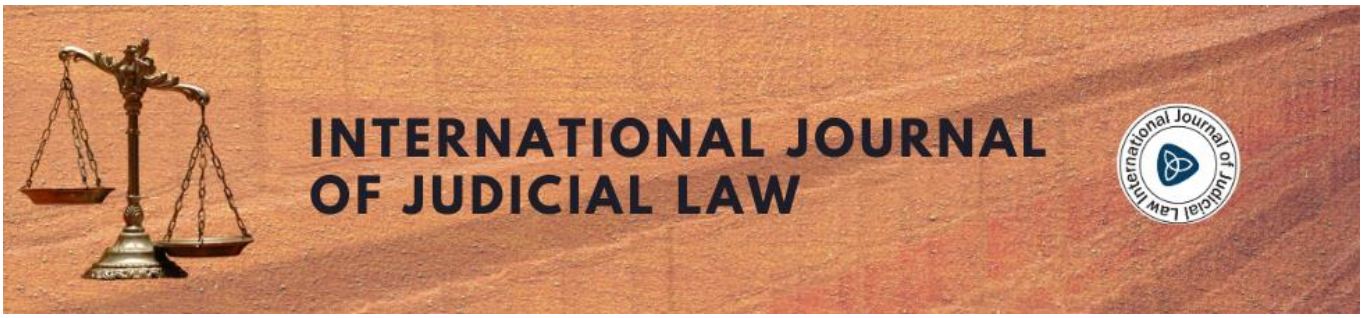




Mastery Jurisprudence and Control Physical Characteristics of Village Land Titled as Ownership Certificate in Bali

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Abstract

This study aims to examine and understand the concepts of juridical possession and physical possession held by indigenous community members occupying communal land for which the Customary Village has registered a Right of Ownership, as well as the utilization of such land by individuals who are no longer “*mipil*” (officially registered) as members of the customary village. This research employs a normative research method. Possession of this land is not based on individual ownership rights but rather on the relationship of local people, manifested through the “*mipil*” registration system and the fulfillment of customary obligations “*ngayah*”. In the context of individuals who are no longer “*mipil*” or who have withdrawn from customary village membership, the right of possession over the communal land automatically reverts to the customary village.

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Introduction

Background

Customary rights is rights held by the community law customs on a particular area, including land, forests, rivers, and sources Power nature within it. This right recognized in a way hereditary and regulated based on law customs that apply in society said. Customary rights covers right For manage, utilize and preserve source Power nature in the area For interest together public customary rights nature collective, meaning owned in a way together by the community custom, not by individuals. ^[1]

The community has authority or right control on land in the environment fellowship known laws with a number of term that is, rights customary rights lordship, and rights perba. Based on a right mastery Where society law Can manage, administer, control and use his rights For interest together. According to public law customs, land has a special meaning compared to with objects others and concepts from land according to law customs That Alone has meaning, everything land located in community areas law the customs concerned There is in power from public law customs That Alone.

Recognition of the existence of customary law communities and their rights is contained in Article 18 B of the 1945 Constitution of the Republic of Indonesia and Article 3 of Law No. 5 of 1960 concerning Basic Agrarian Principles, which states that the State recognizes and respects customary law communities and their traditional rights as long as they still exist. Customary rights are currently still recognized, function, and are obeyed as institutions in society, but their existence must be adjusted to the national interests, the State, and the Indonesian Nation. ^[2]

Customary Rights are explicitly stipulated in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 14 of 2024

¹ Shebubakar, AN, & Raniah, MR (2023). Customary/ulayat land law. *Journal of Master of Law: Law and Welfare*, 4(1), 14-22.

