

Krama Desa Adherence to Unwritten Awig-Awig in the Traditional Village of Bayung Gede, Bangli



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ABSTRACT: The aim of this research to identify a model of “krama desa” (indigenous villagers) adherence to their awig-awig, which is still spoken (unwritten). This research examines why there was no attempt to put it in written law and why indigenous people obeyed the rules even though there was no written law. Penelitian dilakukan di desa adat tipe baliaga (tidak mendapat pengaruh dari kerajaan Majapahit dengan tata pemerintahan masyarakatnya menggunakan pola ulu apad). The research was conducted in a baliaga-type customary village (uninfluenced by the Majapahit kingdom with community governance using the ulu apad pattern). This research is empirical legal research and primary data was collected with interview techniques. Based on the results of the research, it can be stated that the reason awig-awig is still maintained in unwritten form even though local regulations mandate that it be made in writing is that the ‘krama desa’ has never questioned it and from the past they have respected and obeyed it for generations without anyone daring to violate it. The village community respects and obeys awig-awig even though it is unwritten and is highly dependent on traditional leaders. When violating awig-awig, there is a psychological burden, namely kimud (shame for violating) because the consequences are stigmatized by the community.

KEYWORDS: Unwritten Awig-awig; Balinese Customary Law; Customary Village; Factor of Adherence.

INTRODUCTION

It should be mentioned that in Bali there are two types of villages, namely “Desa” and “Desa Adat”. Desa or the village in Bali is now commonly referred to as prebekelan is a village whose role is to organize government affairs and the interests of the local community within the system of government of the Unitary State of the Republic of Indonesia as intended by the provisions of Article 1 number 2 of Law Number 6 of 2014 concerning Villages.¹

In addition to “village” in the definition above, in Bali there is also Desa Adat, which is an institution whose role is to take care of social and religious matters. Desa Adat is an autonomous social organization, especially in relation to the order of life in accordance with the teachings of Hinduism.² Etymologically, Desa Adat means an autonomous region that governs its citizens, which is both immaterial and material in nature and based on custom and morality.³

A customary law community unit (Desa Adat) in Bali has the right to manage and organize their own households. This right is commonly referred to as the autonomy of Desa Adat, which includes the right to form its own laws, the right to organize its own government, the right to maintain order and security in its own territory and the right to organize its own judiciary.

The autonomy of Desa Adat can be divided into 3 (three), namely:

1. The power to establish rules, in order to maintain peace in society;
2. The power to conduct organizational life of a socio-religious nature;

¹ Law No. 6/2014 on Villages equates the meaning of Village (Administrative Village) with Customary Village or other designation. A village is a legal community unit with territorial boundaries that has the authority to regulate and manage government affairs, the interests of the local community and based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the system of Government of the Unitary State of the Republic of Indonesia.

² Wayan P.Windia, 2004. *Mamitra Ngalang, Catatan Populer Tentang Hukum Keluarga Perspektif Hukum Adat Bali*, Upada Sastra, Denpasar.

³ Marhaendra Wija Atmaja, Gede dan Anak Agung Istri Atu Dewi, 2021. *Desa Adat Sebagai Kesatuan Masyarakat Hukum Adat di Bali*, dalam Windia, Wayan. P, 2021, *Hukum Adat dan Desa Adat di Bali*, Udayana University Press, Denpasar.

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3. The power to settle disputes relating to conflicts of interest between villagers.⁴

The period of regional autonomy has often led to a paradigm shift in the way Indigenous Villages are viewed:

- (1) The establishment of Bali Province Regional Regulation Number 3 of 2001 concerning Pakraman Village jo. Regional Regulation Number 3 of 2003, and in its development was replaced by Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali. Through this latest Regional Regulation, the existence of Desa Adat is given greater attention and role.
- (2) The existence of a number of economic concessions delegated by the Bali Provincial Government to the Desa Adat, including the assistance of vehicle facilities (motorbikes), management of tourist attractions and also financial assistance in the form of Special Allocation Funds each year.
- (3) Involved in the process of policy making and or governance in the village, for example the process of investment licences in the region, must be approved by the Indigenous Village, also in the monitoring of migrants there is synergy between the official village and the Indigenous Village.⁵

