

## **Legal Pluralism In The Process Of *Ngadegang Bandesa Adat, Kelian Adat* Or Other Names In Customary Village In Bali**

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### **ABSTRACT**

There is regulation of State Law and Customary Law in the *Ngadegang Bandesa Adat/ Kelian Village* or Other Names and *Prajuru Desa Adat*. By theory including pluralism law in *Hanging out Bandesa Adat/ Kelian Desa Adat* or Other Names and *Prajuru Desa Adat* in Bali. How Settings and Models of Legal Pluralism in *Ngadegang Bandesa Adat/ Kelian Desa Adat* or Other Names and *Prajuru Desa Adat* Interesting For studied.

This writing use method study normative law. Problem discussed with approach regulation legislation, approach analysis laws and approaches draft law. Problem studied with use source material Primary law refers to provisions regulation legislation, as well use source material law secondary, deep form bibliography, articles law as well as literacy other. Collection material law done with technique quote, next processed and analyzed with theory pluralism law, then narrated in a way descriptive, for Then concluded.

Keywords: Legal Pluralism, Process of *Ngadegang, Bandesa, Customary Village*

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### **I. Introduction**

Recognition and respect to Customary Villages in Bali as peculiarity from Bali already There is in provision law Good made Central Government and made Local Government. As Customary Law Community Units (KMHA), Customary Villages in Bali have authority for manage its territory Alone. Related with one from right Customary Village in inner Bali look after House the stairs Alone through rights for forming rule law custom designation others in Bali are called *Awig-Awig* or *Pararem* This is what is called a Customary Villages as *self-regulating community*. Namely make regulation for his community Alone. There are Customary Villages in Bali authority make rule law Alone in form *Awig-Awig* is authority nature (Sudantra, 2008), which is brought since birth Customary Village are referred to as Customary Law or called *Awig-Awig* in Bali which cannot be

separated with Customary Village That alone, which is jointed customs in the village custom local (Witari, et al , 2020).

Inner Customary Villages operate duties and authority as well as right organize and manage House the stairs Alone naturally must own Customary Village government is appropriate with tradition that is down hereditary carried out in the appropriate Customary Village with law each other's customs. Speak about Customary Village government in Bali is interesting For refer provisions of Article 1 Number 14 of Bali Province Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali (Furthermore called Regional Regulations on Customary Villages in Bali), which states that "Customary Villages Government is management of living arrangements community in the related Customary Villages with *Parahyangan*, *Pawongan*, and *Palemahan* are recognized and respected in system unitary state government Republic of Indonesia". Customary Villages Government administers life management community in the related Customary Villages with *Parahyangan*, *Pawongan*, and *Palemahan* held with base institutional Customary Villages Government and Decision Making Institutions. In the process in the Process of *Ngadegang Bandesa Adat*, *Kelian Adat* or Other Names in Customary Village in Bali at least there are 2 (Two) types governing law, namely state laws and laws custom .

As instrument state law, refer provisions of Article 29 Paragraph (2), (3), (4), (5), (6), and (7) of Regional Regulations concerning Customary Villages in Bali, respectively state that *Bandesa Adat* or other designations are chosen by *Krama Desa* individually discussion consensus. Customary Villages in inner Bali look after house the stairs alone through rights for forming rule law custom designation others in Bali are called *Awig-Awig* or *Pararem* This is what is called a Customary Villages as *self-regulating community*. Authority that executed in form writing *Awig-Awig* or *Pararem* which is in it load process of *Ngadegang Bandesa Adat*, *Kelian Adat* or Other Names in Customary Village are regulated through mechanism discussion consensus. *Bandesa Adat* is designation leader in communities in Customary Villages areas. *Bandesa Adat* in operate task assisted by representatives of the so-called *Petajuh Bandesa Adat*. Then there is the so-called

*Penyarikan Desa Adat* as the secretary of the Customary Village, as well assisted by the so-called Customary Villages treasurer so called *Petengen / Juru Raksa*.

As a legal instrument customs represented by the Decree of the *Pasamuhan Agung* II Bali Customary Villages Council of 2021 Number 12/KEP-PSM.II/MDA-BALI/X/2021, *Awig-Awig*, and *Pararem* special Customary Villages arrange about the Process of *Ngadegang Bandesa Adat, Kelian Adat* or Other Names in Customary Village in Bali. Where general directs *the Bandesa* process custom or other designations are chosen by *Krama Desa* individually discussion consensus.