² Hasan, U., Suhermi, S., & Sasmiar, S. (2020). The Existence of Customary Rights in Customary Law Communities. *Journal of Socio-Human Sciences*, 4 (2), 649-660.

concerning the Implementation of Land Administration and Registration of Customary Land Rights of Customary Law Communities (hereinafter referred to as the Regulation of the Minister of ATR/KBPN No. 14/2024) which stipulates that: "Customary rights as referred to in paragraph (1) are declared to still exist if:

- a. There is a group of people who still feel bound by their customary legal system who acknowledge and apply the provisions of this association in their daily lives;
- b. There are certain Ulayat Lands which are the living environment for its residents and a place to get their daily necessities; and/or there is a customary legal order regarding the management, control and use of Ulayat Land which applies and is obeyed by its residents."

The customary land of the customary village is strengthened through Bali Provincial Regulation Number 4 of 2019 concerning customary villages in Bali (hereinafter referred to as the Customary Village Regulation). This land belonging to the customary village is known as communal land (Tanah Ayahan Desa (AyDs), customary land (Tanah Pekarangan Desa (PKD), or (Tanah Padruwen Desa). This strengthening of the communal dimension can be seen from the provisions of Article 58 paragraph (1) of the Customary Village Regulation which stipulates that "Land belonging to the customary village is registered in the name of the customary village." This means that land in the customary village area is not registered in the personal name of the customary community member who occupies the land. This provision aims to maintain the communal dimension of customary land. The communal dimension is inseparable from the pattern of relations between the customary village and its customary community. The customary community is given hereditary control over the land by the customary village with certain obligations as regulated in *the awig-awig*. Traditional Villages. Therefore, Traditional Villages also have their own laws for resolving disputes over Village Land.^[3]

The existence of Customary Villages is also regulated in Law Number 6 of 2014 concerning Villages (Village Law), furthermore, Villages can also have several assets as regulated in Article 76 of the Village Law which states "Village assets can be in the form of Village treasury land, customary land, Village markets, animal markets, boat moorings, Village buildings, fish auctions, agricultural product auctions, Village-owned forests, Village-owned springs, public baths, and other assets belonging to the Village."

Based on the article, one of the village assets is customary land, if reviewed according to Balinese customary law, then customary land can be equated with *druwen desa* or land belonging to traditional villages, one form of which is customary land (Tanah Pekarangan Desa (PKD). that related to the existence and existence of traditional villages, the province of Bali has a legal instrument that can later provide legal certainty for traditional villages, namely the Traditional Village Regulation. In the Traditional Village Regulation, it is directly and clearly regulated that Traditional Villages can have assets, namely regulated in Article 55 paragraph (3) of the Traditional Village Regulation which states as follows: "

The material *Padruwen* of a Traditional Village can be in the form of Traditional Village authority, Traditional Village land, natural resources, economic resources which are the traditional rights of the Traditional Village, sacred areas, sacred places, sacred buildings belonging to the Traditional Village, buildings belonging to the Traditional Village, objects of a religious, magical, financial and *sarwa mulé* nature ; and other material wealth."

That what is meant by customary village land can be seen in the explanation of Article 55 of the Customary Village Regulation, namely: "Customary Village land is land owned by the Customary Village, whether managed directly by the Customary Village, such as: *setra* land, *palaba* land, market/tenten land, and others, or the management of which is handed over to the *Krama Desa Adat* (local people), such as the customary land (Tanah Pekarangan Desa (PKD) and the Communal land (Tanah Ayahan Desa (AyDs))."^[4]

In the context of governance and social life of indigenous communities in Bali, the resolution of disputes that occur in the area of the Traditional Village, whether involving members of the community, between the community and the customary *prajuru* (Customary Village administrators), or related to the *padruwen* (ownership) of the Traditional Village (communal assets belonging to the traditional village) is carried out through the following mechanisms: deliberation, which is a form of deliberation based on local customary law. This resolution is carried out by *Kertha Desa Adat*, a traditional institution that has the authority to resolve cases based on customary law provisions applicable in each traditional village.

