



The Regulation of Traditional Villages as Legal Subjects and the Designation of Temples as Religious Legal Entities in Relation to Land Ownership Rights

Anak Agung Sagung Laksmi Dewi¹ | I Nyoman Sumardika¹ |
I Gusti Agung Ayu Gita Pritayanti Dinar¹ | I Made Minggu Widyantara¹ |
Anak Agung Ngurah Adhi Wibisana¹

1. Fakultas Hukum, Universitas Warmadewa, Indonesia

Correspondence Address to:

Anak Agung Sagung Laksmi Dewi,
Fakultas Hukum, Universitas
Warmadewa, Indonesia
email: amlayasaabgs@gmail.com

Abstract. This study aims to discuss the implementation of the Bali Provincial Regulation which has given birth to various legal provisions regarding the registration of land rights, both for Customary Village and Temple land, both of which are recognized as legal entities. The material is presented using a normative approach to identify legal rules and principles. The legal sources for this study are derived from statutory provisions, including: 1) Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), 2) Government Regulation No. 24 of 1997, 3) Bali Provincial Regulation No. 4 of 2019 on Customary Villages, 4) Ministerial Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017 on the Designation of Customary Villages in Bali Province as Legal Subjects for Joint (Communal) Land Ownership, 5) Minister of Home Affairs Decree No. 556/DJA/1986 on Legal Entities Eligible for Land Ownership Rights. The results of the study show that the Traditional Village was officially designated as the subject of customary rights based on the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017 concerning the Determination of Traditional Villages in Bali Province as Subjects of Collective (General) Land Ownership Rights. Procedurally, the initial land ownership certification process for Pura followed the standard land certification procedure. It began with a written application submitted to the Head of the National Land Agency Office of Tabanan Regency, accompanied by the required administrative documents.

Keywords: Land ownership rights; legal subjects; religious legal entities; traditional villages



This article published by Fakultas Hukum, Universitas Warmadewa is open access under the term of the Creative Common, CC-BY-SA license

Introduction

Government Regulation of the Republic of Indonesia Number 38 of 1963 concerning the designation of legal entities eligible for land ownership rights was enacted in Jakarta on June 19, 1963, by Djuanda, who was the President of the Republic of Indonesia at the time. However, pursuant to the provisions stipulated in Article 8, this regulation came into effect on the date of its promulgation and has retroactive force as of September 24, 1960.

Referring to the provisions stipulated in Article 1(c) of Government Regulation Number 38 of 1963, religious institutions are recognized as legal entities eligible for land ownership rights. Furthermore, Article 4 of the same regulation states that religious and social institutions may possess land ownership rights, provided that the land is used for purposes directly related to religious and social activities.

The designation of religious and social institutions as entities eligible for land ownership rights can also be inferred from the provisions of Article 49(1) of the Basic Agrarian Law. However, land ownership by these institutions is limited to land that is used exclusively for purposes directly related to their religious and social activities.

Recent developments indicate that indigenous legal communities continue to assert their existence in pursuit of juridical recognition, including their traditional rights. This is evidenced by the emergence of various legal instruments in the form of Regional Regulations, which grant recognition to indigenous legal communities within their respective regions. The Province of Bali is among the provincial governments that have enacted such regulations, specifically Regional Regulation Number 4 of 2019 concerning *Desa Adat* (Customary Villages). Several key considerations underline the formulation of this regulation, including:

Desa Adat, which has evolved over centuries and possesses inherent rights, traditional rights, and original autonomy to govern its own affairs, has made a significant contribution to the sustainability of community life within the nation and the state.

As a unit of indigenous legal community based on the *Tri Hita Karana* philosophy, which is rooted in the local wisdom of *Sad Kerthi*, inspired by Hindu teachings, and enriched by the cultural values and local wisdom of Bali, *Desa Adat* plays a crucial role in the development of society, the nation, and the state. Therefore, it must be nurtured, protected, guided, developed, and empowered to realize the sovereignty of *Krama Bali*—politically sovereign, economically self-reliant, and culturally dignified.

