

The Financial Grant Legality from the Local Government to Customary Villages

I Wayan Suambara

Ph.D Candidate at Faculty of Law, Udayana University, Bali, INDONESIA

ABSTRACT

Legality is compliance with applicable law and demands that authority be exercised in accordance with applicable law. Thus an action is said to be invalid or illegal if it is not in accordance with the law. The Law on Local Governments does not regulate the granting of grants to indigenous peoples, so the essence of Law Number 23 of 2014 concerning the Local Government does not yet reflect the principles of national legal politics. Even the regulation in the Local Government law has the potential to cause social jealousy between the customary law community unit with other institutions, and has the potential to cause social conflict. Therefore, there are two main problems, namely how the Legality of Financial Grants to Customary Villages in the Perspective of Law Number 23 of 2014 concerning Local Government and how the Legality of Grants to Customary Villages in the Perspective of Home Affairs Ministerial Regulation Number 14 of 2016. This research was conducted using normative legal research through an analysis of norms in the legislation. Based on the results of the study, it was found that in Law Number 23 of 2014 concerning Local Government in Article 298 paragraph (5) which regulates the recipient of the grant, that the customary law community unit is not included as the party that can be given the grant and this article does not provide a definition of the grant. Customary Villages in Law Number 23 Year 2014 cannot be given financial grants by the local governments so that it implies the legality of financial grants given by local governments to Customary Villages in Bali. However, there is a difference between Law Number 23 Year 2014 and Home Affairs Ministerial Regulation Number 14 of 2016 regarding the awarding of grants to customary villages namely the details of legal subjects that can be given grants so that these different arrangements have implications for the legality of financial grants given by the Local Government to Customary Villages as Unity of Customary Law Communities in Bali.

Keywords: Legality, Financial Grants, Local Government, Customary Villages.

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A. Introduction

The word "legal" means in accordance with the law. An action is legal if carried out in accordance with applicable laws or regulations. Legality is compliance with applicable law and demands that the authority to be carried out in accordance with applicable law.¹ Thus an action is said to be invalid or illegal if it is not in accordance with the law. The definition shows that the problem of legality is comparing action with applicable law. In that context, the law seems to have been placed in a rigid position, while on the other hand the purpose of law is not intended to curb people's lives. Law is seen as a social phenomenon, which is something that always exists in social life and its existence because it is made by the authorities.² Because it is made by the authorities, a statutory regulation as a legal product cannot be separated from political, economic, social and cultural considerations, because the ruler and the power itself are born from a political process which is then embodied in government institutions, in this case the legislative and executive.

Political, economic, social, cultural and other considerations are more closely related to the making of laws by legislative institutions, namely by the House of Representatives whose members come from various political parties and the government, in this case the President who is also from the winning Political Party of the presidential election, by sticking to the essence or the nature of the law as the basis. Law is an instrument to achieve the goals of the state, therefore the law must also function and adhere to the four principles of the legal ideal (*rechtsidee*) namely:

1. Protect all elements for the integrity of the nation
2. Realizing social justice in the economic and social fields
3. Embody the sovereignty of the people (democracy) and state law (nomocracy)

¹ Frans,S. (2016). *Etika Politik Prinsip Moral dasar Kenegaraan Modern*. Jakarta: Gramedia, p.70.

² Marzuki, P.M. (2008). *Pengantar Ilmu Hukum edisi Revisi*. Jakarta: Kencana, p.87.

4. Creating tolerance on the basis of humanity and civilization in religious life.¹

The presence of a statutory regulation should reflect the four legal ideals above, because the essence contained must be oriented towards achieving the objectives of the state as the values contained in Pancasila, which is the basic norm for the Indonesian nation. The most basic function of law is to prevent that conflicts of interest are resolved in open conflicts, meaning that they are solely based on the strengths and weaknesses of the parties involved. In that connection, the law provides a way to resolve conflicts of interest based on a policy or norm in the administration or management of government and the state. The existence of the intended policy or norm, the resolution of conflicts of interest is not based on strong parties but rather on norms or rules oriented to the interests of the parties. Such an orientation would reflect justice, as one of the aims of the law. Peter Mahmud Marzuki believes that not all executive action must be based on law². In administrative law, it is known as *Freies Ermessen* or discretionary power, which is an action that is carried out without a written foundation but because its aim for a higher value must be done, even though it is detrimental to the interests of some people to save many people. From this opinion, the *freies ermessen* or discretion is a space for the government to issue policy regulations on matters that are not regulated in the law but need to be regulated because of the need for regulation in the interests of the wider community. This administration is not only within the scope of government, but as a whole governs governance and implementation of government, both the internal scope of government and also the relationship with the people.³