The authority and functions of the *Kertha Desa Adat* are regulated in Article 37 of the *Adat Village Regulation*, which explicitly states that this institution is tasked with receiving, examining, and deciding on customary/dispute cases occurring within the *Adat Village*. The main principle put forward is the creation of peace based on the principle of collectivism (*druwenang sareng-sareng*), namely the principle of deliberation and consensus that reflects the values of collectivity and social harmony. If this peace mechanism is unsuccessful, the *Kertha Desa Adat* has the authority to issue decisions based on the provisions of the Village Law. Customs and regulations and/or *Pararem* which applies as a written customary legal norm within the customary village environment. If a resolution at the customary village level reaches a deadlock, the parties can submit the case to the customary village head. Traditional Village Council (MDA), in accordance with the applicable levels of authority.

Within the framework of customary law, customary rights is a form of binding legal relationship between customary law communities as legal subjects and land or certain areas as their objects. Customary rights encompass three fundamental aspects, namely: (1) the authority to regulate and manage land use by customary communities; (2) determining the legal relationship of the community to the land; and (3) regulating legal interactions between individuals and legal actions related to the land. These three aspects indicate that customary rights are a comprehensive legal institution and are the main source in the natural resource management

³ Suwitra, IM (2020). The existence of customary land and its problems in strengthening customary villages in Bali. *WICAKSANA: Journal of Environment and Development*, 4(1), 31-44.

⁴ Purnama, DGASY, & Dewi, AAIAA (2019). Traditional Villages in Balinese Customary Land Management Based on Regional Policy (Doctoral dissertation, Udayana University).

system by customary communities.

The existence of customary rights obtains formal legitimacy in the provisions Article 3 of the Basic Agrarian Law (UUPA) states that as long as the rights are respected in practice. In practice, this recognition is evident in the process of granting land rights (for example, land use rights), where customary law communities as holders of customary rights must first have their opinions heard and their rights formally recognized.

Collectively, customary rights held by customary village communities not only have legal and economic dimensions, but also spiritual and cultural values. In Bali, customary rights to land are one of the fundamental rights. *rights*) inherent in the existence of a Traditional Village. These rights include not only land ownership, but also rights to village forests and the natural resources contained therein that can be utilized by the customary village community according to customary law. For Balinese indigenous people, land is not merely a means of economic production, but also an ancestral heritage containing sacred values, so that land management by the customary village community is not only an economic obligation, but also a manifestation of respect and devotion to ancestors. Therefore, indigenous people maintain and manage the land responsibly as part of the sustainability of their cultural and spiritual heritage. ^[5]

Druwe land (*druwe* means belonging) is also commonly referred to as customary land, which some parties qualify as communal land, which is shared land controlled and owned communally by traditional villages. Control of some of this communal land is transferred (*derivative*) to individual members of the traditional village, called communal land.

The types of customary land in Bali as detailed by M Suastawa D include several categories, namely: Village land or *druwe* land, which is land owned or controlled by the traditional village obtained through purchasing efforts or other efforts. Included in this type of *druwe* land are: Market Land, Field Land, *Setra* Land, which is land used for cemeteries. For *Laba Pura* Land, it is explained as village-owned land (controlled by the Village) which is specifically used for temple purposes (holy places). Customary land (*Tanah Pekarangan Desa* (PKD)) is land controlled by the village which is given to village residents (*Krama desa*) for building housing. (*Tanah Ayahan Desa* (AyDs)) Komunal village land is land controlled by the village whose cultivation is handed over to each Each village community has the right to enjoy it with the obligation to provide labor and materials to the traditional village. Over time, many AyDs lands, which were previously rice paddies or fields, have changed and become residential areas as a result of the certification of the Ayds land, which was then sold by the owner to be used as a residential area.

