice model is needed so that tenure rights based on religious communal concepts can remain the umbrella. Meanwhile Article 58 formulates:

“As long as the implementing regulations for this Law have not been established, the written and unwritten regulations regarding the earth and water and the natural resources contained therein and land rights, which exist at the time this Law comes into force, remain valid as long as it does not conflict with the spirit of the provisions in this Law and is given an appropriate interpretation”

The provisions of Article 58 of this UUPA expressly provide recognition and respect for the state for the existence of rights to land of indigenous peoples (*druwe desa*) provided that they do not conflict with the interests of the government and the state and government regulations. Again, this provision indicates a coexistence between customary law and state law in the sense that state law does not deny the existence of customary law, while customary law may not conflict with state law.

The existence of the terms customary land and western land is a reference to historical aspects in viewing land tenure during the Dutch colonial period following the population groups and their respective laws, namely the European group with Western Civil Law (BW), the Foreign Eastern Group with its customary law and some BW, and the Bumi Putra group with their customary law. So, the law applies. Lands controlled by European groups are subject to Western Civil Law (BW) while customary lands are subject to customary law. The implication is that the terms West land and customary land are known to distinguish lands controlled by the European and Foreign Eastern groups, and customary lands, namely lands controlled by the Bumi Putra group. From this difference, the principle that prohibits the alienation of customary lands to people who are not a legal alliance for the reason of preserving and maintaining national identity in the context of a customary law alliance.

By paying attention to the gap between the expectation of preservation and the reality of the conversion effort according to the UUPA and the transfer of customary land (*druwe desa*) which continues to occur and is increasingly massive, it is considered important and urgent to socialize several concepts and principles in customary law regarding land tenure which is used as material. the main role in the formation of the UUPA in Traditional Villages. The main goal is that customary lands as *druwe desa* that still exist can be preserved as a variable that is able to strengthen traditional villages not only in discourse but as a reality that must always be fought for by stakeholders, one of which is visionary and progressive campuses and academics. Furthermore, the formulation of problem in this research are how the right to control the village on *druwe* land, and how administration of *druwe desa* land and strengthening of traditional villages and alternative administrative patterns for customary lands as *druwe* traditional village.

II. RESEARCH METHOD

According to Soekanto, (2010), there are 2 types of legal research, namely: normative legal research and empirical or sociological legal research. The type of research used in this research is normative legal research. Normative legal research is legal research based on secondary data. There is also a normative legal research that focuses on analyzing legal norms and placing legal norms as the object of research. In this study, researchers used normative legal research by examining norms relating to paralegals and villages. The approach used in this research is the statutory approach and the legal concept analysis approach (Marzuki, 2005).

III. RESULT AND DISCUSSION

3.1 The Right to Control the Village on *Druwe* Land

Land tenure rights in Bali are based on *ulayat* rights or *prabumian rights*. This condition will be very relevant if it is related to the relationship between the occurrence of traditional villages and customary lands from a historical perspective. In addition, it is also relevant to the theory of natural law and *occupatio* in the sense that there is control and ownership of *3olar u* (communal) as well as individual (individual) control and ownership. The relationship between communal rights and individual rights is also urging each other, thickening and thinning, protracted and muted. It is even more dominated by individual rights, especially in the use of yard land and its exploration. The process of thickening and depleting the relationship between communal rights and individual rights seems to depend very much on the sensitivity of their *prajuru adat* and the awareness of village manners towards the customary lands they control in determining whether communal property rights will change their status to full individual property rights. Land that used to belong to customary lands has sometimes been transferred to full private ownership, better known as land certificates of ownership (SHM), such as AYDS land in the Traditional Village of Kemenuh Gianyar after independence turned into full individual land, as a result of the issuance of tax papers. by the government, even though initially AYDS was an integral part of the PKD land.

