

## Law and Public Policy in the Development of Tourism Villages in Bali (Between Legal Politics and Legal Pluralism)



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**ABSTRACT:** The legal policy on tourism in Bali is fundamentally planned from a legal aspect as cultural tourism. The underlying thought is that Bali's legal politics of tourism is built on the values of Hindu religion, customs, local wisdom, and upholding the philosophy of Tri Hita Karana. Bali is culturally, religiously, naturally, and humanly unique, with the foundation of its social-religious organization being the customary village (*desa adat*). Based on this central idea, the legal issues explored are: (1) How is the construction of legal politics in public policy for tourism development (especially in Tourism Villages) in Bali? (2) What are the legal implications for the tourism villages developed in relation to community welfare? The socio-legal research method is interdisciplinary and "hybrid," which will explain the relationship between law and society in shaping public policy related to tourism villages. The research findings indicate that the legal construction in public policy for the development of tourism villages in Bali is built on a concept of law that is culturally meaningful. On one hand, it is constructed based on state law, and on the other hand, it can be managed by Bali's customary law, such as *awig-awig*, *pararem*, and customary village regulations (*Peraturan Desa adat*). The legal implications for customary villages managing tourism villages in Bali are ambiguous in legal choices, particularly in implementation within customary village areas. However, regardless of the legal choice by the customary villages in Bali, the legal goals of utility, certainty, and justice can serve as benchmarks for forming a law that brings happiness.

**KEYWORDS:** legal pluralism; legal politics; tourism villages

Tourism provides public policy in the layer of meaning as a decision-making process<sup>1</sup>. Public policy serves as a form of intervention by the central government and the Bali provincial government in managing tourism in Bali. Law Number 10 of 2009, concerning Tourism, Article 14, paragraph (c), addresses tourism attractions. This law does not explicitly mention Tourism Villages. However, Article 3 of Government Regulation Number 67 of 1969 further regulates the implementation of tourism, stating that tourism must be carried out with consideration to:

a) The ability to encourage and enhance the development of economic and socio-cultural life; b) Religious values, customs, and the views and values prevailing in society; c) The preservation of culture and environmental quality; d) The sustainability of tourism businesses.

In managing tourism in Bali, the Bali Provincial Government, when initially formulating legal policies related to tourism, issued a legal product, Bali Provincial Regulation Number 3 of 1974, concerning Cultural Tourism. Article 27 mentions that the term *loka wisata* (tourist spots) allows for the provision of lodging for tourists in residents' homes. In the legal politics of the state, there has been a dynamic shift in the concept of cultural tourism, with several changes in thought based on the evolving Balinese society and culture interacting with the dynamics of tourism activities. The latest legal product and public policy are reflected in the issuance of Bali Provincial Regulation Number 5 of 2020, concerning Cultural Tourism Standards. This will have implications for customary villages that manage tourism villages in Bali.

Based on the concept of I Wayan Wesna Astara,<sup>2</sup> that in Bali, the term "ecotourism," as mandated by the Minister of Home Affairs Regulation Number 33 of 2009 concerning Guidelines for Ecotourism Development, is based on Article 4, paragraph (1), where Regional Governments develop ecotourism through: a. planning; b. utilization; c. control. Furthermore, paragraph (2) states that the planning, utilization, and control of ecotourism, as referred to in paragraph (1), are carried out in an integrated manner by

<sup>1</sup> Luthfi J. Kurniawan, Mustafa Lutfi, 2017, *Hukum dan Politik Kebijakan Publik*, Setara Press, Malang, hlm. 15.

<sup>2</sup> I Wayan Wesna Astara, 2022, *Pertarungan Budaya dan Politik Hukum dalam Mengelola Ekowisata berbasis Filosofi Tri Hita Karana*, "Orasi Ilmiah Disampaikan Pada Upacara Pengukuhan Jabatan Guru Besar Tetap dalam Bidang Ilmu Hukum Pada Fakultas Hukum Universitas Warmadewa", Universitas Warmadewa, Denpasar, *Passim*.

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ecotourism actors. The concept of ecotourism was initially not incorporated into the legal norms of public policy related to tourism law. The concept of ecotourism has developed somewhat vaguely and has almost been equated with the concept of tourism villages. Therefore, in this research, patterns and models of tourism villages and ecotourism based on village potential, such as beaches managed as cafes in the customary village of Kedonganan, will be explored. The tourism village that is the focus of this research faces a juridical problem of a normative vacuum in the management of Tourism Villages, particularly related to Bali Provincial Regulation Number 5 of 2020 concerning Cultural Tourism Standards.

The Balinese customary community that inhabits the island of Bali has its own uniqueness because Bali, in particular, has a majority Hindu religion, customs, and culture that are not found elsewhere in Indonesia or even in the world. The greatness of Balinese cultural values is not only recognized by the Republic of Indonesia but also acknowledged globally. Therefore, public policy law concerning Tourism Villages in Bali, particularly those based on Hindu religion, local traditions, customs, and Balinese culture, becomes important and highly relevant for study.<sup>3</sup> The community-based tourism model in Bali is collectively institutionalized through customary villages (*desa adat*), rather than by individuals, but it continues to develop in response to the demands of the customary community.<sup>4</sup> The rise of the Balinese community in managing tourism in their region is largely top-down or based on instructions from above.<sup>5</sup> In the reality of state politics, particularly in Bali, there is indeed state hegemony, especially in the legal politics of tourism in Bali. When the Dutch colonial government ruled Bali, the island was indeed expected to contribute revenue from its cultural aspect by opening up tourism to the island.<sup>6</sup> In the development of tourism in Bali, the potential of legal pluralism as a value of local wisdom can be developed as an alternative to maintaining sustainable cultural tourism through public policy law.<sup>7</sup> To clarify the legal issues mentioned above, the researcher examined the legal aspects of public policy and legal politics with legal pluralism related to the dynamics of tourist villages in Bali with the focus on Penglipuran (Bangli) traditional village, Tenganan Pegringsingan traditional village (Karangasem), Kutuh traditional village (Badung), and Kedonganan traditional village (Badung). These four traditional villages have different village characteristics in managing tourist villages according to their respective potentials. This will be found legal policies in managing their respective customary villages, both strengths and weaknesses so that The solution is legal pluralism in the management of tourist villages in the form of social engineering law and in the optical pluralime of law, progressive law and cultural meaning law become the tools of analysis in this paper. Formulation of problems in legal issues: How to construct the political and legal laws of public policy in the development of tourism (especially Tourism Villages) in Bali; what are the Legal Implications for the developed tourism village on the welfare of the community.

