

# Jurnal Notariil

Jurnal Notariil, Vol. 8, No. 1, 2023; 32-36

P ISSN 2540 - 797X

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

E ISSN 2615 - 1545

## TRAINING VILLAGE TENURE RIGHTS ON COASTAL LAND VS VILLAGE ULAYAT IN UNGASAN TRADITIONAL VILLAGE

Ni Komang Rai Widhyaningsih\* and I Made Suwitra  
Magister of Notary, Universitas Warmadewa, Denpasar-Indonesia

\*E-mail: raiwidya08@gmail.com

How To Cite:

Widhyaningsih, N. K. R., & Suwitra, I. M. (2023). Training Village Tenure Rights on Coastal Land Vs Village Ulayat in Ungasan Traditional Village. *Jurnal Notariil*, 8 (1), 32-36, Doi: <https://doi.org/10.22225/jn.8.1.2023.32-36>

### Abstrak

This paper analyzes the Customary Village Tenure Rights on Coastal Land as Village Customs in the Ungasan Traditional Village. The focus of the study in this paper is on land that has been certified and Ulayat land is joint land with the members of the customary law community concerned. The research method used in this paper is an empirical legal research method using the Legal Approach, Analytical, Case Approach, Customary Law Approach, and Legal Sociology Approach. The analysis of legal materials in this paper is carried out by using several legal theories, namely Legal Certainty Theory, Authority Theory, Justice Theory, and Benefit Theory where these theories will later serve as analytical tools in discussing legal issues in this study. It can be concluded that the right of control over customary land to coastal land follows the concept of control rights regulated in Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 Paragraph (1) of the BAL. The regulation on the use of coastal land controlled by the Ungasan Traditional Village has been stated and regulated clearly as it turns out in the Ungasan Traditional Village Awig-Awig and Ungasan Traditional Village Perarem Number 06 of 2020, it can be seen that there are clear arrangements relating to the use of coastal land areas in the Ungasan Village. Ungasan Traditional Village. In relation to the authority of the Ungasan Traditional Village on the utilization of the coastal land area in its territory, it is based on the existence of the customary land rights owned by the Ungasan Traditional Village based on Article 18 of the 1945 B UUD.

**Keywords:** Tenure Rights; Communal Land; Ungasan

### 1. INTRODUCTION

Land is a very basic human need, humans live and carry out activities on the ground so that humans are always in contact with the ground. It can be said that almost all activities of human life, either directly or indirectly, always require land. Between humans and land is something that can not be separated. In meeting the needs of life such as housing, a place to carry out agricultural activities and even a place to bury corpses, Humans in their lives will definitely come into contact with the ground. So that land has a very important position in human life (Arba, 2015). Guarantees of legal certainty in the land sector will be very necessary, written, complete and clear legal instruments and consistently implemented are needed in providing legal certainty in

the land sector and holding land registration for the sake of guaranteeing legal certainty of land rights.

Beginning with the issuance of Law No. 39/1999 on human rights, the importance of the right to live, maintain life and improve the standard of living (Article 9 Paragraph (1)) requires the availability of land to fulfill the right to welfare in the form of property, which can be owned. for himself and together with others for his development together with the community. Property rights that have social functions are protected from arbitrary actions from other parties, so that when property rights are needed for the public interest, they must be given reasonable and immediate compensation and carried out in accordance with the provisions of the legislation (Article 36,

Article 37). The principle of respect for private property was then included in the Second Amendment of the 1945 Constitution, namely in Article 28 A, 28 H Paragraph (4) and Article 28 J Paragraph (2) (Sumardjono, 2008). Land registration is an important part of the Basic Agrarian Law, commonly referred to as the LoGA, because land registration is the beginning of the process of producing proof of ownership of land rights. Because of the importance of the issue of land registration, the LoGA ordered the government to register land in all parts of Indonesia (Supriadi, 2009).

Land owned with certificates will then be able to, among other things (in addition to many other benefits), be used as community economic resources, especially in the context of strengthening business capital, so that they can make a real contribution to efforts to improve community welfare. Ulayat land is a plot of land on which there are ulayat rights of a particular customary law community. Ulayat land is land with the members of the customary law community concerned.

Juridical control of land means that there is a right in that control which is regulated by law and there is the authority to control physically, for example in the case of a legal lease of land the land is the right of the land owner but physically the land is cultivated or used by the tenant of the land within a predetermined period of time. It is also agreed that in the case of guaranteeing land to the Bank, the Bank as creditor is the holder of the security right to the land that is used as collateral but the physical control or use remains with the owner of the land rights. The land issue is a very touching issue for justice because of the rare and limited nature of land, and is a basic need of every human being, it is not always easy to design a land policy that creates justice for all parties. A policy that provides greater concessions to a small part of the community can be justified if it is balanced with a similar policy aimed at other, larger groups (Sumardjono, 2007).