Based on such a mindset, in the event that the Local Government Law does not regulate the granting of grants to indigenous peoples, the essence of Law Number 23 of 2014 concerning Local Government does not yet reflect the political principles of national law as mentioned above. Even the regulation in the Local Government Law potentially to cause social jealousy between the customary law community unit with other institutions, and potentially to cause social conflict. On the other hand, Regulation of the Minister of Home Affairs Number 14 of 2016 Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget in conjunction with Regulation of the Minister of Home Affairs Number 13 of 2018 concerning Third Amendment to Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for the Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget which regulates the provision of grants to customary law community units, including traditional villages in Bali can be seen as a way out for avoiding the void in the regulation.

The issuance of the Ministry of Home Affairs is based on the authority of the Minister of Home Affairs, and the grant is intended to support the implementation of local government affairs, whose ultimate goal is to improve the welfare of the community. Thus, the Regulation of Minister of Home Affairs as a legal product has given legality to the granting of grants to customary law communities that are beneficial to the welfare of indigenous peoples, namely traditional or customary villages in Bali. The purpose of the issuance of Regulation of the Minister of Home Affairs Number 14 of 2016 concerning the Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for the Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget in conjunction with the Minister of Domestic Affairs Regulation Number 13 of 2018 concerning the Third Amendments, Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for the Provision of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget is in line with the legal objectives of achieving the objectives of the state. This is in accordance with Indonesia's national legal politics, that the law must open the way and even guarantee the creation of social justice for all Indonesian people, in the sense that the law must regulate the social and economic differences of the citizens in such a way as to provide the greatest benefit for those who are most disadvantaged. Those who at least have the opportunity to achieve prospects for prosperity, income and authority must be given special protection, not allowed to compete freely with the strong because it is certainly not fair.⁴ Thus it can be interpreted that Indonesian national legal politics is basically oriented to the creation of social justice for the welfare of the Indonesian people, but the way to realize social justice and welfare must have legality as a consequence of identity, that the State of Indonesia is a state of law. Based on these legal issues, it becomes interesting and actual for further research to be carried out under the title "The Legality of Financial Grants From Local Governments to Customary Villages".

¹ Mahfud, M.D. (2017). *Membangun Politik Hukum Menegakkan Konstitusi*. Jakarta: PT. Raja Grafindo Persada, p.18.

² Ibid, p.87-88.

³ Isdiyanto, I. Y. (2017). *Rekontruksi Hukum dan Ketatanegaraan Indonesia*. Yogyakarta: UII Press, p.63.

⁴ Mahfud, M.D. Op.cit, p.19.

Based on the background of the problem above, the problem can be raised as follows:

1. How is the Legality of Financial Grants to Customary Villages in the Perspective of Law Number 23 of 2014 concerning Local Government?
2. How is the Legality of Financial Grants to Customary Villages in the Perspective of Regulation of the Minister of Home Affairs Number 14 of 2016 concerning Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for Granting Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget in conjunction with Ministerial Regulation of Home Affairs Number 13 of 2018 concerning the Third Amendment to the Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for the Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget?

B. Research Method

This research is normative, that is research by referring to the legal provisions in the applicable laws and regulations, which are then related to the issues discussed.¹ Normative legal research includes several things, namely research on legal principles, research on legal systematics, research on the synchronization level of law in a vertical or horizontal sense, comparison of law and history of law.² The type of approach used in this study will be assessed using the Statute Approach, Analytical & Conceptual Approach and Historical Approach. Sources of legal materials used in this study consisted of primary and secondary legal materials. Primary legal material is an authoritative legal material which means it has authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation, and the decisions of judges.³

Results and Discussion

1. Legality of Financial Grants to Customary Villages in the Perspective of Law Number 23 of 2014 concerning Local Government