### METHOD

The type of research chosen is an interdisciplinary "hybrid" sociolegal study that will explain the relationship between law and society. In this context, it requires a legal and social science approach. An approach and analysis of legal science is needed to find out the content of legislation and legal cases. The legal issues that are the focus are law and public policy in the development of Tourism Villages in Bali (Between Legal Politics and Legal Pluralism). The approach used is an anthropological and sociological approach with discourse analysis, cultural studies. In this study, conducting textual articles in laws and regulations and policies can be critically analyzed. The realm of sociolegal research is Interpretism and critical. In this study, legal practice in daily life will be explained which can be reflected in legal pluralism in a micro context. Furthermore, the critical paradigm holds that the law can also be used as a tool to change the situation for the better.

### RESULT AND DISCUSSION

#### *The Political Construction of Ecotourism Laws in Traditional Villages in Bali Versus Bali Tourism, and Legal Pluralism*

The State of Indonesia is a State of Law in carrying out tourism activities regulated in tourism law products. According to Padmo Wahjono, legal politics is a basic policy that determines the direction, form and content of the law to be formed. Based on the views of Moh. Mahfud MD, legal politics is an official legal policy about the law enforced in a country. The construction of legal politics in the aspect of upholding religious norms and cultural values with Law No. 10 of 2009, concerning tourism: Article 5, upholding religious norms, and cultural values, the embodiment of Tri Hita Karana; upholding human rights, cultural diversity and local wisdom. Penglipuran traditional village with the concept of a Cultural Village and synergizing with nature (bamboo forest). This makes the Penglipuran Traditional Village provide a new "model" in managing tourist villages based on local wisdom.

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<sup>3</sup> I Wayan Wesna Astara, A.A. Gde Wisnumurti, (dkk), 2018, *Custom, Hindu Religion, Local Law, and social change in Bali in the context of Tourism*, Proceeding Book- International Seminar Bali Hinduism, Tradition and Interreligious Studies, *Passim*.

<sup>4</sup> I Nyoman Darma Putra (ed), 2015, *Pariwisata berbasis Masyarakat Model Bali*, Buku Arti, Denpasar, hal x.

<sup>5</sup> *Ibid*.

<sup>6</sup> I Wayan Wesna Astara, 2010, *Pertarungan Politik Hukum Negara & Politik Kebudayaan Otonomisasi Desa Adat di Bali*, Udayana University Press, Denpasar, *Passim*.

<sup>7</sup> I Wayan Wesna Astara, (dkk), 2018, *Cultural Tourism Practices In Law Tourism in Bali*, Proceeding of the 1<sup>st</sup> International Conference of Business law and Local Wisdom in Touism 14<sup>th</sup> Februari 2018, Atlantis Press, hal. 49-52.

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However, Penglipuran as a cultural tourism village, in the theory of cultural meaning law, indigenous peoples have the full right to maintain cultural heritage and benefit from these activities in full. In optics, progressive law does not see law as a final product, but rather is continuously built (*Law in the making*).

Legal politics are related to ecotourism in Bali as a key variable, namely education, conservation, empowerment, environmental conservation, and satisfaction (benefits). In this study, the value of local wisdom (as the potential of the village), political law (as a policy) of the government in "designing" tourism is oriented to the principle of community (local) manpower so that empowerment occurs. Ecotourism as a tourism activity in conservation areas with the aim of enjoying, respecting, and preserving the natural beauty contained in it (Ceballos-Lascurain, 1996; Hvenegaard, 1994). In this paper, based on the results of the research, it can be explained that the traditional village of Tenganan Pegringsingan Karangasem developed into a tourist/ecotourism village that began during the colonial era of the Netherlands. The traditional village of Tenganan Penggringsingan developed naturally as a cultural and natural tourism village. Based on the results of an interview with Putu Wiadyana (Monday, June 17, 2024), the chairman of the management of the Pegringsingan tengenan tourism village said that the struggle towards ecotourism/tourism villages based on culture and nature during the independence period until the Reformasi, there was a transformation, from a tourist village in the colonial era of the Netherlands as a village that was more researched related to traditional culture, rituals that had a releaning with customary law. The aspect of tourist activities follows the pattern of village development, the first purpose of which is for academic purposes, to become also a tourist village for the development of mass tourism. It began to be managed as a traditional village (old village) as a tourist village starting in 1980 which was naturally managed on the initiative of the official village to "receive guests" of researchers who came to the Tenganan Traditional Village. Tenganan Pegringsingan Village is one of the Kuna (Bali Aga) villages in Bali whose existence still maintains traditions, customs, and cultural values that are still firmly held in the rules of the customary village (*awig-awig*).<sup>8</sup>

In the view of the theory of meaningful law of Culture I Wayan Wesna Astara that law is the concretization of the values and culture of the Balinese indigenous people/community by practicing local law / awig-awig as a policy of customary villages in Bali, in managing tourist villages.<sup>9</sup> Tenganan Pegringsingan tourist village with the potential of culture, nature, and village forests. Based on the regulation of the Minister of the Republic of Indonesia No. P. 89/Menhut-II/2004 (Pemenhut P. 89/2014" concerning Village Forests. In this regulation, it gives the right to the Tenganan customary village to manage the village forest which is a state forest that is used for the welfare of the village. Furthermore, in terms of village forest management rights (HPHD), which are forest management rights in protected forest areas or production forests given to village institutions, namely village community institutions that are tasked with managing village forests.

