



Land Rights Registration for Indigenous Villages Towards a Sustainable Indigenous Village

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Abstract – This study aims to explore outcomes relating to the allocation of property rights to legal entities, with an emphasis on the importance of ministerial recommendations regarding such rights. This research utilizes a combined approach of normative and empirical research methods. Normative research methods were utilized to explore the legal and regulatory aspects related to the registration of land rights for indigenous villages, including an analysis of agrarian law, government regulations, and related policies governing the registration of such land rights. On the other hand, empirical research methods were conducted to collect field data related to the implementation of land rights registration for indigenous villages. Data collection was conducted through interviews with land rights certificate holders, direct observation of *ngayah* activities in indigenous villages, and analysis of the impact of land rights registration on the sustainability of indigenous villages. In the process of data analysis, various techniques were used, including in-depth analysis of agrarian law, government regulations and policies governing the registration of land rights for indigenous villages, in order to draw relevant conclusions. The results show that the allocation of property rights to legal entities has the potential to strengthen indigenous villages and achieve the goal of *ajeg Bali*. It is important for the government to ensure that these various factors are met in order for property rights to provide significant benefits to the viability and sustainability of the village.

Keywords: Property Rights Allocation, Ministerial Recommendations, Indigenous Village Sustainability.

I. INTRODUCTION

According to Hinduism, there exist four distinct ages, referred to as "*yugas*." The first is the *Satya Yuga*, often described as the golden age, characterized by a society where virtuous conduct prevails without the presence of criminals, deceivers, or thieves. The second age, also known as *Treta Yuga*, witnesses a balance between righteousness (*dharma*) and wrongdoing (*adharma*). The subsequent *yuga* is the *Dwapara Yuga*, where the prevalence of *adharma* starts to overshadow virtue. Finally, the fourth and concluding age is *Kali Yuga*, famously recognized as the age of darkness (Susanti, 2020). As per the *Manawa Dharmasastra* I.71, these four *yugas* collectively span 12,000 human years, representing a cycle of divine influence. Each *yuga* distinctly embodies varying degrees of luminosity and obscurity. Consequently, it is evident that every age carries its unique essence of brilliance and darkness within its temporal framework (Tristaningrat, 2019).

The era of *Kali Yuga*, often dubbed as the age of darkness in Hinduism, blurs the distinction between righteousness (*dharma*) and wrongdoing (*adharma*) (Putra et al., 2022). This ambiguity arises from the inherent instability of human nature, characterized by incessant desires to fulfill personal needs. Notably, individuals often fail to discern between essential needs that don't impinge on others and self-serving desires that may detrimentally impact others, including their native villages, the very places that have provided them with agricultural land, termed *Ayahan Village Land (AYDS)*, or residential areas, commonly known as village yard land (*tanah pekarangan desa*).

AYDS represents agricultural or moorland owned by the indigenous village (*druwen desa*), allocated to its community members (Windari, 2010). Part of the produce from AYDS is contributed back to the village, supporting its sustenance. On the other hand, PKD land, also owned by the indigenous village, is assigned to community members as residential areas (Rudy, 2017). However, unlike AYDS, PKD land doesn't yield material returns; instead, it mandates the obligation of *ngayah* (community service) to maintain the customary village's assets, including its temples *Tri Kahyangan* or *Kahyangan Tiga*, namely the Village, Puseh, and Dalem temples.

Both AYDS and PKD lands signify properties held by the traditional village (*druwen desa*), entrusted to local indigenous community members, obligating them to perform *ngayah*, aligning with the land's benefits. While AYDS contributes part of its yield to finance village activities, PKD serves as residential space, requiring users' adherence to *ngayah* for the customary village's welfare (Keler, 2018).

Designation of customary villages in Bali was formalized by the Government's Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Minister of ATR/KBPN) through Decree No. 276/Kep-19.2/X/2107, allowing land ownership rights. Bali Province's Regional Regulation No. 4 of 2019 subsequently renamed Pekraman villages as customary villages (Fauziah, 2022).

The need for research arises from the Balinese government's pursuit of *ajeg* Bali, aiming to preserve traditional villages. This normative research delves into "Land Rights Registration for Indigenous Villages Towards a Sustainable Indigenous Village." It primarily investigates the correlation between granting land property rights to indigenous villages and the continuation of *ngayah* to these villages by the land rights certificate holder and their descendants. Additionally, the study explores the repercussions if the certificate holder ceases to perform *ngayah* for the indigenous village.

II. METHOD

This research used normative and empirical research methods. Normative research methods are used to explore the legal and regulatory aspects relating to land rights registration for indigenous villages. This research involves analyzing agrarian laws, government regulations, and related policies governing the registration of land rights. Furthermore, empirical research methods were used to collect field data related to the implementation of land rights registration for indigenous villages. This involves interviews with land rights certificate holders, direct observation of *ngayah* activities in indigenous villages, and analysis of the impact of land rights registration on the sustainability of indigenous villages. Data collection techniques that can be used include interviews with land rights certificate holders, direct observation of *ngayah* activities in indigenous villages, and analysis of policies and regulations related to land rights registration for indigenous villages. In this research to analyze the data several techniques are used such as; analysis and drawing conclusions on agrarian laws, government regulations, and related policies that regulate the registration of land rights for indigenous villages.