The Regional Government of Bali Province, in enacting Bali Provincial Regulation Number 4 of 2019, did not use Law Number 5 of 1960 concerning the Basic Agrarian Law (*UUPA*) as one of its legal foundations, nor did it refer to Government Regulation Number 24 of 1997 on Land Registration. This raises a critical question, as the regulation's substance stipulates that land owned by *Desa Adat* must be registered under the name of *Desa Adat*, as stated in Article 58, Paragraph (1).

Furthermore, the provisions in the regulation stipulate that the land required to be registered is *Tanah Milik Desa Adat* (Customary Village-Owned Land). This raises several questions, including: Does the land owned by *Pura* (temple) fall under the category of *Desa Adat*-owned land? And is the registration of *Pura* land based on the legal framework established in this regulation? However, the key point to be conveyed here is that the enactment of the Bali Provincial Regulation has resulted in multiple legal provisions regarding the registration of land rights for both *Desa Adat* and *Pura* properties, with both being recognized as legal entities. If this is not well understood by the public, it could lead to conflicts in its implementation.

Method

The material is presented using a normative approach to identify legal rules and principles, addressing legal issues as positive norms, and systematically examining and analyzing the legal regulations governing

the registration of land ownership rights for Desa Adat (Customary Villages) and Pura (temple) properties. Due to its normative nature, this study employs a statutory and textual approach to gain a comprehensive understanding of the regulations related to this study. The legal sources for this study are derived from statutory provisions, including: 1) Law No. 5 of 1960 on the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA), 2) Government Regulation No. 24 of 1997, 3) Bali Provincial Regulation No. 4 of 2019 on Desa Adat, 4) Ministerial Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017 on the Designation of Desa Adat in Bali Province as Legal Subjects for Joint (Communal) Land Ownership, 5) Minister of Home Affairs Decree No. 556/DJA/1986 on Legal Entities Eligible for Land Ownership Rights.

Discussion

Desa Adat as a Legal Subject in Relation to Land Ownership Rights

Historically, on October 23, 2017, *Desa Adat* was officially designated as a communal land rights subject based on the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017 concerning the Designation of *Desa Adat* in Bali Province as a Communal Land Ownership Subject. This designation seemingly fulfilled the long-standing aspirations of the Balinese community, who had been advocating for *Desa Adat* to be recognized as a subject of land ownership rights. The proposal to designate *Desa Adat* as such had long been voiced by traditional institutions and local governments.

The existence of this ministerial decree was further reinforced by the enactment of Bali Provincial Regulation No. 4 of 2019 on *Desa Adat*, which was officially approved on April 2, 2019. The regulation consists of 19 chapters and 103 articles, formulated to provide recognition, strengthening, empowerment, and independence to *Desa Adat*. These objectives are reflected in strategic, responsive, progressive, and anticipatory provisions. Some of the key aspects regulated in the decree include the recognition of *Desa Adat* as a legal subject and the obligations (*swadharma*) of its residents, categorized as *krama adat* (traditional community members), *krama tamu* (migrants), and *tamu/tamu* (guests or visitors).

One important aspect of Bali Provincial Regulation No. 4 of 2019 on *Desa Adat* is the effort to facilitate the registration of customary land in Bali. This initiative is explicitly stated in Article 58, Paragraph (1) of the regulation, which stipulates that "*Customary land owned by Desa Adat shall be registered under the name of Desa Adat.*" This provision deserves recognition as a positive step taken by the Bali Provincial Government and should be appreciated by all stakeholders. Referring to the Explanation of Article 55, Paragraph (3), Letter b of the *Desa Adat* Regulation, there are two types of *Desa Adat* land, namely:

- Land that is directly managed by *Desa Adat*, such as *setra* (cemetery land), *palaba* temple land, market land, and others.
- Land owned by *Desa Adat* that is delegated for management to *krama Desa Adat* (members of the customary community), such as *Desa Adat* residential land and *ayahan* land of *Desa Adat*.

