SUSTAINABLE CULTURAL DEVELOPMENT:
THE FATE OF BALINESE ADAT VILLAGE POSTERIOR
THE ENACTMENT OF LAW NUMBER 6 YEAR 2014
CONCERNING VILLAGE

I Nyoman Nurjaya
Law Faculty of Brawijaya University Indonesia
e-mail: nurjayai@yahoo.com

ABSTRACT

The recognition of indigenous peoples existence is very dependent on the will of the Government. The village government as formulated in Act number 6/2014 of the village, as well as Government Regulation number 43/2014 about Implementation of the Act number 6/2014 has naturally become a bureaucratic and legal officials law, that the village is set in the system of local government under the supervision of State law. In the case of Bali and the local Government of Bali, there is legal consequences with the fate and the future existence and life of indigenous village/pakraman village as a social and cultural system of the Hindu society, it is the law on the development basis of the indigenous village/pakraman village will not remain be "the awig-awig" as Balinese traditional society customary law; philosophy and the essence, function and role of the indigenous village/pakraman village changed physically as well as community life of Balinese people loss; traditional customs and Government system should be changed in accordance with the system of the village Government; on one side the customs affairs village should organize pakraman village administration and bureaucracy under the structure of local governments, and on the other hand the indigenous village is at the same time responsible to organize and responsible about the culture, traditions, customs and ritual as Hindu affairs, village understanding of pakraman village customs and traditions should be completely ignored in Balinese village daily community life.

Keywords: rural, indigenous villages, local government system.
INTRODUCTION

Indonesia has been wellknown as a multicultural country having many ethnics, religions, races, and classed within. Its official motto Unity in Diversity or Bhinneka Tunggal Ika, de facto reflects the cultural plurality within a unitary State of the Republic of Indonesia. The region of the country that stretches from Sabang to Merauke has a rich natural resources that overflows as emeralds string in the span of the equator, as well as various cultural resources.¹

The cultural diversity is in one side a configuration culture that indicating cultural identity of the nation, and empirically it becomes the main element that established the Unitary State of Indonesia. On the other side, the diversity of cultures also becomes a cultural capital and cultural power that driving the dynamic of its national life. However, the cultural diversity is also potential for the emerge of conflicts that can be threatening the national integrity, because the conflict among culture expressed in the form of clashes among ethnics, adherents of the religion, among races and classes is very sensitive and vulnerable to a condition directing the national disintegration. It would be very likely to happen when the conflict is not managed, understood, and resolved in polite way, peaceful, and wise manner by the government together with all components of the nation.²

One of the Indonesia’s cultural richness namely traditional adat village or desa adat that is form of social alignment in particular within traditional community’s social system include its customary adat law or hukum adat, as an instrument of social control in the daily life of adat community. The traditional adat village in the country has been known as desa or dusun in Jawa, desa or banjar pakraman in Bali, nagari in West Sumatra, Gampong in Aceh, marga in Sumatera Selatan, lembang di Toraja, banua or wanua di Kalimantan Barat, negeri di in South Sumatra, tiuh or pekon in Lampung, kadamangan in Central Kalimantan, or huta or nagori in North Sumatera Utara, etc. In the context of national life, traditional adat villages that have existed long period of time should be admitted as the element forming the Unitary State of Indonesia or Negara Kesatuan Republik Indonesia (NKRI). NKRI as a sovereign and independent state formed on the basis of the social structures of indogenous peoples, and a social structure of adat community that grow and develop in the inner life of adat community in Indonesia.

The paper attempt to outline and present a more holistic understanding on the characteristics of adat community and criterias of adat village, the legal status of adat village in the Indonesia’s Constitutional system, recognition and protection of their existence in the 1945 Constitution and the laws, as well as the legal implications posterior the enactment of Law Number 6 of 2014 regarding Village.

Traditional Adat Community and Village: Its Characteristic and Criteria of The Adat Village

In principle, the traditional adat community as a social system at least has 4 (four) elements namely social alignment, social standard, social media, and social control. The social alignment is expressed through a genuine social structure named “desa adat” (adat village), or other names in other regions; the social standard is expressed through ethics, traditions, etiquettes, or courtesies which keep the social life in order; the social media is languages, signs, codes, or symbols used as a medium of communication in the society; and the social control is expressed through a legal instrument which is established, implemented, and enforced in order to keep regularity, order, security, and peace within society.