The research formulation drawn in this paper is about (1) how is the regulation of customary village control

rights over coastal land as village ulayat in Ungasan Traditional Village? and (2) What is the authority of the traditional village over the coastal land in the Ungasan Traditional Village?

## **2. METHOD**

The research method in this paper is an empirical legal research method. Empirical legal research is law that is carried out in terms of the field or often called empirical legal research by examining the implementation and implementation of statutory provisions in the field (Suratman & Dillah, 2013). In the discussion, several types of legal approaches are used, namely the Legal Approach, Analytical, Case Approach, Customary Law Approach, and Legal Sociology Approach.

## **3. DISCUSSION**

The functions and uses of these coastal areas are indeed very important for the use of coastal areas to be strictly and clearly regulated so that coastal areas in Indonesia can be maintained for their sustainability and also their uses. Based on the provisions of Article 1 point 2 of the Law of the Republic of Indonesia Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands as amended to the Law of the Republic of Indonesia Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management Coastal Zone and Small Islands, it is stated that the Coastal area is a transitional area between land and sea ecosystems that are affected by changes on land and sea. In relation to the existence of coastal land itself, according to the Decree of the Minister of Marine Affairs and Fisheries Number KEP.10/MEN/2003 concerning Guidelines for Integrated Coastal Management Planning, the coastal area which has been defined above as a transitional area between interacting land and marine ecosystems, where it is determined that towards the sea which is 12 miles from the coastline and also one third of the sea area is to be controlled by the Regency/City and towards the land up to the administrative boundary of the Regency/City.

Coastal land areas controlled by a village can of course be one of the most potential resources if used and developed, one of which is to increase village income

and even regional income. Based on the results of an interview with Mr. I Wayan Disel Astawa, S.E., M.Sc. as Jro Bendesa Ungasan Traditional Village which was held on July 15, 2022; It is known that as in Ungasan Village, Badung Regency, most of the coastal areas have changed their functions and uses for other purposes, especially being converted as lodging houses or villas or resorts. The transfer of the function of the land or land on the one hand is indeed because it is used for the benefit of the community at large, but on the other hand it must also be seen whether the conversion of the land is in accordance with the existing provisions, including in accordance with the designation contained in the regional spatial planning regulations (Regional Spatial Planning).

Regarding the use of the coastal area in the Ungasan Traditional Village, Badung Regency, Article 6 of the BAL states that: "All land rights have a social function" and this explains that any land rights that exist in a person cannot be justified that the land will be used or not be used solely for personal interests, especially if it causes harm to the wider community. In the sense that land does not only function for the holders of land rights and villages that control their territory, but also for the Indonesian people as a whole, with the consequence that the use of rights to a plot of land must also pay attention to the interests of the people living around the coastal area.

According to the Coastal Law, the management of the Coastal Zone and Small Islands includes the activities of planning, utilizing, monitoring, and controlling human interaction in utilizing Coastal Resources and Small Islands as well as natural processes in a sustainable manner in an effort to improve the welfare of the community and maintain the integrity of the community. The Unitary State of the Republic of Indonesia. In connection with the authority of the Ungasan Traditional Village on the utilization of the coastal land area in its territory, it is based on the existence of the customary land rights owned by the Ungasan Traditional Village. Article 18 B of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that the State recognizes and also respects customary law community units and their traditional rights as long as they are still alive and in accordance with

the development of the nation, society and the principles of the State. Unity of the Republic of Indonesia regulated by law.

If using the concept of the Customary Law Community, the living space for the Indigenous Law Community is as a landscape unit or an expanse of ecological unity that is defined and marked by natural boundaries, such as watersheds, bays, and currents. Based on the identification of the elements of ulayat or territorial rights, as the rights of the Indigenous Law Community unit (*rechtsgemeenschap*) then the communal right of the sea (communal property right) is the property of the Indigenous Law Communities who live and inhabit coastal areas. So that this customary right of the sea is an inherent right as a distinctive competence in the Indigenous Law Community, as an exclusive right that is used to carry out economic exchanges and at the same time confirms and affirms the boundaries of jurisdiction based on customary law and properly right.

The existence of village customary rights institutions needs to be recognized within the framework of managing coastal, marine and marine resources based on Indigenous Law Communities. The zoning arrangement and also the firmness of the jurisdictional boundaries of the customary rights of the sea are important things to be recognized in an effort to avoid conflicts of interest between various development activities and marine conservation areas. The legality or legal basis that underlies the recognition and application of customary rights in some cases can be in the form of written rules. Meanwhile, in other cases, it is shown that the implementation of ulayat sea rights is an extra-legal practice because it is based on custom, which is a necessity that must be recognized and respected by the State as stated in Article 18 B of the 1945 Constitution.

