

CUSTOMARY CONFLICT AND BANISHMENT 'KASEPEKANG' AT BUNGAYA TRADITIONAL VILLAGE, KARANGASEM REGENCY, BALI: IN THE PERPECTIVE OF CULTURAL STUDIES

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I. INTRODUCTION

1.1 Background

Every traditional village in Bali has a strong social organization system to create harmony for its society, including the local genius (Wales, 1948) which can establish peaceful situation such as: *paras-paros salunglung sebayantaka* (always together when happy and unhappy), *tri hita karana* (three things resulting in welfare, that is, harmonious relationship between man and the Almighty, man and his fellow man, man and his environment). This has made Powell (1930) call Bali Island "The Last Paradise". This does not mean that Bali is free from conflicts. Based on the researches conducted by Agung (1974; 2001), Triguna (1997); Pitana (1997; 1999); Windia (2000); Atmaja (2001); Dwipayana (2001); Rai (2004); Kerepun (2004); Robinson, 2006), Bali has never been free from any conflicts

Not every conflict which happens at a traditional village can be stated to be a customary conflict. As stated by Ter Haar (1991), a customary conflict arises when there is a customary violation which makes the atmosphere at the

village not in harmony. Out of 112 conflicts which happened at the traditional villages between 1999 and 2005 only 57 or 50, 9 % can be categorized as the customary conflicts. The doers of the conflicts can be given sanctions ranging from the lightest one, that is, warning (*pamiteket*) to the heaviest one; that is, customary banishment (*kasepekang* = being fired from the traditional village membership.) Out of 57 customary conflicts which have happened in Bali, 24 have been settled by the sanction of *kasepekan*).

From the researches conducted, it has been found out that out of 14 traditional villages at Bungaya 12 have applied the customary banishment. The people who have received such banishments are called *krama nanggulang* meaning the members of the village who are isolated at their own villages for certain cases, but are still considered as the members of the villages. A different case happened in 2004, when I Ketut Surajana Adi Putra and his families were not only customarily banished by Banjar Adat Kecicang (the smallest traditional neighbourhood after the village) but also

by Bungaya traditional village. Consequently, they were not *krama nanggulang* anymore and they were also fired from the membership of Bungaya traditional village

Customary conflicts followed by customary banishments are becoming one of the problems in the existence of the traditional villages in Bali, if viewed from the human right point of view. However, no deeper researches have been conducted so far on this matter. Investigating customary conflicts from the perspective of cultural studies, the theory of hegemony, the theory of conflicts, and the critical legal studies is necessarily conducted in order to find easier solutions to the conflicts. .

1.2 Statement of The Problems

This research was conducted to analyze and answer the following three problems; (1) the factors which have caused conflicts and customary banishment at Bungaya traditional village, (2) the mechanism of settling the conflicts, and (3) the effect and meaning of customary conflicts and their banishment (*kasepekang*) at this village.

1.3 Objectives of The Research

The general objective of the research is to investigate the customary conflicts which are settled by customary banishment (*kasepekang*) at Bungaya traditional village. The specific objectives of the research are: (1) explaining the factors which have caused the conflicts and the customary banishment at Bungaya village; (2) explaining the mechanism of settling the conflicts, (3) explaining the effect and meaning of the customary conflicts and their banishment (*kasepekang*) at this village, and (4) analyzing the solutions and the effect of

the customary conflicts which are settled by the customary banishment (*kasepekang*).

1.4 Significance of The Research

Academically, the result of the research can (1) contribute to the development of the sociocultural studies, especially the Balinese customary law; (2) be used as the basis for further and deeper researches. Practically, the result of the research will be beneficial to: (1) the leaders of the traditional village (*prajuru*) in handling the conflicts; (2) the traditional villagers (*krama desa*) in understanding the customary sanctions; and (3) the governmental institutions in motivating the villagers (*krama desa*) to be aware of Balinese cultural values.

II. LITERARY REVIEW, CONCEPTS, THEORITICAL FRAMEWORK AND RESEARCH MODEL

2.1 Literary Review

A customary conflict is one of the problems at the traditional villages in Bali. However, only a few intellectuals and researchers in Bali have been interested in investigating this matter. Furthermore, what they have investigated is only presented in the form of research reports. Those researchers are Dherana (1975), Januariawan (1996), Suderti (1997), and Windia (2000). They have focused more on the customary conflicts and their sanction *kasepekang* in the legal perspective.