Customary village is a customary law community unit in Bali that has territory, position, original arrangement, traditional rights, own assets, traditions, social life manners for generations in the boundaries of a sacred or holy places (*kahyangan tiga* or *kahyangan desa*), duties and the authority and right to regulate and administer their own institutions. The definition of Customary Village is regulated in Article 1 number 8 of the Provincial Regulation of Bali Province Number 4 of 2019 concerning Customary Village in Bali (hereinafter written Local Government Regulation of Customary Village II). The stipulation of the Local Government Regulation of Customary Village II is based on the consideration that the Customary Village as a customary law community unit in Bali needs to be fostered, developed and empowered because based on facts from the past up to now the customary village has a very significant role in community life in Bali in all areas of life based on the philosophy of *Tri Hita Karana*. Even the duties and authority of traditional villages are not only limited to matters relating to Hindu customs and religions, but also tasked with realizing the glory of traditional villages which includes the peace, prosperity and happiness of its citizens, as well as carrying out other tasks handed over by the government and local governments, as regulated in Article 22 letter o, of Local Government Regulation of Customary Village II.

Thus the task of the customary village has similarities with the duties and functions of the local government, namely to realize the peace and prosperity of the community. As a consequence of the existence of a customary village as a community entity in Bali, it should be an obligation of the local government in Bali to protect and maintain its existence through the instrument of local government administration, in this case relating to financial support through the Regional Revenue and Expenditure Budget, particularly in the form of financial grants. In Law Number 23 Year 2014 concerning Local Government, there is no regulation on granting grants to customary law communities through the Regional Budget of Revenue and Expenditures so that there are no norms governing, whereas the facts show that local governments have given grants to traditional villages using a foundation law in the form of Regulation of the Minister of Home Affairs Number 14 of 2016 concerning Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for

¹ Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta: Fajar Interpratama Offset, p.93.

² Zainuddin, H. (2011). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, p. 25-30.

³ *Ibid.*, h. 141.

Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget in conjunction with Regulation of the Minister of Home Affairs Number 13 of 2018 concerning the Third Amendments, Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget which clearly regulates the provision of grants to traditional law community units, in this case including customary villages in Bali.

The fourth Alenia of the Preamble to the 1945 Constitution of the Republic of Indonesia essentially contains the objectives of the state, which include promoting public welfare, educating the nation's life and realizing social justice based on the values of Pancasila, which are the basis of the state. To accelerate the realization of the country's goals, the Unitary State of the Republic of Indonesia consists of Provinces, Regencies, and Cities, as regulated in Article 18 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In Article 18 paragraph (1) reads The Unitary State of the Republic of Indonesia consists of provincial regions and the provincial region consists of regencies and cities, each of which has a regional government, which is regulated by law while Article 18 paragraph (2) reads the Provincial Government, regencies, and cities self-regulate government affairs according to the principle of autonomy and assistance tasks.

The meaning of Article 18 paragraph (1) and paragraph (2) is as described in the Explanation of the 1945 Constitution of the Republic of Indonesia that the Indonesian State is an "*eenheidstaat*", so that Indonesia will not have an area within its "*staat*" state as well. Indonesian regions will consist of provincial regions, and provincial regions will also be divided into smaller regions whose existence is regulated by law and those regions are autonomous.

In carrying out the mandate of Article 18 paragraph (1) and (2) above, the local governments are equipped with the legal instrument in the form of Local Government Law as the basis for governance of Local Governments, which is currently governed by Law Number 23 of 2014 on Local Government. The aforementioned Local Government Law regulates, among others, regional finance, but the regulation does not fully reflect support for the implementation of regional authority, particularly relating to the existence of indigenous and tribal peoples, in this case the provision of grants to indigenous and tribal peoples (customary villages in Bali) through Regional Revenue and Expenditure Budget (APBD).

The Law of Local Government is a legal instrument in the administration of local government so that the local government can carry out its functions with legal certainty, justice and benefit all the people in the region, including for the unity of customary law communities in areas whose existence is recognized in the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) reads that the State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law. Article 18 paragraph (2) implies that every law relating to the existence of a customary law community unit in a region must contain rules that recognize and respect the existence of a customary law community unit, including those that are protective and strengthen its existence. The government is obliged to implement a government system that is oriented to the welfare of society and to fulfill the constitutional rights and traditional rights of the community.

One manifestation of protecting and strengthening the existence of indigenous peoples is by establishing them as legal subjects in relation to financial sources or financial support regulated in the law, but currently not regulated in the Local Government Law. Thus, it can be said that the constitutional guarantee in the 1945 Constitution of the Republic of Indonesia for the unity of indigenous and tribal peoples is ineffective. This is proven because the Local Government Law which is a legal instrument for the administration of the local government in which the existence of the customary law community unit does not give certainty of the status of the customary community as a legal subject that can receive grants from the local government. The modern constitution that was formed at the time of independence was only temporary, lacking in support of the glorification of the rights of indigenous peoples and the spirit of local wisdom.