Bali is an inseparable part of the Unitary State of the Republic of Indonesia, and so is Indonesia which is known as a country that has cultural diversity (multicultural), multi-ethnic, religious, and multi-class. Indonesia's territory stretches from Sabang to Merauke with natural resources and cultural resources that are diverse in style.⁶ Cultural diversity (multicultural) on the one hand is a cultural configuration (cultural configuration) reflects the identity of the nation, and empirically, becomes the main element forming the Unitary State of the Republic of Indonesia. In addition, cultural diversity is also a cultural capital and cultural power that drives the life of the nation.⁷

The diversity of tribes with various cultures, there are also laws with special characteristics in the form of Customary Law. Customary law in Bali is known as awig-awig, which can be written or unwritten. Recently, with the issuance of Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali, mandating awig-awig to be made in written form.

This research is important to conduct considering that in the current era of technological and legal advances, some areas in Bali still maintain an unwritten form of awig-awig (customary law), even though there is a mandate from Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali, every awig-awig is made in writing. Based on this background, the author formulates the problem, namely why is the awig-awig of Bayung Gede Traditional Village not written? And the factors that influence 'krama desa' (customary villagers) to obey the awig-awig of Bayung Gede Customary Village.

RESEARCH METHODS

This research is empirical legal research⁸ because this research explores and examines the implementation of (customary) law in the lives of local people. The approach used in this research is the awig-awig approach (customary law) and is supported by a conceptual approach to strengthen the argumentation. Legal data collection techniques were carried out by observation and interviews. After the data (law) is collected, classification and compilation are then carried out and analysed with qualitative descriptive reasoning.

The type of research conducted is empirical legal research, because this research focuses more on the implementation of awig-awig. Whereas the approach used in this research is a legal anthropological approach because this research looks more at the mindset of the application of a decision (rule) by a particular community. To determine the research area, the method of sampling is used, meaning that one traditional village is appointed as a sample of this research. Data collection techniques were carried out with documentation studies and interview techniques. Interviews with respondents were classified into 3 (three) according to age groups, namely young age, elderly age, and elderly age.

The data analysis conducted based on the theory and factors that affect law enforcement. After the data analysis is completed, the author will conceptualise the sanctions that can be imposed in addition to the sanctions that have been applied with the aim of overcoming violations in the sacred place area. After the data analysis and conception of sanctions are completed, it will be continued in the fifth stage, namely by compiling data systematically, then classified and connected between one data and other data which will then be compiled and presented in the form of a research report.

⁴ Wayan P. Windia, 2004. *Mamitra Ngalang, Catatan Populer Tenang Hukum Keluarga Perspektif Hukum Adat Bali*, Upada Sastra, Denpasar.

⁵ Agus Purbathin Hadi,(tt), *Eksistensi dan Kelembagaan Lokal: Kasus Bali*, Yayasan Agribisnis/Pusat Pengembangan Masyarakat Agrikarya (PPMA), Jakarta.

⁶ I Nyoman Nurjaya, 2008. *Pengelolaan Sumber Daya Alam, dalam Perspektif Antropologi Hukum*, Prestasi Pustaka Publisher, Jakarta.

⁷ I Made Budiartana dan I Gusti Ngurah Anom.2022. Efektivitas Awig-Awig Desa Adat Tegal Darmasaba alam Mengantisipasi Peralihan Hak Atas Tanah Desa Adat, *Jurnal* dari Fakultas Hukum Universitas Mahasaraswati, Denpasar.

⁸ Irwansyah, 2020. *Penelitian Hukum, Pilihan Metode dan Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta.

RESULT AND DISCUSSION

Law as a system consists of substance, structure, and legal culture, which is internally based on basic norms, and externally the operation of the system is inseparable from society as its basis. Lawrence M. Friedman states: "A legal system in actual operation is a complex organism in which structure, substance, and culture interact,"⁹ This implies that law as a system, in its operation, has three interacting components, namely legal structure, substance, and culture.