Regarding the politics of law with the issue of customary law issues, in the context of customary villages, it provides an understanding that by referring to the Regional Regulation of the Province of Bali Number: 06 of 1986, it can provide an affirmation that the customary village as a unit of customary law communities that has the lowest self-government under the sub-district in the bond of a unitary state (Article 1, letter c). It is further explained in the Bali Provincial Regulation Number: 4 of 2019, concerning Customary Villages, Article 1, number 8: Customary villages are the unity of customary law communities in Bali that have territory, position, original composition, traditional rights, own wealth, traditions, manners of community life from generation to generation in the bond of sacred places (Kahyangan tiga or Kahya Desa) duties and authorities as well as the right to regulate and manage their own household.

In this study, the author analyzes that in ecotourism in Bali, the social phenomenon and legal facts that occur are legal pluralism, namely those that come from pluralistic societies and according to their identities. Every society does not give birth to a monovalie value system, but there are several value systems in the form of culture, customs, tribes and races.<sup>10</sup> Werner Menski in his book *Comparative Law in a Global Cotex (the Legal System of Asia and Africa)* defines legal pluralism, which is an approach to understand the relationship between constitutional law (positive law), aspects of society (socio-juridical approach, and natural law (moral/ethical/religious).<sup>11</sup>

Legal Theory Meaning Culture in the traditional village of Tenganan Pegringsingan Karangasem which is associated with the management of tourist villages, forests are important in the lives of indigenous peoples contained in their natural environment. The strength of the potential of the Pegringsingan Tenganan customary village is the culture and nature (indigenous community forest) which is regulated in the awig-awig of the Pegringsingan Tenganan customary village. The law that lives in the community is based on the rights of the community, becoming a foothold in regulating the business behavior of the local community.

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<sup>8</sup> Wirata. Ketut, 2017, *Tradisi Bali Kuna Tenganan Pegringsingan, Perspektif Hukum Adat Bali*, Ruas Media, Yogyakarta, hal. 14.

<sup>9</sup> Wesna Astara I Wayan, 2022, *Teori Hukum Bermakna Budaya Dalam Membedah Kasus Eksistensi kerta Desa di Bali Menuju Harmonia tau Konflik*, dalam "*Pergolakan Penguatan Desa Adat Bali: Silang Pandang Aneka Perspektif*", Pustaka Larasan, Denpasar, hal. 231-240.

<sup>10</sup> Hairun Tri Wahyuni Sagal, 2022, *Kajian Teori Pluralisme Hukum Terhadap Sistem Hukum di Aceh*, vol. 3. Issu 2 (2022), Universitas of Jember, hal 115-129

<sup>11</sup> *Ibid.*

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Paying attention to the Penglipuran tourism village that, in terms of the management of the tourist village, it is regulated in the Penglipuran customary village Decree No. 31/DA-Peng/V/2022, regarding the determination of the management of the Penglipuran tourism village in the Penglipuran customary village. The composition of the Penglipuran Tourism Village Tourism Management in the Penglipuran Traditional Village, including managers: I Wayan Sumiarta; Operations Manager: I Ketut Nurada; Financial manager: Made Alvin boby Nugraha. Furthermore, for the Tengenaa Pegringsingan Tourism Village in managing the tourist village by issuing the Decree of the Prajuru of the Tengenaa Pegringsingan Traditional Village Number: 01/KEP-P. DA-TP/VIII/2020, regarding the composition of the Management Board of the Tengenaa Pegringsingan Tourist Destination. In the Decree, there is a composition of the management of the Tengenaa Pegringsingan tourist destination, namely: 1. Chief manager: Putu Wiadnyana, ST; 2. Secretary: Niluh Putu Ari Agustini; 3. Treasurer: I Ketut Pancawan. When examined from the view of Satjipto Rahardjo, with progressive legal theory, that Tourism Villages in Bali are produced for the local Balinese indigenous people, pro-people, and the interests of the people (their welfare and happiness) must be the orientation point and the ultimate goal of law enforcement. For progressive law, the process of change is no longer centered on regulations, but on the creativity of law actors to actualize the law in the right space and time.<sup>12</sup>

### *Ecotourism in Bali and Legal Pluralism*

Cultural Tourism designed by the Government of the Province of Bali based on the Regional Regulation of the Province of Bali Number 5 of 2020 concerning Cultural Tourism Standards, implementation at the Customary Village Level is based on its management and based on the potential of the customary village. Dinanima Ecotourism in the perspective of legal sociology has the implication of a "conflict" between the first management party unilaterally without coordination with the Kedonganan customary village. Kedongan Beach is part of the potential of "natural capital" that can be combined into social capital, if the traditional village is the "manager of Kedonganan beach". As a natural capital, the Kedonganan Kuta Traditional Village manages the Beach as an attraction with "beach tourism branding café concept" selling food. At the beginning of the establishment of these cafes, there were 76 cafes in 2006, but there was no coordination (as the forerunner) of the indigenous people who protested against such conditions. That with the power of social capital consisting of a network of customary norms, and community trust to build ecotourism communally based on indigenous peoples. In the process there was a "conflict", namely 76 cafes that had been established on Kedonganan Beach were 'sued' by the indigenous people of Kedonganan so that the owner of the café was the Kedongan Indigenous People. In the theory of cultural law, according to I Wayan Wesna Astara, local law (awig-awig customary village) in Bali can be derived in *pararem lepas* (*Pararem* is the regulation for the implementation of awig-awig) as customary law in Bali. This *pararem* in the substance of the law regulates related to "ecotourism management on Kedonganan Beach". In Soepomo's view, regarding Indonesia's customary law in legal optics anthropology, customary law is not only seen as a stretch of land issues, about *lungguh* in ancient times can critically contain a historical angle. The action agenda in the progressive law of Sajipto Rahardjo, in examining the management of Kedonganan Beach, indeed the social reality is chaos in the arrangement of Café-café, the goal is to succeed, namely the management of customary villages to strive for pro-people legal products (customary village *krama*) and the results of negotiations and consensus produce pro-justice as the agenda for the purpose of arranging cafes in Kedonganan.