The element distinguishing between the general society which has been known as patembayan society and that of indogenous one has its characteristics, that reflect its own philosophy, function, and specific roles in their common life in the society known as paguyuban society.

The distintive characteristics of traditional adat community as a legal entity are as follow: First, The pattern of adat community life is familiar community (paguyuban), communal, and harmony-oriented. Second, The way of thinking of the adat community is magic-religious, meaning that the communal society is always oriented to the equilibrium and harmony between skala (physically) and niskala...
should be village pecalang as the guard of security, keeping harmony, and order of the village; 11. There is a banyan tree or punyan bingin as a shelter of ritual activity within the village.

**Recognition and protection of The Traditional Adat Community: Is It Genuine or Pseudo Recognition?**

Constitutionally, the indigenous legal community has a genuine constitutional recognition as a legal entity that is equal with other citizens in national life. It has been formulated in the Explanation of Article 18 of the 1945 Constitution (the name before Amendment) which states: In the territory of the State of Indonesia, there is approximately Zelfbesturende landschappen and Volksgemeenschappen as desa in Java and Bali, Nagari in Minangkabau, desa or village and marga or clan in Palembang, and so on. These regions have native order and therefore can be considered as a special region. The Republic of Indonesia respects the position of the special regions and all regulations regarding the special regions provides the rights of the origin of the region. Therefore, their existence still must be recognized and given assurance of continuity of life within the Unitary State of the Republic of Indonesia.

However, there is a substantial amendment in that 1945 Constitution or Undang-Undang Dasar Negara Republik Indonesia Tahun 1945/UUD NRI Tahun 1945 named after amendment, dealing with respect and recognition of the indigenous community in national life. This is explicitly formulated in Article 18 of the 1945 Constitution becoming Article 18B Paragraph (2) that stating: The State recognizes and respects the unity of the indigenous legal community with all their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of Republic of Indonesia, which is regulated in the national laws.

Dealing with that formulation, the word “as long as” within the norm of that Article confirms a particular condition limiting a recognition of the existence of indigenous community and their traditional adat rights, because the recognition will be existed as long as the condition is fulfilled, and therefore only the adat community fulfilling the officially requirements will the only be recognized by the Indonesian government. Therefore, recognition
of the existence or non-existence of indigenous adat community is highly dependent on the will of the ruling government. The word “as long as” has a meaning of officially restriction to the scope of life of the legal society units namely traditional adat community which de facto, they are still alive and keep on growing in the region of Indonesia.

Hence, it can be said that the respect and recognition which is normed in Article 18B Paragraph (2) of the 1945 Constitution or UUD NRI Tahun 1945 has been a pseudo constitutional recognition, because it does not recognize the indigenous adat community as a legal entity that is equal with other citizens communities. However, this kind of officially unrecognition is naturally has no meaning to the indigenous adat community which in fact is still exist, live, and develop in the sovereign territory of Indonesia.

The norms of genuine legal recognition to the indigenous legal community as a legal entity, in the terms of not formulated in the word of “as long as” in the legal norm, can officially be found in the formulation of the Decision of People Representative Assembly the Republic of Indonesia that is Ketetapan MPR RI No. IX/MPR/2001 concerning Pembaruan Agraria dan Pengelolaan Sumber Daya Alam or Agrarian and Natural Resources Management, especially Article 4 (j) which states: recognising, respecting, and protecting the indigenous adat communities and cultural diversity of their own natural resources. This is also explicitly regulated in Law Number 5 of 1994 concerning Ratification of the United Nations on Bio-Diversity; Law Number 39 of 1999 on Human Rights; Law Number 29 regarding 1999 on the Ratification of United Nations Convention concerning the Elimination of All Forms of Racial Discrimination; Law Number 11 of 2005 on the Ratification of International Covenant on the Economic, Social, and Cultural Rights; and Law Number 12 of 2005 on the Ratification of International Covenant on the Civil and Political Rights.

Furthermore, the genuine recognition to the indigenous adat community as a legal entity is expressed through some Decisions of Indonesian Constitutional Court or Mahkamah Konstitusi), such as:


Second, The Decision of Indonesian Constitutional Court Number 007/PUU-III/2005 on the Review of Law Number 40 of 2004 on the National Social Security to the 1945 Constitution;

Third, The Decision of Indonesian Constitutional Court Number 31/PUU-V/2007 on the Review of Law Number 31 of 2007 on the Establishment of Tual City in the Province of Maluku to the 1945 Constitution;


Fifth, The Decision of Indonesian Constitutional Court Number 3/PUU-VIII on the Review of Law Number 21 of 2007 on the Management of Coastal and Small Islands to the 1945 Constitution;

Sixth, The Decision of Indonesian Constitutional Court Number 21 Tahun 2001 which has been amended by the Government Regulation in Lieu of Law Number 1 of 2008 on the Special Autonomy for Papua Province to the 1945 Constitution;

Seventh, The Decision of Indonesian Constitutional Court Number 35/PUU-X/2012 on the Review of the Law Number 41 of 1999 on Forestry to the 1945 Constitution; and


The regulations stating respect but reflect pseudo legal recognition to the rights of traditional adat communities over natural resources they depend on are explicitely formulated within a number of the Acts with regard to the management of natural resources, such as Law Number 5 of 1960 on Basic Agrarian Law; Law Number 41 of 1999 on Forestry; Law Number 7 of 2004 on Water Resources; Law Number 31 of 2004 on Fishery; Law Number 32 of 2004 on Regional Government; Law Number Tahun 2007 on the Management of Coastal Regions and Small
Islands; Law Number of 2009 on Mineral and Coal Mining.

From the historical perspective of laws that have been enacted regulating village, it can be observed an interesting development reflecting the up and down in terms of the recognition of indigenous village as volksgemeenschappen in the system of Indonesian constitutional law. In the era of the Post Indonesian Independence in 1945, the village social system is regulated in Law Number 22 of 1948 on the Principles of Regional Government; followed by the Law Number 1 of 1957 on the Principles of Regional Government; Law Number 18 of 1965 on the Regional Government; then Law Number 19 of 1965 on Praja Village As a Transitional Form to Accelerate the Establishment of the Level III Region thorough Indonesia Territory; followed by Law Number 5 of 1974 on the Principles of Regional Government; Law Number 5 of 1979 on Village Government; Law No. 32 of 2004 on Regional Government; and currently the enactment of Law Number 6 of 2014 concerning Village.

The legal politics reflected in the Law regulating Village before Law Number 5 of 1974 recognizes the existence of indigenous village as a volksgemeenschappen/self-governing community as well as a legal entity which has a genuine character of legal recognition. However, posterior the enactment of Law Number 5 of 1974 on Regional Government, and followed by Law Number 5 of 1979 on Village Government, which addhered legal politics of village in the form of unification and uniformity are naturally denying the cultural plurality of Indonesian, then the scope of life of the indigenous village is threatened and apparent death in mostly regions of Indonesia, except the life of indigenous adat villages in Bali Province which are still alive and co-existence with the formal and administrative villages under the structure of the Regional Government.

By enacting the Law Number 6 of 2014, which is in principle addheres legal politics of recognizing of two kinds of villages namely desa or administrative village and desa adat or adat village, however, still there is a confusion in understanding the meaning of adat village and it is really reflected in the nuances of the denial on the philosophy and essence, function, and the main role of desa adat or adat villages in the whole system of social and cultural life. It is in fact the mentioned Law of 2014 naturally contains the spirit, moral message, and normative will to do mixing/hybriding to coopt two forms of village which is actually different in their philosophy, function, and roles in the social system and the regional government system; in principle desa or administrative village runs the functions of local self-government, administrative government, based on the State law, whereas adat village or desa adat run its functions as self-governing community which include communal and the magic-religious nuances, regulating the skala and niskala world view in the life of community which established based on the unwritten or written adat law (that so called awig-awig in Balinese adat villages).

In turn, such legal politics bring about the consequence of destructing the system of traditional adat government system as a genuine structure of the society or volksgemeenschappen in mostly regions of Indonesia except the desa adat in Bali Province. The reasons why can be mentioned as follows:

First, The commitment and assertiveness of the local government to clearly make a distinction between desa adat as a self-governing community and desa dinas as a local self-government;

Second, Desa dinas and desa adat in Bali de facto co-exists harmoniously and play their respective function and roles in the daily lif of the Balinese communities; and

Third, Desa dinas and desa adat are able to fairly play their respective fuctions and roles together in the Balinese community and Village according to their own essence based on the adat law in one hand, and on the other hand the desa dinas is based on the State law; Desa adat has functions in the field of culture, adat, and ritual tradition of Hindu religious life, whereas the desa dinas plays its function and roles in the field of birocracy in the level of official village, running administratrive role and becomes the part of regional government structure.