In this case, it can be stated that the traditional village has not understood the implications of the conversion from AYDS to full individual land, and is only now realizing it, because AYDS is basically *nutug* (follows) on PKD, meaning that all materials needed for ceremonies and religious ceremonies usually come and are produced from the land. AYDS which is called *teba* or also as a source of basic needs if the AYDS land is in the form of rice fields. Even the place of activities related to traditional activities can be carried out in *teba* (AYDS) as a *nista mandala* (teben) in accordance with the *Tri Mandala* concept (Doktrinaya, 2020). These customary lands are referred to as "druwe" or "druwen" desa (adat), meaning gelah (Bali) or belonging, belonging to, customary village authority. So, the lands in the area (wewengkon) of the traditional village are the *druwe* (n) of the village, except for full private land. So, from this *druwe* concept, customary lands in their *ulayat* are under the authority of the customary village, consequently the authority to manage in the sense of maintaining and leading its designation, also directly uses it for the public interest, such as for *setra*, village markets, village halls.

The issuance of a tax letter in the form of IPEDA or PBB against AYDS land brings other implications for legal culture, namely the perception of indigenous peoples (*krama desa*) who consider that the land is controlled and there is evidence of tax payments in the form of IPEDA or PBB which can be used as the basis for claiming control or ownership which is called "druwe ngeraga" with the implication that with the said evidence, one can propose to increase the right to ownership through conversion such as the menu provided by the UUPA. This is not entirely the case, meaning that the lands controlled by village manners with evidence of IPEDA or PBB are AYDS, or even those that are privately owned or "druwe ngeraga". Therefore, it is necessary to sort out and identify as well as inventory the control of lands in the customary village area. The aim is to ensure the ownership rights, so that they are not mistaken in administrating through conversion in the registration of rights.

Errors and inaccuracies in land administration have various implications. One that stands out is the conflict over claims to control. Until now, the control over land has often caused conflicts, both horizontally and horizontally. This conflict in the field of land tenure can be caused by several reasons, such as: due to changes in the pattern of people's income from communal to stic money, from socio-religious to individual secular, as well as changes in the meaning of the concept of mastery towards ownership. In addition, because there is a change in the economic value of the land itself, which is increasing. Significant increase in the economic value of land occurred in urban areas, such as Denpasar City.

The land of the *druwe desa* (custom) is definitely regulated in *awig-awig* with various names, such as in Anjingan Village, Bangjarangkan District, Klungkung Regency which formulates *druwe desa* include: Pura Kahyangan Tiga, Pura Mas Melanting Ayu, Tegak Bale Desa/Banjar, *Setra* land, Margi Land or Rurung (road), Tanah Pekarangan Desa (PKD), Laba Pura Land. Meanwhile, in the Traditional Village of Siangan Gianyar, it was stated that the *druwe desa* included: *Kahyangan Tiga*, *Penataran Agung Temple*, *Prajapati Temple*, *Setra*, *Pelaba Desa*, LPD, BUPDA, Karang Ayahan. In contrast to the *druwe desa* in the Penglipuran Traditional Village, they include: Sacred Buildings, Laba Pura Land, Traditional Village Land, Karang Kerti, Ayahan desa Land (AYDS), *Setra*. So, one of the elements that qualify as a *druwe desa* is in the form of land that is used as a *setra*, housing for *krama desa*, *tegak pura*, *laba pura*.

From the results of the dissertation research, it was found that land tenure or ownership in Bali can be grouped into four main groups, namely state land, local government evidence fund land (Pemda) which is now known as 4olar land of the Regional Government, fully private land, and customary lands which are owned by the local government. controlled or owned by a traditional village called the *druwe desa*. Land as *druwe* becomes the right of control of the traditional village, which is relevant to the religious communal concept. This means that these lands are recognized as a gift from *Ida Sang Hyang Widi Wasa* (God Almighty) which can be used together (Simpén,1985). The right to control this traditional village gives authority to the village through its traditional officers to regulate and lead its designation, so that lands as *druwe desa* are used by *krama desa* individually, the supervision of their use becomes the authority of the traditional village. Consequently, *krama desa* who will carry out the construction of houses on PKD land are required to report to the Customary Prajuru. The goal is that the use of PKD land always reflects the philosophy of *Tri Hitakarana* in spatial planning and village money which can be used as an advantage as village tourism or village tourism.