Every traditional village in Bali has a village character in developing its tourist village. Nyoman Sukma Arida, studied tourist villages in Bali by dividing the ecotourism typology: 1. Ecotourism *tife* investors; 2. Government *tife* ecotourism; 3. Community Ecotourism<sup>13</sup>. The concept of ecotourism around the 1980s was born from the concept of alternative tourism which criticized the old paradigm about tourism. Criticizing the results of Isharyanto's research, tourism policies based on local pluralism to realize a prosperous state contain the following elements: 1) regulatory and institutional support that favors local communities; (2) natural attractions, cultural attractions and artificial attractions are the three components that form tourism products, where the three can be combined with each other; (3) character based on integration and cultural character; (4) Tourism villages as alternative tourism products are presented to answer the saturation experienced by tourists in consuming tourism products. The results are different from the author's research that according to the author, tourism villages in Bali have a cultural character with historical, sociological and juridical aspects to ensure legal interests with legal certainty for their managers. Local laws in Bali (awig-awig, *pararem* and customary village regulations can provide legal certainty in managing tourist villages. The subject matter of the law which is used to move the tourist village, so that it has legality.

Kedonganan tourism village products based on indigenous peoples (*tife* ecotourism managed by indigenous peoples). The management model is dialectical, namely there is a conflict in the arrangement of Kedonganan Beach, namely there is a village *krama* of café owners who refuse, and further out of 76 cafes are adjusted to the potential and carrying capacity commensurate with the beach. For this reason, in December 2006 there was a restructuring process by dismantling 67 cafes. The point in the rejection

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<sup>12</sup> Bernard L Tanya, dkk, 2010, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, hlm. 212-213.

<sup>13</sup>I Wayan Wesna Astara, 2022, *Pertarungan Budaya dan Politik Hukum dalam pengelolaan ekowisata berbasis filosofi Tri Hita karana*, "Dalam Orasi Ilmiah Upacara Pengukuhan Jabatan Guru Besar Tetap Ilmu Hukum pada Fakultas Hukum Universitas Warmadewa", Denpasar, Universitas Warmadewa, hlm. 31.

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is that they do not agree with the arrangement of the café, because it is based on the reason that they are the "pioneers of the founders of cafes" on Kedonganan Beach and harm one of the krama parties and they want not to be the communal ownership (indigenous people) of Kedonganan, but to the individual krama. This refusal caused a physical clash that led to the refusal to report to the Denpasar Police Station. In the end, this conflict was resolved customarily. Furthermore, in 2007, 27 cafes were built, with the ownership of the Kedonganan traditional village which was then distributed to Banjar, and there were 6 banjars in the Kedonganan traditional village. The construction of these 27 cafes is financed by the Kedonganan LPD, and to integrate ecotourism activities on Kedonganan Beach, three institutions, namely: Community Empowerment Institution, Kedonganan Village, and Customary Village formed the Kedonganan Beach Tourism Area Management Agency (BPKP2K), whose task is to manage Kedonganan Beach including managing 27 cafes, and also making Pararem which is a guideline for the implementation of the 27 cafés business.<sup>14</sup>

In ensuring legal certainty, the Institution (BPKP2K) is requested to the Regent of Badung for a management permit with the issuance of the Decree of the Regent of Badung Number 1238/I/HK/2008 which contains a permit to the Kedonganan traditional village to manage Tourism. Furthermore, it should be mentioned that there is a model, Ecotourism in the Kutuh-South Kuta traditional village manages Pandawa Beach in South Kuta, has a uniqueness with the Pandawa Beach Area, which is supported by the Gunung Payung cultural Parak tourist area, art and cultural businesses. In regulating the management of Pandawa Beach tourism, it was issued (formed a local law of Bali, the Kutuh Traditional Village pararem number: 01 of 2014 concerning the Establishment of Bhaga Utsaha Manunggal Customary Village (BUMDA) Kutuh Traditional Village. Article 1, number 6, Pararem is a rule derived from the awigs that are established and function as a guideline for the implementation of Tri Hita Karana which regulates specific matters in the procedures of life of the residents of Kutuh village. This pararem regulates the management of Kutuh Customary Village Businesses related to establishment and position, business and capital, institutional organization, administration and staffing, management and operational costs, salary and other income provisions, work plans and reporting, meetings, prohibitions and sanctions, transitional provisions, closing provisions. Article 64, more provisions regarding the implementation of pararem are regulated by the regulations of the customary village prejuru. In the context of two customary villages managing the coast (Kedonganan traditional village and Kutuh traditional village) have different characteristics: First: The coastal customary village is managed by individuals individually so that the customary village takes over individual ecotourism activities on Kedonganan Beach as a potential customary village managed by the traditional village by distributing to each Banjar in the Kedonganan traditional village. The body given to manage is the Institution (BPKP2K) applied to the Regent of Badung for a management permit with the issuance of the Decree of the Regent of Badung Number 1238/I/HK/2008 which contains a permit to the Kedonganan traditional village to manage Tourism. Second: South Kutuh-Kuta Village (managing Pandawa Beach) using the BUMDES Legal Entity with the management (permit) of the Kutuh Traditional Village Pararem Number 01 of 2014, concerning the establishment and management of the Bhaga Utsaha Manunggal Customary Village (BUMDA) of the Kutuh Traditional Village.