The unity of customary law communities in Bali is called the Customary Village. Even as a form of recognition and respect for the existence of customary villages, the Government of Bali Province has established Bali Provincial Regulation Number 4 of 2019 regarding Customary Villages in Bali. The stipulation of the Local Government Regulation on Customary Villages is a reflection and reinforcement of the meaning contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and should also be the basis of the Local Government Law. Strengthening of traditional or customary villages in Bali in the Bali Provincial Regulation Number 4 of 2019 concerning traditional villages in Bali includes recognition and respect for the position and role of existing customary villages with their diversity before and after the formation of the Unitary State of the Republic of Indonesia. Traditional villages located in the territory of the Province of Bali are now legal subjects in the system of governance in the Province of

Bali. The local government regulation also makes traditional villages an institutionalization in the implementation of Balinese life arrangements in accordance with the local wisdom of Sad Kerthi. (STATEMENT OF THE GOVERNOR OF BALI I WAYAN KOSTER, BALI POST, THURSDAY, 19 SEPTEMBER 2019). Even as a concrete form in caring for the existence of traditional villages in Bali, the Government of the Province of Bali established the Office of the Promotion of Indigenous Peoples of the Province of Bali, which is regulated in Bali Provincial Regulation Number 7 of 2019 concerning Amendments to Local Government Regulation Number 10 of 2016 concerning Formation and Composition of Regional Apparatus.

Bali Provincial Government Regulation Number 4 of 2019 regarding Customary Villages in Bali formulating Customary Villages is a unit of customary law communities in Bali that has territory, position, original arrangement, traditional rights, own assets, traditions, social relations of society inherited hereditary in the ties of the holy place (*kahyangan tiga* atau *kahyangan desa*), duties, and authority and autonomy rights. In fact, Article 6 of the Local Regulation on Customary Village stipulates that Customary Village is a legal subject in the government system of the unitary state of the Republic of Indonesia. The formation and stipulation of this Customary Village Regulation can be seen as an extension of the mandate of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Article 18B paragraph (2) reads that the State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia which are regulated by law.

Customary Village as a customary law community unit based on the philosophy of *Tri Hita Karana* imbued with Hindu teachings and Balinese cultural values has shown a very important role in development including the success of various national programs in Bali, so it needs to be nurtured, protected, fostered, and its existence is strengthened.

The consequence of the recognition by the 1945 Constitution of the Republic of Indonesia, the Regional Regulation on Customary Villages in Bali and the facts in the life of the Balinese people, it is the duty of the local government to maintain the existence of traditional villages in Bali. One way to maintain the existence of indigenous villages and those related to this research is to provide funding support through the Regional Budget and Revenue with a financial grant pattern that can be utilized to do various things related to efforts to care for and preserve the existence of customary villages which blends with the Hindu religious life in Bali. The Regional Revenue and Expenditure Budget is a regional annual financial plan stipulated by a Local Government Regulation and is an instrument in the implementation of local government functions. With regard to local government finances, the Law on Local Governments regulates in Chapter XI which in its articles also regulates grant spending.

Article 298 paragraph (4) reads Grants and social assistance expenditures are budgeted in the APBD in accordance with the regional financial capacity after prioritizing the fulfillment of expenditure on mandatory government affairs and selected government affairs, unless otherwise stipulated in the provisions of the legislation. The sentence "..... unless otherwise specified in the provisions of the legislation" implies that it is possible for other legislation governing the budgeting of grant and social assistance expenditure without considering the priority of mandatory government affairs expenditure and expenditure of selected government affairs. Even in a broader interpretation, it is also possible to have other laws and regulations in addition to the laws that regulate in more detail the allocation of the grant and social assistance budget in the APBD. Besides that, it also means that the Law does not specify a certain percentage of the amount of budgeting for grant and social assistance expenditure, including the amount of budgeting for mandatory and optional government affairs expenditure, in addition to the education and health sectors, each of which is regulated in the Law.

Article 298 paragraph (5) reads "Grant expenditure as referred to in paragraph (4) can be given to:

1. Central government;
2. Other Local Governments;
3. State-owned enterprises or Local Government-owned enterprises; and/or
4. Indonesian bodies, institutions and social organizations.

