

Environment Dispute Resolution Through *Awig-Awig* (Customary Law) (Case Study in *Desa Adat* (Customary Community) of Tenganan Pagringsingan, Regency of Karangasem, Bali.)

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Abstract

The effort to preserve the environment is the responsibility of all of us. The community has the same responsibility to protect the environment from damage including in this case the customary village communities of Tenganan pagringsingan, which long before the enactment of the environmental law has had the *awig-awig* of customary villages in which it also regulates environmental issues, done as well as about customary sanctions. The village of Tenganan Pagringsingan belongs to the oldest traditional village in Bali, where its *awig-awig* shows the nature of traditional schools of thought. The customary village rights of everything in the traditional village of Tenganan Pagringsingan (communal rights) are still very strong. The awareness of Tenganan Pagringsingan indigenous villagers will preserve nature deeply in everyday life with the compilation of *awig-awig* indigenous villages. Participation of indigenous peoples in maintaining and conserving environmental functions hence *awig-awig* (customary law) can be said to be concrete from the participation of indigenous peoples, because *awig-awig* was made and endorsed through the deliberations of the villagers themselves. Dispute resolution procedure in case of violation, presumably the way in Tenganan Pagringsingan traditional village shows quite democratic ways.

Key words : Dispute resolution, Environment destruction, Customary law (*awig-awig*).

1. Introduction

Development with all its aspects brings about changes in human life, which changes bring about the impact of changing society's view on the environment (nature). At the beginning of its history humans are always dependent on nature, which ultimately humans want to conquer nature by way of exploitation without taking into account the consequences that will there. Local wisdom is one of the principles of environmental management. It can be realized through the participation of the community to raise awareness in the protection and management of the environment, to increase self-reliance, community empowerment, and partnership, to develop community capability and pioneer, to develop the public's ability to conduct social supervision and develop and maintain local culture and wisdom in order of preservation of environmental function. In the normative dimension, every person is entitled to a good and healthy environment as a part of human rights, the statement a contrario means that any person is prohibited from committing acts that cause environmental pollution and / or damage.

If the event of such environmental pollution and / or destruction, there is a need for law enforcement by means of legislation or by means of customary law (*awig-awig*) for the sustainability of the environment (nature). Characteristics of the pattern of development of the area of Bali is doctrinal based on regional culture that is deeply rooted to the village of customary based on the philosophy of "*Tri Hita Karana*". The principle is considered capable of creating harmony, harmony and balance of the relationship between man and God, between humans and humans and between people with the natural environment. The condition is also found in Tenganan Pagringsingan customary village contained in the customary law (*Awig-awig*). In the *awig-awig* is formulated in norm as a guide for life to behave in society, community relationships with nature and worship issues to *Ida Sang Hyang Widi Wasa* (the God in Bali Hinduism). This *awig-awig* also assumes a wide variety of sanctions for the offenders of the customary law (*awig-awig*). Tenganan Pagringsingan Village as one of Customary Village in Bali with its distinctive characteristic is a unity of legal society that has original structure, privileged origin right from Hinduism, Balinese Culture based on *Tri Hita Karana*. As a customary village of Tenganan Pagringsingan has the authority to organize and manage the interests of his manners, *Prajuru Desa* (organisation structure in Customary Village) is accountable to meeting in customary village. Taking into account the right of origin of customary village concerned village assemblies have the authority to mediate in the

settlement of disputes between Customary Village (*Desa Pakraman*) and village officials have the authority to reconcile the case / dispute of his manners.

The existence of *Desa Pakraman* to organize and manage their own households and resolve disputes in case of violations of the adat village customs concerned has strong legality. In relation to environmental conservation, the *awig-awig* of Tenganan Pagringsingan explicitly formulates the prohibition of cutting trees without permission from the customary village head. In ancient times it was forbidden for the villagers of Tenganan Pagringsingan to cut down certain types of trees such as: jackfruit tree, tehep tree, tingkih, pangi, cempaka, durian and jaka (sago tree).

The description indicates that the role of indigenous peoples and procedures for the handling of acts that violate the provisions of the village *awig-awig* as well as the type of customary sanction against the perpetrators of the destruction of the function of the environment as a conservation effort and the form of protection for the environment is good and healthy interesting and important to be studied. From what has been disclosed in the background of the above problems, it can be asked the following problems: 1. How is the participation of indigenous community of Tenganan Pangringsingan in environmental conservation program? 2. How is the procedure for dealing with acts that violate the provisions of *awig-awig* (customary law) especially the provisions relating to the destruction of environmental functions?