Learning from Bali's dynamic tourism policy that is "designed", the concept of cultural tourism has begun to be organized when Bali established the concept of cultural tourism in 1974, because Bali has a fair culture as a cultural resource that can be a characteristic of the indigenous people of Bali in managing tourism. The philosophy of Tri Hita Karana, can be described in the form of cultural tourism in various tourism lives in Bali which has special characteristics for world tourism. Balinese traditional villages are supporters of Balinese culture: Balinese Hinduism, traditions, customs, awig-awig, and local wisdom values such as the Tri Hita Karana philosophy.

Culture is everything related to creation, taste, karsa, and human works (Based on Law Number 5 of 2017, concerning the Advancement of Culture, Article 1, number (1). In terms of the use of cultural advancement, one of them is to promote the nation's cultural heritage; and influence the direction of the development of world civilization, so that culture becomes the direction of national development. Furthermore, it is stated that the objects of cultural advancement include: a) oral traditions; b) manuscripts; c) customs; d) rites, e) traditional knowledge; f) traditional technologies; g) art; h) Language; i) folk games; j) traditional sports (Article 5 of Law Number 5 of 2017, concerning the Promotion of Culture).

Cultural issues in Bali which are the object of tourism, there are standards that must be known by tourists visiting Bali, including tour guides who carry out their profession as guides in Bali. Bali has sacral and profane values, namely it can be its territory/place, dance, objects (immaterial). This is what must receive the attention of lawmakers, especially in Bali. So that the community in an orderly culture.

### ***Legal Implications for Tourism Villages and/or Ecotourism in Bali: A Struggle for Legal Aspects and Interests of Customary Villages.***

The state is present in the development of ecotourism in Bali in an effort to hegemonize the management of material and immaterial cultural assets. The regulation and management of customary village assets is carried out to improve the welfare of customary village customs (Bali Provincial Regulation Number 4 of 2019, concerning Customary Villages, Article 59, paragraph (2). Furthermore, that the arrangement and management of Padruwen (assets) of customary villages is carried out to improve the welfare of customary village customs. Based on Article 59, paragraph (3) the regulation and management of customary village

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<sup>14</sup> Anom Hery Suasapha, Samsul Alam Paturusi, *loc.cit.*

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padruwen is carried out by the customary village prajuru and/or the appointed institution in accordance with the awig awig and/or perarem of the customary village. Businesses in customary villages, further regulated in Article 60: that customary villages have usaha (business) of customary villages consisting of: a) LPD; b) BUPDA (Baga Usaha Padruwen Customary Village) / businesses owned by traditional villages. That article 62, paragraph (1) BUPDA as referred to in Article 60, letter (b) is a customary village usaha in the economic and real sector; Article 62, paragraph (2) BUPDA as referred to in paragraph (1) is formed, regulated, and managed based on customary law.

The text of the articles mentioned above, is responded to with various management models by tourism villages that develop in accordance with the potential of culture, nature, traditions, customs, and rituals. Although Article 62, paragraph (2) Baga Usaha Padruwen Customary Village should be managed based on awig-awig and/or perarem, but it takes different forms according to the challenges and opportunities of each customary village as explained above. Of course, in this policy dynamic, each customary village manages a tourism/ecotourism village with legal choices, an approach to problems based on the potential of customary villages.

The Penglipuran community who actively participate in the arrangement of the Penglipuran tourist village seems to be more capable in customary village contributions. After the arrangement of the Penglipuran tourism village, the practice of bamboo forest conservation through the preservation of pélipuran cultural traditions became lighter. In addition, the function of customary land has increased followed by more and more members of the Penglipuran community who are able to participate in the implementation of Penglipuran tour packages. On the other hand, the arrangement of this tourist village does not reduce the opportunity for every Penglipuran resident to carry out traditional ceremonies as before Penglipuran village was built and laid out as a tourist village.

Profit sharing management pattern with the Bangli Regency government Based on the Cooperation Agreement with Penglipuran Traditional Village on Tourism Management Tourism Village Coverage Number 415.4/23/PKS/PKPP/2020; Number 01/S.P/X/2020; about the Management of Penglipuran Tourism Village. Penglipuran customary village is entitled to a reward of 60% (sixty percent) of the gross levy proceeds. deposit all levy results (gross) for three weeks/7x 24 (seven times twenty-four) hours to the Regional treasury through the Recipient Treasurer at the Bangli Regency Tourism and Culture Office. This cooperation agreement is valid for 5 (five) years starting January 1, 2021. At least 2 (two) months before the end of this Cooperation Agreement, the parties agree to inform each other of their intention to extend this Cooperation. Based on the results of the FGD and the practice of writing contract and/or agreement law on June 16-17, 2024, there are 2 (three) alternative ideas to provide solutions to the Bangli district government proposed by the Penglipuran Traditional Village (I Wayan Budiarta). First, self-management; Second, Continuing PKS, by revising, articles that are detrimental to the customary village, the first option, the reason is that the customary village is an original autonomous village, the interests of the local community based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the state government of the Republic of Indonesia. In the context of the cooperation agreement between Bangli Regency as party I (first) and Penglipuran traditional village as party II (second); Article 3: The scope of this cooperation agreement includes: a. Management of tourist attractions; and b. collection of levies for recreational places and by sports in Penglipuran tourism village. Article 4, paragraph (1) The First Party has the following rights and obligations: a. carry out the arrangement of the Penglipu Tourism Village; b. carry out human resource development in Penglipuran tourism village; c. carry out tourism village marketing; d. entitled to receive non-tax regional revenue (PDBP) for each levy paid by tourists from the second party in accordance with applicable regulations. Article 4, paragraph (2) The second party has the following rights and obligations: a. maintaining the cleanliness, beauty and sustainability of the Penglipuran tourist village; b. collecting bribes from every tourist including vehicles entering the Penglipuran tourist village; d. provide the best service to tourists who enter the Penglipuran tourist village; e. deposit all levy results (gross) every week 7x 24 (seven times twenty-four) hours to the regional treasury through the recipient Treasurer at the Bangli Regency Tourism and Culture Office; and f. entitled to a reward of 60% (sixty percent) of the gross levy. Article 6, paragraph (4) if the second Party does not comply with this Cooperation agreement, then the first Party may terminate this agreement by party; The legal fact is that there is no equality in this agreement, only the first party is protected in this agreement, if there is a legal issue related to the obligations of the parties specifically for the second party is enforced, then in this agreement, one of the parties who does not carry out the obligation, there is a default, then it will apply, Article 9, paragraph (2) changes in writing in the form of an addendum.