Thus, the Local Government Law regulates grant spending, but does not include the customary community as a party that can be given grants and does not provide a definition of grants. There are several laws and regulations relating to the local government finance and grants. Government Regulation of the Republic of Indonesia Number 58 of 2005 concerning Local Financial Management does not provide a definition of what is meant by grant spending, whereas Government Regulation of the Republic of Indonesia Number 57 of 2005 concerning Local Grants, Article 1 number 7 formulated Grant is a local revenue originating from foreign government, foreign agency / institution, international agency / institution,

government, domestic or individual agency / institution, both in the form of foreign exchange, Indonesian Rupiah and goods and or services, including experts and training that do not need to be repaid.

Government Regulation Number 57 Year 2005 was then replaced by Government Regulation Number 2 Year 2012 concerning Local Grants, which formulated that Local Grants are grants by transferring the rights to something, from the government or other parties to the regional government or vice versa which have specifically been designated and done by agreement.

If it is examined between Government Regulation Number 57 of 2005 and Government Regulation Number 2 of 2012, there are a number of differences in principles, although both regulate Grants, namely:

- a. Government Regulation Number 57 of 2005 uses the nomenclature "Grants to Local Governments", while Government Regulation Number 2 of 2012 uses the nomenclature "Local Grants".
- b. Government Regulation Number 57 of 2005 contains the definition of "Grants", while Government Regulation Number 2 of 2012 contains a definition of "Local Grants", each of which has a different essence.
- c. Government Regulation Number 57 of 2005 does not regulate parties who can be given grants, whereas Government Regulation Number 2 of 2012 regulates parties who can be granted grants as specified in Article 8 paragraph (1) as follows:

Article 8 paragraph (1) reads Grants from the local government as referred to in Article 2 letter b may be given to:

1. Government;
2. Other Local Governments;
3. State-owned enterprises or Local Government-owned enterprises; and/or
4. Indonesian bodies, institutions and social organizations.

Government Regulation Number 58 Year 2005 published as the implementation of Law Number 32 Year 2004 concerning Regional Government both does not provide an understanding of Grants. In its development, a Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 13 of 2006 concerning Local Government Financial Management Guidelines was published. This Regulation of the Minister of Home Affairs does not provide the definition of a grant, but determines the grant as an Indirect Expenditure Group within the structure of the Regional Revenue and Expenditure Budget as stipulated in Article 37 as follows:

"Indirect Expenditures Group as referred to in Article 36 paragraph (1) letter a is divided according to the type of expenditure consisting of:

1. employee expenditure;
2. interest;
3. subsidy;
4. grant;
5. social assistance;
6. profit sharing expenditure
7. financial assistance; and
8. Incidental expenses.

Furthermore, in Article 42 paragraph (1) it is determined: "Grant Expenditures as referred to in Article 37 letter d are used to budget grants in the form of money, goods and / or services to the government or other local governments, and specific community / individual groups that have been designated.

From the provisions above, the customary law community unit (customary village) is not included as the target recipient of the grant, but the facts show that the granting of financial grants to the customary law community unit, namely customary villages in Bali, is based on Minister of Home Affairs Regulation Number 14 of 2016.

2. **Legality of Financial Grants to Customary Villages in the Perspective of Regulation of the Minister of Home Affairs Number 14 of 2016 concerning Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for Grant of Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget in conjunction with the Minister of Home Affairs Regulation Number 13 of 2018 concerning the Third Amendment to the Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Providing and Social Assistance sourced from the Regional Revenue and Expenditure Budget**

The regulation on Grant by the Minister of Home Affairs is very dynamic. Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for the Grant of Grants and Social Assistance Sourced from the Regional Budget for Revenue and Expenditure, in Article 1 paragraph 14 formulates, Grants are granting of money/goods or services from local governments to the government or other regional governments, companies regions, communities and social organizations, whose specific designations have been determined, are non-mandatory and non-binding, and are not continuously aimed at supporting the implementation of local government affairs.

As for the parties who can be granted grants, inconsistencies occur between Minister of Home Affairs Regulation Number 32 of 2011 and Article 298 paragraph (5) of the Regional Government Law. Regulation of the Minister of Home Affairs Number 32 of 2011 does not regulate the provision of grants intended for agencies, institutions and the exclusion of Indonesian legal entity requirements for community organizations. The Law on Regional Government and Minister of Home Affairs Regulation Number 32 of 2011 does not provide an explanation of what is meant by bodies, institutions, communities, social organizations or social organizations incorporated in Indonesia.

