

Norm Creation and Compliance in Waste Management System in Badung Regency (Bali), Case Study of the Customary Law in Banjar Seminyak and Banjar Bhineka Nusa Kauh: Lesson for the Implementation of Governor's Decree Number 97 of 2018

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ABSTRACT

Indonesian government has the pretension to reduce the number of plastic waste, by reducing its consumption through regional regulation. The Governor's Decree Number 97 of 2018 is issued as commitment of Bali Provincial Government to Limit the Disposable Plastic Waste. In order to carry out the regulation, *desa adat/desa pakraman* as a customary law community/*masyarakat hukum adat* in Bali were ordained to incorporate the norm in the *awig-awig/pararem* (Balinese customary village regulation). This paper is significant to find the right approach to modify the behaviour of the people. This paper analyses the attempts to change the behaviour of society in Bali, through what identified to be social licence and statutory licence in Bali concerning waste management. This paper ought to explain factors influencing the establishment of the social licence and cause of compliance to the social licence and illustrate how The Governor's Decree Number 97 of 2018 might be implemented with customary village regulation.

Keywords: *norm creation, compliance, adat law, legal pluralism, waste management*

1. INTRODUCTION

In this study, we gathered data from two villages ("*banjar*"), in contrast with each other. One is a tourist destination *banjar* and one is a transmigrant area. The two are located in Badung Regency. This careful choice of object aimed for representativeness. One is the productive waste producer with strong social cohesiveness, with a rather homogenous population having international and domestic tourist rapid flux daily, namely Banjar Seminyak. On the other hand Banjar Bhinekka Nusa Kauh represents the diversity of settlers in a transmigrant area with much lesser social cohesion due to lighter social sanction. These differences

regarding social cohesion will be further discussed in sections below. The contrast of the profile of the two *banjar* would be significant, in the study of norm creation and compliance.

This is a field study report of face-to-face interviews of key stakeholders in norm creation and compliance in Badung Regency, including Badung Regency Government, Regency Level Environment Office (*Dinas Lingkungan Hidup*), head of the *Banjar* (called *Kelian Banjar*), restaurants, hotels, residents, Head of Waste Management Service and tourists. The sampling of citizens and tourists was conducted in a random sampling method to ensure validity of the

information regarding their attitude, beliefs and behaviour in the areas in which the study was conducted.

The observations were conducted to obtain initial data regarding cleanliness of both areas, behaviour of the residents and the ethnography in general to get preliminary understanding over the social cohesion, namely its implication to compliance. Leaders and governmental bodies became the subsequent priorities, to understand the objective of the norms created in order to intensify waste management. Locals were interviewed last to confirm the data obtained prior and to discern the depth of understanding about the system, either pitched by the Regency Government or local leaders.

We obtained a variety of qualitative environmental performance and this paper would like to analyse these in respect of the study laid down by Lawrence M. Friedman, Kenneth J. Kaford, Jeffrey B. Miller, Timur Kuran and Neil Gunningham. Mainly focused on the cause of compliance. This study is divided into 4 (four) sections, namely regulation *status quo* in Regency and in both *Banjar*, the socio-legal profile of the Banjar and the early observation on compliance and last of about the analysis of the main factor of compliance in *Banjar Seminyak* and *Banjar Bhineka Nusa Kauh*.

1.1. Theories of Legal Behaviour

Lawrence M. Friedman on his work "The Legal System" (1975) laid down theory of factors influencing compliance, which include; 1) cost-benefit analysis; 2) social factors, including praise and blame; 3) conscience or internalized norm; 4) laziness, habit or inertia. Later, he explained further the topic of compliance on his work "Impact: How Law Affects Behaviour" (2016). On both of his works he confirmed that "[t]hese models of legal behaviour do not, on the whole, contradict each other. They can all be true, in part... As for the factors generally, one might reduce or combine all of the, in one sense, into a single theory of legal behaviour." Furthermore, he asserted that "[s]ome behaviour is best explained by one theory rather than another, but no one theory holds the exclusive key" (Friedman, 1975).