The substance of the law, related to the addendum contains the reality of the field whether the pattern is entirely that will manage the Penglipuran customary village (100%) for various rational reasons, and/or the customary village is 80% (net) after deducting operational funds, and 20% is the Bangli Regency government, this, as the first objection. Then the second office, Fixed with the pattern of 60% of Penglipuran customary villages, and 40% is the Regency Government, but this 40% is managed again by the Penglipuran customary village which is used for the interests that were previously taken care of by the first party, because it was not carried out, then the task was handed over to the Penglipuran customary village, in accordance with article 4, paragraph (1). With standards of justice for the benefit of indigenous peoples, and the progress and sustainability of the Penglipuran tourism village. This is in accordance with the settlement of disputes by consensus deliberation. (Article 8, paragraphs (1, and 2).

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### *Prospective Policy in Ecotourism Legal Practice.*

Political and legal issues related to Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages need an in-depth study of whose interests are being fought. The laws that are formed are not always complete and clear. Sometimes lawmakers deliberately or unintentionally use terms or meanings that are general, so that they can be given more than one meaning. Furthermore, sometimes the terms used in laws and regulations are not clear in their meaning or meaning, or cannot be realized in the reality of society that has undergone development and change. Another thing, sometimes problems can be found in the community but there are no or have not been regulated in laws and regulations. In this statement, that based on Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages, Article 60, letter b, Customary Villages have a Customary Village Utsaha consisting of BUPDA. Article 62, number (1) BUPDA as referred to in article 60, letter b is the Utsaha of the Customary Village in the economic and real sector; Paragraph number 2, BUPDA as referred to in paragraph (1) is formed, regulated and managed based on customary law; paragraph 3, further provisions regarding guidelines, mechanisms and the establishment of BUPDA are regulated in Regional Regulations. Article 104, this Regional Regulation comes into force on the date of promulgation in the Regional Gazette of the Province of Bali Year 2019 Number 4 Noreg Regional Regulation of the Province of Bali: (4-131/2019), Promulgated in Denpasar, on May 28, 2019, the Regional Secretary of the Province of Bali. In the reality of culture, customary law, and economic phenomena in customary villages. This is understood by As an example in Kutuh Traditional Village about the birth of the Traditional Village Business under the name BUMDA (Baga Utsaha Manunggal Traditional Village) in 2014. The existence of BUMDA in Kutuh Traditional Village is found in the government of the Dinas Village through Village Regulation Number 08 of 2014 concerning the Establishment of BUMDA. Furthermore, the Kutuh Traditional Village also issued the Decree of the Traditional Village Number 12/KEP. DAK/XII/2014 dated December 12, 2014, about the same matter. In customary law, it turns out that the Kutuh Traditional Village Bendesa Kutuh Traditional Village has issued the Kutuh Traditional Village Pararem Number 01 of 2014 concerning the Establishment and Management of Baga Utsaha Manunggal Customary Village (BUMDA) of the Kutuh Traditional Village which was stipulated by the Kutuh Traditional Village Bendesa I Ketut Suwena, S.Pd.H, on June 16, 2014. Regarding the Customary Village Regulation No. 4 of 2019, concerning Customary Villages, this BUMDES already existed before the enactment of the Regional Regulation. In the context of a large legal state, people are needed who are able to grasp the meaning of the development of the legal state well and intelligently. The state of law is not just a piece of document, but a project that goes far beyond the document of words and concepts. The point is that the state of law is also the behavior of the people who carry it out.<sup>15</sup>

In the concept and theory of Legal Pluralism of Penglipuran customary villages in managing tourism villages with a management model In terms of tourism village management, considering that the busyness of traditional village Prajuru is very dense in terms of religion, customs and rituals, the management of tourism villages is given to the "Tourism Manager" that is on May 1, 2012, which is named "Penglipuran Village Management Institution".<sup>16</sup>

Penglipuran traditional village in managing cultural and natural tourism villages, Awig-awig Traditional villages in Bali have the character of flexibility towards the development of tourism in Bali. Penglipuran Tourism Village is the cleanest tourist village in the world, with the potential for culture, nature, traditions, customs and local wisdom values. Then cultural, natural, traditional, Padruwen and Utsaha Customary Village assets are regulated in the Provincial Regulation. Bali Number 4 of 2019, concerning customary villages, article 55, paragraphs (1,2, and 3).

In the context of sustainable tourism law, the law is a means for the sustainability of a tourism activity in Bali. Bali's tourism policy in the legal context related to customary villages in managing ecotourism is dynamic, even the government has not yet had a single unit in arranging the village as a professional tourism village. This is considering that law is a process in the process of becoming a legal product.