The certification of customary land in Bali designates the customary village (*Desa Adat*) as the subject of ownership rights, while the members of the customary village (*Krama Desa Adat*) serve only as subjects who possess and utilize the land. Problems concerning the certification of customary land in Bali are frequently encountered, primarily due to the lack of clarity regarding the designation of the subject of ownership of customary land. Numerous disputes over the

ownership of customary land occur between customary villages and even among members of customary villages, while some customary lands have been certified in the names of individuals. One such case occurred in Penglipuran Village, where a boundary dispute arose concerning *Ayahan Desa* land between neighboring land managers due to uncertainty regarding the actual size of the land. Another case involving customary land in Bali occurred in Guwang Customary Village, where customary village land was claimed to be privately owned by an individual from Celuk village based on the submission of a *pipil* document as evidence of ownership. Based on these two problems, in order to ensure legal certainty regarding the ownership and boundaries of customary land in Bali, land certification is necessary. The numerous problems concerning customary land in Bali demonstrate the need to establish a safe and peaceful social environment. Therefore, the legal status of customary lands must be promptly clarified through the establishment of a clear and certain legal status. ^[6]

With the designation of the Customary Village as the subject of communal rights, the Customary Village may serve as a subject in land registration. Land registration, based on Article 1 Number 9 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Rights of Ownership of Apartment Units, and Land Registration (hereinafter referred to as Government Regulation Number 18 of 2021), is a series of activities carried out continuously, continuously and regularly by the Government, including the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data in the form of maps and lists concerning land parcels and apartment units, including the issuance of certificates of rights for land parcels that already possess rights and rights of ownership over apartment units, as well as certain encumbrances imposed thereon.

Land registration serves to provide legal certainty that the name of the person registered in the general register cannot subsequently be challenged, even if that person is not the actual owner of the land in question. The certification of customary land continues to refer to Government Regulation Number 18 of 2021. The implementation of land registration produces a land certificate containing physical and juridical data as evidence of rights. The physical data contained in the certificate describes the boundaries of the land and is presented in the form of a map. Meanwhile, the juridical data contained in the certification of customary land, following the enactment of the Decree of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 276/KEP-19.2/X/2017, contains differences from the juridical data generally included in land certificates.

Land registration for Customary Village land can provide legal certainty and legal protection for rights holders over land, while also ensuring that customary land in Bali remains sustainable and well-preserved. However, customary land in Bali remains uncertified in many cases, one of the reasons being the ambiguity regarding the position of Customary Villages in Bali as subjects of land rights. This situation has resulted in customary lands being certified in the names of individuals, thereby potentially creating new problems

⁵ I Gusti Nyoman Guntur, *et al*, 2013, Dynamics of Customary Land Management in Bangli and Gianyar Districts, PPM-STPN Strategic Research Report, <http://www.stpn.ac.id>, accessed February 5, 2025

⁶ Puspawati, AAAI (2022, December). Customary Land Certification in Bali After Customary Villages Become Subjects of Communal Rights. In *International Conference Towards Humanity Justice for Law Enforcement and Dispute Settlement* (Vol. 1, No. 1, pp. 12-21).

concerning customary land in Bali. In addition, there have also been instances in which land belonging to Customary Villages has been taken over and transformed into assets of regional governments based on the argument of state control rights, allegedly for the purpose of serving the public interest, regional autonomy, and the principles of decentralization. Based on background behind the on importance know right the rights of Traditional Villages in matter processing land village certified customs right owned by individuals. Therefore That study This made in writing law entitled “Control of Jurisprudence and Control Physical Characteristics of Village Land Titled as Ownership Certificate in Bali”

Research Methods

A research method is a way to solve problems or develop knowledge using scientific methods. This paper uses a normative research method, which is a process for discovering legal rules, legal principles, and doctrines. law to address the legal issues being faced.^[7] The author examines laws and regulations relating to legal control and physical control over land rights.

Discussion

1. How Is the Concept of Juridical Control and Physical Possession Exercised by Customary Community Members Occupying Communal Land Registered As Ownership Rights In The Name Of The Customary Village?