2. Research Method

In this research using empirical law research, empirical law research using field data that can be in the research location that is Tenganan Pagringsingan Traditional Village, then the existing field data is associated with existing legal norms, both written law and unwritten law such as *awig-awig* in the village of Tenganan Pagringsingan, then analyzed and described in a comprehensive, and holistic .

3 Participation of Indigenous Peoples of Tenganan Pangringsingan in the Program of Environmental Conservation.

The participation of indigenous peoples in maintaining and conserving the environmental function so *awig awig* (customary law) can be said to be concrete from the participation of indigenous peoples, because *awig-awig* is created and ratified through the deliberations of the villagers themselves. The made various restrictions on *awig-awig* especially concerning the environment is to maintain and preserve the environment as a manifestation of the implementation of one element of philosophical conception "*Tri Hita Karana*" that is the element of human relationship with nature. Communities have equal and wide opportunities to play a role in environmental management by:

- a. Increase self-reliance, community empowerment and partnership.
- b. Growing community skills and pioneering
- c. Growing public responsiveness to social monitoring.
- d. Give opinion advice.
- e. Delivering information and / or submitting reports.

The maintenance of the sustainability of the function of the environment is in the interests of the people so as to demand the responsibility, openness and role of community members that can be channeled through individuals, environmental organizations such as indigenous peoples, to maintain and enhance the environmental capacity and support to the sustainability of development. In the *awig-awig* of Tenganan Pagringsingan's there is a ban on cutting trees without permission first. In ancient times prohibited villagers to cut down certain types of trees, such as: jackfruit tree, tehep tree, tree wham, pangi tree, cempaka, durian, and jaka tree. In subsequent developments not only non-private trees are forbidden to be felled, but including private trees are forbidden to be felled without prior permission from the village. For those who violate this provision, the violator shall be subjected to customary sanction in the form of a fine of 400 (*kepeng uang bolong*) traditional money in Bali or a fine twice the price of logged timber and the logged timber shall be seized for the benefit of the village. In line with Munajat¹, environmental issues, especially for developing countries like Indonesia, can always be used religiously.

¹ St.Munajat Sanusaputro, 1981, *Pembangunan Hukum Lingkungan*, dalam Hukum dan Pembangunan No.6 Tahun XI, November, hal :541

4. Procedures for dealing with acts that violate the provisions of awig-awig in particular provisions relating to the destruction of environmental functions.

The way an customary community in resolving actions / actions that violate customary law is strongly determined by the system adopted by the indigenous peoples concerned. For customary community of Tenganan Pagringsingan it relates to the system of government and the nature of the leadership of indigenous communities. Customary community of Tenganan Pagringsingan system of government is a "kolegial" which consists of 6 people called "*Klian Desa*" (head of customary community) with the system "*Ulu apad*" that is in accordance sequences marriage. Held by the *Klian Desa* and conducting regular meetings every night with the help of *penyarikan* (secretary from head of customary community), to discuss everything about the current and ongoing activities of the village and other issues that need to be resolved such as problems of *awig-awig* violations with Nengah Suja, SH, a member of Tenganan Pagringsingan traditional village, dated June 13, 2017). The *penyarikan* mentioned above are villagers who are in charge of delivering meeting results (*sangkepan*) and village activities to all Tenganan Pagringsingan traditional villagers.

In solving the problem in case of the occurrence of *awig-awig* violation then in accordance with the village government system, the *Klian Desa* is the first authority in resolving the dispute of the *awig-awig* violation of the village. So it can be said that the *Klian Desa*, as a village peace judge in the village of Tenganan Pagringsingan. And on how the settlement procedure depends on the nature and type of the customary violation. In outline there are 2 models of violation settlement of *awig-awig* in Tenganan Pagringsingan customary village, namely:

1. If the violation of the customary is mild or common, then the procedure taken in resolving the customary violation is settled by the *Klian Desa* (totaling 6 persons) at the continue meeting (*sangkepan*) held every night at "*Balai Agung*" (the place of great in village to meeting) and the decision is delivered by "*Penyarikan*" to the dispute party or the *awig-awig* violator.
2. If the violation is severe enough, the procedure takes longer, meaning more meetings are needed (*sangkepan*) to complete. Firstly after the dispute (legal matter) is confronted with the *Klian Desa*, then directly at the first meeting (*sangkepan*) the problem will be resolved. If at the meeting *Klian Desa* can not be completed completely, then the problem (dispute) will be brought before the larger forum, that is in the forum "*sangkepan desa*" (meeting in customary community) called "*takon takon*", that is solving the problem (dispute) jointly on the basis of deliberation, in which all Tenganan Pagringsingan traditional villagers are present at the meeting (*sangkepan*). This special encounter begins with a dispute to be discussed by one of the *Klian Desa* to all villagers for consideration and resolving. In accordance with the position of villagers (*krama desa*) in the traditional village of Tenganan Pagringsingan. Then the first one is asked to consider the "*krama luanan*", are (villagers) who according to the sequence of marriage occupies the position of serves as an advisor. After *krama luanan* express opinions, then asked for consideration and views of the other villagers who positioned under the *krama luanan* and *klian desa*, are *krama tebanan*, *tamba lapu* and *pengeluduan*. All these opinions are accommodated for discussion and punishment.