Thus there has been a difference in the determination of the parties to which the grant can be given, and even with regard to the legal aspects of social organizations. The inconsistency is likely to occur due to the inaccuracy of the legal drafters in the drafting of the Minister of Home Affairs Regulation or the possibility of certain interests to facilitate the grant.

From the formulation above, there is a lack of qualifications in relation to the customary law community (customary village in Bali) in terms of being able to be given a grant.

Customary Villages are not a social organization, because Customary Villages are formed from a natural process by a group of people who bound themselves in a single territorial unit, which have its own traditions, related to Hindu religious life, had its own rules and management, so that its existence is not based on the formation of the government or not is a government structure. In the case of grants, it is aimed at achieving the objectives of the programs and activities of the local government, as determined in Article 4 paragraph (3) of the Minister of Home Affairs Regulation Number 32/2011 as follows:

"The granting of Grants as referred to in paragraph (1) is intended to support the achievement of local government programs and activities by taking into account the principles of justice, propriety, rationality, and benefits for the community".

Thus, the purpose of giving grants is in line with the nature of the existence of customary villages, including supporting local government programs and activities, and supporting the implementation of regional government affairs, so that the provision of grants based on Minister of Home Affairs Regulation Number 32 Year 2011 is considered not to pay attention to the principles of justice, and propriety seen from the existence of an customary village as a legal community unit.

The Minister of Home Affairs Regulation Number 32 of 2011 subsequently changed with the issuance of the Minister of Home Affairs Regulation Number 14 of 2016 concerning Second Amendment to the Minister of Home Affairs Regulation of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for the Granting of Grants and Social Assistance Sourced from the Local Revenue and Expenditure Budget.

The definition of Grants in the Minister of Domestic Affairs Regulation Number 14 of 2016 is the same as those formulated in the Minister of Home Affairs Regulation Number 32 of 2011. However, the substance of the changes regulated in the Minister of Home Affairs Regulation Number 14 of 2016 and its relation to this research is the regulation of the granting of grants to customary law community units as stipulated in Article 6 paragraph (5) letter c.

In Article 6 paragraph (5) letter c. non-profit, voluntary social nature in the form of community groups / customary law community units as long as they are still alive and in accordance with community development, and their existence is recognized by the central government and / or local government through endorsement or stipulation of the head of the central agency or the head of the regional service related to their authority.

Minister of Home Affairs Regulation Number 14 of 2016 has changed again with the enactment of Minister of Home Affairs Regulation Number 13 of 2018 concerning the Third Amendment to Minister of Domestic Affairs Regulation Number 32 of 2011 Regarding Guidelines for Granting Grants and Social Assistance Sourced from Regional Revenue and Expenditure Budget, however the substance of the change regulated is not in connection with the customary community grant.

In Law Number 12 of 2011 concerning Formation of Regulations and Regulations, Ministerial Regulations are not included in the type and hierarchy of Regulations as regulated in Article 7 paragraph (1) of the said Law. On the other hand, although it is not included in the hierarchy of statutory regulations, the Ministerial Regulation is recognized and has binding legal force. This is in accordance with the

provisions in Article 8 paragraph (1) and paragraph (2) of Law Number 12 Year 2011, the details of which are as follows:

Article 8 paragraph (1) reads "Types of statutory regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank of Indonesia, Minister, a body, institution or commission of the same level established by law or government by law, the Provincial Regional Representative Council, the Governor, the Regency / City Regional Representative Council, the Regent / Mayor, the Village Head or the equivalent".

Article 8 paragraph (2) reads

"The laws and regulations referred to in paragraph (1) are recognized and have binding legal force insofar as they are ordered by higher statutory regulations or are formed based on authority".

From the description above, it can be seen that the granting of financial grants to traditional villages in Bali as a customary law community unit has only begun since there was a regulation by the Minister of Home Affairs Regulation Number 14 of 2016.

Grants are a component of regional expenditure that is budgeted in the Regional Revenue and Expenditure Budget. Law Number 23 of 2014 concerning Local Government is a legal instrument in the administration of regional government containing various provisions concerning regional financial management because regional financial management is a part of being a unity in the administration of government affairs, which is under regional authority.