A deep research on traditional villages and Balinese customary law was carried out by V.E. Korn (1932), while

Warren (1993) conducted a research on the relationship between traditional villages and official villages within the system of the Republic of Indonesia. They also discussed about the customary banishment (*kasepekang*), but their discussions were not deep.

Putra Agung (2001), Rai (2004), and Triguna (1997) are also interested in the customary banishment but their researches are only related to their expertise. The customary conflicts and banishment cannot only be investigated from the legal perspective but they are necessarily investigated from multidisciplinary approaches such as the theory of conflict, the theory of law, the critical legal studies, and other critical social theories such as the theory of hegemony which is common in cultural studies.

2.2 Concepts

There are four concepts that are used in this study; they are the concepts of customary conflicts, customary banishment, traditional villages, and cultural studies. A cultural conflict is a conflict which happens at a traditional village and its members. The conflict arises because of the violation of the traditional norms and /or Hindu norms and after the punishment is imposed; those who break the norms are not prepared to fulfill what they are obliged to by the traditional village resulting in a conflict between them. The customary banishment (*kasepekang*) means being sacked from the village membership. This means that those upon whom the sanctions are imposed do not necessarily do what they have been obliged to by the traditional village (*swadharna*) and that the privileges they have ever obtained

from the traditional village (*swadhikara*) are supposed to be revoked.

A traditional village is an organization in Balinese society which are bound by three things; they are: (1) *Parahyangan* which is in the form of holy places such as temples ; (2) *Palemahan* which refers to the parcels of land occupied by the villagers (*karang ayahan desa* = the parcels of land which belong to the village, and *karang gunakaya* = the parcels of land which belong to the individuals) ; (3) *Pawongan* which refer to the villagers who are Hindus. Cultural studies are an approach which aims at observing a subject matter from the point of view of cultural practice and observing its relation with power and analyzing the socio political context where culture manifests itself.

2.3 Theoretical Framework

This research applies three theories such as: (1) the theory of conflict, (2) the theory of hegemony, and (3) critical Legal Studies. The theory of conflict is based on Hegel's dialectical philosophy which is then developed by Karl Max. The idea of this theory is that a conflict takes place when there is an economic gap. This is supported by Ralf Dahrendorf who says that conflict arises when the distribution of power and authority is not equal. However, in this study the conflict theory applied is that the one proposed by Collins who states that a conflict takes place when there is a fight over wealth, power and prestige.

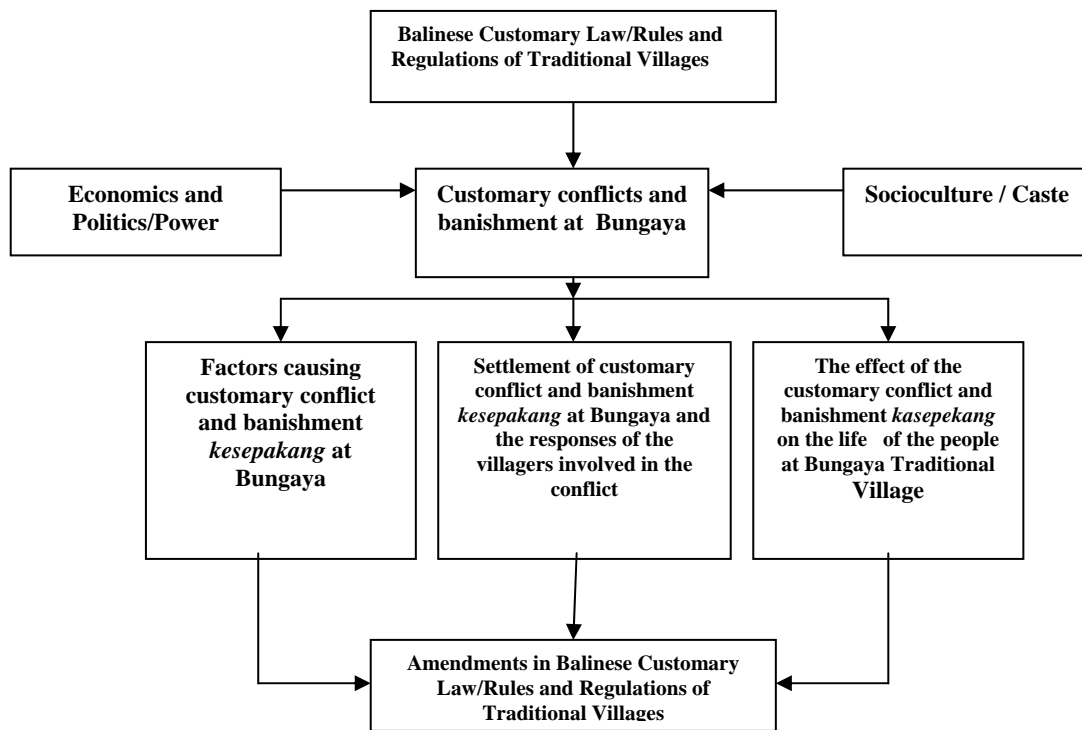
The theory of hegemony is introduced by an Italian philosopher, Antonio Gramsci. He states that this theory is established on the premise that ideas are important and that the physical strength is insufficient to control the socio