Ownership rights are hereditary, strongest, and most complete rights that may be transferred and provide broad authority to their holders to carry out legal acts and legal relations concerning the right of ownership. Land registration is an administrative process that has legal force in providing legitimacy to individuals or legal entities in controlling a parcel of land. In this context, the Customary Village in Bali, whose existence as a legal subject has been recognized in the Balinese Customary Village Regulation, may be regarded as a holder of such rights. This recognition provides a legal basis for Customary Villages to register the land under their control or ownership based on the legal basis of control over land as recognized in the Constitution and the Basic Agrarian Law (UUPA).^[8]

Registration land is something form state power as arranged in Article 2 of the UUPA, that the state only confess ownership on land If has own tool evidence that can be used for prove position entitled from subject law certain. With do registration land, subject law will get certificate land as proof ownership right on land. Certificate is nothing but product law namely the State Administrative Decision (*beschiking*) which has characteristic concrete, individual, and final. Certificate is the only one tool evidence that can be used for prove base entitled somebody or subject law other concerning base ownership on land.

A certificate describes the form of control, consisting of juridical control and physical possession. This concept also serves as a basis for understanding that a parcel of land that has been certified and owned by a person may have its physical possession transferred to another person, for

example, through a lease agreement. However, the situation is different when it is related to Ayahan Desa land certified in the name of the Customary Village. Unlike a lease agreement, the customary status of persons occupying Ayahan Desa land is subject to certain criteria that must be fulfilled in order for a person to occupy the land.

The concept of juridical control and physical possession provides legal protection for Customary Villages in maintaining the existence of Ayahan Desa land while preserving the integrity of Balinese customs and culture. In relation to physical possession that may be exercised by a person other than the owner through a lease agreement, as regulated in Article 1548 of the Civil Code, “A lease is an agreement by which one party binds himself to provide the other party with the enjoyment of an object for a certain period and in return for the payment of a certain price agreed upon by the latter party.” Accordingly, the elements of a lease agreement include the existence of an agreement, an object of the lease, the transfer of possession and use to the lessee, an obligation to make payment, and a period determined by the parties. Meanwhile, physical possession in relation to the concept of Ayahan Desa land in Bali contains the following elements: the person must be a member of the customary village community (Hindu), must perform ngayah or be a registered member of the Customary Village, there must be an object in the form of land owned by the Customary Village, there is no fixed period of occupancy, and no payment is required. Furthermore, such possession must remain consistent with the concept of Tri Hita Karana.^[9]

In the context of the national system, the types of rights over land are determined based on the State's Right to Control as stipulated in Article 16 paragraph (1) of the UUPA. The types of rights over land include ownership rights, cultivation rights, building use rights, use rights, lease rights, rights to open land, rights to collect forest products, and other rights regulated by statutory provisions. Rights over land are granted by the State to certain legal subjects, whether natural persons or *rechtspersonen*, as holders of such rights.

The provisions of Article 4 paragraph (1) of the UUPA in relation to the “Unity of Customary Law Communities” need to be analyzed from two perspectives, namely:

- **Unity of Customary Law Communities as Subjects and Holders of Rights**

The State, as the holder of the Right to Control over land, determines the types of rights over land and the legal subjects entitled to obtain such rights. A Unity of Customary Law Communities constitutes a subject and holder of rights over land and is therefore entitled to legal certainty and legal protection over customary land so that it is not claimed as belonging to other parties. Referring to the provisions of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 14 of 2024, a “Unity of Customary Law Communities” is recognized as a legal subject that may obtain Management Rights or Ownership Rights over its Customary Land. In the context of Customary Villages, this is also based on the provisions of Article 58 paragraph (1) of Bali Regional

⁷ Jonaedi Efendi, SHI, & Prasetyo Rijadi, SH (2022). *Normative and Empirical Legal Research Methods: Second Edition*. Prenada Media.

⁸ Jayantiari, IGAMR, & Wijaya, IKKA (2017). Legal Review of Druwe Desa Land Regulation in Bali (Legal Aspects of Indigenous Peoples' Protection of Land). *WICAKSANA: Journal of Environment and Development*, 1 (1), 33-39.