This proves that the legal plurality in the really life of society is a necessary condition and the fact, not an illusion, mitos, claim, ideal, as stated by John Griffiths as follows: Legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion. Legal pluralism is the name of a social state of affairs and it is a characterisitic which can be predicted of a social group. The ideology of legal centralism, law is and should be the law of the state, uniform for all
persons, exclusive of all other law, and administered by a single set of state institutions.\(^3\)

**The Future of Desa Adat Posterior the Enactment of Law Number 6 Year 2014 Regarding Village**

On January 15 of 2014, the Indonesian Government passed and enacted Law Number 6 of 2014 regarding Village for the purpose of regulating villages, to clarify their status and provide legal certainty, recognition and respect, and empowering villages in the implementation of national development policy. The good purpose is received with open arms and positive thinking as long as it is aimed to bring the message of Paragraph IV of the 1945 Indonesian Constitution into reality, namely “... to protect whole people of the Nation and to advance national territory and generating general welfare of the people, to educate people and to participate in providing world order based on liberty, long-life peace, and social justice.”

Critically analyze, that Law Number 6 of 2014 is ambiguity-nuanced dealing with the respect and the recognition of desa adat (adat villages); In one hand, it principally provides recognition to the Village which consists of both desa and desa adat, but on another hand – the General Elucidation and the Elucidation of each Articles within the Law show: (1) the suspicion of legislative body on the existence of indigenous village which is termed as “... a kind of village that has been oldest and democratization, causes gaps among regions, poverty, and bring social-cultural problems disturbing the Unitary State of the Republic of Indonesia”; (2) treating the desa adat as the same the formal village or desa dinas whereas actually they have different essences, characters, functions, and roles; (3) totally intervening the system of adat village government referring to the customary law or the so called awig-awig in Bali, with the state legal instruments (laws and regulations).\(^4\)

The critical analysis can be initiated from the comprehension of the meaning of the legal concept of village as intended in Article 1 point 1 that stating: “The meaning of Villages is desa or administrative village and desa adat or adat village or to be mentioned with other terms, and for the next parts is termed as “village”, is ... and so on ”. The legal concept of desa (administrative village) and desa adat (adat village) is absolutely different, but it has been understood bya the Government as the same, as “the unity of legal community within certain regions having authorization to regulate and manage governmental business, the interests of local society based on the initiatives of them, the right of genealogy, and/or traditional right recognized and respected within the governmental system of the Unitary State of the Republic of Indonesia.” The proper regulation should recognize each of the village and define the terms reflecting the philosophy, essences, functions, and roles in the whole system of Unitary State of the Republic of Indonesia.

Article 6 Paragraph (1) explicitly states “Villages consist of desa or administrative village and desa adat or adat village. It is an expression of de yure recognition to the 2 (two) types of village in the government system of the Unitary State of Indonesia, giving them a co-existence life space in playing respective function and roles in the village government. However, the norm in Article 6 Paragraph (1) would be ambiguous and inconsistence when it is explained in the Elucidation of that Article which stating:

“This provision is intended to prevent the intersection in regions, authority, institutional duplication between Desa and Desa Adat within the same region. It is, therefore, in one region should be the only 1 (one) Desa or Desa Adat. In order to do that, it must be chosen one type of village according to provision of this Law.

According to the statutory law, an Article is a legal norm that is legally binding, whereas the Elucidation is not a legal norm, it is only statements to make the meaning and the intention more clearly and understandable. Its legal implication is, there is no sanction in case the Elucidation of Article 6 is not obeyed and or not implemented.