According to Friedman, legal structure...." is its skeletal framework; it is the permanent shape, the institutional body of the system, the tough, rigid bonds that keep the process flowing within bounds",¹⁰ It means the institutions created by the legal system. Furthermore, the substance of the law is," is composed of substantive rules and rules about how institutions should behave",¹¹ That is, it consists of substantive legal rules and legal rules on how institutions (created by substantive legal rules) should behave.

Further referring to Hart's opinion, Friedman explains the substance of this law, as follows:

A legal system is the union of "primary rules" and secondary rules". Primary rules are norms of behavior, secondary rules are norms about those norms-how to decide whether they are valid, how to enforce them, etc. Both primary and secondary rules of course, are output of legal system. They are ways of describing the behavior of the legal system seen in cross section. Litigants behave on the basis of substance; it creates expectations to which they react.¹²

This refers to the unity of primary rules, which are norms of behaviour, and secondary rules, which are norms of behaviour, such as how to determine the validity of norms of behaviour, how to (enforce) norms of behaviour, and others.

The legal system conceptualised by Hart, requires the existence of 2 (two) minimum conditions, as a condition for its existence, which are:

One minimum condition, for a legal system to be in existence is that rule of recognition and the other secondary rules are accepted as binding by those officials having the tasks within the legal order of creating, changing, interpreting, applying, enforcing, or advising on legal rules. This acceptance is essential because the secondary rules are the means by which the legal system governs the fulfilling of these tasks. It follows that the officials must adopt an internal view of the secondary rules. They must view them as meaningful guides for their own conduct and that others. The other minimum condition for a legal system to exist is that citizens, in general, regularly obey the primary rules. It is not necessary that they should view the primary rules from an internal viewpoint. Obedience merely because of the fear of punishment would be sufficient. Thus, for a legal system to exist there must be general obedience to the primary rules, coupled with an acceptance by officials of the secondary rules from an internal viewpoint.¹³

According to Hart, there must be two minimum conditions for the existence of a legal system, which are: first, the existence of a basis of recognition supported by secondary legal rules that are accepted as 'binding' by the legal apparatus in charge of creating, changing, interpreting, applying, enforcing, or evaluating primary legal rules; second, each citizen obeys the primary legal rules, even though they see them from an internal perspective, and cause fear by the existence of punishment.

The two minimum conditions for the existence of a legal system, as described by Hart above, have theoretical relevance to what Friedman describes, namely legal culture, as:

Social forces are constantly at work on the law-destroying here, renewing there, invigorating here deadening there; choosing what parts of "law" will operate, which parts will not; what substitutes, detours, and bypasses will spring up; what changes will take place openly or secretly. For want of a better term we can call some of these forces the "legal culture". It is the elements of social attitude and value.¹⁴

The point is that social support constantly works on the law, which can neglect, pay attention to, reform, determine the parts of the law that work or the other way round. Furthermore, the form of legal culture, according to Friedman: "...Legal culture refers, then, to those parts of general culture-customs, opinions ways of doing and thinking-that bend social forces toward or away from the law and in particular ways".¹⁵

Theoretically, according to Soerjono Soekanto, there are several factors that influence law enforcement, including: (a) legal factors; (b) law enforcement factors; (c) facility factors; community factors; and (e) cultural factors. These factors are closely interrelated because they are the essence of law enforcement. It is also the standard of the effectiveness of law enforcement; therefore, the five factors need to be elaborated.

8 Lawrence M. Friedman, 1975, *The Legal System : A Social Science Perspective* Russell Sage Foundation, New York, p.16

9 *Ibid*, p.14

10 *Ibid*

11 *Ibid*

12 Hart.HLA, 1972. *The Concept of Law*. The English Language Book Society and Oxford University Press, London-Great Britain, p 49-60, 97-197. Penjelasan konsep hukum dari Hart ini juga terdapat dalam Roger Conterrel, 1992. *Jurisprudence: A Critical Introduction to Legal Philosophy*, University of Pennsylvania Press, Philadelphia, p.100-103 dan Charles Sampford, 1989. *The Disorder of Law, A Critique of Legal Theory*, Basil Blackwell, Oxford-UK, New York-USA, p.26-46

13 *Ibid*, h.15

14 *Ibid*

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Regarding the enactment of the rule of law (law), there are several principles whose purpose is for the law to have a positive impact, meaning that a rule (law) achieves its purpose so that it is effective. The intended principles include: 1) laws (rules) must not apply retroactively, 2) rules made by higher authorities have a higher position as well, 3) special rules override general rules for the same actions, 4) rules made later, cancelling previous rules, and 5) rules are inviolable.

