



Implementation of Land Acquisition of Customary Property Rights for Sustainable Tourism Development in the Tri Hita Karana Philosophy

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Abstract. The most challenging issue for the government to comprehend and address is happiness, and Tri Concept Hita Karana, which is addressed to those impacted by freedom and the government, offers a solution. In the idea of acquiring land with the community, socio-religious activities take on value. By employing normative approaches, this study seeks to identify and elaborate on the rules and practices governing land acquisition for the execution of development in the public interest that adhere to the Tri Hita Karana idea and the principles of social justice as well as participation. The Tri Hita Karana Concept in Customary/Customary Property Rights' guiding principles Land for sustainable tourist development realizes the welfare of the community, specifically: the principle of indigenous communalism in the execution of development for the execution of the national plan based on the tri hita Karana philosophy.

Keywords: Land Acquisition · Tri Hita Karana · Sustainable Tourism

1 Introduction

In this increasingly rapid economic development, land is still a wealth and is the fundamental capital to carry out life, both individuals, community groups and also the state. As an agricultural nation, land is a living resource that allows each individual to succeed in a variety of fields. In addition, land is a crucial component in the growth of a country, and its advantages must be maximized.

People have a strong relationship to their land, which makes it difficult to expropriate it from the population in the absence of “willingness” on the part of the rights holder. The interests of the “Government” and the “Citizens of the community” must always be balanced while discussing land acquisition, disenfranchisement, or any other name for it.” The “Ruler” and the “People,” who are the two parties concerned, must both be aware of and abide by the relevant land acquisition requirements. And if that clause is ignored, issues could arise that lead to disputes.

By land acquisition (Pijsgeving) is “Relinquishing the original legal relationship that exists between the holders of land rights by way of granting compensation with the party concerned”.

Land acquisition is defined as the activity of supplying land in exchange for appropriate and just compensation in Article 1 Number 2 of Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for The Public Interest.

Bali is a small island whose development capital comes from the tourism sector. Bali tourism grows because of the unique attractiveness of Balinese agrarian culture which is reflected in the form of local wisdom in dividing resources (water and land /space). The combination of all of them forms a Balinese Culture that blends between the Spirit, The Pattern of Community Activity and Balinese Nature. A summary of all of this is contained in the Tri Hita Karana Concept, including the Harmony of man with the Creator (parhyangan/God), with fellow humans (pawongan (society/inhabitants), and with nature/environment (palemahan/space). The Spirit of the Tri Hita Karana Concept is basically the same as the Spirit of Spatial Planning Objectives: Creating a Safe, Comfortable, Productive and Sustainable Space and the Village Government can organize development that has an impact on the Village economy and the strategy carried out by the Village Government prioritizes coordination and cooperation [4].

Thus Bali Spatial Planning, is to manage Bali Nature/Space wisely, in order to level the development and improve. Community Welfare while Maintaining/Preserving Balinese Culture. Maintaining Balinese Culture (nature, people, and its cultural activities) is perceived as guarding against Bali's economic life energy which comes from tourism, degradation of Balinese culture, means the decline of Bali's attractiveness, and Bali will be abandoned.

The most developed and well-established industry in the Bali region is tourism. Bali is one of Indonesia's most popular tourist destinations, drawing both domestic and international visitors in large numbers. The consequence of the high level of visitation is the increasing construction of tourism supporting facilities. On the other hand, there are often tensions or conflicts between tourism entrepreneurs and pakraman (adat) village administrators related to existing relationship patterns.

The relationship between local communities (pakraman village) and investors (tourism service entrepreneurs) so far is still often colored by various problems. It is not strange then that there are many cases of disputes between the pakraman village and the investors.

2 Method

A. Research Type

Legal science has an own personality. The normative aspect of law is its defining feature. Normative research ought to follow the precedent set by the law itself. According to the nature and traditions of law, normative research is a signature of the legal profession [5].

The positive legal inventory research that Soetandyo promoted may be compatible with this kind of normative legal study. The next step is to look into the laws

that were in force from the Dutch East Indies era up until 1980 regarding land use without permits. Every time period will show distinct conditions, leading to distinct approaches to resolving land-use issues. The second relationship between this and the exposure of the external dynamics of the law is that the law is operationalized in the community, particularly by individuals who have the authority to handle situations of unauthorized use of plantation property. This study's three key elements are its data, interpretation processes, and research reports.