Utilization of space from part of coastal waters and utilization of part of small islands that are not in accordance with the given Location Permit will be subject to administrative sanctions which can be in the form of written warnings, temporary cessation of activities, site closures, revocation of permits, cancellation of permits and/or administrative fines. Article 35 regulates various prohibitions for anyone who directly or indirectly carries out activities such as mining coral reefs so that they can damage ecosystems, taking

coral reefs in conservation areas, carrying out various activities that can damage mangrove and seagrass ecosystems, mining sand and minerals as well as oil and gas, as well as carrying out physical development that can damage the environment and harm the surrounding community. These prohibition points should be intensively socialized to the local community so that they are not subject to sanctions due to their lack of access to information, especially laws and regulations that specifically regulate activities around them.

#### **4. CONCLUSION**

Based on the discussion of the problems as described in the previous chapter, the following conclusions can be drawn: (1) The right of control over customary land to coastal land follows the concept of right of control as limitedly regulated in Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 Paragraph (1) of the BAL. This tenure right in the context of national law has the dimensions of public law and civil law. The regulation on the use of coastal land controlled by the Ungasan Traditional Village has been stated and regulated clearly as it turns out in the Ungasan Traditional Village Awig-Awig and Ungasan Traditional Village Perarem Number 06 of 2020, it can be seen that there are clear arrangements relating to the use of coastal land areas in the Ungasan Village. Ungasan Traditional Village; however, the use and utilization must still be based on the regional spatial plan that is planned, controlled, and supervised by the regional government and the central government based on the laws and regulations governing the utilization of the area and spatial planning. (2) In relation to the authority of the Ungasan Traditional Village on the utilization of the coastal land area in its territory, it is based on the existence of the customary land rights owned by the Ungasan Traditional Village. Based on Article 18 B of the 1945 Constitution which states that the State recognizes and also respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of the nation, society and the principles of the Unitary State of the Republic of Indonesia as regulated in laws and regulations. and efforts to utilize and manage the coastal area of the Ungasan Traditional Village must be carried out by fulfilling the legal rules that are perceived in the form of

legislation and of course being able to put the principles of mutual justice in it, able to put equality for indigenous peoples, in the form of utilization of coastal areas and able to put a balance between personal interests and common interests.

Based on the description above, the following suggestions can be submitted (1) To be able to create a healthy investment climate, it is necessary to guarantee legal certainty. The existence of legal certainty guarantees should not deny the rights of indigenous peoples. Therefore, it is suggested to the local government, especially BPN, to carefully examine the status of the land for which a decision to grant rights will be given, because customary land in Bali as ulayat land is spread out according to the territory of the customary village. This means that before making a decision on granting rights, it always coordinates with the customary village government as well as being able to adopt the "broadcast" institution known in customary law which has until now been the most effective medium in the process of delivering information. (2) To the Bali Provincial Fisheries and Marine Service as a facilitator as well as a coordinator in charge of compiling the initial document, together with the Bali Provincial House of Representatives together with the Bali Province Governor and related stakeholders to immediately implement the RZWP3K policy formulation process with the terms and conditions that have been instructed by the central government and the control and utilization of coastal areas must be carried out in an integrated manner by combining various plans in various sectors by policy makers, both central and local governments, so that there is mutual harmony in the control, utilization and management of coastal areas.

#### **REFERENCE**

- Arba, H. M. (2015). *Hukum Agraria Indonesia*. Jakarta: Sinar Grafika.
- Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 16 tahun 2021.
- Peraturan Menteri Negara Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksana Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.
- Peraturan Menteri Negara Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah

- Sumardjono, M. S. W. (2007). *Kebijakan Pertanahan Anatar Regulasi Dan Implementasi*. Jakarta: PT Kompas Media Nusantara.
- Sumardjono, M. S. W. (2008). *Tanah dalam Persektif Hak Ekonomi, Sosial, dan Budaya*. Jakarta: Kompas Media Nusantara
- Supriadi. (2009). *Hukum Agraria*, Cetakan ke-3. Jakarta: Sinar Grafika.
- Suratman., & Dillah, H. P. (2013). *Metode Penelitian Hukum*, Cetakan ke-1. Bandung: Alfabeta
- Surat Direktur Pendaftaran Tanah, Dirjen Agraria Depdagri Nomor Dpt/12/63/12/69 Tanggal 20 Desember 1969.
- Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria.