



Customary Village Authority in Coastal Area Management : an *Ius Constituendum* Perspective

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Abstract

The research was aimed to examine the authority of *Adat* village in the management of coastal areas based on Bali Province Regional Regulation No. 4 of 2019 concerning *Adat* Village and constructing the regulation on forest park in coastal areas from the perspective of *ius constituendum*. This was normative legal research using statutory approach and conceptual approach. The study indicated that there is a conflict of norm in the authority to manage the coastal areas in Bali, which according to the Article 25 point 1 c and d of the *Perda Desa Adat*, it can be seen that *Adat* Village has the authority to manage the coastal areas, which includes Tahura Ngurah Rai, however, according to Article 1 point 10 of the Regulation of the Minister of Environment and Forestry No: P.10/Menhut-II/2009, the authority to manage the forest park is delegated to the UPTD Tahura Ngurah Rai, which was formed and is under the Bali Provincial Environment and Forestry Services as the holder of autonomous forest management rights in Bali. Hence, it is important to harmonize the application of the authority of *Adat* Village with the national regulation to avoid conflict of norms by taking in to account the *Stufenbau* Theory and the principles of *lex superior derogat legi inferiori* in reforming a regulation on forest park in coastal area in the future as *ius constituendum*.

I. Introduction

In order to realize the development of the Bali Province, the Bali Provincial Government implements regional policies with a development plan with a vision of: “*Nangun Sat Kerthi Loka Bali*”, which means “maintaining the sanctity and harmony of Balinese nature”.¹ There are 22 (twenty-two) development missions that will be carried out in order to realize the vision of the Bali Provincial Government, namely realizing a prosperous and joyous life of *Krama Bali* through patterned, comprehensive, planned, directed and integrated development.

¹ I Wayan Muka, Made Adi Widyatmika, and I Ketut Gde Darma Putra, “Pengembangan Rencana Induk Sistem Pemerintahan Berbasis Elektronik Provinsi Bali,” *Jurnal Bali Membangun Bali* 1, no. 3 (2020): 253–76.

To carry out this development mission, the Bali Provincial Government issued various regional policies as the legal basis for implementation. One of the development missions is the development of the life of *Krama Bali* in “the seen and the unseen” (which also known as *sekala* and *niskala*) manner based on philosophical values of *Sad Kertih*, namely *Atma Kertih*, *Danu Kertih*, *Wana Kertih*, *Segara Kertih*, *Jana Kertih*, dan *Jagat Kertih*.² With regard to this development, *Adat Villages* have a great responsibility. In order to provide protection for *Adat Villages* in terms of implementing its governance, the Bali Province Regional Regulation No. 4 of 2019 concerning *Adat Villages* (*hereinafter* *Perda Desa Adat*) was issued.

According to *Perda Desa Adat*, it can be seen that the responsibility given by the Provincial Government of Bali to *Adat Villages* in regulating the management of Balinese manners is very crucial.³ It was reflected in Article 3 of *Perda Desa Adat* that regulates the purpose of regulating *Adat* village by recognizing and respecting the position and the role of *Adat Villages* in the constitutional system of the Republic of Indonesia.

One of the responsibilities of the *Adat Village* is the management of water sources, including *pasisi* or coastal area, and *sagara* or the sea, as regulated in the provisions of Article 25 paragraph (1) letter c and d of the *Perda Desa Adat*.⁴ The existence of authority in terms of the management of water sources, including *pasisi* or coastal area, and *sagara* or the sea by the *Adat Village* has an impact on the development carried out in coastal areas in South Bali, especially in Denpasar.

There are several *Adat Village* that carry out the development of coastal area under its authority based on the *Perda Desa Adat*. However, the problem arises in the coastal areas in South Bali, especially in Denpasar, namely the Forest Park (*Taman Hutan Raya*) Ngurah Rai (*hereinafter* *Tahura Ngurah Rai*). The development of *Tahura Ngurah Rai* has become a problem because there is a conflict of norm in the management of *Tahura Ngurah Rai*. According to the *Perda Desa Adat*, it can be seen that the authority to manage belongs to *Adat Village*, however according to the Article 1 point 10 of the Regulation of the Minister of Environment and Forestry No: P.10/Menhut-II/2009 concerning Guidelines for Formulating a Grand Forest Park Management Plan determine that the authority to manage the forest park is delegated to the UPTD *Tahura Ngurah Rai*.

Some other problems arise concerning the management of coastal area of *Tahura Ngurah Rai* namely: **First**, development in the coastal area carried out by the *Sesetan Adat Village* is being in conflict with the rules for the protection block for the area of *Tahura Ngurah Rai*. **Second**, the development of coastal areas for construction work in *Pedungan Village* also clashes with the area of *Tahura Ngurah Rai*. **Third**, the development of coastal areas by *Pemogan Village* for spiritual places also clashes with the protection block in the area

² Luh KOMPIANG SARI, “LEMBAGA PERKREDITAN DESA SEBAGAI KEWIRUSAHAAN BERBASIS KERAKYATAN PADA DESA PEKRAMAN DI BALI (SUATU PERSPEKTIF LPD SEBAGAI PENUNJANG PEMBANGUNAN DESAWISATA BERKELANJUTAN),” *Maha Widya Bhuwana: Jurnal Pendidikan, Agama Dan Budaya* 4, no. 1 (2021): 93-100.

³ Kadek Ayu Monica Pastika Putri et al., “Pengaruh Hukum Adat Atau Awig-Awig Terhadap Pengelolaan Dana Desa Di Desa Banjar Kecamatan Banjar Kabupaten Buleleng Provinsi Bali,” *Jurnal Ilmiah Akuntansi Dan Humanika* 8, no. 1 (2019): 1-13, <https://doi.org/10.23887/jinah.v8i1.19856>.

⁴ A A Istri Eka Krisna Yanti, “KEWENANGAN PENGELOLAAN DESA WISATA DALAM PERSPEKTIF PERATURAN DAERAH PROVINSI BALI NOMOR 4 TAHUN 2019 TENTANG DESA ADAT DI BALI,” *Kerta Dyatmika* 16, no. 2 (2019): 59-68.

of Tahura Ngurah Rai. **Fourth**, the plan to develop the coastal area of the Sidakarya Adat Village for “Melasti”⁵ is also in conflict with the area of Tahura Ngurah Rai, as well as several cases of coastal area development plans by Adat Villages in the areas of Sanur, Tuban, and Tanjung Benoa.

Based on the polemic problems abovementioned, of course, not all of them depart from the awareness to realize the government’s development goals that prioritize the protection of the universe and its contents, hence sectoral interests can damage the purpose of maintaining ecosystems that should be protected. The authority as specified in *Perda Desa Adat* in managing water sources, spaces, and soils must be implemented properly so as not to cause ambiguity and conflict of norms regarding the management of the Forest Park area which is regulated by the Regulation of the Minister of Environment and Forestry in Indonesia.

The issuance of *Perda Desa Adat* determine the authority of Adat Village to manage water sector as stipulated in Article 25 paragraph (1) letters c and d of *Perda Desa Adat*. The provision stipulates that:

“The local authority on the scale of the Adat Village as referred to in Article 23 includes the management of: ... c. water sources; d. *pasisi* (coastal area) and *sagara* (sea)”.

The existence of this authority in the coastal area sector is undeniable as a result of the existence of the Adat Village as a traditional organization in Bali which is the point of the implementation of development in the Province of Bali. In fact, to focus more on structuring Customary Government in Bali, the Provincial Government of Bali has established an agency in charge of customary governance issues, namely the Customary Community Empowerment Service (*Dinas Pemberdayaan Masyarakat Adat* also known as PMA). This indicates that there is a power or authority given to customary community through the Adat Village as their institution to move forward to realize the *Sad Kerthi Loka Bali* program launched by the Bali Provincial Government.

Based on the abovementioned, there are conflict of norms that occur as the effect of the implementation of *Perda Desa Adat*, especially in terms of the authority of Adat Village in managing the coastal area that have forest park. This research will examine the scope of authority of Adat Villages in the management of coastal areas based on the Bali Province Regional Regulation No. 4 of 2019 concerning Adat Village and the management of the Forest Park in the Coastal area in the perspective of *ius constituendum*.

The purpose of this research is examining the authority of of Adat Villages in the management of coastal areas based on the Bali Province Regional Regulation No. 4 of 2019 concerning Adat Village. the management of the Forest Park in the Coastal area in the perspective of *ius constituendum*. This research also aims to construct the regulation on forest park in coastal areas from the perspective of *ius constituendum*.

Previous study was conducted by Eka Krisna Yanti in 2019 concerning “*Kewenangan Desa Adat Dalam Pengelolaan Kepariwisata Budaya Bali Dalam Perspektif Peraturan Desa Adat*”

⁵ Melasti is a Hindu Balinese purification ceremony and ritual, which is held several days priors to the Nyepi holy day.

Nomor 4 Tahun 2019 tentang Desa Adat".⁶ The study was focused on the authority of *Adat Village* in managing Balinese Cultural Tourism as the main attraction of Bali tourism and the dualism of village that applies in Bali. In 2019, Purnama and Dewa also conducted similar research concerning "*Desa Adat Dalam Pengelolaan Tanah Adat Bali Berbasis Kebijakan Daerah*".⁷ The research was focused on the clarity of the status of *Adat Village* as the subjects of land ownership rights which have implications for the authority of *Adat* village in managing customary lands in Bali.

Based on the abovementioned, there is similarity between this research and the previous studies in terms of topic, which mainly discussed about the authority of *Adat Village*, however the focus of study is different. This research is focusing its study on the authority of *Adat Village* in managing coastal areas based on *Perda Desa Adat* and construting a regulation concerning forest park in the perspective of *ius constituendum*.

2. Research Methods

This research was normative legal research using several approaches, namely statutory approach and conceptual approach. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find truth based on scientific logic from the normative side.⁸ The normative side here is not limited to laws and regulations. According to Peter Mahmud, legal research is normative research, but not only positivist law research.⁹ Norms are not only interpreted as positive laws, namely rules made by politicians who have a higher position as stated by John Austin or rules made by authority as stated by Hans Kelsen. Based on this opinion, legal research seeks to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the legal norms containing obligations and sanctions are in accordance with legal principles whether one's actions are in accordance with legal norms or legal principles. Therefore, norms are also interpreted as behavioral guidelines.

3. Result and Discussion

3.1 The Authority of *Adat Village* in Managing Coastal Areas based on *Perda Desa Adat*

The regulation of *Adat Villages* in the form of Regional Regulations is certainly a form of appreciation and recognition carried out by a regional government for the existence of traditional organizations that require a legal basis and legality to be able to carry out their activities. Moreover, in Bali, the existence of *Adat* villages cannot be separated from the life of the Balinese people who are very attached to these traditional customary units in carrying out their lives, especially in the fields of customs, religion, and culture which cannot be separated from the life of the Balinese people which have been passed down from generation to generation.

⁶ A A Istri Eka Krisna Yanti, "Kewenangan Desa Adat Dalam Pengelolaan Kepariwisata Budaya Bali Dalam Perspektif Peraturan Daerah Nomor 4 Tahun 2019 Tentang Desa Adat," *Jurnal Hukum Saraswati (JHS)* 1, no. 1 (2019): 48-60.

⁷ Dewa Gede Agung Satria Yoga Purnama and Anak Agung Istri Ari Atu Dewi, "Desa Adat Dalam Pengelolaan Tanah Adat Bali Berbasis Kebijakan Daerah," *Acta Comitatus: Jurnal Hukum Kenotariatan* 4, no. 2 (n.d.): 343-54.

⁸ J Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media, 2011).

⁹ Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 189-206.

The development of *Adat Villages* from time to time can be said to have undergone a significant change. In the past, the existence of *Adat Villages* was strongly felt by Balinese customary community called "*Krama Adat*" in carrying out daily activities, mainly related to religious issues that carried the concept of *Pura Khayangan Tiga* in each *Adat Village*, as well as the concept of "*bebanjaran*" that emerged as a community livelihood unit that used to be the majority are engaged in the agricultural sector.¹⁰

The *Adat Village* is known as a place for the community unit to work together to carry out their duties and rights which are outlined in a mutually agreed guideline both orally and in writing, most of which are in the form of traditional regulation named *awig-awig*, *perarem*, or *elikita*.

In the life of independence, the existence of the *Adat Village* is side by side with the existence of the Administrative Village or *Desa Dinas* which is an extension of the Central Government which runs the current decentralized system. Hence, the position of *Adat Villages* and Administrative Villages in Bali are both carrying out their respective functions which are still running until nowadays.

According to the Bali Province Regional Regulation No. 3 of 2001 concerning *Desa Pakraman*, *Adat Village* or *Desa Adat* is defined as:

"a unit of customary law community in the Province of Bali which has a unified tradition and manners of social life of the Hindu community from generation to generation in the ties of *Kahyangan Tiga* or *Kahyangan Desa* which has a certain area and its own assets and has the right to take care of its own household."

Further, according to Article 1 point 1 of Law No. 6 of 2014 concerning Village, it is regulated that there are two types of villages, which states that a village is a village and a *Adat village* or another name, hereinafter referred to as a village, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the the Republic of Indonesia.

The difference between "*Adat village*" and "*Administrative village*", can be seen from the elements of "*Adat village*" which include: its management structure, and its governance.¹¹ The elements consist of: (1) *Parahyangan* elements is a Hindu holy place called the *Adat village temple*; (2) elements of *Pawongan*, people who are Hindus, called "*krama desa adat*"; (3) *Palemahan* elements is *Adat village areas* managed according to Hinduism.¹²

The *Adat village* leadership apparatus, known as *prajuru*, consists of the chairman (*bendesa*), vice chairman (*petajuh*), treasurer (*petengen*), and *kesinoman* (general assistant). *Adat village* is manages based on Hindu religious norms, Balinese customary law (*awig-*

¹⁰ I Wayan Putra Yasa, "Tri Hita Karana Untuk Pencegahan COVID-19 Di Bali," *Jurnal Socius: Journal of Sociology Research and Education* 7, no. 1 (2020): 54-66.

¹¹ Piers Andreas Noak, "Kedudukan Dan Kewenangan Desa Adat Dan Desa Dinas Di Bali Pasca Pemberlakuan UU Nomor 6 Tahun 2014 Tentang Desa Dalam Perspektif Administratif," in *International Conference "Democracy for People*, 2016, 4.

¹² I Gusti Putu Suharta, I Gusti Putu Sudiarta, and I Wayan Puja Astawa, "Ethnomathematics of Balinese Traditional Houses," *International Research Journal of Engineering, IT and Scientific Research* 3, no. 4 (2017): 47-56.

awig and *pararem*) and national law. In general, *Adat* villages have main tasks and functions in preserving and implementing Hindu religious beliefs and upholding Balinese customary law to achieve inner and outer peace and prosperity. *Adat* villages in Bali were previously referred to as *Desa Pakraman* based on the Bali Provincial Regulation Number 3 of 2001 which was later amended by Regional Regulation Number 3 of 2003 concerning *Desa Pakraman*.

The Administrative Village has a government structure led by the *Lurah* or Village Head (*Perbekel*). This village has various ranks of staffing staff assigned by the Regional Government in providing administrative services to the community related to population, licensing, social affairs, as well as as an extension of the State's hand in carrying out the mandate of the Constitution to fulfill State Goals.

In fact, the dualism of government in Bali can be ended, if the Regional Government of Bali is willing to choose the form of Village Government which is expected to be implemented in Bali based on the mandate of Law Number 6 of 2014. However, based on input and a fairly long debate, with various considerations, Bali finally chose to maintain the dualism of *Adat* Village and Administrative village until now, bear in mind that both run well so far.

The existence of this Governmental Dualism, of course, in some ways can lead to a reduction in the meaning of one form of the Village, so that it is well realized that gradually it can drown out the existence of *Adat* Villages, whose role in authority has been eroded by government. Moreover, in the era of uncontrolled population migration, the role and function of Administrative village in regulating population is more dominant.

In order to strengthen the existence of *Adat* Villages in Bali so that their existence does not overlap with the Administrative Village, it is necessary to take steps to strengthen, as well as protect, so that *Adat* Villages can have authority and continue to exist in protecting Bali from the onslaught of various understandings, cultures, and traditions as well as community civilization, which of course not all can be in line with the existence of customary community' lives in Bali.

Therefore, through the regulation of *Adat* Villages in the *Perda Desa Adat*, it is something that should be supported and of course provide legal guarantees for the implementation of a sovereign *Adat* Village Government to carry out its duties in realizing the peace, prosperity, happiness and peace of the community.

According the provisions of the *Perda Desa Adat*, there are various authorities possessed by *Adat* Villages in carrying out their duties and functions. The authority of the *Adat* Village can be seen in Article 24 and Article 25 of the *Perda Desa Adat* which stipulated that:

Article 24

The authority of the *Adat* Village based on the right of origin as referred to in Article 23 includes:

- a. establishment of *Awig-Awig*, *Pararem*, and other customary regulations;
- b. determination of the development planning of the *Adat* Village;
- c. determination of the *Adat* Village Revenue and Expenditure Budget;
- d. implementation of government based on the original structure;

- e. development and preservation of customary values, religion, traditions, arts and culture as well as local wisdom;
- f. management of *Wewidangan* and *Padruwen* land in the *Adat* Village;
- g. management of *Padruwen* of *Adat* Village;
- h. development of customary law life in accordance with the principles of Bali *Mawacara* and *Mawacara* Village;
- i. determination of organizational systems and customary law institutions;
- j. participate in determining decisions and implementing development in the *Wewidangan Adat* Village;
- k. maintain the peace and order of *Krama* in the *Adat* Village;
- l. holding peace hearings on customary cases/customary speeches of a civil nature; and
- m. settlement of customary/*wicara* cases based on customary law.

Article 25

(1) The local authority on the scale of the *Adat* Village as referred to in Article 23 includes the management of:

- a. holy place and holy area;
- b. customary forest;
- c. water sources;
- d. *pasisi* (coastal area) and *sagara* (sea);
- e. *padruwen adat* village/ customary ulayat area;
- f. agriculture, plantation, fishery, and animal husbandry;
- g. food industry and folk crafts;
- h. Traditional *Adat* market or *Tenten*;
- i. boat mooring;
- j. public bath;
- k. art, culture, and *pasraman* studios;
- l. library;
- m. tourist destinations and/or attractions;
- n. neighborhood of *Krama*;

(2) The local authority on the scale of the *Adat* Village as referred to in paragraph (1) is as long as it is the authority of the *Adat* village.

Taking into account at the authority of *Adat* Village in the provisions of *Perda Desa Adat*, it can be seen that the role of *Adat* Village is vital and strategic. It is in accordance with the vision and mission of Bali Provincial Government in strengthening the elements of customary and local wisdom in supporting the program of *Sat Kerthi Loka Bali*, which embrace the local wisdom in Bali as well as glorify it by providing guarantees and legal protection.

The authority of *Adat* Village that examined through this research is related to the authority in managing water sources and coastar area and the sea (*pasisi* and *sagara*) as stipulated in Article 25 paragraph (1) letters c and d. Although the authority of *Adat* Village is limited by the provisions of Article 25 paragraph (2) concerning the limitation of the authority of the *Adat* Village with the word "*pada hal yang sepanjang menjadi kewenangan desa adat*" (translated: on matters that as long as it is in the authority of the *Adat* Village). However, it is still vague and unclear historically and philosophically, because the *Adat* Village existed before Indonesia's independence. Therefore, the matters

related to the customary area become the basic authority of the *Adat* Village to regulate it.

According to Article 25 paragraph (1) of *Perda Desa Adat*, it has been stated that one of the authorities of *Adat* Village is managing the coastal area or *pasisi*. In Bali, *Pasisi* is known as beach or coastal area that defined as the boundary area between land and the sea. The coastal area is mentioned as a transitional area between land and sea which is a meeting area between land and sea; towards the land covers the land part, either dry or submerged in water, which is still influenced by the characteristics of the sea such as tides, sea breezes, and infiltration of salt water; while towards the sea includes the part of the sea that is still influenced by natural processes that occur on land such as sedimentation and fresh water flow, as well as those caused by human activities on land such as deforestation and pollution.¹³

According to Ministry of Marine Affairs and Fisheries Decree Number Kep.10/MEN/2002 on General Guidelines for the Planning of Integrated Coastal Management, Coastal Area is defined as a transitional area between interacting land and marine ecosystems, where towards the sea 12 miles from the coastline for the province and one third of the sea area (provincial authority) for the district/city and towards the land the administrative boundary of the district/city. The existence of this provision provides opportunities and avenues for the Provincial Government to regulate the existence of coastal areas, one of which is by giving the authority to *Adat* Villages through Regional Regulations. This is what the Bali Provincial Government has done with the issuance of *Adat* village authority in *Perda Desa Adat*.

The main idea of regulating the authority of *Adat* Villages in *Perda Desa Adat* is to provide legitimacy for *Adat* Villages in carrying out and enforcing the vision and mission of “*Nangun Sat Kerthi Loka Bali*” in maintaining the dignity and sovereignty of *Adat* Villages. With this authority arrangement, then the Customary Village through territorial customary law which is owned in the form of *Awig-awig* and *Perarem* then regulates, describes and reduces this authority, so that there are strengths and bases used by Traditional Villages in carrying out their duties and functions in the community. The granting of this authority in *Perda Desa Adat* according to the Board of the Bali Province *Adat* Village Council Mr. Gede Arya Sena, stated that it was necessary to strengthen the existence of *Adat* Villages, one of which was to regulate their authority in Regional Regulations.

This strengthening will cause *Adat* Villages to carry out various legal strategic steps to maintain regional and community sovereignty hence, they are able to move autonomously with good coordination, of course, with the Regional Government through the extension of the *Adat* Village Council, in order to develop Bali as a whole through the power of *Adat* Villages. With this arrangement, the *Adat* Village can act in a directed manner and have a clear scope of authority, therefore no action or authority is exercised in a discretionary manner and causes problems in the community.

Before the issuance of *Perda Desa Adat*, *Adat* Villages was known as *Desa Pakraman*. It was stipulated under the provision of Article 6 of Bali Provincial Regional Regulation No. 3 of 2001 concerning *Desa Pakraman*:

¹³ Lisa Meidiyanti Lautetu, Veronika A Kumurur, and Fela Warouw, “Karakteristik Permukiman Masyarakat Pada Kawasan Pesisir Kecamatan Bunaken,” *Spasial* 6, no. 1 (2019): 126–36.

“The *Desa Pakraman* has the following authorities:

- a. settle traditional and religious disputes within their territory while still fostering harmony and tolerance between village manners in accordance with *awig-awig* and local customs;
- b. participate in determining every decision in the implementation of development in its territory, especially those related to *Tri Hita Karana*;
- c. carry out legal actions inside and outside the *Desa Pakraman*”.

Seeing this provision, the authority of the traditional village called *Desa Pakraman* at that time was limited to the function of mediator and executor in the context of resolving customary and religious disputes as well as implementing development in the field of *Tri Hita Karana* which was not described in detail. This is what is considered not to give authority by village officers who carry out their duties and functions in a society whose needs and interests are getting complex.

It is also expressed by Mr. Dudik Mahendra, *Prajuru* of *Adat* Village of Sesetan who stated that in the era of *Desa Pakraman*, the function and the authorities of *Adat* Village tended to only be fixated on a series of traditional and religious ceremonies, making it difficult to develop and having to synergize with Administrative Village to carry out programs and breakthroughs due to the lack of funds owned and obtained from the Regional Government. However, with the issuance of *Perda Desa Adat*, the authority given to *Adat* Village getting more vital and strategic, hence it can be considered as a real step in strengthening *Adat* Village. Therefore, the elaboration of the authority of *Adat* Village in *Perda Desa Adat* is considered as a policy that meets the needs and expectations of the Balinese people.

This is certainly in accordance with the Policy-Oriented Framework of Inquiry by Myers S. McDougal and Harold D. Lasswell. McDougal stated that there are legal problems that arise due to the neglect of community expectations by legislators in the legislative process, which is often termed the context problem.¹⁴ Community expectations are expectations generated by community processes in the form of reciprocal relationships between community components. The processes include all community processes at all levels: local, national, regional and global. The community process can take place at the will of the community, or the influence of the surrounding community pressure. Therefore, according to the Policy-Oriented Framework of Inquiry, legal problems that impact on problems in society should not occur and can be resolved with the sensitivity shown by policy makers to community responses, hence public expectations are represented through regulations or policies made.

The issuance of the *Perda Desa Adat* implies the fulfillment of community expectations which in this case is the expectation of *Adat* Villages to be able to have more power and authority in carrying out their functions. The authority of the *Adat* Village in the management of the Forest Park area that is included in the coastal area or water sources is regulated in the provisions of Article 25-point 1 letters c and d of the *Perda Desa Adat*, which gives authority to the *Adat* Village to manage the territory and water sources.

¹⁴ Mikael Baaz, “Harold D. Lasswell and the Social Study of Personal Insecurity,” in *Progressivism and US Foreign Policy between the World Wars* (Springer, 2017), 193–217.

Thus, the Tahura Ngurah Rai area which is included in the area of coastal area and water sources is included in the area of the *Adat* Village.

In relation to the management of the Tahura Ngurah Rai, it is understood that forest control as a form of earth, water and natural wealth is controlled by the state and used for the prosperity of the people. This control does not constitute ownership, but the state authorizes the government to regulate and manage everything related to forests, forest areas and forest products; determine forest area and/or change the status of forest area; regulate and stipulate legal relations between people and forests or forest areas and forest products, as well as regulate legal actions regarding forestry. The government has the authority to grant permits and rights to other parties to carry out activities in the forestry sector.

According to the Article 4 paragraph (2) of the Law No. 41 of 1999 concerning Forestry (*hereinafter* Law on Forestry), it is stated that:

“Forest control by the state as intended in paragraph (1), shall grant the authority to the government to:

- a. regulate and organize all aspects related to forest, forest area, and forest products;
- b. stipulate the status of certain area as a forest area or a forest area as non-forest area; and
- c. regulate and stipulate legal relations between man and forest, and to regulate legal actions concerning forestry”.

This provision emphasized the authority of government related to forest, forest area, as well as forest product. In accordance with the provision, the Article 1 point 14 clearly mentioned that “Government shall be the Central Government”, therefore the authority to regulate and organize all aspects related to forest belongs to the Central Government in this matter shall be assigned to the Ministry of Environment and Forestry in the form of attribution authority.

Theoretically, the method of obtaining authority is influenced by the theory of authority which can be done in three ways, namely attribution, delegation, and mandate.¹⁵ Attribution is known as authority that is obtained directly from the law.¹⁶ Delegation is known as the transfer of authority to make a decision by a government official to another party.¹⁷ In this delegation of authority, there is a transfer of responsibility from the one who gave the delegation to the one who received the delegation. Furthermore, the mandate is the delegation of authority to subordinates, meaning that the responsibility remains with the giver of the mandate.¹⁸

Further, the Article 66 paragraph (1) of the Law on Forestry, it is stated that:

¹⁵ Tri Hayati, “Abuse of Authority by Government Officials: Controversy between Administrative and Criminal Sanctions,” *Journal of Legal, Ethical and Regulatory Issues* 22, no. 5 (2019): 1-7.

¹⁶ Arifin Tumuhulawa and Roy Marthen Moonti, “The Authority of Government Officials in Delegating and Mandating,” *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 7, no. 1 (2021): 47-60.

¹⁷ Tumuhulawa and Moonti.

¹⁸ Tumuhulawa and Moonti.

“In the context of forest administration, Government shall delegate parts of authorities to Regional Government”.

The purpose of the delegation of authorities shall be intended to improve the efficiency of forest administration in the context of regional autonomy development, as stipulated in Article 66 paragraph (2) of the Law on Forestry. The delegation of authorities in the context of forest administration shall includes the management of forest park, which shall be in accordance with the management plan that is arranged based on ecological aspects, technical, economic and socio-cultural aspects.

Based on Article 1 point 10 of the Regulation of the Minister of Forestry Number: P. 10/Menhut-II/2009 concerning Guidelines for the Preparation of a Forest Park Management Plan, it states that: “Regional Technical Implementing Units are organizations carrying out technical tasks entrusted with managing Forest Parks under the and is responsible to the Provincial/Regency/City Office in charge of the forestry sector”. Further, the regulation concerning forest park is regulated under Government Regulation No. 28 of 2011 concerning Management of Nature Reserve Areas and Nature Conservation Areas (*hereinafter* Government Regulation No. 28 of 2011), Article 1 number 10 states that a Forest Park is a nature conservation area for the purpose of collecting natural or non-natural plants and or animals, native and or non-native species, which used for public interest as research, scientific and educational purposes. Also as a facility that supports cultivation, culture, tourism and recreation.

According to Article 12 of Government Regulation No. 28 of 2011, it is regulated that the the implementation of Nature Reserve Areas (*hereinafter* KSA) and Nature Conservation Areas (*hereinafter* KPA) as follows:

1. The implementation of KSA and KPA, except for forest parks, is carried out by the Government;
2. For forest parks, the implementation is carried out by the provincial government or district/city governments;
3. The implementation of KSA and KPA by the Government as referred to in paragraph (1) is carried out by a management unit established by the Minister;
4. The administration of a forest park by the provincial government or district/city government as referred to in paragraph (2) is carried out by a management unit established by the governor or regent/mayor;
5. The management unit as referred to in paragraphs (3) and (4) is established based on the criteria determined by the Minister.

In terms of carrying out utilization activities in a forest area that has the status of a Forest Park Area, it is divided into several zones that are restricted and determined by laws and regulations, as stipulated in Article 36 paragraph (1) of Government Regulation Number 28 of 2011. Based on the abovementioned, the implementation and management of Forest Parks can be carried out by the Technical Implementation Unit (*hereinafter* UPT) of the Forest Management Unit (KPH) which is the UPT of the local Government Forestry Service, which is formed by the Governor or regent/mayor.

Regarding the existence of the Tahura Ngurah Rai in Bali, its implementation and management is carried out by the Tahura Ngurah Rai Technical Implementation Unit (UPT Tahura Ngurah Rai) based on the Governor of Bali Regulation No. 102 of 2011

concerning Technical Implementation Unit in the Bali Provincial Forestry Service. In terms of carrying out utilization activities in a forest area that has the status of a Forest Park Area, it is divided into several zones, which are restricted and determined by laws and regulations. Regarding the Tahura Ngurah Rai area, the existence of the criteria zone in it is based on the Decree of the Director General of Natural Resources and Ecosystem Conservation Number SK.255/KSDAE-SET/2015, dated November 6, 2015.

Based on the abovementioned, there is a conflict of norm in the management of coastal areas in Bali. According to *Perda Desa Adat*, it can be understood that *Adat* Village has the authority to manage coastal area (*pasisi*) and water sources. However, according to Article 1 point 10 of the Regulation of the Minister of Forestry Number: P. 10/Menhut-II/2009 concerning Guidelines for the Preparation of a Forest Park Management Plan, it stated that the management of coastal area shall be assigned to Regional Technical Implementing Units under the Provincial/Regency/City Office in charge of the forestry sector. Regarding this matter, the management of the Tahura Ngurah Rai area was handed over to the UPTD Tahura Ngurah Rai which was formed and is under the Bali Provincial Forestry and Environment Service as the holder of autonomous forest management rights in Bali. Therefore, there shall be harmonization between these conflicted regulations to determine the management of coastal area.

3.2 Regulation concerning Forest Park in Coastal Area in the Perspective of *Ius Constituendum*

The issuance of *Perda Desa Adat* and the Law on Forest have caused a dualism in the management of Tahura Ngurah Rai in the coastal area of South Bali. According to *Perda Desa Adat*, the authority to manage coastal area and air source is possessed by the *Adat* Village, meanwhile according to the Law on Forest, the authority is possessed by the the Management Unit formed by the Regional Government that carried out by the UPTD of the Tahura Ngurah Rai. This condition has caused a polemic in the customary community whose area is included in the Tahura Ngurah Rai.

Some of the *Adat* Village near Tahura Ngurah Rai think that they have the authority to manage Tahura Ngurah Rai, which according to *Perda Desa Adat* belongs to the area of *Adat* Village. This authority is used by several *Adat* villages to make the area of forest park as a source of income for *Adat* villages from the tourism sector, hence some *Adat* Villages try to build natural tourist attractions in the Tahura Ngurah Rai area, such as the *Adat* Village of Sesetan who uses the Tahura Ngurah Rai as a sea crossing and as a fishing recreation park, Sidakarya Village plans to make a beach tour on the east side, Pedungan Village has also built a place for boat docking and mooring, as well as the *Adat* Village of Tuban and its surroundings has built a boat mooring area in the Tahura Ngurah Rai area.

Some of the developments carried out by the *Adat* Village in the Tahura Ngurah Rai area were carried out solely by the approval of *Adat* Village. According to the *Prajuru* of *Adat* Village of Sesetan, namely I Wayan Dudik Mahendra, S. Sos, they had not received any approval from UPTD Tahura Ngurah Rai in carrying out the construction of a sea crossing in the *Adat* Village of Sesetan. The problem arose because the UPTD Tahura Ngurah Rai prohibits the use of the area by several *Adat* Village, which located within a protection zone or block. According to the Decree of the Director General of Natural Resources and Ecosystem Conservation Number SK.255/KSDAE-SET/2015, there are several criteria within the Tahura Ngurah Rai, including a protection zone or block that cannot be used for economic purposes. It is different if the zone is included in the

utilization zone or block, then there is a possibility or potential to be developed as a tourist spot or natural business, but it still under the applicable terms and conditions.

This condition has become an issue in the management of Tahura Ngurah Rai, since there are 2 (two) different regulations that authorize different authority in managing Tahura Ngurah Rai. Taking account at the legal provisions and the limitations that *Adat Villages* have in managing forest areas which are the authority of the central government attributable to local governments, then *Adat Villages* must obey the principles and laws and control themselves in utilizing the area of Tahura Ngurah Rai which is assigned as the authority of UPT. Tahura Ngurah Rai to organize and manage it.

In carrying out the provisions of *Perda Desa Adat*, *Adat Village* is not allowed to take advantage arrogantly by using their authority and violating other regulation. Therefore, there shall be a guideline that can be carried out by *Adat Village* in using their authority.

With regard to this matter, the Customary Community Empowerment Service (*Dinas Pemberdayaan Masyarakat Adat* also known as PMA) stated that the provisions regulated in *Perda Desa Adat* must be composed in to *awig-awig* or *perarem* of *Adat Village* in order to be implemented.¹⁹ The *awig-awig* or *perarem* shall be composed in detail, hence it can be used as the guideliness for *Adat Village* in managing their area, which includles managing water resources, coastal area, and the sea. In order to avoid conflict of norms, the content of *awig-awig* or *perarem* shall be in accordance with the prevailing law in Indonesia. Therefore, the draft of the *awig-awig* or *perarem* should be discussed with the Customary Community Empowerment Service (*Dinas Pemberdayaan Masyarakat Adat* also known as PMA) before the enactment. Once it is agreed, the *awig-awig* or *perarem* shall be used as the guidelines for *Adat Village* in carrying the authority.

Theoretically, this condition is related to the *Stufenbau des Recht* theory (*hereinafter Stufenbau Theory*) from Hans Kelsen.²⁰ The problem related to conflict of norms can be solved by examining the hierarchy of law and regulation in Indonesia legal system. The *Stufenbau Theory* emphasizes the conception of a hierarchical legal structure (*Stufenbau*) and the primacy of the constitution.²¹ Based on this theory, it is stated that the legal norms are valid as long as it is sourced and based on higher legal norms, while in Indonesia, the legal ideals, the basis, and source of all legal norms is Pancasila.²²

According to the *Stufenbau Theory*, it is known that the hierarchical legal structure determine the degree of each arrangement of higher norms or lower norms. Therefore, in the event of conflict of norms, the higher norms shall prevails. It is in accordance with the derogatory principles, which expressed in Latin namely: "*lex superior derogat legi inferiori*", meaning that a higher law supersedes a lower one.²³

¹⁹ I Ketut Sudantra, Ni Nyoman Sukerti, and AAIAA Dewi, "Pengaturan Perkawinan Pada Gelahang Dalam Awig-Awig Desa Pakraman," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 4, no. 3 (2015): 575-87.

²⁰ Stanley L Paulson, "Hans Kelsen on Legal Interpretation, Legal Cognition, and Legal Science," *Jurisprudence* 10, no. 2 (2019): 188-221.

²¹ Giorgio Bongiovanni, "Rechtsstaat and Constitutional Justice in Austria: Hans Kelsen's Contribution," in *The Rule of Law History, Theory and Criticism* (Springer, 2007), 293-319.

²² Tanto Lailam, "Penataan Kelembagaan Pengujian Norma Hukum Di Indonesia," *Jurnal Konstitusi* 15, no. 1 (2018): 206-30.

²³ Åke Frändberg, "On Conflicts Between Legal Rules," in *The Legal Order* (Springer, 2018), 189-204. BOOK ANTIQUA 10

Based on the abovementioned, it can be understood that there is a conflict of norm between *Perda Desa Adat* and Law on Forest in the provisions related to the authority to manage the Tahura Ngurah Rai, which located in the coastal area and water resources of *Adat Village*. According to the *Stufenbau* Theory, which emphasizes the conception of a hierarchical legal structure, the provisions of *Perda Desa Adat* should be in accordance with higher norms related to the forestry. Along with this theory, the derogatory principles which expressed in Latin namely: "*lex superior derogat legi inferiori*", meaning that a higher law supersedes a lower one can also be implemented. This principle emphasized that in the event of conflict of norm, then a higher law supersedes a lower one. Therefore, there shall be a harmonization of law and regulation in managing the Tahura Ngurah Rai. The harmonization must be carried out by taking into account the higher norms and other prevailing law to avoid multi-interpretation in carrying out the authority to manage water sources, coastal area, and the sea by *Prajuru* of *Adat Village*.

4. Conclusion

Based on the abovementioned, it can be concluded that there is a conflict of norm in the management of coastal areas in Bali. According to *Perda Desa Adat*, it can be understood that *Adat Village* has the authority to manage coastal area (*pasisi*) and water sources. However, according to Article 1 point 10 of the Regulation of the Minister of Forestry Number: P. 10/Menhut-II/2009 concerning Guidelines for the Preparation of a Forest Park Management Plan, it stated that the management of coastal area shall be assigned to Regional Technical Implementing Units under the Provincial/Regency/City Office in charge of the forestry sector. Regarding this matter, the management of the Tahura Ngurah Rai area was handed over to the UPTD Tahura Ngurah Rai which was formed and is under the Bali Provincial Forestry and Environment Service as the holder of autonomous forest management rights in Bali. According to the *Stufenbau* Theory, which emphasizes the conception of a hierarchical legal structure, the provisions of *Perda Desa Adat* should be in accordance with higher norms related to the forestry. Along with this theory, the derogatory principles which expressed in Latin namely: "*lex superior derogat legi inferiori*", meaning that a higher law supersedes a lower one can also be implemented. This principle emphasized that in the event of conflict of norm, then a higher law supersedes a lower one. Therefore, there shall be a harmonization of law and regulation in managing the Tahura Ngurah Rai. The harmonization must be carried out in reforming a regulation on forest park in coastal area in the future as *ius constituendum* by taking into account the higher norms and other prevailing law to avoid multi-interpretation in carrying out the authority to manage water sources, coastal area, and the sea by *Prajuru* of *Adat Village*.

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