⁹ Wiguna, MOC (2019). Provisions for Ownership of Karang Ayahan Land in Pakraman Village in Bali by Village Krama. *Journal of Legal Analysis*, 2 (1), 125-140. Pp. 68-69.

Regulation Number 4 of 2019, which requires customary village land to be registered in the name of the Customary Village.

- **Unity of Customary Law Communities as an Implementing Authority of the State's Right to Control**

A Unity of Customary Law Communities plays a role as a party that may be authorized to exercise the State's Right to Control within its customary territory, as referred to in Article 2 paragraph (4) of the UUPA. Based on the State's Right to Control, the implementation of which may be delegated to the relevant Unity of Customary Law Communities, various rights over land within their customary territory may be determined as referred to in Article 4 paragraph (1) of the UUPA.

Customary Villages in Bali do not recognize the concept of rights over land in the same manner as the UUPA; rather, they recognize several types of land, such as communal land, customary land, Temple Land, and others. In principle, the relationship between the Customary Village and the members of the Customary Village is not in the form of "the Customary Village grants Land Rights to the members of the Customary Village," but rather "the Customary Village grants control over land to the members of the Customary Village subject to certain obligations." Holders of land rights possess certificates as evidence of their rights, whereas members of the Customary Village do not possess certificates of land rights registered in their names as proof of ownership of the communal land on which they reside. The Customary Village has the authority to determine who may occupy communal land based on the applicable customary law. Therefore, members of the Customary Village occupy Ayahan Desa land based on the determination of the Customary Village. This concept is not the same as the concept of "Land Rights" recognized under the UUPA.

Based on matter was issued in 2017 Decree of the Minister of ATR/BPN Number 276/KEP-19.2/X/2017. Consequences law from publication letter decision the that is village customs as subject right communal in registration land and land village customs must done registration land. Designation of Traditional Village as subject right communal referring to Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Residing in Certain Areas (hereinafter called with Regulation of the Minister of ATR/BPN Concerning Communal Rights). According to Article 1 number 1, the right communal on land is right owned by together on land something public law customs, or right owned by together on the land given to the community that is in area certain.

In the Regional Regulation Bali Province regarding Traditional Villages that land *for rich purposes* own characteristic communal and individual, then what is included in land the that is land controlled by village people For occupied settlement that is customary land (PKD) and managed land for fulfil need daily that is communal land (AyDs). After he did registration land in accordance with

stages implementation registration land so published certificate as sign proof ownership rights. Intent to publish certificate in activity registration land is for the holder right with easy can prove that himself as holder his rights. Certificate published For interest holder the rights concerned in accordance with physical data and legal data that have been registered in book land that. Physical data and legal data listed in certificate must accepted as correct data as long as the data is listed in letter measure and book the land in question. Certificate consists of on physical data and legal data. Physical data is information about location, boundaries and area field land and units House arrange listed, incl information about existence building or part the building above it, while the legal data is information regarding legal status field land and units House array registered, holder his rights and rights other parties as well other burdens that burden him. For legal data as implementation Decree of the Minister of ATR/BPN Number 276/KEP-19.2/X/2017 village customs as subject right communal so there are two subjects that is subject holder right that is village customs and subjects For occupied and utilized that is *manners* village customs.^[10]

2. How Is the Utilization of Communal Land by Members Of The Customary Village Regulated When Such Members Are No Longer Registered As Members Of The Customary Village?