Friedman assumes that before a person acts, he calculates what he stands to gain and the risk he runs, where he would act only if, in his opinion, he is likely to profit from behaviour. In line with this idea, Robert B. Cooter and Thomas Ulen in his works "Law & Economics, The 6th Edition" (2012) says that humans are a rational being and rationality requires maximization. The concept of rationality holds that a rational actor can rank alternatives according to the extent that they give him what he wants, while in practice, the alternatives available to the actors are constrained, thus as a rational being, people would choose the best alternatives among those presents that are well suited to achieving their ends (Cooter and Ulen, 2012).

This idea of humans as a rational being are the basics of the theory of sanction. According to Friedman, people comply with rules or use the law for their own benefit or to avoid punishments, penalties, and pains that come with the law.

These—reasons for compliance—do not always come from the government. Friedman argues that one of the most powerful motives for people to comply with the laws are their own self-interest. Of course self-interest doesn't always guarantee compliance with the laws. Other means of compliances, as Friedman says, comes from the legal consequences of the law itself, namely sanctions. Sanction, either as promises of reward or threats of punishment, could influence a person's compliance towards the law. After all, it is in human nature to respond to incentives.

Social factors contribute to norm compliance as man of reason, according to Friedman, would include *public opinion* in his/her calculus. Each subculture rewards and punishes behaviour and the form of incentive given from one subculture to another differ because of their surroundings, this includes the kind of behaviour that is denounced. The power of this factor was by virtue of the fear and expectation of members, rather than the actual punishment. Strength of the group, therefore, proportional to its influence on the legal behaviour of its members. One of the determinant factors of its strength, "like the strength of the state, depends, in part, on its ability to ferret out deviant behaviour" (Friedman, 1975).

Other than the its ability to ferret out deviant behaviour, we would like to suggest one other factor, that is *social cohesion*. Durkheim (1897) defined social cohesion as a characteristic of society that shows the interdependence in between individuals of that society. French *Commissariat General du Plan* defines social cohesion as common values and identities, which helps to instill in individuals the sense of belonging to the same community and the feeling that they are recognized as members of that community (Jensons, 1988; Green and Janmaat, 2011). However, Green and Janmaat (2011) suggest a simpler definition that, "[s]ocial cohesion refers to the property by which whole societies and the individuals within them, are bound together through the action of specific attitudes, behaviours, rules and institutions which rely on consensus rather than pure coercion." Comte, as elaborated by Stanford Encyclopaedia of Philosophy (2008), "convinced of the religious nature of social cohesion and, therefore, of the need for a priestly class in charge of maintaining it. ... [R]eligion would become an application of science, permitting enlightened men to govern the ignorant." Conscience, gave explanation of behaviour on the basis of norms that the actor has internalized. Conscience is intensely personal, in the sense of right conduct, it is situated deep within the inner voice of a man. Friedman (1975) asserted that "[a]t any rate, bad conscience is painful, while virtue brings a glow of satisfaction."

The fourth factor is laziness, habit or inertia. Friedman (1975) says that people take some paths of conduct out of cognitive poverty and because the paths are easy and available. This model shows behavior that is undertaken without forethought, which could be caused by habit or custom or tradition or just because that is what people do. It is argued that civilization advances by extending the number of important operations which we can perform without thinking about them (Whitehead, *sine anno*; Hayek, 1945; Koford and Miller, 2007). Aside from habit, there is custom,

which is defined as activity which is kept because men are accustomed to it and persist in it by unreflective imitation (Weber, 1968). Although confluence with social factors, what is the tendency of individuals to rarely reflect on their actions that are based on custom.

1.2. Waste Management System in Bali

Waste management in Indonesia is regulated by Act of the Republic of Indonesia No. 18 Year 2008 regarding Waste Management (“**Act No. 18/2008**”). Act No. 18/2008 brings a new paradigm of waste management that waste management is carried out comprehensively from the upstream before it becomes a product potentially will become waste. Up to the downstream or the stage where products were used to produce waste and it could return back to the environment safely. This paradigm is shown by the waste management implementations that have been stated before. Waste management is divided into two parts: household waste and household-like waste management and specific waste management. The implementation of household waste and household-like waste management consists of waste reduction and waste handling. Stipulation of regulation regarding the waste reduction shall be regulated further by government regulation, stipulation of regulation regarding the waste handling shall be regulated further by government regulation and/or local government regulation according to their authority, while stipulation of regulation regarding the specific waste management shall be regulated further by government regulation.