III. RESULT AND DISCUSSION

Land registration is a governmental prerogative governed by Article 19, paragraph (1) of Law No. 5 of 1960 concerning Basic Agrarian Regulations, commonly known as the Basic Agrarian Law (*UUPA*). This article stipulates the authority that determines;

"To ensure legal certainty, the Government conducts land registration of land throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation."

Based on these provisions, the government promulgated Government Regulation No. 10 of 1961 concerning Land Registration, which has been revoked and replaced by Government Regulation No. 24 of 1997 concerning Land Registration.

The authority granted by law to the government to carry out land registration is also complemented by the authority to conduct land registration is also complemented by the

authority the government to grant certain land rights to the subject of the right, as stipulated in Article 2 paragraph (2) letter b of the *UUPA*, which stipulates;

"The State's right of control referred to in paragraph 1 of this article gives it the authority to determine and regulate the legal relationships between between persons and the earth, water and airspace."

Furthermore, Article 2, paragraph (4) of the Basic Agrarian Law (*UUPA*) stipulates;

"The right of control of the State mentioned above may be delegated to Swatantra Regions and customary law communities, as necessary and not contrary to the national interest, according to the provisions of a Government Regulation."

Article 4 of the *UUPA* further specifies;

1. On the basis of the State's right to control as referred to in Article 2, there are various kinds of rights over the surface of the earth. 2, there are various kinds of rights over the surface of the earth, called land, which can be granted to and owned by persons. called land, which may be granted to and owned by persons, either alone or jointly with other persons and legal entities. either alone or together with other people and legal entities.
2. The land rights referred to in paragraph 1 of this article authorize the use of the land in question, as well as the body of the earth and the water and the space above it, merely for the purposes directly related to the use of the land, within the limits set by this Act and other higher laws. other higher laws.
3. In addition to the rights to land as referred to in paragraph 1 of this article rights to water and airspace are also determined.

The land rights that the government may confer upon legal entities (both individuals and corporate bodies) are delineated in Articles 20 through 43 of the Basic Agrarian Law (*UUPA*), namely;

1. Right of ownership (Article 20-Article 27 of the *UUPA*) essentially states that the right of ownership is a hereditary, strongest, and fullest right that can be owned by people over land and can be transferred or transferred by people over land and can be transferred or transferred. The right of ownership may only may only be owned by Indonesian citizens and legal entities that are determined by the government. Legal entities that can own land titles are regulated in Government Regulation No. 38 of 1963 concerning the Designation of Legal Entities That Can Own Land (*LN. 1963-61*). The following legal entities may hold land titles on land, each with the restrictions mentioned in Articles 2, 3 and 4 of this regulation;
 - a. Banks established by the State (hereinafter referred to as State Banks).
 - b. Agricultural Cooperative Societies established pursuant to Law No. 79 of 1958 (State Gazette of 1958 No. 139).
 - c. Religious bodies, appointed by the Minister of Agriculture/Agraria, after hearing the Minister of Agama.
 - d. Social bodies, which are appointed by the Minister of Agriculture/Agrarian Affairs, after hearing the Minister of Social Welfare. after hearing the Minister of Social Welfare.
2. Cultivation Rights (Article 28-Article 34 of the *UUPA*) which basically states that Cultivation Rights (*HGU*) is the right to cultivate land directly controlled by the State, for agricultural, bonding or livestock companies, with an area of at least 5 hectares and if the area is 25 hectares or more, it must use proper capital investment and good corporate techniques, in accordance with the times. *HGU* is granted by government stipulation for a period of 25 years or 35 years and can be extended for a maximum of 25 years. *HGU* can be owned by Indonesian citizens, legal entities established under Indonesian law.
3. Which basically states that the Right to Use Buildings (*HGB*) is a right to erect and own buildings on land that is not one's own, with a maximum period of 30 years and can be extended for 20 years and can be transferred or assigned. The Right to Use Buildings can be owned by Indonesian citizens, legal entities established under Indonesian law and domiciled in Indonesia. *HGB* can occur on land directly controlled by the State by government stipulation or on land owned based on an agreement in an authentic form.

4. Right of Use (Article 41-Article 43 of *UUPA*) essentially states that the right of use is the right to use and/or collect products from land directly controlled by the State or land owned by others with obligations stipulated in the decree granting the right or agreed upon by the landowner. The right of use can be granted for a certain period of time or as long as the land is used for certain purposes, which can be granted to Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia and foreign legal entities that have representatives in Indonesia. have representatives in Indonesia.