Indigenous Law Communities A customary law community is a social group that shares common genealogical ancestry, resides in a specific geographic area, and shares the common goal of maintaining and preserving customary values and norms. This community is governed by a customary legal system that is binding and adhered to by all members of the community. Leadership is exercised by customary leaders, and an administrative structure exists that allows for coordination of power and dispute resolution, both among members of the customary law community and with outsiders of different nationalities. Thus, a customary law community constitutes a legal entity bound by both kinship ties and proximity to the area of residence.^[11]

In Bali, the customary law community is known as the Traditional Village Community, namely Balinese citizens who are Hindu and officially registered through the "*Mipil*" system as members of the relevant Traditional Village, as regulated in Article 1 Number 13 of the Traditional Village Regulation. This membership requires the fulfillment of religious requirements and official registration, the provisions of which are further regulated in customary regulations and/or *Pararem* as complementary rules. Therefore, a person may be recognized as a member of a Traditional Village only if they fulfill certain requirements, namely being a Balinese citizen who is Hindu, being registered as a member of the relevant customary community, and performing *ngayah* in accordance with the customary regulations and rules applicable within the Traditional Village.

Members of the Traditional Village Community can occupy communal Land passed down through generations based on lineage, as long as all the elements of traditional village

¹⁰ Sudantra, IK (2018). Implications of the Decree of the Minister of ATR/Head of BPN Number 276/KEP-19.2/X/2017 on the Status of Land Owned by Pakraman Villages. *Udayana Master of Law Journal (Udayana Master Law Journal)*, 7 (4), 546-564.

¹¹ Thontowi, J. (2015). Regulation of customary law communities and implementation of protection of their traditional rights. *Pandecta Research Law Journal*, 10 (1). Page 3

customs are fulfilled, which can be proven through the existence *Sanggha Uwed*, a sacred place within the home that symbolizes the presence of ancestors. However, membership status can be lost due to certain events, such as *ninggal kedaton* (leaving the traditional village), mixed marriages, *nyeburin*, *nyentana* (The male party who leaves his customary status and family in his original home to reside with the woman's family and assume the customary status and family obligations of the woman's family), changing religion and or because weekly (serious customary violation). Communal land is an asset belonging to the customary village, although it is physically controlled by the village head with the knowledge and permission of the customary village. Residents who have been assigned land are required to comply with local customary rules as stated in the customary law. The transfer of customary land rights cannot be carried out without the approval of the customary village. If the Customary community members commits a serious violation of customary values, such as abandoning Hinduism, failing to carry out customary obligations, defaming the village's honor, or committing an unlawful act, the customary village has the right to revoke the physical control rights over the customary land in question. The consequence for the community no longer being a village head is the return of the control rights of the customary village land back to the customary village. In other words, the community is no longer burdened with the responsibility of *ngayahin desa*. Regarding the use of the *ayahan desa* land, it is returned to the village in accordance with the provisions of the *awig-awig* and *perarem* in each customary village. In the context of certified *ayahan* village land, further steps are required, namely changing the legal data related to the physical owner data to the National Land Agency.

Customary villages are recognized as autonomous entities that regulate their own internal affairs based on customary laws that are unique and differ from one village to another, in line with the concept *Desa Kala Patra* (adjusting the law to conditions of space, time, and circumstances). Therefore, not all customary village regulations can be standardized nationally. Customary Village Council (MDA) MDA is a collective institution consisting of religious and traditional leaders who serve as facilitators for resolving conflicts between traditional villages when internal resolution cannot be achieved. The MDA does not have the authority to intervene directly in traditional villages unless invited or delegated to resolve the conflict by the relevant traditional village. The MDA's decision is binding as long as the Traditional Village declares its compliance with the decision, and at that point, the MDA's decision becomes part of local customary law. However, the Traditional Village must still respect national law, especially in matters relating to The Constitution, Pancasila, laws and regulations, and human rights. If the disputing parties feel that their civil rights have been violated by customary or MDA decisions, they can file a lawsuit with the District Court, because legal protection is an individual's civil right.^[12]

In decision making, the Traditional Village can exercise its authority directly through the administrators without deliberation (*paruman*), if this has been regulated and given direct authority and as long as the action is in accordance with customary law. However, this action must still adhere to the

principles of authority, procedure, and substance. It should be noted that not all traditional leaders are called "bendesa"; there are also other terms such as *subak* or *jero gede*, referring to the existence of the ancient/original Balinese traditional society, as well as *desa*, *kala*, *patra*, depending on the local structure of each village.