The formulation regarding customary land registered under the name of *Desa Adat* needs to be carefully examined once again, considering that before the *Perda Desa Adat* in Bali was enacted, several regulations had already provided a framework for registering certain types of customary land in Bali. For instance, the Decree of the Minister of Home Affairs No. 556/DJA/1986, which is based on Government Regulation No. 38 of 1963 concerning Legal Entities Eligible to Hold Land Ownership Rights, states that:

- Designating *Pura* as a religious legal entity eligible to hold land ownership rights.
- Establishing that *palemahan* lands, which function as an integral part of *Pura* and were already owned

at the time this Decree was issued, shall be converted into land ownership rights.

The land ownership rights referred to in this context are those regulated under Article 20, Paragraph (1) of the Basic Agrarian Law (*UUPA*), which defines ownership rights as hereditary, the strongest, and most complete rights that an individual may possess over land, in conjunction with Article 21, Paragraph (2). Consequently, *Pura* is legally recognized as a subject of law entitled to hold land ownership rights. As a legal entity, *Pura*, through its *Prajuru* (management committee), is authorized to undertake various actions concerning its property rights within the scope of private law. Based on these provisions, it can be assumed that the land ownership rights held by *Pura* cannot be interfered with by any other party, including *Desa Adat*, as this is a legal consequence of the distinction between the legal entities of *Pura* and *Desa Adat*.

Accordingly, the enactment of Bali Provincial Regulation No. 4 of 2019 on *Desa Adat*, as an effort to formalize the registration of customary land in Bali, does not contradict nor should it be seen as conflicting with the existence of the Minister of Home Affairs Decree No. 556/DJA/1986, which is based on Government Regulation No. 38 of 1963 concerning Legal Entities Eligible to Hold Land Ownership Rights.

From a substantive perspective, the regulatory scope of the two legal instruments differs, particularly in the field of land registration. It can be explained that the designation of *Pura* as a legal subject was established earlier than the recognition of *Desa Adat* as a legal subject.

Furthermore, the legal framework used by *Pura* in the land registration process to obtain legal recognition of its ownership rights is based on Government Regulations, which hierarchically hold a higher legal status than regional regulations.

The Efforts to Certify Pura-Owned Land as a Legal Subject of a Religious Institution

Government Regulation of the Republic of Indonesia No. 38 of 1963 on the Designation of Legal Entities Eligible for Land Ownership was enacted in Jakarta on June 19, 1963, by Djuanda, who was serving as the Acting President of the Republic of Indonesia at that time. However, based on the provisions stipulated in Article 8, this regulation came into effect on the date of its promulgation and has retroactive force as of September 24, 1960.

Referring to the provisions stipulated in Article 1(c) of Government Regulation No. 38 of 1963, religious institutions are recognized as one of the legal entities eligible to hold land ownership rights (*Hak Milik*). Furthermore, Article 4 of the same regulation states that religious and social institutions may possess land ownership rights, provided that the land is used directly for religious and social purposes.

The designation of religious and social institutions as entities eligible for land ownership can also be inferred from Article 49(1) of the Basic Agrarian Law. However, the ownership of land by such institutions is strictly limited to land that is utilized for activities directly related to religious and social endeavors.

The issuance of the Decree of the Minister of Home Affairs No. 556/DJA/1986, based on Government Regulation No. 38 of 1963 concerning Legal Entities Eligible for Land Ownership Rights, further reinforces the status of *Pura* as a legal entity under the category of Religious Institutions. Furthermore, the Decree of the Minister of Home Affairs No. 556/DJA/1986 stipulates the following:

- Designates *Pura* as a religious legal entity eligible to hold land ownership rights.
- Establishes that *palemahan* lands, which function as an integral part of *Pura* and were already owned at the time this Decree was enacted, shall be converted into ownership rights.