That culture *Ngadegang Bandesa Adat* in a way discussion the consensus carried out by the Customary Villages has been become inspiration in election leader nation this, however in tune with current global developments This culture election in a way deliberation and consensus also took place shifted become election in a way direct through voting with mechanism one man one vote, fine in a way open nor closed with principle direct, public, free, confidential, honest and fair. Situation this too has been influence mechanism *Ngadegang Bandesa Adat* in Customary Villages in Bali, previously put forward election in a way discussion consensus (*gilik saguluk, paras paro, salunglung sabayantaka, sarpana ya*) become election in a way voting, one man one vote.

More conditions worrying is it shifted mechanism *Ngadegang Bandesa Customaty Village* leader from hereditary model or appointment become a selection model in a way direct with reason democracy contemporary. Shift system This has grind values the Hindu religion that became the spirit of Customary Villages in Bali and also eroding attachment social community, so that the feeling of *Menyamabraya, Gilik saguluk, Paras paro, salunglung sabayantaka* become fades and is implicated in less realization harmony life in a Customary Village.

That Bali Province Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali has been implemented start applies official since date promulgated, namely on May 28 2019, namely A effort serious Bali Provincial Government for return strength discussion consensus in order life custom customs in Bali, which Article 29 paragraph (2) regulates that "*Bandesa Adat / Kelian Desa Adat* or Other designations are chosen by *Krama Desa* individually discussion consensus ". That principle *Ngadegang* (election) *Bandesa Adat/ Kelian Adat* or

Other designations made in a way discussion consensus is very suitable with *tetuek* principles Balinese customs, namely *manyama Braya*, *Gilik saguluk*, *para sparo*, *salunglung sabayantaka*, *sarpana ya* that 's it duly always *kerajegang lan kasungkemin* by every *Krama Desa Adat* and *Prajuru* Cumtomy Village in maintenance order life custom in Bali.

There is regulation of State Law and Customary Law in the *Ngadegang Bandesa Adat/ Kelian Village* or Other Names and *Prajuru* Desa Adat. By theory including pluralism law in *Hanging out Bandesa Adat/ Kelian* Desa Adat or Other Names and *Prajuru* Desa Adat in Bali. How Settings and Models of Legal Pluralism in *Ngadegang Bandesa Adat/ Kelian* Desa Adat or Other Names and *Prajuru* Desa Adat Interesting For studied.

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### **Discussion**

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia determines that the State recognizes and respects units public law custom along with rights its traditional throughout Still lively and appropriate with development society and the principle of the Unitary State Republic of Indonesia, which is regulated in Constitution. It means that existence unity public law custom must still acknowledged and given guarantee sustainability his life in the Unitary State Republic of Indonesia. Likewise, Article 28I paragraph (3) of the 1945 Constitution confirms that: Identity culture and rights public traditional respected aligned with development of time and civilization.

Refer from Decision Court Constitution Number 31/PUU-V/2007 concerning Judicial review Number 31 of 2007 concerning Formation of Kota Tual, Maluku Province, where in The Constitutional Court 's decision load condition

Confession to existence The declared Customary Law Community Unity classified Still life with conditions, between:

1. There are societies whose citizens feel as one group because of the values they maintain together;
2. There are traditional institutions that grow traditionally;
3. There are assets and/or traditional objects;
4. There are customary law norms that are still valid; And
5. There are certain areas.

Strengthening and advancing Customary Villages in Bali has been get state recognition and support through its birth Constitution Number 15 of 2023 concerning the Province of Bali (hereinafter referred to as the Bali Province Law), as follows regulated in Article 6 which states that "In the Bali Province area there are Customary Villages and *Subak* which are regulated by the Bali Province Regional Regulations in accordance with the provisions regulation legislation". Furthermore, Article 8 Paragraph (2) of the Bali Province Law states that "The Central Government can provide support funding in order strengthening advancement culture, Customary Villages, and *Subak* through the Regional Government of Bali Province". Arrangement this is what happens next also strengthens existence Customary Village Regulations in Bali.

Customary Villages is unity public law the customs contained therein there is public custom. Legal society custom shared become territorial society and society genealogy. Legal society or fellowship territorial law is a permanent and orderly society, whose members its people tied to something area residence certain, fine in connection worldly as place life nor in connection spiritual as place worship to spirits ancestors. Meanwhile, society or fellowship legal nature genealogy is something unity an orderly society, in which its members tied to the same lineage from One ancestor, or in a way No direct Because relationship marriage or relationship custom (Hadikusuma , 2003: 108) .