According to Act of the Republic of Indonesia No. 23 Year 2014 regarding Regional Administration (“**Act No. 23/2014**”), the environment is one of the mandatory government affairs that are not related to the basic services which is part of the regional authority. Waste management is one of the government affairs related to the environment. Hence, the Bali Provincial Government has the authority to regulate waste management. Through Bali Province Regional Regulation No. 5 Year 2011 regarding waste management (“**Provincial Regulation Bali No. 5/2011**”), the Bali Provincial Government regulates waste management based on the mandate of Act No. 18/2008 and the authority given by Act No. 23/2014. Provincial Regulation Bali No. 5/2011 divide the implementation of waste management into waste reduction and waste handling. Waste reduction consisted of limitation of waste generation, recycling of waste, and/or reusing of waste, while waste handling consisted of segregating, collecting, transportation, processing, and final waste processing. In line with Article 12 Provincial Regulation Bali No. 5/2011, Governor of Bali issued Bali Governor Regulation No. 97 Year 2018 regarding Limitation of Disposable Plastic Waste (“**Governor Regulation No. 97/2018**”) as the further regulation of limitation of waste generation.

As a tourist destination, cleanliness is an absolute prerequisite for Bali. Governor Regulation No. 97/2018 is issued as commitment of Bali Provincial Government on waste management. As described on Government Regulation

No. 81 Year 2012 regarding Household Solid Waste and Household-like Solid Waste Management (“**Government Regulation No. 81/2012**”), limitation of waste generation is effort to minimize the generation of waste before it become a product and/or product packaging until the end of the use of the product and/or product packaging. This regulation is aimed to suppress the use of single-use plastics. The subjects of this regulation are individuals, producers, distributors, suppliers, and business actors. In order to carry out the regulation, Bali Provincial Government wanted *desa adat/desa pakraman* as a customary law community/*masyarakat hukum adat* in Bali to incorporate Governor Regulation No. 97/2018 in the *awig-awig/pararem* of the balinese customary village regulation.

Nevertheless, the implementation of governor regulations encounters some obstacles. Based on our interview with the Environmental Services of Bali Province, some obstacles that could hamper the implementation are:

- the tendency of the Balinese to obey customary law, such as *awig-awig/pararem*, more than the local regulation;
- the complexity of incorporating the local regulation with *awig-awig/pararem*.

In this research, we are conducting an observation on the successful incorporation of the Provincial Regulation of Bali No 5/2012 into local customary law, namely *pararem* and how the compliance of such norms in the community.

1.3. Desa Seminyak

In Bali, there are two types of *Banjar*, *Banjar Dinas* and *Banjar Adat*. The difference between each banjar are banjar *adat* consisting of three elements: *parahyangan* (hinduism), *pawongan*, and *palemahan*, usually called as *Tri Hita Karana*. Banjar *adat* is governed by a *prajuru* - a set of customary governors structure, led by a customary leader titled *Bendesa Adat*. The role of *Bendesa Adat* is to lead the members of the banjar (*krama*) in conducting the traditions which influence almost every aspect of life. Banjar *Adat* also has its own constitution, called *awig-awig*, and its implementing regulations, called *pararem*. *Awig-awig* are the basis of life for the people (*krama*), which regulates the relationship of the people with the divinity (*sukerta tata parahyangan/hinduism*), the relationship between the people (*sukerta tata pawongan*), and the relationship between the people and the surrounding (*sukerta tata palemahan*) (Parmajaya, 2018). From our interview with the *Bendesa Adat* of *Desa Adat Seminyak*, Mr. I Wayan Windu Segara, *awig-awig*, as with the constitution of a country, are rarely changed. The content of an *awig-awig* is usually the same in every banjar *adat*, with a little alteration according to each of the banjar’s needs. While *pararem*, as an implementing regulation of the *awig awig*, has a more specific content, and could be changed or even revoked as agreed upon by the people of banjar through a procedure, e.x. the regular meeting of the *krama*.