In the study of BUPDA, it is indeed very necessary to have an analysis that can reveal hidden political intentions behind various concepts, doctrines and legal processes. The law can provide a guarantee of legal certainty to implement BUPDA in the legal text, Bali Provincial Regulation number 4 of 2019, concerning Customary villages, as "Bali Mawacara" Regulatory order. As explained above, Balinese Customary Village, based on Article 60, letter b, Customary Village has a Customary Village Utsaha consisting of BUPDA. Article 62, number (1) BUPDA as referred to in article 60, letter b is the Utsaha of the Customary Village in the economic and real sector; Paragraph 2, BUPDA as referred to in paragraph (1) is formed, regulated and managed based on customary law. However, there is a problem that in paragraph (3) it is stated that further provisions regarding guidelines, mechanisms and the establishment of BUPDA are regulated by Regional Regulations. Paragraph (2) that regulates is customary law; and paragraph (3) is further regulated by Regional Regulations, there are contradictions and inconsistencies. This is a bit odd related to paragraph (3), regulated by the Decree of the Supreme Decree II of MDA Bali in 2021, Number 07/KEP-PSM.II/MDA. Bali/X/2021, concerning Guidelines for the Establishment and Management of Bhaga Utsaha Padruwen Customary Villages (BUPDA). Customary Village Pararem on BUPDA which has been prepared based on the Pararem Mailing Guidelines prepared by the

<sup>15</sup> Satjipto Rahardjo, *Hukum itu Perilaku Kita Sendiri*, Kompas, 23/9/2002.

<sup>16</sup> Profil Desa Wisata Penglipuran, 2013: iv.

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Customary Village Assembly, consulted and verified by the Customary Village Assembly and obtained a registration number from the PMA Office; and the Decree of the Customary Village on the Organizational Structure of the BUPDA. In the view of the cultural meaning of the author, that ideas, and ideologies, the law grows with the strength of the people and finally as a key variable in analyzing "legal facts" is justice that does not violate human rights based on Pancasila. Then the Historicists rejected the view that laws were made. For them the law was not made, but found in society.<sup>17</sup>

In the study of the theory of legal significance of culture, that regarding the implementation of BUMDES law in Kutuh Customary Village, established based on the Kutuh Traditional Village Pararem Number 01 of 2014, this, law as a social fact is a law that lives in society (law in action) which is related to the reciprocal relationship between the law and other institutions as well as non-doctrinal and empirical.<sup>18</sup> Furthermore that. Law as a social fact in the context of the Kutuh Village BUMDES as an autonomous or independent normative phenomenon, but as a social institution that is always grounded in real with patterns or social variables that are actually alive and developing and rooted in society. In the legal politics of customary villages in Bali, which is contained in the Regional Regulation of the Province of Bali Number 3 of 2001, concerning the village of Pakraman, the legal norm that regulates "Customary Village Business", is an empty norm. However, based on Regional Regulation Number 4 of 2019, concerning Customary Villages, the "business name" related to the Customary Village Business "BUPDA" Baga Utsaha Padruwen Customary Village, as inspired by the concept of "BUMDES" of the Kutuh traditional village, based on Pararem Number 01 of 2014, concerning the establishment and management of Bhaga Utsaha Manunggal Customary Village. Article 2, (paragraphs 1, and 2): paragraph (1) BUMDA is established as a customary village based on awig-awig and determined through the customary village pararem; paragraph (2) BUMDA is positioned as the Padruwen Management Institution of Customary Villages in an integrated manner. Article 4 as a Kutuh customary village business, the establishment of BUMDA aims to:

- a) a) Increase the sense of devotion to the greatness of Ida Sanghyang Widhi Wasa;
- b) b) Strengthening the harmony of relations between customary village customs;
- c) c) Maintaining and preserving the weakening of customary villages;
- d) d) Preserving the cultural arts of traditional villages based on Balinese cultural values and imbued with Hindu religious values;
- e) e) Optimize the management of the potential of customary villages so that they are useful and valuable for the sustainability of the economic life of customary village customs;
- f) f) Encouraging the development of economic activities of customary village krama;
- g) g) Increasing the income of customary villages through creative efforts and productive business opportunities;
- h) h) Improving the welfare of customary village customs;
- i) i) Creating business opportunities for customary village customs;

The legal substance that was excavated and discovered by the founders of Pararem is based on the interests of customary villages, indigenous peoples and the potential of Kutuh customary villages as outlined in Pararem texts that reflect the interests of the "Mawacara village" of Kutuh customary villages. This is still enforced in the management of BUMDES and does not replace with the name BUPDA, based on Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages.

In another case, in Penglipura traditional village as a cultural tourism village managed by a traditional village, in the social reality in the field, the customary village does not also use "BUPDA" in the management of its tourist village. However, when operating the Penglipuran traditional village tourism village, it formed the "Tourism Village Management Agency". The Bangli Regency Government issued the Decree of the Regent of the Bangli Level II Regional Head Number 115 of 1993 concerning the determination of tourist attractions in the Bangli Regency Region, and one of the villages designated as a tourist attraction is the Penglipuran Traditional Village. In tourism development, the people of Penglipuran Village as Bali Aga Village still maintain the values and norms that govern the lives of the local community. According to Koentjaraningrat (2003: 76) the cultural value system is the highest and most abstract level of customs because cultural values consist of concepts about everything that is considered valuable and important by society so that it can function as a guideline in their lives. In terms of tourism village management, considering that the busyness of the traditional village Prajuru is very dense in terms of religion, customs and rituals, the management of the tourism village was given to the "Tourism Manager" that is, on May 1, 2012, which was named "Penglipuran Village Management Institution".<sup>19</sup> Based on the results of an interview with the Penglipuran customary village, with I Wayan Budiarta, that it will not form a BUPDA, in accordance with Bali Provincial Regional Regulation number 4 of 2019 concerning Customary Villages. The explanation is that the "Penglipuran Tourism Village Management Institution" is at the same time improved its function as "BUPDA". In the management of local economic aspects. In supervision and policies at the local level of customary villages, the authority still exists with the Customary Village Commander. An example, that the community is not given to dismantle