About function rights traditional HM. Koesnoe put forward there is four related functions with rights traditional in fellowship public law villages (custom) regarding with maintain harmony between public with the universe includes:

Function government, Function maintenance spirit, Function maintenance of religion, and Function coaching law custom (Nur Rahman, 2011: 4).

The existence of Customary Villages in Bali today This arranged in Bali Province Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali (next called Customary Village Regulations in Bali). Applicability The Regional Regulation on Customary Villages in Bali is in place walk more from 4 (four) years since determined by the Governor of Bali, on May 28 2019. Birth The Regional Regulation on Customary Villages in Bali naturally placed as instrument law for reach ambition sublime related the existence of Customary Villages in Bali.

Refer to the provisions formally, the meaning of Traditional Village in Bali is appropriate with provision in article 1 number 8 of the Regional Regulation on Customary Villages in Bali which states that the Customary Village is unity public law Balinese customs have territory, position and structure original, rights traditional, treasure riches themselves, traditions, *manners* association life public in a way down hereditary in bond place holy (*kahyangan tiga* atau *kahyangan desa*), duties and authority as well as right organize and manage house the stairs alone. Based on provision the there is elements in village customs in Bali, among others ( Sastra, 2020: 260):

1. Represents something unity public law custom in Bali. Meaning unity public law custom is something incorporated communities in something unity system based law on right togetherness.
2. Having territory, that is every village custom in Bali can be said as village custom If have their own territory with certain limits both physical limits as well as natural boundaries.
3. Position, meaning village custom own position clear law as something subject the law can do deed law on Name village custom Alone.
4. Arrangement original, meaning village custom own arrangement original Good from system government, system economics, etc. which have been done in a way down hereditary and not yet influenced by culture outside.
5. Rights traditional, meaning village custom own inherent rights in a way traditional in the village custom that, for example right management forest

custom, right management sea, rights on management land in a way traditional, etc.

6. Treasure riches yourself, that is village custom own treasure riches Good riches nature, objects nor riches others are controlled in a way communal by village custom For need together public custom.
7. Tradition, meaning village custom own habits that are down hereditary inherited and preserved Good from side customs, arts and culture.
8. Manners association life public in a way down hereditary in bond place holy (*kahyangan tiga* atau *kahyangan desa*), meaning every village custom there is place so- called holy as heaven village as proof bond together.
9. Duties and authority as well as right organize and manage House the stairs yourself, that is village custom own authority for arrange House the stairs Alone including taking out rule Alone in arrange the region.

Required step for can face challenge and complete The problems experienced by Customary Villages are good in a way institutional as subject Customary Village laws, as well as what is experienced by Customary Village *manners* Alone. One of them with implement Good Customary Village Governance.

Especially with exists reality various the origins of the Traditional Village in Bali, which is general common in many ways literature is typological into 3 (three) types of Customary Villages in Bali, namely the Bali *Aga*, *Apanaga* and Bali *Anyar* Customary Villages.

- 1) *Customary Village Bali Aga*, is a traditional village belonging to this typology, the majority of which are in mountainous areas (but there are some in coastal areas), who are descendants of the original Balinese population, have a collective system of government, both based on descent, age level, and collectively. alternately/ *rigrigan* , which was not influenced by the Majapahit royal system. This traditional village still adheres to it tradition the original Balinese Hindu or pre-Majapahit era did not exist influence originating from Javanese Hindu culture from Majapahit .
- 2) *Customary Village of Apanaga*, is a traditional village that has been influenced by the Majapahit government system, originating traditions

and culture from Majapahit , such as the economic system, leadership system and stratification social The people, usually in the Customary Village area, are related to the regional leadership or the authority of the local King.

- 3) Customary Village *Bali Anyar*, is a Customary Village that was just born or grew after the independence of the Republic of Indonesia, and grew due to population and regional growth, including movement or transmigration residents to earn a living.