politics. In contrast, Gramsci states that hegemony is a form of supremacy of a group or several groups over another or others. What is intended by supremacy in this case is ‘domination’, that is, power which is supported by physical strength.

Critical legal studies was firstly introduced in 1970 by Richard A. Posner

in his book *Frontiers Legal Theory*. This theory is under the theory of postmodern law which directs its analysis toward the context where law exists and views causal relationship between a doctrine and text with a reality (Adji Samekto, 2003). Based on the above description, the research model can be diagrammed as follows:

2.4 Research Model



III. RESEARCH METHOD

3.1 Location and Nature of the Research

This research was conducted at a traditional village named Bungaya, in

Karangasem regency. The reason why it was decided to be the location where the research was carried out is that there were some relatively long customary conflicts here. They appeared 1977 and were settled in 2007. Based on the location, this study

can be classified as a field research, and based on the nature of and scope, it can be classified as a case study

3.2 Types and Data Source

The data employed in this study are quantitative and qualitative data which were obtained by interviewing the villagers and leaders who were familiar with the customary conflicts at Bungaya Traditional village.

3.3 Data Collection, Analysis, and Presentation

The data were collected by non-participant observation, that is, by interviewing the leaders who were familiar with the conflicts and banishment of *kasepekang* by investigating several documents which are related to the conflicts and the banishment under study. Then the data obtained were analyzed with reference to the theories relevant to the perspective of cultural studies. To support the analysis and the argument, some pictures, photographs and tables are also included.

IV. RESULTS OF THE RESEARCH

4.1 Factors Causing the Customary Conflicts and Banishment at Bungaya Traditional Village

There were four factors causing the customary conflicts and banishment of *kasepekang* at Bungaya traditional village from 1999 to 2005. They are: customary violation, economy, politics, and difference in perception in caste. Among them, two are easily identified; they are different perception in caste and customary violation, whereas the factors which have something to do with economy and politics are not so clear. However, loss and gain in economy and

the fight over power and influence at the traditional village are responsible for every customary conflict and banishment of *kasepekang* at Bungaya Traditional Village.

The customary conflict involving the Bungaya traditional village and Adi Putra and friends which is the focus of this study resulted from different perception in caste. Adi Putra and friends were stated to break the customary law pertaining at the village, that is, they have added "I Gusti" to their names since 1977. They have done this because they believe in the inscription (*prasasti*) inherited from their ancestors.

4.2 Mechanism in Handling the Conflicts at Bungaya

In general, the conflicts at Bungaya traditional village were settled in three mechanisms, they are: (1) the internal mechanism, which was done by the leaders starting from the smallest unit (*tempekan*), the higher one (traditional *banjar*) and the highest one (traditional village) with reference to the customary rules and regulations pertaining at the village. (2) the external mechanism, in which the customary conflicts were settled by the governmental institutions such as the Police and Court with reference to the criminal law (KUHP) and to the rules and regulations beyond KUHP.; (3) the combination of internal and external mechanism, that is, the traditional village leaders coordinated with the governmental institutions and other Hindu-related organizations with reference to the rules and regulations applicable at Bungaya Traditional Village, and other rules and regulations made by the Hindu-related institutions and related to Balinese Customary Law.

The customary conflicts between Bungaya Traditional Village and Adi Putra and friends were initially settled by internal mechanism and finally by combined mechanism, which is the focus of this study, at the Regent's office in Karangasem on the 5th of October, 2004.