<sup>17</sup> I Wayan Wesna Astara, 2022, *Teori Hukum bermakna Budaya dalam membedah kasus eksistensi Kerta Desa di Bali menuju Harmonia tau Konflik*, dalam "Pergolakan Penguatan Desa Adat Bali: Silang Pandang Aneka Perspektif" Editor I Ngrah Suryawan, Larasan, Denpasar, hlm. 234.

<sup>18</sup> Sabian Utsman, *op.cit.*, hlm. 137.

<sup>19</sup> Profil Desa Wisata Penglipuran, 2013: iv.



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the retaining wall to make stalls, because the aesthetic value of the village area will be damaged, due to these stalls. If people make stalls so that they can enter the yard of the house. The development of Penglipuran Tourism village in Penglipuran indigenous people's cultural tourism has developed renting traditional clothes, wedding clothes, for tourists in the context of selfies in Penglipuran village.

The next problem that is still a record by Bendesa Adat I Wayan Budiarta, that bamboo forests have not been optimally tried to support cultural tourism activities and bamboo forest nature tourism so that it has added value to this nature which does not damage the environment. This continues to be sought to establish cooperation with CSR, and higher education institutions in the framework of sustainable tourism villages. The legal issue of BUPDA reflects the still resistance of customary villages in practice, related to legal interpretation, legal texts that are still unclear. This is related to the potential of customary villages, human resources, understanding of law, law as a legal fact, law as a social fact in interpreting law as a cultural product. The question in this case, it is necessary to reveal the opinion of Soetandya Widjosoebroto, to provide a legal reconstruction of whether the so-called law is all the regulations that have been written in the codification book, or whether the law is actually nothing but the entire order of behavior of community members in the daily life of the "hihup table". That the name of the law is "official regulations that are sanctioned by the state" or all the rules that can be observed in the realm of sensory experience.

Based on Regional Regulation Number 5 of 2020 concerning Balinese Cultural Tourism Standards; Tourism Villages: Article 8 paragraph (1) Customary villages/traditional institutions/community groups have the right to develop rural tourism in accordance with local potential and in accordance with laws and regulations; paragraph (3) Tourism Village Managers are obliged to prioritize local investment and resources. Article 12, paragraph (4) in the development of tourism business partnerships as referred to in paragraph (1) letter c, tourism entrepreneurs are obliged to meet the following standards: (a) the implementation of increased cooperation between the government, provincial governments, district/city governments, the business world, and the community; (b) the implementation of increased implementation of cooperation between the government, provincial governments, district/city governments, the business world, and the community; (c) the implementation of increased monitoring and evaluation of Cooperation between the government, provincial governments, district/city governments, the business world, and the community. Article 13, paragraph (2) tourism products as referred to in paragraph (1) letter a include: main products; b. supporting products and ; c. supporting facilities. Article 17, tourism organizations, includes: a) Provincial governments; b. Regional-owned Enterprises; c. Baga Utsaha Padruwen Traditional Village; d. Cooperatives; e, private, and f. Community.

## CONCLUSION

The legal construction of public policy The development of tourist villages in Bali varies according to the potential of the village, culture, nature, and Human Resources (HR) of the Balinese indigenous people in the customary village. The Regional Regulation of the Province of Bali regarding cultural tourism standards with a development pattern is sourced from the philosophy of Tri Hita Karana which is inspired by Hinduism with the concept of cultural tourism based on local Balinese wisdom. Furthermore, based on the potential that exists in customary villages such as Penglipuran Tourism Village, it develops an ecotourism model with two legal constructions, namely first, by using the form of customary law, namely customary village regulations; and second, Cooperation Agreement with the Bangli Regency government. Legal theory means that culture plays a role in these two models of legal construction and also for the Pegringsingan traditional village. In terms of cultural reality and legal aspects, that the Pegringsingan customary village manages the tourist village independently can be mentioned as entrusting local law as legal pluralism. Pegringsingan customary village by making a legal construction of tourism village management in the form of customary village regulations.

Furthermore, there are two customary villages that manage the beach for the benefit of tourism and/or ecotourism villages. First, the Kedonganan traditional village in arranging the Kedonganan Beach which is controlled by individuals, and krama individually, then the traditional village (prajuru desa) took the initiative to become the right to manage the kumunal (customary village). Individuals/individuals take advantage of the beach to create cafes, conflicts occur and finally the customary village applies for a management permit to the Regent of Badung, and further the permit is issued to be processed to form a beach management institution in the form of local law/pararem customary law. Second, the Kutuh Traditional Village manages Pandawa Beach, manages a tourist village in the form of BUMDES (Baga Utsaha Manunggal Customary Village) whose form of management legality is Balinese customary law, namely Pararem.

The legal implications for tourist villages in Bali, reflect that indigenous village communities are ambiguous in their legal choices in the management of tourist villages. This is due to the existence of a Bali Provincial Regulation on Customary Villages that orders the management of tourist villages with the Institution "Utsaha Padruwen Desa Adat" or Customary Village-Owned Enterprises. The law functions to change the culture of the community in managing the potential of the village for welfare and providing justice to the people. However, this problem, using the theoretical basis, is progressive law as a reflection that law is not an institution that is valid and final, but depends on how humans see and use it.

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