Inner Customary Village operate duties and authority as well as right organize and manage House the stairs Alone naturally must own Customary Village government is appropriate with tradition that is down hereditary carried out in the appropriate Customary Village with law each other's customs. Speak about Customary Village government in Bali is interesting for refer provisions of Article 1 Number 14 of the Regional Regulation on Customary Villages in Bali, which states that "Customary Village Government is management of living arrangements community in the related Traditional Village with *Parahyangan*, *Pawongan*, and *Palemahan* are recognized and respected in system unitary state government Republic of Indonesia". Customary Village Government administers life management community in the related Traditional Village with *Parahyangan*, *Pawongan*, and *Palemahan* held with base institutional Customary Village Government and Decisions Making Institutions.

Article 28 Article Paragraph (2) of the Regional Regulation on Customary Villages in Bali explains the elements contained within Institutional Customary Village Government, consisting of on:

- a. *Prajuru Desa Adat*;
- b. *Sabha Desa Adat*;
- c. *Kertha Desa*; and
- d. *Banjar/ Banjar Suka Duka* or other names.

Article 29 Paragraph (1) of the Regional Regulation on Customary Villages in Bali, regulates that the fewest Customary Village *Soldiers* consists on:

- a. *Bandesa Adat* or other names;
- b. *patajuh Bandesa Adat* or *pangliman* or other names;

- c. *panyarikan* or *scribe* or other designation; And
- d. *patengen* or *juru raksa* or other names.

Next, in provisions of Article 29 Paragraph (2), (3), (4), (5), (6), and (7) of the Regional Regulation on Customary Villages in Bali, respectively state that *Bandesa Adat* or other designations are chosen by *Krama Desa* individually discussion consensus, *Prajuru Desa Adat* (*Patajuh Bandesa Adat* or *commander* or other designations; *Panyarikan* or *interpreter write* or other designations; and *Juru Raksa*, sebagai *Bendahara*, appointed and determined by the Indigenous People's *Village Paruman Sabha Desa Adat*). Election *Bandesa Adat* and appointment *Soldier* arranged with *Awig-Awig* and/ or *Pararem*. Length of service *Prajuru Customary Village* is appropriate with *Awig-Awig* and/ or *Pararem* that applies in the local Customary Village. The *Prajuru Desa Adat*, carries out duties and authority in a way collective collegial. *Prajuru Desa Adat* can lift staff administration general and financial in accordance need.

It varies Customary Village Government in Bali is A flower Many beautiful Customary Villages in Bali for regulated, maintained and protected, so that variation sovereignty in a way politics owned by Customary Villages can guarded and maintained. One of them showed in The Regional Regulation on Customary Villages in Bali provides arrangement special related with the *Desa Adat Tua*. Refer provisions of Article 53 Paragraphs (1), (2), (3), and (4) of the Regional Regulation on Customary Villages in Bali, in general short state that the Old Customary Village is arrangement public native to certain Customary Villages in Bali which have system government collective (*ulu apad*). The *Desa Adat Tua* has procedures determination soldier or first based on: lineage; or *rigigan, lekesan* (order). Arrangement the organization and institutions of the *Desa Adat Tua* followed suit arrangement original, system management *Parahyangan*, and system society obedient *dresta* local. *Desa Adat Tua* authorities organize and manage field customs, religion, traditions, arts and culture, as well as wisdom local in accordance with *dresta* local.

In filling *kaprajuruan* There are various Customary Villages in Bali mechanism *Ngadegang Bandesa* or the leader of the Customary Village in Bali, namely mechanism election (deliberation consensus), descent, *saserodan* /

*undagan / rigigan , nyanjan / tedun sekar*, and others . There is also through mechanism designation and even There is through mechanism *lekesan* . It varies mechanism *Hanging out* leader custom is A flower Many Customary Villages in Bali are worth visiting For regulated, maintained and protected, so that variation sovereignty in a way politics owned by Customary Villages can

Bali Province Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali, namely A effort Serious Bali Provincial Government for return strength discussion consensus in order life customs in Bali, which Article 29 paragraph (2) regulates that “*Bandesa Adat/ Kelian Desa Adat* or Other designations are chosen by *Krama Desa* individually discussion consensus”. That principle *Ngadegang* (election) *Bandesa Adat / Kelian Desa* or Other designations made in a way discussion consensus is very suitable with tetuek or life handle principles Balinese customs, namely manyama Braya , Gilik saguluk para sparo salunglung sabayantaka , sarpana ya, that 's it duly always kerajegang lan kasungkemin by every *Krama Desa Adat* and *Prajuru Desa Adat* in maintenance order life customs in Bali.

