

The Existence of *Telajakan* Land as a Road Borders in the Customary Law of Traditional Villages in Bali

I Made Suwitra^{1,*} I Made Gianyar² I Wayan Rideng³

^{1,2,3} *University of Warmadewa*

*Corresponding author. Email: madesuwitra27@gmail.com

ABSTRACT

This research aims to find "coexistence" between state law and customary law (awig-awig) in the conservation of *Telajakan* land as a road border in traditional villages. The method applied in empirical legal research with the statutory, analytical, case, and customary law approaches. According to observations, the existence of *Telajakan* land as a border of roads in traditional villages has been reduced due to the expansion of buildings on PKD lands, building stalls, garages, shop houses. Meanwhile, existing legal structures such as *Prajuru Adat* (The Leaders of Traditional Village) are almost helpless and allow the violations. If this condition remains, it can set a bad precedent for the utility and functions of *Telajakan* land to support the implementation of the *Tri Hita Karana* Philosophy and the concept of ecotourism, which includes elements of education conservation, empowerment, environmental preservation, and satisfaction index. Meanwhile, in Bali, with an area of 5,636.66 km², there are currently 1,493 traditional villages spread across 9 (nine) regencies/cities in Bali, which have customary law that functions to maintain the existence of the referred land. *Telajakan* land as a road border has also been strengthened in the regional regulations in regencies and cities in Bali. With the enactment of the Bali Provincial Regulation Number 4 of 2019 regarding Traditional Villages in Bali, which carries the mission in strengthening traditional villages, it is hoped that it can be used as a milestone to restore awareness of the importance of conserving *Telajakan* land as borders as the characteristic of traditional village spatial planning in Bali.

Keywords: *Customary Law, Ecotourism, Traditional Village, Telajakan Land.*

1. INTRODUCTION

One of the leading research areas in the research strategic plan of the warmadewa university research centre in 2021-2025 is "research in the field of "social and humanities, customs and culture" with the sub-theme of customs and balinese customary law. therefore, the issues to be considered are related to the deepening of balinese customary law, which is coexistent with state law and aspects of ecotourism that support the conservation of *telajakan* land, which is generally used as a park.

One of the strengths that come from traditional villages is the arrangement of spatial patterns as ancestral heritage in the utilization and use of pkd land (village land), whose control is handed over to each villager with the width area of almost the same known as "*sikut satak*" which is approximately 6 (six) acres. the arrangement for its use is in the form of the land of *merajan* (sacred place space), *bale daje* (a building where religious ceremonies are as well as beds) for family members who are not yet

mature (menstruation) or who have finished menstruating (elderly), *bale dauh* (bed as well as an open living room), *bale dangin* (bed) which is halfly open and closed with bamboo or rattan curtains so that it saves energy because it does not require air conditioning, *paon* (kitchen), *jineng/gelebeg* (place to store rice) as well as pigsty (bade), *natah* (yard)), and *tebe* (where to defecate/toilet).

Each of these buildings occupies its space and zone so that the shape of the building is visible and does not interfere with each other so that it is free from wall leaks during the rainy season. The treatment is straightforward because it can be reached from all sides, where each building has its prana (breathing) room, so it does not get hot. this condition is supported by the existence of an open yard which can be partially used as a home garden as well as a source of support for religious activities because the garden is more dominantly filled with flower plants for ceremonial purposes, especially in *merajan* (temple), the side of the yard is used for flowers plants. the problem now is whether this concept

can still be preserved as a reflection of "ecotourism" because there are aspects of education, conservation, empowerment, or environmental preservation.

Conceptually, the meaning of strengthening leads to trust in the local government, which will seriously pay attention to the protection and affirmation of the regulation of its traditional rights, especially regarding the management of customary land use as village *ulayat* (land belong to all villager members). This means that the meaning of strengthening is not justified and oriented to the interests of power politics, because in said local regulation it is intended to try to carry out a function as "social engineering," namely changing and unifying the management structure of traditional villages throughout bali and positioning its administration in the power of the provincial government directly [1].