Desa Adat Seminyak, located in the famous *Seminyak Area*, is one of the two villages that we observed during our

research. Desa Adat Seminyak can be classified as banjar adat. Despite being located in a famous tourist area, Desa Adat Seminyak still maintains its traditions. This means that the governance of Desa Adat Seminyak is still carried out based on the traditions.

In terms of norm making, as with other banjar adat, only the native people from Desa Adat Seminyak are being involved in the process. As Desa Adat Seminyak are located in a famous tourist area, the demography of the residence of the banjar are varied, from native seminyak, transmigrant from other Indonesian region, to foreigners. Along with private residences, there are also several business entities under the jurisdiction of Desa Adat Seminyak, such as hotels, resorts, restaurants and retailers that usually are not owned by native of Desa Adat Seminyak. The mechanism was done by a regular meeting, conducted every six months in Balinese calendar. Mr. I Wayan Windu Segara, Bendesa Adat Desa Adat Seminyak, said in our interview that on of the agenda of the meeting usually are the reevaluation of the pararem, whether the pararem are still needed to be implemented, or should be revised/revoked, along with the preparation of the traditional ceremony that was about to be held during the time of the meeting.

In terms of waste management system, as a tourist destination, Desa Seminyak are a bit more concerned about the issue of waste management than Desa Bhinneka Nusa Kauh, mostly because of the impact of the issue for their economy. Desa Seminyak has a structured waste management system that is managed by a bureau established by the Banjar with the purpose of managing the waste in the village (Tempat Pengelolaan Sampah Terpadu (TPST) Banjar Desa Adat Seminyak). This bureau is responsible for the collection, sorting, and waste utilization such as by composting of the waste that were produced by the members of Banjar Desa Seminyak and other business entities that are located under the Banjar jurisdiction. The bureau, established in 2003, are built as the product of a consensus of the villager in one of their regular meeting during the end of 2002 in order to solve the waste problem of the residence of Desa Adat Seminyak, also partially as a way to utilize the fund that Desa Adat Seminyak got from World Bank as an aid post the second Bali Bombing. After running for a year, the establishment of TPST Desa Adat Seminyak is strengthened through a pararem. It was in fact becoming independent and self-sufficient. The main responsibility for TPST Desa Seminyak is catering to the villagers of Desa Adat Seminyak that are not catered by the provincial government. Alongside the villagers, TPST Desa Seminyak also catered all the business entities in the area of Desa Adat Seminyak, who are required to use the service.

Even though the drives of the establishment of the bureau might be based on external pressure such as the bad publicity of the waste in Bali and supported by foreign aid from the World Bank, during our research we obtained that the main reason for the compliance of both the *krama* and other entities (whom are not a member of the community) are unique combination of the legitimacy of Desa Adat and its *apparatuur*, fear of customary sanction, peer pressure, and often conscience.

As Banjar adat, Desa Seminyak still has a tight social cohesion where the residents have a higher tendency to comply to the customary law and a social consensus as a customary product rather than its formal counterpart. The legitimacy of Desa Seminyak continues to persist due to the respect of the residents to the Balinese culture that is integral with Balinese-Hindu. Fear of customary sanction in Bali is unique in nature, as it has magic-religious nature, reflects habitual behaviour, also correlated by cost-benefit analysis and enforced with Peers (Banjar residents) as its court. On the peak of the sanction pyramid in Banjar Adat hemisphere is the *pengasingan* sanction. When it is enforced, those sanctioned would face substantial obstacles to manifest their beliefs in traditional weddings and Balinese burial taking into account the long list of the offerings and requirements of such practice--Banjar residents are codependent in this matter. Often they are dependent on Banjar's apparatuur and infrastructure to make sure no mistake occurred during practice and even to have a place in the Banjar burial site. By value, it is perceived to be cheaper to comply with collectively agreed norms than to deviate from it, as the cost to hold religious practice is too expensive if done alone without the help of fellow Banjar residents. As the social cohesion tightens, peer pressure intensifies. Names of the wrongs would be mentioned during the regular meetings, and the fear of shame supports the persistence of peer pressure. The entity is acknowledged, therefore the laws in the territory are respected. The consistency of practice helped the acknowledgement of the entity and its law. This could be seen from the fact—from our interview with Mr. I Komang Rudhita Hartawan, the head of TPST Desa Adat Seminyak—that every business entity in Desa Adat Seminyak is complying with the *pararem* that requires them to use the service of TSPT Desa Adat Seminyak.