Penglipuran Village is known as a Tourism Village because it is able to explore the potential of cultural resources in implementing the *Tri Hitakarana* philosophy as an advantage, such as preserving money in the form of spatial designations and traditional village spatial planning including spatial planning, space utilization, and controlling space utilization under the control of *awig-awig*. In an effort to preserve the polar money arrangement and the traditional type of village spatial arrangement, it is not enough just to use the *awig-awig* arrangement. Also, no less important is the consistency of supervision and law enforcement by

the existing legal structure, namely *prajuru adat* to immediately make efforts to restore conditions to their original state or restore balance again (evenwicht). Another variable that has the same potential in maintaining traditional superiority characteristics is community culture in the form of attitude and attitude by the community in preserving traditional characteristics of traditional village management and spatial planning. It is relevant to the elements of the legal system as stated by LM. Friedman, that the operation of the legal system can be analyzed from three components, namely (1) Legal Structure, (2) Legal Culture, and (3) Legal Substance.

3.2 Administration of Druwe Land and Strengthening of Traditional Villages and the Alternative Administration Pattern of Druwe Land

a. Administration of Druwe Land and Strengthening of Traditional Villages

The discourse on strengthening Traditional Villages became relevant with the issuance of the Regional Regulation (Perda) of the Province of Bali No. 4 of 2019 concerning Traditional Villages in Bali which provides legal standing as legal subjects, as confirmed in Article 5, which formulates: Traditional Villages have the status of legal subjects in the government system.

The term "strengthening" of traditional villages is a choice of words to remind all components of Balinese society to the conditions they are facing, namely the complexity of the problem, both on a local and national scale. Even in the Bintek team meeting on March 13, 2019, it was agreed to use the theme "Strengthening Traditional Villages through Technical Guidance for Indigenous Prajuru throughout Bali". The discourse on strengthening Traditional Villages must be welcomed regardless of interest, because strengthening Traditional Villages is indeed needed. However, to strengthen it requires intelligent, responsive, honest and selfless thinking. One of them is through a coexistence approach from several perspectives, such as: institutions, budgeting, work programs, and commitments.

This land is also the philosophy of the Palemahan element, which is an element of the balance of life that is directly related to the environment. In addition, the land of Druwe Desa is part of the embodiment of the elements of Pawongan and Parahyangan, which are united in achieving a balance of life in a traditional village (Suwitra, 2005).

Observing the phenomena and thoughts of these scholars, it is necessary to disseminate information to all traditional villages in Bali so that they are always used as subjects and objects to achieve popularity for political support and power. For this reason, efforts are needed to strengthen ideologically and juridically as well as academic studies in fortifying themselves against the tug-of-war between the discourse of strengthening and the hegemony of power through imposing state duties on traditional villages by denying the existence of service villages. This condition can undermine the intrinsic nature of traditional villages, namely autonomous and otohton as characteristics of customary law communities.

Since the enactment of the UUPA, especially with the enactment of the National Agrarian Program (Prona) in an effort to accelerate administration through registration of land parcels controlled by individuals, legal entities, autonomous regions, and customary law communities, it can be stated that some customary lands (druwe desa) after being registered, a certificate of ownership (SHM) is issued in the name of the individual krama desa. So, there has been individualization of customary lands as druwe desa into full individual lands as in the case of PKD Siladan, Kemenuh, Tusan lands.