The traditional village in bali has been known since the dutch rule in indonesia because it is an autonomous and otohton village. The village is autonomous because it has its own rules, government, territory, and manners (people). Otohton because of the existence of indigenous peoples and their traditional rights and other human rights are inherent in indigenous peoples. so a community that grows, lives, and develops based on its indigenous peoples are not given by other institutions based on state law.

The emergence of the "balinising" movement in the 1920s, as a movement for developing balinese culture under the umbrella of colonial rule, was used to develop balinese culture, especially the arts. In that way, even though the dutch government wanted to isolate bali from its external relations, the impact made bali more famous and was visited by outside visitors. from a tourism point of view, this situation benefited the dutch colonial government. The results then became a means of promotion to attract foreign tourists during the reign of the dutch east indies[2].

It is essential to explore community empowerment based on traditional villages by remembering that most of the natural resources such as communal land, most of which are no longer oriented to the *trihitakarana* (three concepts of balance) philosophy, such as the existence of road borders in the utilization of pkd land, which is regulated in *awig-awig* (customary law) and regional regulations as state law. Therefore, the legal issues that will be discussed are related to constructing a reflection of the policy direction in *awig-awig* (customary law) to preserve *telajakan* land and building space patterns on pkd land?

2. METHOD

The type of research used is in the form of empirical legal research because it is observed that there is a gap between *awig-awig* (customary law) which still maintains the *Telajakan* land on one side, and the fact that it is used as a building. The research approach used is statutory [3], which means tracing all the regulations and legal products that regulate the *telajakan* land and

road borders. In addition, an analytical approach is also used [4]. Another approach that is considered relevant is the case approach which is carried out by purposive sampling because it is grounded and holistic [5] and views a case as a tool to find "how the law works" in society [6]. Another very relevant approach is the coexistence approach. The data sources used are the first and second sources. Data from the second source is from secondary data referred to as Legal Materials in the form of primary and secondary legal materials collected by using the documentation technique and recording file system.[7] While the primary data was collected by using observation and interview techniques. The data were then analyzed using hermeneutic and qualitative techniques

3. RESULT AND DISCUSSION

3.1 Arrangement of Indigenous and Telajakan Land as Road Border

Customary land as "owned" (possession) of Traditional Villages, the arrangements vary significantly from one traditional village to another in Bali. In Article (Paos) 20 Awig-Awig (customary law) Traditional Village of Tumbu Karangasem, it is formulated that sane kadruwe (what is being possessed) Tumbu Traditional Village includes": Kahyangan Tiga Temple, Kahyangan Desa Temple, Bale Desa (Village Building), Palemahan desa (village physical environment) (village land), bangket (unmanaged yard) or yard, cemetery, Village road or alley, Lembaga Perkreditan Desa (Village Credit Institution), Sekancan kelebutan toya (all kind of water springs), toya anakan (part of water springs) that can be used as the place to purify the Devas, or used as holy bath place. So the property of the traditional village includes Kahyangan Tiga Temples, village hall, village land, rice field land, garden land, cemetery, roads and alleys, Village Credit Institution, all water sources.

In Article 21 of Awig-Awig (customary law) of Lantangidung Traditional Village Sukawati Gianyar, it is formulated: Padruwen Desa Adat luwire (the possession of traditional village includes): Kahyangan Desa, Bale Desa Adat, Tegalan, Karang Ayahan Desa munjuk lungsur saking 39 Karang, Setra, Pelaba Pura (carik/tegal: 0,370 ha/0,460 ha dan druwe desa sewosan (means the possession of Lantangidung Traditional Village covers: Kahyangan Desa (village temples), Bale Desa Adat (traditional village hall), Tanah Tegalan (dry land), Karang Ayahan Village, approximately 39 plots, cemetery, the land belongs to temple (ricefiled/yard: 0.370 ha/0.460 ha.

