

THE LEGAL STATUS OF ESTABLISHED BUSINESSES IN THE PAKRAMAN VILLAGE (FROM THE PERSPECTIVE OF CUSTOMARY LAW IN BALI PROVINCE)

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ABSTRACT

Based on the absence of rules that provide certainty to issues of customs in Bali. Such as dispute resolution and Customary Law or Adat Law in Bali, the pattern of the relationship between people and activities within the community, thus requiring legal certainty. Business activities are activities that require certainty and good adaptation wherever the place of business is established. This article aims to analyze the legal position of established businesses in communities that are still closely related to rules of Customary Law. Analyzing the legal relationship Desa Pakraman (Pakraman Village) with outsiders/Krama Tamiu and Tamiu (Investor, Businessman), and the rights and obligations of entrants who opened the business. By using juridical studies, this paper will describe legal position, as well as the consequences obtained to businessman in carrying out its business activities in Desa Pakraman.

Key words: Business, Desa Pakraman, Customary Law, Bali Province.

Introduction

The existence of customary in the middle of the people in Bali is a reasonable, but the complexity of the dynamics of the community as well as the outflow of residents causing any activity associated with the Balinese to be important and noteworthy all concerned. I Wayan Surpha mention that the real problem is not just about the indigenous people of Bali, but it is a national problem (Surpha 2012, p. 3).

The values of harmonious culture are the foundation of the persistence of customary in Bali. Doctrine *Tri Hita Karana* (three things that lead to peace) taught that the harmonious relationship between man and God (*parhayangan*), between humans and the settlements and regions where the natural surroundings (*palemahan*), as well as the harmonious relationship between humans and the each other (*pawongan*). Efforts to improve harmony in a broader context, it should also aimed at integrating the development with indigenous life itself.

Indigenous and Hindu Religion plays an important role and determine the community in Bali, to carry out development activities and to open up to migrants who settled and opened a business in Bali. Not rare investor wants to open a business in Bali, especially in *Pakraman Village (Desa Pakraman)*. So that needs to be set concerning the rights and obligations of migrants, not just those based on national law but also based on common law, which applies in Bali.

The more complex problems of indigenous and customary law in Bali, along with the absence of clear provisions on several issues related to patterns and mechanisms of the problems of indigenous and customary law (Bali), so it takes arrangements to provide certainty for business actors who want to open their business in *Pakraman Village*.

By conducting normative study, this paper analyzes how the legal position of the newcomers, who want to open businesses in the territory *Pakraman Village* in Bali.

Pakraman Village

There are several definitions of *adat* village or village *Pekraman*. The definition given by researchers Bali as well as the existing traditional institutions in Bali. Covarrubias anthropologist argued that *adat* village are closed territorial integrity, or limited to ancestor worship, and community administration settings (Covarrubias, 1986, p. 58). Furthermore, it also explained that there is an element of unity posed as a village fastener element, namely: temple *Desa*, temple *Puseh*, and temple *Dalem*. Unity of the temple is by the people of Bali known as the temple of *Kayangan Tiga* (Kontjaraningrat, 1975, p. 283).

Furthermore, in another sense of the Indigenous Village, was put forward by the Board of Trustees of the Institute of Indigenous Peoples of Bali as follows, "indigenous village refers to the traditional groups with the ties of tradition, and linked by their three

main temple, called the temple of *Kayangan Tiga*, or another temple that serves it, called the temple of *Kayangan Tiga* (Dyatmikawati, 2013, p. 115).

Indigenous Village is a traditional community with a focus on functionality in the areas of customs and Hinduism, and is a union territory, its members jointly implement social and religious activities were organized by a cultural system. Indigenous Village is a traditional law community partnership that has grown and developed in Bali since hundreds of years ago.

The existence customary law communities, including the presence *Pakraman* Village in Bali, recognized in the Constitution of the country. It is stated in the provisions of Article 18 B of the 1945 Constitution, which specifies the following:

- (1) The state shall recognize and respect the units of local government that is special or that are regulated by law.
- (2) The State recognizes and respects units customary law community and their traditional rights as long as they live, and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which is regulated by law.

Juridical Definition of *Pakraman* Village can be seen from the Bali Provincial Regulation No. 3 of 2001 on *Pakraman* Village. Indigenous Village designation is replaced by *Pakraman* Village. Under Article 1 No. 4 Bali Provincial Regulation No. 3 of 2001 on *Pakraman* Village. *Pakraman* Village is the unity of indigenous people in the Province of Bali which has a unity of tradition and social manners Hindu community living for generations in the bond of Temple *Khayangan Tiga* or village that have a particular area and their own property, and is entitled to manage his own household.