B. Case Approach

The statute approach [6], case approach, and conceptual approach are approaches to legal studies that are employed in legal research. To address and resolve the concerns raised above, primary legal research sources and secondary legal research sources are required. Legislation and court rulings are examples of primary legal materials, which are those that are authoritative, or authorized, in nature. All legal publications that are not official papers, such as legal dictionaries, legal journals, and commentaries on court decisions, are examples of secondary legal resources. The study of libraries is the best technique to find legal resources to access these legal resources.

3 Result and Discussion

3.1 Rights, Arrangements and Management of Customary Land Empowerment in Bali

Community life in Bali, known as the pakraman village/customary village container, has long existed because of the strong attachment between the individual community. A close and magical religion also exists between the indigenous law community and the occupied land. As a result, the orthodox law community was granted the authority to manage the land, make use of it, collect revenue from any vegetation that existed there, and hunt any animals that might inhabit it [7]. The indigenous people's right to this land is "beschikkingsrecht," which is later translated into customary rights or land rights. In Bali, it is known as pre-earth rights.

"Customary land" is defined as "land on which there are customary rights of a particular indigenous law community" in Article 1 Paragraph (2) of the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 5 of 1999 concerning Guidelines for Resolving Customary Rights Problems of Indigenous Peoples.

Bali's lands can be divided into two categories: those owned by the village and those owned by private individuals. In the event of a disagreement, it is typically simple to determine "justice" by looking at the genealogy rather than the heir or heirs to the land possessed by this individual. However, for the lands owned by the Village, the situation is still very complicated. What is essential about these lands is the matter of their arrangement. Until now, each Village has different rules regarding the customary lands of this Village.

In light of the provisions in Articles 1 and 2 on the application of customary rights and comparable rights of indigenous peoples, so long as they actually still exist, the control of customary land has been specified in Law Number 5 of 1960 regarding the

Basic Regulation of Agrarian Principles. It must be implemented in a manner that is best for the nation as a whole and the state, which are founded on inter-national harmony, and it must not conflict with other, more significant laws and regulations.

Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali, which addresses the presence and regulation of indigenous Balinese peoples' customary land, makes explicit that such land exists. The land of the village title of the indigenous people of Bali is called the village drive land. According to some parties, it is classified as customary land according to the Basic Agrarian Law. Draw land and village land are terms that some circles still doubt the boundaries of their scope. According to the awig-awig or perarem he made, the village head has the power to administer and use the lands that belong to the unitary customary law community. The prerequisites for the existence of indigenous peoples' still-recognized customary rights are laid out in Article 2 Paragraph 2 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 5 of 1999, which is administered by Permen Agrarian/BPN No. 18 of 2019. The criteria for satisfying elements of the existence of Customary Rights of The Unity of Indigenous Peoples are set forth in article 2 paragraph 2 of the Regulation of the Minister of Agrarian Affairs number 18 of 2019 concerning Procedures for The Administration of Customary Lands of Indigenous Peoples, which is not significantly different from the replacement provisions.

This refers to Article 19 of the Basic Agrarian Law, which governs the registration and registration of land. The Basic Agrarian Law's article 19 governs land registration. In contrast, conversion is regulated in the second mandate of the Basic Agrarian Law on conversion provisions. Government Regulation 24 of 1997, a modification to Government Regulation 10 of 1961 regulating Land Registration, further regulates land registration in order to ensure this legal certainty. The legal basis for the registration of this land is in Article 19 of the Basic Agrarian Law, governing regulations number 10/1961 as amended by governing regulations 24 of 1997 and other related regulations. The Basic Agrarian Law mandates that land registrations be held across the Republic of Indonesia's territory in order to guarantee the legal certainty of land rights. The concerned right holders must register their land rights.

Article 22 of the Bali Provincial Regulation number 4 of 2019 concerning traditional villages, which strongly emphasizes that traditional villages are responsible for developing the economy of indigenous villages and maintaining the status of rights to padruwen land in traditional villages, regulates the basis for traditional villages' authority in the context of customary land management. Article 22 of the Customary Village Bylaw further strengthens the status of indigenous villages in the context of customary land management. This shows that state law recognizes and protects indigenous villages' authority in managing customary lands in their territories. Indigenous villages can develop and improve their economy by developing and managing customary land owned by indigenous villages. The development carried out by indigenous villages is by managing and empowering tourism to support the economy of indigenous villages. Bali tourism's progress has implications for customary land's existence, namely the increasing need for customary land to support tourism. The empowerment of indigenous villages has placed indigenous villages as legal subjects in national development, one of which is in the field of tourism. Tourism, as one of the sectors that play a role in

development, contributes significantly to foreign exchange earnings and employment in Bali Province.