In Article 2 of Awig-Awig of Gelgel Village in Klungkung regency as old village mentioned that the druwe (possession) with the term of Kekuwuban wewidangan Desa Adate, according to the customary law, covers:

1. Pupulan Karang Pahumaan (land of house)
2. Khayangan Tiga Temples (Puseh, Dalem and Baleagung)

3. Cemetery (Bugbugan, Pijik, Seluang, Nyuhanya and Gandamayu)
4. Pekarangan Desa (village land)
5. Telajakan Pekarangan Desa (Telajakan village yards).
6. Pepayonan ring pamumahan lan ring Desa Sane mayanin anak lian. So the area of the Gelgel Traditional Village by the customary law includes a collection of residential land, Kahyangan Tiga Temple, Cemetery, Village Courtyards, Telajakan village yards.

The "Padruwen Desa" (village possession) of Kesiman Traditional Village in Denpasar is regulated in Article 19, namely: Sane kemanggehang druwe (what is possessed by) Kesiman Traditional Village, includes: Dalem Kesiman Temple, Land belongs to Dalem Kesiman Temple area of 2,0600 m², Kahyangan Kesiman Temple, Land belongs to Kahyangan Kesiman temple, and Telajakan of temple 0.7350 m², Cemetery 14.600 m², Desa Temple, Land Possessed which is used as elementary school building 2000 m², Pura Agung Petilan Temple and the land of 0.5000 Ha, Musen Temple, Temple's land and Lan belongs to temple of 1.1100 Ha. So the property of the Kesiman Traditional Village includes Dalem Temple, and the land belongs to temple covering an area of 2,0600 m², the Kahyangan Temple and the Labuan Temple and the telajakan temple 0.7350 m², the cemetery land area of 1,4600 m², the village land used for Elementary School is 2000 m². Agung Petilan Temple and temple mandala 0.5000 Ha.

In Awig-Awig Penglipuran Traditional Village as one of the "tourist villages" in Bangli Regency, Druwen Desa (the possession of the village) is regulated in Article 25, namely:

Wewangunan luwire (building includes): wewangunan suci sekadi Pahryangan-Pahryangan penyiwian desa adat, wewsangunan bale banjar dan bele kulkul (Holy building such as temple, Banjar hall, Kulkul Building).

Tanah laba pura, tanah padruwen desa adat, karang kerti miwah tanah AYDS.

Setra manut dresta (cemetery according to customary law).

Tetangunan manut padruwen desa adat. (traditional music instruments)

Arta berana, serana upakara sejangkepne padruwen desa adat (village property, ceremonial facilities)

From the awig-awig formulation of the Penglipuran Traditional Village, it is confirmed that the land controlled by the traditional village is: Tanah Laba Pura (land belongs to temple), Village Owned Land, Village Pekarangan Land called Karang Kerti, AYDS Land, and Cemetery Land. In Kerti or PKD land, this is included in the telajakan space so that in PKD and Telajakan land, they become one unified field.

These lands are used and occupied according to the rules set out in awig-awig (customary law). Karang Kerti is the land or land of the traditional village occupied by each of the krama (villager/members) of the traditional village, which functions as a place to build houses and live their communal religious life in the traditional village forum. These village members should maintain and preserve the spatial layout of each utilization and use of the coral reefs in question, which is always under the supervision of traditional leaders.

Meanwhile, in Awig-Awig (customary law) of Pulukan Traditional Village, Pekutatan Jembrana District, the Druwen Desa (possession) arrangement is regulated in Pawos (article) 16, which states that: what is called the Possession of Pulukan Traditional Village (sane sinanggeh druen Pulukan Traditional Village), namely: (1) Kahyangan Tiga Pulukan Traditional Village (Kahyangan Tiga Temple), (2) Kahyangan Tiga Desa cultivators (Land belongs to Kahyangan Tiga Temple), (3) Setra utawi Tunon (Cemetery land), (4) Devices, such as Bale Desa/Banjar (village hall), Kulkul (supporting building), (5) traditional musical instruments, such as Gong or others (art items such as Gong).