The ownership rights referred to in this context is the ownership right regulated under Article 20, Paragraph (1) of the Basic Agrarian Law (UUPA), which is a hereditary, strongest, and most comprehensive right that an individual can possess over land, in conjunction with Article 21, Paragraph (2). Accordingly, *Pura* is legally recognized as a legal subject holding land ownership rights. As a legal subject, *Pura*, through its *Prajuru* (management officials), is authorized to undertake various actions concerning its property within the scope of private law. Based on these provisions, it can be assumed that the ownership rights (*Hak Milik*) of land held by *Pura* cannot be interfered with by other parties, including *Desa Adat*, as this is a direct consequence of the legal distinction between *Pura* and *Desa Adat* as separate legal entities.

Conclusion

Desa Adat was officially designated as a subject of communal land rights based on the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 276/KEP-19.2/X/2017 concerning the Designation of *Desa Adat* in Bali Province as a Subject of Collective (Communal) Ownership Rights Over Land. This designation was further reinforced by the enactment of Bali Provincial Regulation No. 4 of 2019 on *Desa Adat*. Meanwhile, the recognition of *Pura* as a religious legal entity entitled to land ownership rights refers to the Minister of Home Affairs Decree No. 556/DJA/1986, which is based on Government Regulation No. 38 of 1963 concerning Legal Entities Eligible to Hold Land Ownership Rights.

Procedurally, the initial land ownership certification process for *Pura Ulun Danu Beratan* followed the standard land certification procedure. It began with a written application submitted to the Head of the National Land Agency Office of Tabanan Regency, accompanied by the required administrative documents. Upon review, the Land Office accepted and approved the application, resulting in the issuance of a Land Ownership Certificate (*Sertifikat Hak Milik* or SHM). The certificate designates *Pura Penataran Agung Ulun Danu Beratan*, located in *Desa Candikuning, Baturiti District, Tabanan Regency*, as the legal owner under SHM No. 03651, SU dated 30/01/2019, No. 02378/CANDIKUNING/2019, with a total area of 4,520 square meters, recognizing it as a Religious Legal Entity.

The enactment of Bali Provincial Regulation No. 4 of 2019 on *Desa Adat* represents an effort to facilitate the registration of customary land in Bali. This regulation does not conflict with Minister of Home Affairs Decree No. 556/DJA/1986, which is based on Government Regulation No. 38 of 1963 concerning Legal Entities Eligible for Land Ownership Rights. The substantive provisions of these two regulations have distinct regulatory objectives, particularly in the field of land registration. Therefore, it can be explained that the designation of *Pura* as a legal subject was established prior to the recognition of *Desa Adat* as a legal entity.

References

Astiti, T. I. P. (2010). *Desa Adat Menggugat dan Digugat*. Denpasar: Udayana University Press

Hadikusuma, H. (1983). *Sejarah Hukum Adat Indonesia*. Alumni: Bandung

Keputusan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 276/KEP-19.2/X/2017 tentang Penunjukan Desa Adat di Provinsi Bali Sebagai Subjek Hak Pemilikan Bersama (Komunal) Atas Tanah

Nurtjahjo, H., & Fuad, F. (2010). *Legal Standing Kesatuan Masyarakat Hukum Adat*. Jakarta: Salemba Humanika

Peraturan Pemerintah Nomor 24 Tahun 1997, tentang Pendaftaran Tanah Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 tentang Desa Adat

Sirtha, I. N. (2008). *Aspek Hukum Dalam Konflik Adat di Bali*. Denpasar: Udayana University Press

Suartika, I. G. (2010). *Anatomii Konflik Adat di Desa Pakraman dan Cara Penyelesaiannya*. Denpasar: Udayana University

Press

Surat Keputusan Menteri Dalam Negeri Nomor 556/DJA/1986 tentang Badan-Badan Hukum yang Dapat Mempunyai Hak Milik Atas Tanah.

Surpha, I. W. (2004). *Eksistensi Desa Adat dan Desa Dinas di Bali*. Denpasar: Pustaka Bali Post

Taneko, S. B. (1981). *Dasar-Dasar Hukum Adat Dan Ilmu Hukum Adat*. Bandung: Alumni

Undang Undang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria

Wiranata, I. G. A. B. (2005). *Hukum Adat Indonesia, Perkembangan Dari Masa Ke Masa*. Bandung: PT. Citra Aditya Bakti