The procedure for the delivery of views in the *sangkep* (meeting) does not always use the sequences as described above. Sometimes it is done freely (randomly), anybody may first express his opinion as long as there is already a "*petarak*" (notice) from *Klian Desa* at the beginning of the meeting. It's just that this way does not a order, often in this way raises a mutual argument so that it can cause a meeting (*sangkepan*) to be emotion so that random is rarely used. *Sangkepan* verdict will be taken if there has been conspiracy within the village meeting about the customary sanctions to be imposed on the person who violation of *awig-awig*. For the parties to the dispute or for those who violate the *awig-awig* is not allowed to attend the village deliberation and he must wait at the "*Balai Kencan*" (resting place and waiting place for the people in whom the matter is being discussed).

Based on the data obtained in the field, the village decisions in accordance with the nature and types of violations, can be:

1. Payment of fines
2. Payment of fines and / or performing certain acts
3. Dismissal of the village membership. (*krama desa*)
4. Grief, that is removed from the village.

The preservation of the environment in indigenous life in Bali in general and the traditional village of Tenganan Pagringsingan in particular not only related to the outward aspects, but also related to the spiritual aspect, which in this case is the holiness of the environment, especially the temple as a holy place and also the

settlement environment. The role of Balinese customary law, especially customary law of Tenganan Pagringsingan village in relation to the preservation of the environment is more visible in preventive aspects (prevention) without reducing the repressive (repression) aspect. This is because it is supported by the community's understanding and awareness of the position and meaning of the *awig-awig* of indigenous villages for the life of the customary community.

Togetherness that is visible in the life of indigenous peoples puts the public interest on the individual. While the religious magical style of indigenous peoples reflects a balance between life in the real world and the unreal world (supernatural). With this feature is contained within it an understanding that all human behavior and deeds must be such that a harmonious relationship between human (indigenous) and the universe (nature) is created. Both of these principles (style) above gave birth to a form of community life that is always trying to maintain a harmonious relationship between humans with each other and also between real life with the unseen nature. This is essentially the essence of environmental conservation among Balinese indigenous peoples.

From the data obtained in the field found the fact that most Tenganan Pagringsingan indigenous villagers do not know the contents written in the *awig-awig*, but they are in interacting with other citizens always behave in line with this set in the *awig-awig*. From these circumstances it can be concluded that although the formal provisions of *awig-awig* are not understood by some villagers, they materially understand what they are allowed to do, the forbidden act follows the customary sanctions. In the case of preserving nature in the traditional village of Tenganan Pagringsingan, it is also applied in a persuasif way, that is raising awareness of the members of society about the importance of the environment for mankind by way of doing mutual cooperation periodically to reforest the hills or clean up the settlements and forests village.

5. Conclusion

- A. The participation of indigenous villages of Tenganan Pagringsingan on the maintenance of the continuous function of the environment is in the interest of the customary village community itself from the past has been good. Motivation of indigenous people Tenganan pagringsingan traditional village to maintain environmental sustainability is quite high. This is evidenced by what is contained in customary villages, as well as the active participation of reforestation in village hilly areas periodically.
- B. Unlawful logging violations in the traditional village of Tenganan Pagringsingan are sufficient to be carried out by the *Klian Desa* (6 people at regular meetings) every night. Cutting of unlicensed timber trees can be categorized as a customary violation, to resolve it is normal, that is still at the stage of the meeting forum (*sangkepan*) of *Kelian Desa* and customary sanction imposed is a custom sanction in the form of a fine of 400 to 1000 *Uang kepeng* (traditional money in Bali). If the violator defies this decision, in the sense of not willing to pay sanction added, then the case will be settled at the meeting forum (*sangkepan*) where all the villagers present.

6. Recommendation

- A. With due regard to technological and industrial developments (including tourism industries) it is necessary to think about the possible negative impacts of these developments. Therefore anticipation through written legal means (legislation) as well as unwritten law (customary law) is needed.
- B. Considering that Tenganan Pagringsingan traditional village has now been designated as a tourist area, and in the field of tourism has long historical roots, it is necessary to think about the provision in *awig-awig* in line with the development of tourism, in particular there is security for resilience in socio-cultural field of Tenganan Pagringsingan traditional village against destructive influences.

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