From several traditional village customary laws as stated above, it can be concluded that every traditional village has assets as property rights (possession) which used to be called Ulayat rights. However, each traditional village has different types of property rights. Likewise, regarding the existence of customary land as part of Ulayat, it varies significantly from one traditional village to another. The extent or number and narrowness or at least of the existing customary lands are strongly influenced by the legal politics of the Basic Agrarian Law, which mandates the registration of all land parcels in Indonesia through conversion so that most of the customary lands, especially PKD (Village Land) and AYDS have been converted into full individual property rights[7]. Every traditional village has a cemetery land, and the land belongs to Kahyangan Tiga Temple. As for PKD, land can only be found in several traditional villages such as the Tumbu Traditional Village, Lantangidung Traditional Village, and Gelgel Traditional Village. Specifically, for the term Telajakan land, only strict (limitative) regulations are found in the customary law of the Gelgel Traditional Village. While in other traditional villages, customary law is not formulated explicitly, but its implementation is still found in several villages.

3.2 Policy Direction for Telajakan Land Management

Land tenure rights in traditional villages are based on Ulayat rights or prabumian rights. This condition will be very relevant if related to the relationship between the occurrence of traditional villages and customary lands in its historical perspective. In addition, it is also relevant to the theory of natural law and occupation in the sense of mutual (communal) control and ownership as well as individual control and ownership. The relationship

between communal and individual rights also appears to be mutually pressing, thickening and thinning, mulur-mungkret. It is even more dominated by individual rights, especially in the use of yard land (PKD) and its exploration [8]. The process of thickening and depleting the relationship between communal rights and individual rights seems to depend very much on the sensitivity of their customary leaders and the legal culture (awareness) of villagers towards the customary lands they control in determining the conservation model to be carried out by their traditional village. Because in several cases, it was observed that the lands that used to be customary mainly had been transferred to full private ownership, better known as land certificates of ownership (SHM), such as the AYDS land in the Kemenuh Traditional Village of Gianyar after independence turned into whole individual land, as a result of the issuance of a tax letter by the government, whereas initially, AYDS was an integral part of PKD land[7]

In this case, the traditional village does not understand the implications of converting AYDS to whole individual land. The same applies to customary lands (PKD or other terms), with almost no control over customary village tenure rights. As a result, there are irregularities in its use. Some buildings exceed the limit known as the pengengkret wall (the fence of the house). It can also be observed that there are efforts to expand the land by exercising excess control of what is rightfully theirs by shifting the pengengkret wall (limiting wall) by merging the telajakan land as a road border into a building.

From the results of participant observations, it can be stated that most telajakan lands as road borders in traditional villages are no longer used as "telajakan parks" but are used as buildings such as stalls and garages workshops, shops, and buildings for business purposes. (rented). This condition can be seen more clearly on Telajakan lands close to markets or places considered strategic for business purposes. The rise of the transfer of the function of telajakan land to be used as a building is because the function of control or supervision over the customary village control rights is not carried out. This means that the traditional leaders who have the authority to execute the "right of control" do not carry out the conservation and protection (conservation) of the telajakan lands.

Meanwhile, the preservation and protection of telajakan lands are only carried out to image the "Tourism Village" status identity as in the Penglipuran Bangli Traditional Village. It is just that the preservation and protection of this telajakan land are partial (only on the inner road to Desa Temple). So it is not carried out thoroughly in the customary village area.

On a micro-scale, customary lands controlled by villagers individually as Karang Kerti or PKD function as places for activities related to daily activities according to the Tri Mandala concept, meaning that there is space for a sacred place (Merajan) as the Main Mandala, living

space as Madya Mandala, and a room for bathing, washing, and toileting as Nista Mandala known as tebe (teben). The Tri Mandala concept is universally applicable, adapting to situations and conditions while maintaining the ulu-teben concept in the PKD soil area. Likewise, the use of druwe ngeraga lands (privately owned) is also subject to the customary village law regulations in the use and utilization of its spatial pattern. In addition, the use of private lands is also equipped with a Building Permit, which is now known as a Building Permission. This arrangement is expressly regulated in Denpasar City Regional Regulation Number 5 of 2015 concerning Buildings. In Article 25 it is formulated:

The boundary line of the building, the distance from the building to the axle, the width of the ramp, or the distance from the yard fence to the outer edge of the sewer, riverbank, beach, railroad, and/or high-voltage electricity network, taking into account the aspects of safety and health.

The building boundary line includes the front, side, and rear building boundary lines.