There is a difference between Law Number 23 Year 2014 and Minister of Home Affairs Regulation Number 14 Year 2016 regarding the details of legal subjects that can be given grants. Law Number 23 Year 2014 does not include the customary law community unit as a legal subject that can be granted a Grant, but the Minister of Home Affairs Regulation Number 14 of 2016 determines the customary law community unit as long as it is still a legal subject that can be given a grant. This difference in regulation has implications for the legality of the money grants given by the Local Government to the Community Village as the Customary Law Community in Bali.

According to the Big Indonesian Dictionary, the notion of Legality is about a legal situation. In the sense of freedom, legality is a matter of a state regarding legal status or legality.¹

The inconsistency of regulation by the laws and regulations on customary community unity, in this case Customary Villages as a legal subject does not reflect a sense of justice for customary villages so that it also impacts on the legal certainty and legality of financial grants given by the Regional Government to customary villages from 2016 to present. Addressing the issue of justice is not easy, because justice is subjective.² Good legislation must meet the elements of justice, expediency, and legal certainty.³

Gustav Radbruch believes that the legal objectives are justice, certainty and expediency. Justice must have the first and foremost position of legal certainty and expediency. At first Gustav Radbruch placed legal certainty as the ultimate goal of law. However, after seeing the fact that with his theory in Germany under Nazi rule legalized inhumane practices during World War II by making laws that validated the practices of war cruelty at that time. Gustav Radbruch finally corrected his theory mentioned above, by placing the goal of justice in the top priority over other legal goals.⁴ Furthermore, it is the duty of the legislator so that each statutory regulation that is formulated reflects the three elements, even though the implementation is not easy.

A law in turn has higher authority than an ordinance.⁵ In relation to the validity of norms and legality, normative or formal, implies, if in the legal system, a rule or legal norms in a hierarchical manner have legality, meaning lower rules are based on higher general legal norms to the end point of what is called "*Grundnorm*", the basic norm (*de basisnorm*), which is not based on a higher norm.⁶ The basic legality of justification is only positive law, especially laws and regulations.⁷ The Local Government Law is a positive law, and in the case that the Local Government Law does not regulate the provision of grants to indigenous peoples, in this case the Customary Villages in Bali, there is a void of norms so that the granting of financial grants from the local government to the customary village has no legality in terms of the Laws of the Local Government. The kind of most of Indonesia's legal problems is a matter of function, which is

¹ Suharso and Retnoningsih, A. (2016). *Kamus Besar Bahasa Indonesia*. Jakarta: Widya Karang, p.285

² Margono, H. (2019). *Asas Keadilan Kemanfaatan &Kepastian Hukum Dalam Putusan Hakim*. Jakarta: Sinar Graha, p.105

³ Redi, A. (2018). *Hukum Pembentukan Peraturan Perundang-undangan*. Jakarta: Sinar Grafika, p.22

⁴ Fanani, A.Z. (1999). *Teori Keadilan Dalam Perspektif Filsafat Hukum dan Islam*. Jakarta: Jakal Press, p.49

⁵ Friedman, L.M. (2011). *Sistem Hukum Perspektif Ilmu Sosial*. Bandung: Nusa Media, p.52.

⁶ Atmadja, I. D. G. (2013). *Filsafat Hukum Dimensi Tematis dan Historis*. Malang: Setara Press, p.61.

⁷ Ibid., p.62.

rooted in the problem of construction and the substance of legislative norms.¹ Based on the facts, in the practice of regional government administration, the granting of financial grants by local governments to indigenous or customary villages is by using the legal basis of Regulation of the Minister of Home Affairs Number 14 of 2016.

Conclusions

Based on the discussion above, it can be concluded as follows:

1. Law Number 23 of 2014 concerning Regional Government in Article 298 paragraph (5) which regulates the recipient of a grant, that the customary law community unit is not included as a party that can be given a grant and does not provide a definition of the grant. Indigenous Villages in Law Number 23 Year 2014 cannot be given financial grants by local governments so that it impacts on the legality of financial grants given by local governments to Customary Villages in Bali.
2. There are differences between the provision of grants to customary villages between Law Number 23 of 2014 and Minister of Home Affairs Regulation Number 14 Year 2016 regarding the details of legal subjects that can be given grants. Law Number 23 of 2014 does not stipulate that the customary law community unit as a legal subject that can be granted a Grant, but the Minister of Home Affairs Regulation Number 14 of 2016 determines the customary law community unit as a legal subject that can be given a grant. This difference in regulation has implications for the legality of the financial grants given by the Local Government to the Customary Villages as the Customary Law Community in Bali.

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