Based on the provisions in the legislation It can be seen that only the state is authorized to grant rights to land to legal subjects (persons and legal entities). Land to legal subjects (persons and legal entities). Land rights that can be granted by the state to legal subjects are property rights, business use rights, building use rights and use right (Reski, 2012) s. With the provision of property rights to land land can only be owned by Indonesian citizens with the exception of the Minister of Agriculture/Agrarian Affairs (now Minister of Agriculture). Minister of Agriculture/Agraria (now Minister of *ATR/KBPN*) may be granted to legal entities of state banks and cooperative societies without the need for recommendations from other ministers. recommendations from other ministers, while for religious bodies must religious bodies must obtain a recommendation from the Minister of Religious Affairs and social bodies must obtain a recommendation from the Minister of Social Welfare (now Minister of Social Affairs). After the time when the state banks changed their legal entity to a limited liability company (*PT*), it was not necessary to obtain a recommendation from the Minister of Religious Affairs. The authority of authority of the state to grant land rights can be delegated partly to swatantra regions (now regional governments) and to customary law communities.

It has been previously mentioned that Article 2 paragraph (4) of the *UUPA* stipulates that the right to control from the state can be partially delegated to the swatantra regions and customary law communities. and customary law communities. This provision is further emphasized in Article 1 point 4 of Government Regulation No. 24/1997 which stipulates;

"Right of Management is a right of eviction from the State which the authority to implementation is partially delegated to the holder."

This is relatively the same as stipulated in the provisions of Article 1 point 3 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Unit of Land Rights. Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Unit of Flats, and Land Registration (*LN. 2021-28*) which stipulates;

"The Right of Management is a right of control from the state whose authority is partially delegated to the holder of the Right of Management. implementation is partially delegated to the holder of the Management Right."

The authority possessed by the state in exercising the State's right of control over land is regulated in Article 2 paragraph 2 of the *UUPA*, which stipulates that over land is regulated in Article 2 paragraph 2 of the *UUPA*, which stipulates;

"The right to control from the State referred to in paragraph 1 of this article grants the authority to;

- a. to regulate and organize the allotment, use, supply and maintenance of the earth, water and space,
- b. to determine and regulate the legal relationships between people with the earth, water and airspace,
- c. determine and regulate legal relationships between persons and the earth, water and space,
- d. determine and regulate legal relationships between persons and the earth, water and space, and legal acts concerning the earth, water and airspace,
- e. determining and regulating legal relations between persons and the earth, water and space.

The state's jurisdiction, as stipulated in Article 2, paragraph 2 of the Basic Agrarian Law (*UUPA*), pertains to public regulation concerning the determination of land designation and usage. This includes delineating specific areas designated for greenways and other

designated purposes. This is regulated in the law on spatial planning. The authority of the State regulated in letter b of Article 2 paragraph 2 of the *UUPA* is the granting of land rights as stipulated in Article 16 paragraph (1) of the *UUPA*, namely Property Rights, Business Use Rights, Building Use Rights and Use Rights. As for letter C, what is regulated is about legal acts, such as legal acts, such as sale and purchase of land, grants, exchanges, encumbrance of land rights, and so on. and so on.

In light of these provisions, part of the State's authority that can be transferred to self-governing regions or customary law communities is the granting of rights to other parties as stipulated in Article 2 paragraph (2) letter b of the *UUPA*, specifically the granting of Cultivation Rights, Building Rights or Use Rights to other parties by holders of Ownership Rights or Management Rights or Right of Use to other parties by holders of Ownership Rights or Management Rights (*HPL*) on land.

Given that *PKD* is indigenous village land allocated to its inhabitants for residential purposes, together with the obligation of *ngayah* (service) to the indigenous village, it is advisable to grant it as Right of Straight Use (*HPL*) to the indigenous village (Wiguna, 2018). Subsequently, the *Bendesa Adat* issues a decree allowing the land's utilization by the local customary village community with the right of use, contingent upon the land being utilized solely as a residential dwelling and the individual adhering to *ngayah* duties for the customary village (Sudana et al., 2019) e. If there is a change in the land's use or if the individual no longer fulfills *ngayah* responsibilities for the customary village, the right of land use is nullified, and the land reverts to the customary village.

Why is it given with *HPL* instead of property rights, because to give property rights to land to certain legal entities, the Minister of *ATR/KBPN* must get recommendations from other Ministers, such as for places of worship must get recommendations from the Minister of Religion. The question is which Minister can provide recommendations to the Minister of *ATR/KBPN* to grant property rights to land to indigenous villages? That is a question that must be answered.

IV. CONCLUSION

The steps or procedures for registering *PKD* land with the Right of Management and issuance of the Right of Use by the *Bendesa Adat* can be further delineated for clarity regarding the process's alignment with ensuring sustainability. Following the aforementioned description, the outlined conclusions emphasize the pivotal role of registering *PKD* land with the Right of Management for the sustenance of the indigenous village. Initially, the customary village ought to undertake the registration process, acquiring the Right of Management. Subsequently, the *Bendesa Adat*, facilitated by the *paruman krama* of the indigenous village, issues a decree bestowing the Right of Use to members within the indigenous village community. This right is contingent upon the land being utilized solely as a residential abode and the individual's commitment to fulfill *ngayah* duties for the indigenous village. In addition, with the existence of Right of Straight Use (*HPL*), the customary village, under the guidance of the *bendesa adat* and village officials, takes over control of the land owned by the village. This control mechanism is essential to ensure the sustainability of the *adat* village, thus aligning with the ultimate goal of realizing a sustainable Bali.

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