The regulation of the distance is regulated in Article 26 Paragraph (7), which formulates: The width of the ramp or the distance of the yard fence from the outer edge of the sewer with the following provisions:

For road widths up to 6 (six) meters, a minimum of 0.5 (zero point five) meters

For roads above 6 (six) meters to 8 (eight) meters, the minimum is 0.75 (zero point seventy-five) meters;

For road widths above 8 (eight) meters to 12 (twelve) meters, a minimum of 1 (one) meter;

For road widths above 12 (twelve) meters to 18 (eighteen) meters, a minimum of 1.5 (one point five) meters; and

For road widths above 18 meters, a minimum of 2 (two) meters.

The affirmation of the regulation of telajakan land in the context of road borders in the Local Regulation as state law indicates the coexistence between customary law and state law in the preservation and protection (conservation) of telajakan land as road borders. Therefore, both customary and state law can conduct supervision and law enforcement together (coexistence).

The existence of Telajakan land is an essential framework in realizing one aspect of the Tri Hitakarana philosophical value, which is oriented towards balance, especially in the utilization and use of PKD land, which is related to the use of unbuilt space and built space which in state law is known as the coefficient of building area.

In customary law, it is not determined in a limited way the percentage of coefficient of building area from the land for housing as in Regional Regulations as state law. However, in customary law known as awig-awig, the principle of propriety in the placement of a building follows the Tri Mandala concept, such as the placement and size of the building as a holy place, a place to live,

and a building for the function of waste disposal. In addition, in every yard, there should be a barrier called "wall pengengker" with an obligation (megaleng ke dulu or keteben), meaning that the owner of the yard is obliged to make a barrier on two sides (East and North or South and West which in awig language is called megaleng kedulu or megaleng keteben).

From the observations, telajakan lands as customary lands have been explicitly regulated in a small part of awig-awig traditional villages. However, in real terms, the telajakan lands in several traditional villages still exist and are well maintained, and some still exist but are not appropriately maintained. Maintenance of Telajakan lands is usually done by utilizing it as a Telajakan garden/park. The rest occurred when the land was converted into stalls, shop houses, mini markets, garages, places to put building materials as part of the building materials business (open storefronts). The transfer of the function of the telajakan land also includes the telajakan tukad (river border) for the expansion of buildings or other functions such as stalls, garages. The direction of the awig-awig correspondence policy is to confirm the propriety that has been sentenced so that it can be used as a reference by the next generation in its implementation, supervision, and law enforcement—likewise, affirming the arrangement to preserve and protect the treacherous land as a bollard of the road from various onslaughts of development

4. CONCLUSION

From the discussion results, it can be concluded that: Strict regulation of the use and utilization of telajakan land as a road border in one PKD plot of land is expressly regulated in the awig-awig of the Gelgel Klungkung Traditional Village. While in other traditional villages, it is not formulated explicitly, but sociologically it still exists in several traditional villages. Some of these Telajakan lands are well maintained, but some are left unattended. Violations of the use and utilization of telajakan as road borders on a massive scale occur in the form of conversion of functions into residential buildings, stalls, garages, shop houses, merchandise storefronts due to neglect and law enforcement is not carried out by the existing legal structure (customary law and state law). Meanwhile, the direction of the policy in the conservation and protection of the telajakan land as a road border has been formulated in awig-awig (both written and unwritten). In order to maintain the Tri Hitakarana philosophy, the telajakan lands in each traditional village are deemed necessary to be conserved through the affirmation of the regulations in awig-awig through the resolution of policy directions in writing the awig-awig, especially in monitoring and enforcing violations of the use and utilization of telajakan lands. As a border with the legal system coexistence approach. The function of telajakan land as a road border so that it can be returned as a village park which is a characteristic of traditional village spatial patterns and at the same time can be used as an educational function in creating a role

model for new tourism destinations based on customary law wisdom.