1.4. Banjar BTN Bhineka Nusa Kauh

Banjar BTN Bhineka Nusa Kauh is a banjar, under village/desa Dalung, North Kuta, Badung Regency, in which 195 families reside. Banjar Bhineka Nusa Kauh is not a *Banjar Adat*, or customary made *Banjar*, rather a administratively made to provide residents for Balinese and transmigrants. The establishment of Banjar Nusa Kauh was promoted by a Bank Tabungan Negara (BTN), thus identified by its official name, Banjar BTN Bhineka Nusa Kauh. The establishment of society was rather different than Banjar Adat. Mimicking its Banjar Adat Counterpart, the leader of the Banjar was called Kelian Banjar Dinas, or "Pak Kelian" for short. The Balinese in this Banjar was from other Banjar Adat in Bali. From the data provided by the Kelian Banjar in 2017 of the demographic of its resident's religions shows that 43,25% of its residents are Hindus, 40,70% are Moslems, 6,5% are Catholics, the rest are Christians, and none are Buddhist. This shows the diversity of the area. Kelian Banjar confirmed that there are a significant amount of transmigrants who reside in the area came from outside of Bali and most of the residents are not Hindus. Another evident, from our observation, was the size of the Masjid, not

Musholla, and the number of *ummats* that came to pray in *Zuhur*.

From the size of the houses and the length as well as width of the street, the population was rather dense. There are rarely any gaps between the house and the street. Most of the houses do not have gates, and motorcycles were put on terrace, indicating the lack of space. This, too, applied to the cars that parked outside the house.

Mimicking its Banjar Adat's counterpart. The norm making mechanism was done by regular meetings, in which only men could attend and have votes. The Kelian said that the number of meetings held in a year was decided to be decreased due to majority votes. He identified the nature of Administrative Banjar that differs from Banjar Adat. In a meeting, the Kelian recalled, the majority of the residents believed that there were lesser conflicts around the neighbourhood, compared to first years of its establishment. For that very reason, the number of meetings were reduced.

Although the formation of Administrative Banjar was to a certain extent mimicking the Balinese custom, the institution will never be one. Adat Law in Bali, like many other Adat Law, possess certain mechanisms for compliance, with that being the Adat Sanction. This is also supported by social cohesion in Bali, *a sense of belonging*. The feared sanction by is *pengasingan* or exclusion. This is strongly related, among other things, to burial ceremonies and weddings. The magic-religious nature of Bali, which is identified by its devotion towards rituals, necessitates the dependence of members towards other members as a community. The long list of offerings, strict requirements for *Ngaben* (not to mention its cost) and designated burial site. That what binds the rule and so, the fear lingers.

Balinese people in Banjar Bhinneka Nusa Kauh, do not have such requirements, for they would be buried in the Banjar they came from. Javanese people reside there, did not have any constraint, for they are not bound by the Adat of Balinese-Hindhu, so is other transmigrant. So, the very question would be. What binds them? What causes the compliance over their meeting results? We suggest; conscience. For they know, they have to have rules to live in a society. From the testimony of several residents, interviewed in random, it didn't happen overnight, there were trials and errors.

In the case of waste management, the compliance was also caused by the attention drifted to them as a consequence of a massive flooding. Which turned the attention of the ruling Regent, and the very event became a headline.

The external pressure was triggering better waste management system. As time went by, another external factor disrupt their ignorance, it was the Santi Guna. The pattern of waste collecting affect the behaviour of resident in Banjar Nusa Kauh. Most of the residents are aware of the mechanism of Santi Guna. The system were not without flaw. However, the resident relationship with the always-voted Kelian Banjar, helped the complaint mechanism to function. The praxis was complete, with the discourse of the regular meetings and the activism of both the Kelian Banjar and the resident.