Customary Land (PKD) are assets owned exclusively by the Traditional Village. Decisions regarding land certification are made by the village council. These land certificates have legal force because they are concrete, individual, and final state administrative decisions. Hereditary customary land ownership can be transferred to descendants after a family deliberation and approval by the Traditional Village (traditional villages have their own mechanisms depending on the village, time, and place). However, family deliberations do not have absolute power and must still obtain approval from the Traditional Village. A *pengarep*, the individual responsible for the family's customary interests, does not always have to be the firstborn. If a *pengarep* is over 70 years old (*nyada*), land rights can be passed on to their descendants with the approval of the Traditional Village. If an individual loses their status as a customary member, the Traditional Village has the authority to reclaim the land they previously controlled, even if they legally have inheritance rights.

The MDA does not have the direct authority to take over dispute resolution without a report from the traditional village, and if indigenous communities choose not to use the MDA, they can resolve their cases directly through the courts. In cases of physical land ownership conflicts, the resolution stages begin with an examination of the customary laws (*awig-awig*), then the *perarem*, and finally through a decision by the village council based on the minutes. The village council cannot deviate from this *awig-awig*, but can be used as a means to change them. *Perarem* is a written rule, while *paruman* is still an oral agreement that will be followed up in the form of rules.

A traditional village's refusal to accept a request to become a traditional member cannot be categorized as a human rights violation, because customary membership status depends on local criteria and village decisions. In customary disputes, if the MDA decision has been accepted by the parties, the settlement process no longer requires national law, except in relation to the existence of assets standing on village land, because land law adheres to the principle of horizontal scheduling/horizontal separation, which can still be tested according to national law, in accordance with the provisions in Article 3 of the Civil Code "There is no punishment whatsoever that can eliminate a person's civil rights and citizenship." In principle, *Pekraman Village* and *Traditional Village* are the same entity, with a change in nomenclature based on Regional Regulation Number 4 of 2019 replacing the previous term.

Conclusion

Communal land is a form of collective land control by Customary Villages in Bali that differs from the concept of land rights recognized within the national legal system through the UUPA. Control over this land is not based on individual property rights, but rather on a customary membership relationship (*Krama Desa Adat*), manifested

¹² Junia, ILR (2023). Understanding Awig-Awig customary law in Balinese traditional villages. *Journal of Law and Human Rights Wara Sains*, 2 (09), 828-844.

through the “*mipil*” system and the fulfillment of customary obligations (*ngayah*). This demonstrates that control over communal land emphasizes socio-cultural and communal membership aspects rather than individual ownership. Land registration by the Customary Village provides legal force and juridical legitimacy, whereby the land certificate constitutes a form of State Administrative Decision (*beschikking*) that recognizes control based on legitimate administrative evidence. In this context, the Customary Village, as a legal subject, has an important position both as a rights holder and as an implementer of the State's Right to Control as regulated under the UUPA.

In the context of a community member who no longer participates in or withdraws from membership in the Customary Village, the right to control communal land automatically returns to the Customary Village. The use of communal land by individuals who are no longer members of the Customary Village cannot be continued, and all administrative processes, such as changes to juridical data, must be carried out to prevent future legal conflicts. This is consistent with the principle that rights over customary land cannot be transferred without the approval of the Customary Village, and that physical control over the land is communal in nature, with the mechanism for determining control based on *awig-awig* and *pararem*. Thus, the Balinese customary land control system emphasizes the existence of legal dualism between national law and customary law. Legal protection for communal land can be realized if harmonization between customary law and national law is carried out without eliminating the local characteristics (*desa, kala, patra*) of each Customary Village. Awareness of the position of the Customary Village as a legal entity with autonomy in the field of customary agrarian affairs needs to be continuously strengthened to prevent overlapping authority while ensuring the sustainability of Balinese cultural and customary values.

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