Taking into account that until 2017 the existing land parcels had not been fully registered either sporadically or systematically according to legal politics in the UUPA, the PTSL (Complete Systematic Land Registration) program was issued with a target that by 2025 all land parcels had been registered according to the UUPA and organic rules. If this registration model is not handled wisely, then it is possible that there will be a change in communal ownership to individuals with different subjects, namely from what was previously controlled by the customary village and then changed to individually controlled by krama desa known as property rights or land rights. full individual land. The implications of being a hurricane volume II in the form of conflicts in the agrarian sector are re-emerging. Another implication is that all druwe desa lands without distinguishing their tenure rights and types are entirely administered for registration as customary village property rights (Pakraman) following the mandate pattern of the ATR Ministerial Decree No. 276/KEP-19.2/X/2017 concerning the Appointment of Pakraman Village in Bali Province as the Subject of Joint (Communal) Ownership of Land. This condition actually contradicts the communal religious concept which is used as the main ingredient in the formation of the LoGA. In addition, it will be contrary to the nature of the "mulur mungkret" relationship between individuals and traditional villages on customary land as druwe desa.

Harmonization efforts against contradictions or gaps that can occur between efforts to administer customary lands as village druwe according to the UUPA and organic regulations into communal property

rights can deny the right to control *krama desa* from generation to generation and at the same time deny the recognition of hereditary use rights with obligations. in the form of "ayahan". Meanwhile, if the administration is carried out through conversion based on control of more than 20 consecutive years to be able to issue a certificate of SHM in the name of *krama desa*, then the existence of traditional villages is getting weaker in the face of village manners in carrying out the public aspect of the "Right of Control" over druwe lands. In order for the UUPA mandate to be implemented in the administration of customary lands, as well as private tenure rights are not revoked but the religious communal concept can still be maintained along with the preservation of the relationship between individual rights and communal rights in the context of "mulur-mungkret", a relevant administrative pattern is needed as a form of registration.

b. Alternative Administration Pattern of Druwe Land

Traditional Villages through their Customary Prajuru in the perspective of authority based on ulayat rights have the authority to regulate, administer, manage, and supervise their ulayat lands as joint property regarding:

- a. allotment, use, supply, and maintenance of ulayat rights;
- b. legal relationship between people and ulayat rights; and
- c. legal relationship between people and legal actions concerning customary rights.

Currently, the authority possessed by Traditional Villages is not carried out properly and correctly, especially in managing the designation of existing customary lands, supervising their use and utilization, and taking enforcement actions against violators of spatial patterns and spatial planning of customary villages, including against the abandonment of customary lands. So in the context of the legal system, supervision and law enforcement against violators is at stake against the strength of customary lands over customary village control rights or customary *krama desa*.

The issuance of Permen ATR/Ka.BPN No. 276/KEP-19.2/X/2017 on the one hand can strengthen the rights to control and ownership of customary land. On the other hand, it can also weaken the authority of traditional villages over their ulayat lands when they make the wrong choice of the registration model. This condition of choice will increase in credit with the issuance of Permen ATR/Ka.BPN No. 12 of 2017 and which has been replaced by Permen ATR/Ka.BPN No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL) in conjunction with the Presidential Instruction of the Republic of Indonesia No. 2 of 2018 concerning the Acceleration of PTSL throughout the Republic of Indonesia.

The chronology of the administration in the registration of customary lands occurs because the right or "proper" model has not been found by taking into account the variations in the types of customary lands that exist in each customary village. In addition, it is also because the success of PTSL is only measured by the number of land parcels that can be certified, so that the number of certificates that are always the target of achievement can ignore the actual conditions for the existence of the relationship between subjects (*krama desa*) who control the object (land), especially on customary lands. which are qualified as AYDS, PKD and Karang Ngeraga (private) lands. An example is looking at the case in the "Jro Kuta Pejeng" Traditional Village, Gianyar.