Besides *Pakraman* Village, in Article 1, point 5 in the Regulation also explained about *Banjar Pakraman*, “a community group, part of *Pakraman* Village.” A *Pakraman* Village there consisting of one *Banjar Pakraman*, and some are made up of more than one *Banjar Pakraman*.

Based on these descriptions, it can be argued that the Indigenous Village or *Pakraman* Village, a Balinese Hindu community organizations based on the territorial integrity of a home with spiritual and religious most fundamental patterns of relationships and social interaction patterns Bali.

Residents of *Pakraman* Village known as *Krama Desa*. Not all people who have identity cards Bali can be referred to as the villagers, residents of Bali can be grouped into three, namely:

- a. *Krama Desa* (population are Hindu and listed as a member in *Pakraman* Village,
- b. *Krama Tamiu* (Hindu population and are not listed as members in *Pakraman* Village,
- c. *Tamiu* (non-Hindu residents and is not a member of *Pakraman* Village.

Each group the resident, apply the obligations (*Swadharma*) different to *Pakraman* Village. That difference should provide comfort to the three groups of the population.

Duties and Authority of *Pakraman* Village

Pakraman Village has the task, among others:

- a. Made a rule (*awig awig*)
- b. Setting or organize the *Krama* village
- c. Setting the Assets Management of village
- d. Together with the Government to implement development in all fields, especially in the fields of religion, culture and society
- e. Maintaining and developing the values of the Balinese culture in order to enrich, preserve and develop national culture in general and in particular regional culture based on deliberations - consensus (*paras-paros, sagilik-saguluk, salunglung-sabayantaka*)
- f. protect village

The authority of *Pakraman* Village are:

- a. Customs and religion resolve disputes within the region while fostering harmony and tolerance between village manners in accordance with the rules (*awig awig*) and local custom.
- b. Participate and determine every decision in the implementation of the existing development in the region, especially with regard to the *Tri Hita Karana*.
- c. Legal actions inside and outside *Pakraman* Village.

Based on the description above, it can be seen that the duties and authority *Pakraman* Village, closely related to the implementation of the religious (Hindu) and customary law Bali. The customary laws in certain *Pakraman* Village known as *awig awig* *Pakraman* Village.

Establishing Businesses in the *Pakraman* Village

As described earlier, that the people of Bali is a complex society, but it is open. The customs and teachings of Hinduism play an important and decisive people in Bali to carry out development activities and to open up to settlers. The values of harmonious culture are the foundation of the persistence of customary in Bali. Doctrine *Tri Hita Karana* (three things that lead to peace) taught that the harmonious relationship between man and God (*parhayangan*),

between humans and the settlements and regions where the natural surroundings (*palemahan*), as well as the harmonious relationship between humans and the each other (*pawongan*). Efforts to improve harmony in a broader context, it should also aimed at integrating the development with indigenous life itself.

It was also explained earlier that, each population group living in *Pakraman* Village, have different obligations. *Krama Tamiu* and *Tamiu* based activities in *Pakraman* Village can be divided into two, namely:

- a. *Krama Tamiu* and *Tamiu* which only domiciled in *Pakraman* Village; and
- b. *Krama Tamiu* and *Tamiu* domiciled and or open a business in *Pakraman* Village.

Especially for *Krama Tamiu* and *Tamiu* domiciled and or open a business in *Pakraman* Village, in addition to the obligation in the form of money, that amount is not more than 30% of obligation *Krama* village, also obliged to contribute to the *Pakraman* Village, according to the business activities carried out, for the benefit of humanity and the natural environment, to the extent not directly related to the belief according to Hindu teachings.

The type and amount of the contribution that must be given, poured in the form written agreement between *TAMIU* with *Pakraman* Village, for a period of five years and thereafter may be reviewed and or adapted to the circumstances of the business activities carried out objectively. In addition to these contributions, *Tamiu* concerned can also provide voluntary contributions (*dana punia*) to *Pakraman* Village. *Krama Tamiu* and *Tamiu* domiciled and or open a business in *Pakraman* Village, the right to assistance (*panyanggran*) *Pakraman* Village, in the face of disaster or catastrophe (*kapancabayan*).

Conclusion

It can be concluded that, Indigenous and teachings of Hinduism plays an important role, determining the people in Bali to carry out development activities and to open up to settlers who settled and opened a business in Bali. Based on the Main Assembly decision of *Pakraman* Village Bali Number: 050 / Kep / Psm-1 / MPD Bali / III / 2006 which manages the position (rights and obligations) any person who set up business in *Pakraman* Village, especially settlers (This distinction is based on religion and domicile).

Especially for *Krama TAMIU* and *TAMIU* domiciled and or open a business in *Pakraman* Village, incur liability amount of money not more than 30% of obligation *Krama* village, and given the opportunity to provide voluntary contributions. *Pakraman* Village also have an obligation to help *Krama TAMIU* and *TAMIU* when the face of disaster.

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