3.2 Obstacles to the Implementation of Land Acquisition of Customary Property Rights for Sustainable Tourism Development in the Tri Hita Karana Philosophy in Denpasar

The issue of land in development is an exciting and, at the same time, unique issue considering that national development needs land. Still, the need for the land is not easy to meet, which has been realized by all parties.

In the provisions of land acquisition for the public interest, what should be remembered is that the state has management and control rights. In the management, rights can be handed over and given by the state to other parties, including the private sector.

Based on Article 4 and Article 1 of the Basic Agrarian Law, it can be argued that this country's right to control land is a strong one. But in addition, this control must not forget the right of control by individuals or communities who obtain their rights to land legitimately, such as property rights, business use rights, building use rights, or by an institution such as customary rights land.

The difference in the provision of compensation here does not cause polemics in the community. This is because the land released is owned by the temple, and the responsibility lies with the above (Ida Sang Hyang Widi Wasa/God Almighty). So people do not dare to use this for personal gain for fear of being exposed to customary sanctions and karmapala (punishment from God).

The issue of compensation in acquiring land for the public interest is the most complicated central issue of handling in the efforts to acquire land by the government by utilizing land rights. In many cases, it arises in land acquisition when observed on the form issue and amount of compensation that is not agreed upon. It is appropriate that the reimbursement does not harm the correct holder for the loss of rights to his land but must impact a better or at least the same level of life when there has not been a development activity.

The full impact of the government's compensation policy is yet being felt. The basic tenet, particularly the question of religious law and the social role that people's land plays, does not evolve into a value in the notion of liberty, which ultimately becomes the goal of the government's process of compensating profits [2]. To draw the attention of decision-makers and important stakeholders in order to promote the quickening of the achievement of growth objectives through tourism [8]. 2018's I Nyoman Sugawa Korri. In order to increase community welfare, increasing community potential through entrepreneurship in tourism development is a key method [9].

This theory serves as the basis for an analysis of the Tri Hita Karana philosophy, which is the concept of communal life in Bali in the harmonization of life, state, and homeland and which creates and creates harmony in the lives of people in Bali. In order to resolve disputes over land acquisition for the public good, where cooperation between the state and the community is essential, regional laws that recognize the inherent rights of indigenous peoples, as outlined in Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations, must be passed.

3.3 The Purpose of the Law is to Create Legal Certainty

According to Lon Fuller's viewpoint expressed above, there must be certainty between regulations and their execution, encompassing all aspects of action, behavior, and the variables affecting the application of positive law [1].

Legal certainty is governed by Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which declares that "everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." The law must always be unambiguous, particularly when it comes to accepted legal norms. Without clarity, law will become ineffective since it can no longer act as a standard for acceptable behavior. Certainty is mentioned as a tool in certain perspectives, while it is listed as one of the objectives of the law in others. Legal certainty's foundational elements are in place. Regularity allows people to live with confidence and the freedom to engage in the necessary social activities.

Published as a result of legal exploitation, national legislation is frequently regarded as a source of particular political power. The prevailing theory was The Stuffed Theory [3]. [10].

1. Using the term "Constitution" in its substantive sense, the Constitution is the highest level of positive law. Its primary purpose is to regulate the body and the process of enacting general law, or legislation.
2. General norms produced through the legislative process: General norms produced through the legislative process make up the next level of the hierarchical structure, one level below the Constitution.
3. Administrative Regulations: Administration takes the form of an administrative rule, which individualizes and concretizes laws.

4 Conclusion

The Tri Hita Karana concept's philosophy in the acquisition of land for development for the community's interests has an unbreakable relationship, namely social relationships, emotional relationships, and social relationships, in order to realize the welfare of the community and significantly alter the relationship between land and people. The Religious Communalistic concepts stated in the Basic Agrarian Law represent spiritual relations. From the viewpoint of religion, the traditional interpretation of the law, and the environmental law perspective, it is possible to observe the tight interaction between land and natural resources with mankind (egocentric, anthropocentric, and ecocentric). Legal frameworks that refer to and are based on Pancasila and the 1945 Constitution are required to safeguard human access to land and natural resources. These laws and regulations must reflect the meaning, essence, and philosophy of Pancasila and can work in conjunction with derivatives of central and local government regulations that are based on and have a synergistic hierarchy of local wisdom in the context of community harmony and its welfare.

The Tri Hita Karana ideology, which is outlined in Land Acquisition for Development for the Public Interest, is used in Bali as the cornerstone and starting point for the state's management of natural resources and agricultural resources in order to achieve

the welfare of the populace. This philosophy also serves as an alternative solution for the community to obtain the value of justice in the acquisition of customary land for Development for the Public Interest.

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