Other social mechanisms happen to be peer pressure. PKK Meetings were conducted, socialisation happened with informal encounters, gossip, and activity as per usual. Another thing, residents will all clean up the least clean house on kerja bakti. It was hoped that the communal clean up, in front of that dirty house would *knock the heart of the owner*. Some agreed that the mechanism worked and as experience has been proven effective, it would slowly be known as custom.

Without prior notification from the regency, the meeting of Banjar Kelian raised a rather progressive unwritten law, which expects all the houses to have sorting bins. However, the procurement never happened, due to a political issue.

Sanctions also exist, in terms of waste management. It was an open secret that there were violators of the enactment that prohibit dumping on the river, caught and being sanctioned for Rp.500.000,00. Although, that is not the most significant reason for compliance. The result of our interview concluded that it was only one person that was shouldered with the sanction, and it was not a resident. But those who were driving by. It was still adjudicated, however, and the law of the Administrative Banjar prevailed even when the perpetrator was not a resident.

Banjar Bhinneka Nusa Kauh could be described as an anomaly. With its diverse profile, having people from all across Bali, transmigrants from Java, Nusa Tenggara Timur, Nusa Tenggara Barat, this relatively new established *banjar* have different social norm making than its *banjar* adat counterpart. It is proven in section above that disincentive set by adat law, including but not limited to *pengasingan* or exclusion, has been deemed effective in strengthening compliance over waste management done by banjar adat made institution. Contrary to *banjar* adat, Banjar Bhinneka Nusa Kauh did not have adat sanction instruments. However, it was found that Banjar Bhinneka Nusa Kauh compliance over *banjar* policy could be indicated by physical observation of the area. In which each of every house had their own trash can, clean sidewalks, relatively little waste visible, clean drainage, another visible indication was a clean river. Norm is created in meetings. Socialisation conducted by formal letter issued by the *banjar* committee and supported by PKK meetings. One could say that the main reason for compliance in Banjar Bhinneka Nusa Kauh are the peer pressure that come with the structure of the community, as stated by Kuran, by implication, social pressures that make one individual put on a homespun may fall short of inducing the same response from another. The latter individual may join the process at a later stage, with others waiting even longer (Kuran, 1998). In line with that, there are also some cases where we found that the people of Banjar Bhinneka Nusa Kauh comply with the idea of the waste management system because of the conveniences of the rules, as the ideas of the rules are easy and available.

2. CONCLUSION

In Desa Adat Seminyak, during our research we obtained that the main reason for the compliance of both the *krama*

and other entities (who are not a member of the community) are the strong belief in the *adat* law. As Banjar *adat*, Desa Seminyak still has a tight social cohesion where the residents have a higher tendency to comply to a customary law and a social consensus as a customary product rather than its counterpart (formal regulation). Meanwhile, Banjar Bhinneka Nusa Kauh could be described as an anomaly. Contrary to *banjar* *adat*, Banjar Bhineka Nusa Kauh did not have *adat* sanction instruments. The main reason for the people to comply with the regulations are mainly because of the social factors such as peer pressure. There are also some cases where we found that the people comply with the idea of the waste management system because of the conveniences of the rules, as the ideas of the rules are easy and available to be applied.

Referring to Friedman, on his conclusion in "The Legal System," (1975),

"Laws that make use of the culture and draw on its strength can be tremendously effective....A law that can tap some underground spring of goodwill or strength in the culture will get vastly more for each dollar of enforcement or persuasion...To tap the culture ... means asking them to do new things but in a palatable, comfortable, or convenient way"

Based on the field study conducted and the analysis above, this paper project that the efficacy of Governor Regulation No. 97/2018 could be reached through *pararem* in banjar *adat*. As it was observed that by nature, society of banjar *adat* have better compliance to the rulings of customary law. In the case of administrative banjar, the case might be rather unpredictable, for the administrative banjar observed in this paper was rather an anomaly. We would like to suggest an in depth empirical socio-legal of both type of banjar to have better projection to the implementation of Governor Regulation

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