In the appearance of the PTSL case of customary lands in the Jro Kuta Traditional Village, a claim was found, that "all land controlled by village manners that has not been administered according to the UUPA as state law is "druwe desa land". Meanwhile, in reality, not all land controlled by *krama desa* and without proof of a certificate of title is the land of druwe desa. The proof of ownership of land rights prior to the enactment of the UUPA can be in the form of Pipil, DD, Petok D and Tax Payment Letters (IPEDA). So, the separation of full individual land and incomplete individual land becomes important and main to avoid the arrogance of the Prajuru Desa in registering the land of the druwe desa, so that the collectivity relationship in the traditional village can be maintained. The PTSL program is not the cause of the breakdown of a solid collectivity relationship. Therefore, the neutrality and wisdom of the Traditional Prajuru are needed in responding to the efforts made by their village manners in proving their ownership rights over the claims of the druwe desa. It is relevant to the publicity principle adopted by the UUPS as state law. Where to give everyone to submit their objections when there are ownership rights to their land registered by other parties according to the processes and procedures within the time limit provided.

There are several models of registration as a form of administration of druwe desa lands that are considered ideal to be offered, namely:

1. Laba Pura land is registered according to the Decree of the Minister of Home Affairs No. SK.556/DJA /1986 concerning Appointment of Temples as Religious Legal Entities That Can Have Land Rights. So, the registration includes Profit Pura, Upright Pura (Tri Mandala).
2. Setra land can be done with the subject of Pura Dalem or Pura Prajapati.

3. Pasar land can use the subject of a traditional village or Pura Melanting.
4. Lapang land can use the subject of Traditional Village.
5. Roads/Rurungs, Water Resources using the Land Registration Map (Hak Mastery) pattern which is in coexistence with the UUPA (State Controlling Rights).
6. PKD land, AYDS can use the replication of HPL (Tanah Asset Desa Adat) bearing in mind the existence of a “mulur mungkret” relationship between individual tenure rights and customary villages. This means that there are HPLs that are burdened with usufructuary rights (hereditary).

IV. CONSLUSION

From the description above, it can be concluded that customary lands as traditional druwe desa with various variations still exist today and at the same time become the object of land registration which basically aims to provide legal certainty over the rights of the druwe desa. However, in practice, due to the wrong attitude and perception of the right to control and ownership of full individual land and incomplete individual land in its registration by the Traditional Village Prajuru, a dispute occurs. Disputes also often arise as a result of the registration of communal lands (genealogical groups) into individual plots of land.

To minimize and prevent disputes in registration, an appropriate or ideal model is needed in granting title rights, especially by the Land Agency so that the religious communal concept as the basis for customary village rights can still be reflected in the granting of new rights according to the UUPA as state law. Likewise, Customary Prajuru and Krama Desa Adat can remain united by prioritizing deliberation and consensus in making choices about the administrative model of customary lands (druwe desa) and private lands (druwe ngeraga) in their registration to obtain certificates according to the type of rights. The main goal is to strengthen traditional villages through the administration of customary lands as village druwe, which can really be realized as a necessity in protecting the existence of indigenous peoples such as the Traditional Villages in Bali as a whole.

REFERENCES

- Doktrinaya, I. K. G. (2020, August 4). Terkait tanah PKD, dua warga dikenai sanksi adat. *Bali Express*.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana Pranada Media Group.
- Sastrawan, I. P. D., Guntur, I. G. N., & Andari, D. W. T. (2018). Urgensi Penguatan Hak Atas Tanah Druwe Desa di Bali. *Tunas Agraria, Vol.1(1)*.
- Simpem, I. W. (1985). *Kamus bahasa Bali*. Mabhakti, Denpasar.
- Soekanto, S. (2010). *Pengantar penelitian hukum*. Universitas Indonesia, Jakarta.
- Suwitra, I. M. (2014). Penguasaan Hak Atas Tanah dan Masalahnya (Land Posseeion Right Ist Affair. *Jurnal IUS Kajian Hukum Dan Keadilan, Vol.2(6)*.
- Suwitra, I. M. (2005). Tugas Prajuru Adat dalam mengatur tanah adat khususnya tanah telajakan dalam konsep menuju Bali yang ajeg. *Kertha Wicaksana, Vol.11(1)*.
- Wignjodipuro, S. (1979). *Pengantar dan Asas-asas Hukum Adat*. Alumni, Bandung.