Furthermore, Article 53 paragraph (1) of the Regulations Governor Bali Province Number 4 of 2020 concerning Regulation Implementation Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali states: Election Procedures Traditional *Bandesa* or Other designations discussion based on Guidelines *Hanging out* Traditional *Bandesa* or Another name for Customary Villages in Bali. Temporary paragraph (2) states: Guidelines *Hanging out* Traditional *Bandesa* or Another term for Customary Villages in Bali, prepared by the Provincial MDA and facilitated by the Bali Province Indigenous Community Advancement Service (PMA).

Efforts to strengthen position village custom in Bali continues done when face to face with powers supravillage. During the leadership period Bali Governor Wayan Koster is there effort For strengthen village custom Good from side institutional nor from side economy village custom . This matter be marked with he took it out Regional Regulation Number 4 of 2019 concerning Customary Villages. There are some things contained in Regional Regulation This is one of them is election or *Ngadegang Bendesa Adat* done with discussion consensus.

*Bendesa Adat* or Namely Others in selected Customary Villages based on mechanism discussion consensus will get validation from Customary Village Council. This matter in accordance letter circular No.006/SE/MDA- Bali Province /VII/2020 concerning the Process *Ngadegang Bendesa Adat* or Other Namely in Order New Era Life during the Covid-19 Pandemic and letters circular no. 007/SE/MDA- Bali Province /XI/2020 concerning Mechanism Application Issuance of Acknowledgment Letter Customary Village *Prajuru* issued by the MDA of Bali Province, which must be noticed by the village custom for creation orderly law and order administration. According to SE number 007, start 2021 *Prajuru Desa Adat* recognized custom its existence in a way administratively by MDA and the Bali Provincial Government is soldier village custom that gets letter decision establishment, confirmation, or recognition by the assembly, namely the MDA of Bali Province, including those that have published by the Pakraman Village Madya Council or Pakraman Village Alit Council before in 2020. Then based on Circular Letter Bali Province Traditional Village Council Number 002/SE/MDA- Bali Province /IV/2020 concerning Delay in the *Ngadegang* Process *Bendesa* or Other Mentions in Bali April 4 2020. Lastly Pasamuhan Agung II MDA Bali Decree of 2021 Number 12 / KEP -PSM.II/MDA-BALI/X/2021 dated 28 October 2021 concerning Guidelines *Ngadegang Bandesa Adat/ Kelian Desa Adat* or Other Names and *Prajuru Desa Adat*.

If you look closely more in there is pluralism law in matter arrangement related to the process *Ngadegang Bandesa Adat/ Kelian Desa Adat* or Other Names and *Prajuru* Customary Villages in Bali adhere to understand Legal Pluralism. *Pluralism* law reduce tension between *universalism* and *localism* so that stability social still awake [10]. Pluralism is draft the law contains it more from One principles and substance law , as well see from situation with difference circumstances fact existing social system [ 11]. Pluralism state law (*state legal pluralism*) such as called Gordon Woodman [12], or pluralism weak law (*weak legal pluralism*) such as called John Griffiths [13]. Pluralism state law ( *state legal pluralism*) appear while partial state law originate from stem body norm that since initially of course formed as state law and so on Again originate from recognized non-state norms state law , such as law customs and religion. Pluralism is

characteristic from public compound based because Indonesia exists differences ethnic group nation , religion, customs and regionalism often mentioned as characteristic nature of society compound [14].

Tamanaha [15] states that legal pluralism the There is everywhere, both at the level law local, legal national, legal transnational and legal international. From the law level local nor national. Pluralism studies law against statement that the laws of the State that most have highest authority compared to others. Pluralism law appear as challenge to concepts state-centered law. Idea that state law is the only one form the law used for arrange society. Process the *Ngadegang Bandesa Adat* theoretically contains the principle of Legal Pluralism.

## II. Closing

Pluralism studies law against statement that the laws of the State that most have highest authority compared to others. Pluralism law appear as challenge to concepts state-centered law. Idea that state law is the only one form the law used for arrange society. Process the *Ngadegang Bandesa Adat* theoretically contains the principle of Legal Pluralism. Customary law regulation through the result of the Decree of *Pasamuhan* MDA Bali and *Pararem* regarding *Ngadegang Bandesa Adat/ Kelian Adat* or other designations as well as arrangements in the Regional Regulation of the Province of Bali concerning Customary Village in Bali Aas a form of legal pluralism. Where the positions of Customary Law and State Law reinforce each other or symbiosis mutualism.

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