A law (rule) is a means to achieve spiritual and material welfare for society and individuals. In order for the rule-maker not to be arbitrary or not to become a collection of dead letters, it is necessary to fulfil certain conditions, including: 1) openness in the process of making it; and 2) giving citizens the right to participate in proposing suggestions and being involved in the process of making it.

There is no theory regarding the form of rules (whether they are made in written or unwritten form), but in general it can be said that a rule, especially in the form of a law, is certainly made in writing. Only rules in customary law in the form of customary law are usually still found unwritten. Based on the concept or view conveyed by Soerjono Soekanto, that the legal factor or rule itself can affect law enforcement. This means that if the law is good then the implementation will also be good.

Bali Provincial Regulation No. 4/2019 stipulates that each customary village must have awig-awig and be made in writing. The purpose of awig-awig being made in writing is to ensure legal certainty, because there will be written evidence that can be used as a guide. Customary law is better known as unwritten law. Both written and unwritten laws generally have the same legal force. However, if a law is made in writing, it is certainly easier to enforce it, because all parties can use it as evidence in the event of a violation of customary law.

Referring to Hart's perspective, there must be two minimum conditions for the existence of a legal system, which are: First, there is a basis of recognition supported by secondary legal regulations that are accepted as 'binding' by the legal apparatus in charge of creating, changing, interpreting, applying, enforcing, or evaluating primary legal regulations; second, each citizen complies with primary legal regulations, even though they see them from an internal perspective, and cause fear of punishment. Based on the conducted research, it was found that the reason for not writing awig-awig is that the community of Desa Adat Bayung Gede has recognised that it is supported by secondary legal regulations that are accepted as 'binding' by the legal apparatus in charge of creating, applying, and enforcing primary legal regulations.

The people are very unpretentious, accustomed to a life of togetherness. They have lived together for generations and accepted the unwritten customary rules from their predecessors. Although the rules are unwritten, 'krama desa' adat (customary residents) have never violated the principles. The community has followed and in reality, obeyed the existing rules even though in unwritten form, so the customary village considers it unnecessary to change the unwritten rules into rules in written form. Hence, with the existing unwritten awig-awig, the community has been orderly and obedient, which is not a problem in its unwritten form, especially since customary law is known as unwritten law that comes from custom.

If examined more closely, law enforcement originates from society and aims to achieve community peace. Society can influence law enforcement and legal compliance, this has to do with factors in influencing law enforcement (rules, enforcers, facilities, and culture). In daily life, we can find people who break the law, those who obey the law, and some who pretend to obey the law.

Culture as a value system which is an abstract conception of things that are considered good or bad, is quite influential in relation to community obedience to the rules that apply to them. Some people's adherence to the law depends on the culture of the community, because generally the community must accept the applicable law, but sometimes there are people whose mindset is 'meboya' (rejecting).

Based on the results of the research, the factors that influence community members' adherence to awig-awig, even though it is not written, are two dominant factors, which are: (1) the fear and worry of community members not getting customary services from 'prajuru' (customary leaders) in the future, and (2) a sense of 'kimud' (shame) towards other community members, because once committing a customary offence will be negatively stigmatised in the customary village.

CONCLUSIONS

The reason for maintaining awig-awig in unwritten form when local regulations mandate that it be written is that the village krama (krama desa) have never questioned it and they have respected and obeyed it for generations without anyone daring to violate it. The village community respects and obeys awig-awig even though it is not in writing and is highly dependent on customary leaders. If they violate the awig-awig, there is a psychological burden, namely 'kimud' (shame for violating) because the consequences become the attention of the community and receive a negative stigma.

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