REFERENCES

- [1] Awig-Awig Desa Adat Gelgel Klungkung, 1980.
- [2] Awig-Awig Desa Adat Desa Adat Pulukan Jembrana, 1987.
- [3] Awig-Awig Desa Adat Kesiman Denpasar, 1989.
- [4] Awig-Awig Desa Adat Lantangidung Sukawati Gianyar, 1991.
- [5] Arief, B. N. 1994. *Perbandingan Hukum Pidana*. Cetakan Kedua. PT. Raja Grafindo Persada. Jakarta.
- [6] Awig-Awig Desa Adat Penglipuran Bangli, 2005.
- [7] Awig-Awig Desa Adat Tumbu Karangasem, 2006.
- [8] Ibrahim, J. 2006. *Teori & Metodologi Penelitian Hukum Normatif*. Edisi Revisi. Cetakan Kedua. Bayumedia Publishing, Malang Jawa Timur. Hal. 98.
- [9] Keputusan Menteri Agraria dan tata Ruang/Kepala Badan Pertanahan Nasional No. 276/KEP-19.2/X/2017 tentang Penunjukan Desa Pakraman di Provinsi Bali Sebagai Subjek Hak pemilikan Bersama (Komunal) Atas Tanah.
- [10] Keputusan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 276/KEP-19.2/X/2017 tertanggal 23 Oktober 2017 tentang Penunjukan *Desa Pakraman* di Propinsi Bali sebagai Subjek hak Pemilikan Bersama (Komunal) Atas Tanah.
- [11] Marzuki, P. M. 2005. *Penelitian Hukum*. Cetakan I. Fajar Interpratama. Surabaya.
- [12] Nader, L., Todd, H. F. 1978. *The Disputing Process Law in Ten Societies*, Columbia University Press. New York . P. 2.
- [13] Parimartha, I. G. 1998. "Desa Adat dalam Perspektif Sejarah", dalam *Majalah Dinamika Kebudayaan*. Lembaga Penelitian Universitas Udayana. Denpasar. (01): 1-9.
- [14] Peraturan Dasar Pokok-Pokok Agraria, LN 1960/104, TLN NO. 2043.
- [15] Peraturan Pemerintah No.38 Tahun 1963 tentang Penunjukan Badan-Badan Hukum yang dapat mempunyai Hak Milik Atas Tanah.
- [16] Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- [17] Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.3/1999 tentang Pelimpahan Kewenangan Pemberian dan Pembatalan Keputusan Pemberian Hak Atas Tanah Negara.
- [18] Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.5/1999 tentang Pedoman

Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat.

- [19] Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.9/1999 tentang Tata Cara Pemberian dan Pembatalan Hak Atas Tanah Negara dan Hak Pengelolaan.
- [20] Peraturan Menteri Agraria dan tata Ruang/Kepala Badan Pertanahan Nasional No. 10 Tahun 2016 tentang Tata Cara Penetapan Hak Komunal Atas Tanah Masyarakat Hukum Adat dan Masyarakat Yang Berada Dalam Kawasan Tertentu.
- [21] Peraturan Daerah Kota Denpasar Nomor 5 Tahun 2015 tentang Bangunan Gedung, Lembaran Daerah Kota Denpasar Tahun 2015 Nomor 5, Tambahan Lembaran Daerah Kota Denpasar Tahun 2015 Nomor 5.
- [22] Suwitra, I. M. 2020, *Penguatan Desa Adat dalam Pengelolaan Tanah Ulayat dalam Perspektif Koeksistensi, dalam Menabur Pesona Merebut Kuasa Kontestasi Penguatan Desa Adat dalam Politik Kebudayaan Bali*, Ed. I Ngurah Suryawan, Cetakan Pertama, Pustaka LArasan, Denpasar.
- [23] Suwitra, I. M. 2009. *Eksistensi Hak Penguasaan dan Pemilikan Atas Tanah Adat di Bali dalam Perspektif Hukum Agraria Nasional* (Doctoral dissertation, Universitas Brawijaya), hal. 51.
- [24] Suwitra, I. M. 2005. "Tugas Prajuru Adat dalam mengatur tanah adat khususnya tanah telajakan dalam konsep menuju Bali yang ajeg". *Kertha Wicaksana*. Fakultas Hukum Universitas Warmadewa. Denpasar. (11) 1. Hal 15.
- [25] Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, LN 1960/104, TLN NO. 2043.