4.3 Effect and Meaning of the Customary Conflicts and Banishment (*kasepekang*) at Bungaya village.

The customary conflicts at Bungaya Traditional Village affected both Adi Putra and friends and the traditional village itself. Adi Putra and friends encountered difficulties in carrying out their social and religious activities after the sanction *kasepekang* was imposed upon them. It also affected Bungaya Traditional Village. There was an impression that the traditional village was awkwardly applied its rules and regulations on its members who broke the customary law.

The important meaning of such a settlement is that imposing *kasepekang*, although in accordance with the applicable customary law, was not the best solution. In other words, it did not settle the conflicts perfectly. This means that the customary law so far applied at the traditional village should be interpreted within the context of diversity at the village.

V. RESEARCH FINDINGS

Theoretically, it was found that there was hegemony and a domination of one group over another at Bungaya Traditional Village. However, no complete hegemony and domination was found because there was always an

opposition. The opposition came from the group who felt to be dominated and hegemonized but had economic capital such as Adi Putra and friends in order to get access to cultural capital and social capital. The customary conflicts were made to appear not due to the inequity in the distribution of material, power and authority (the seen elements/*sekala*) but were also made to appear by the difference in belief (the unseen elements = *niskala*) such as the interpretation of the inscription inherited from their ancestors.

A practical finding of this research was that the customary law and sanction were basically made to create harmony (*kasukertan*) both physically and mentally at the village. However, the customary law and sanction were found not to be in accordance with the era development and the human rights. In addition, it was found that such a sanction was applied following the irresponsible big voices (*briuk siu*) instead of the rules and regulations. The sanction intended is *kasepekang*.

VI. CONCLUSIONS AND SUGGESTIONS

The factors which were responsible for the customary conflicts and banishment at Bungaya Traditional Village from 1999 to 2005 are: customary violation factor, economic factor, political factor, and the difference in perception of caste. Among the four factors, two were very easily recognized; they are customary violation factor and the difference in perception of caste, whereas the other two factors were not as clear as the first two ones. However, the consideration of gain and loss in economy and the fight over influence and power at

the traditional village were found in every conflict. The conflict between Bungaya Traditional Village and Adi Putra and friends were made to appear due to the customary law violation and the difference in perception of caste.

The customary conflicts at Bungaya Traditional Village were settled by three mechanisms, they are: (1) the internal mechanism following the organizational structure of the society, that is, starting from the lowest unit (*tempekan*), the higher unit (*banjar*) and the last is the highest unit (the traditional village); (2) the external mechanism which involved the governmental institutions, the police and court with reference to Criminal Law (KUHP) and the rules and regulations beyond it; (3) the combined mechanism, that is, the traditional village leaders coordinated with the governmental institutions and other Balinese tradition- and Hindu-related organizations in Bali. The conflicts were settled by referring to the applicable rules and regulations, the national rules and regulations and other rules and regulations governing Hindu followers. The customary conflict between Bungaya Traditional Village and Adi Putra and friends were settled by the combined mechanism on October 5th, 2004 at the Karangasem Regent's Office.

The customary conflict and the sanction *kasepekan* affected those who were involved in the conflicts. Adi Putra and friends found difficulties in carrying out their activities related to *parhyangan* such as religious activities, related to *pawongan* such as social and economic activities, and related to *palemahan* such as the occupation of some parcels of land belonging to the traditional village. The traditional village

sounded to have awkwardly imposed the customary law upon its members who violated the rules and regulations pertaining at the village.

The important meaning which can be presented is that the settlement of the customary violation by imposing the customary banishment *kasepekan*, although in accordance with the rules and regulations pertaining at the traditional village, turned out not to be able to settle the problems perfectly. The change in one or some aspects of terms of address which did not lead to the change in caste did not relatively result in any consequences including the customary conflicts.

The suggestions which can be offered are : firstly, the traditional village should dare state that the sanction of *kasepekan* is not applicable anymore, and should dare change the provisions of the written and unwritten rules and regulations (known as *kuna dresta*) which unlikely create peace (*kasukertan*) physically and mentally (*sekala* and *niskala*) at the traditional village, because they are not in accordance with the era development and human rights. Secondly, it is necessary for the traditional village leaders to change orientation. They do not only refer to the big irresponsible voices (*briuk siyu*), but should also pay attention to the norms commonly applicable and human rights.

Academically, it is suggested that further researches be conducted concerning the customary conflicts in Bali in order to find out the mechanism suitable for handling the customary conflicts and to match the universal theoretical concepts of social sciences and cultural studies with those of Bali local genius such as the concepts of seen elements and unseen elements.