The provision in the Articles of Law Number 6 Year 2014 on Village has been loaded with legal norms that intervening the autonomy and the existence of desa adat which has peculiar essences, functions, and roles comparing with the administrative village which based on the State law. Hence, it can be concluded from the provisions that intervening the institutional system of indigenous village, the election mechanism of the head of the village as well as the tenure of


\(^4\) Read and criticize General Elucidation and the Article 6 of Law Number 6 of 2014 on Village.
office, the making of indigenous village regulation, the forming, unifying, and dissolving of the village, as well as the regulation of indigenous village’s physical and magic property (the assets desa adat nuanced as skala and niskala), because the traditional adat village is identified the totally same as desa dinas or administrative village according to the regional government in the level of village.

This is really impossible to do, because the legal consequences of the enactment of Act Number 6 of 2014 is that the existence of traditional adat community include of its adat law in the whole regions of Indonesia, as well as desa adat and its awig-awig especially in Bali, finally in the time of slowly but sure would be perished and determined from the social and cultural system in the multicultural country of Indonesia, except in Aceh, Papua, and West Papua.⁵

CLOSING REMARKS

From ancient days until the recently time, Bali keeps on guarding and continuing the inheritance of its social and culture and religious community system that created by the Balinese Ancestors, and it is expressed in the form of desa adat or desa pakraman include its customary law named awig-awig as an instrument of social and cultural supervision and control in the daily life of Balinese adat community that imbued and furnished by Hindu religion precepts.

Orientation and regulation of the Village Government as formulated in the Act Number 6 of 2014 concerning Villages as well as the Government Regulation Number 43 of 2014 on the Implementative Regulation of Law Number 6 of 2014 has naturally been bureaucratic and official law that regulated village within system of the regional government under the supervision of the State law. Hence, it is really not wise if the Government was about to impose the enforcement of State laws against adat villages namely desa adat or desa pakraman as a legal entity of the genuine character of traditional adat community. It is because the desa adat which is based on customary adat law has its own systems, philosophy, functions, and roles in both skala and niskala spheres and world view, and they are distinctive in nature, so that they cannot be enforced and treated as the same as desa dinas in the administrative structure of the regional government.

The provisions to understand the clearly meaning substances of the norms within the Act Number 6 Tahun 2014 on Village, shows that the life space of adat village is naturally still recognized legally with the reasons as follows: (1) The Elucidation of Article 6 is not a norm legally binding and therefore it must be neglected and ignored as a legal norm; (2) Article 116 Paragraph (1) explicitly states: The villages which have been existed before this Law would be recognised as a Village; and Paragraph (2) states: The Regional Government and Regency/ Municipality provides the Local Regulation on the desa or administrative village and desa adat or adat village in their respective region.⁶

What could be mentioned from the above legal norms is the Article 116 Paragraph (1) confirms that both desa and desa adat is clearly recognized as Desa. De facto, the desa adat is in the empirical condition still alive and grow coexistently together with the desa dinas or administrative village, and there is no intersection between the two kind of villages. In fact, both of them live in each own way with their respective functions and roles according to their essence in the time of national development implementation, a long time before the enactment Law Number 6 of 2014 on Village.

It can, therefore, be concluded that in principally, the Law Number 6 of 2014 regarding Village provides legally recognition and protection to the existence of desa adat or traditional adat village in line with its philosophy, essences, functions, and roles within the whole system of unitary adat community under the supervision on its customary adat law, which is in reality sustained living and growing together with the desa dinas or administrative village in conducting the bureaucratic function and role of the regional governmental administrative system which based on the State law.

In the sense of Explanation Article 6 Act Number 6 Year 2014 that stating: This provision is intended to prevent the intersection in regions in term of authority, institutional duplication between Desa and Desa Adat within the same region. It is, therefore, in one region should be the only 1 (one) Desa or Desa Adat. In order to do that, it must be chosen one type of village

---

⁵ Read the Specific Provision of the General Elucidation Point 13 of Law Number 6 of 2014 on Village.

⁶ Village is Desa and Desa Adat as it is meant in the Article 1 Point 1 of Law Number 6 of 2014 on Village.
according to provision of this Law. I should say that it has not been a really norm of the legislation that has binding power to be implemented. In contradiction, in case the Balinese and the Bali regional government as well is intended to chose the desa adat or desa pakraman to be registered with the hope to the only receive a village financial empowerment every year from the Government, I should personally advice that there will be a number of legal consequences with the fate and future of existence and the life of desa adat/desa pakraman as a social and cultural system of Balinese Hindu community in particular and the whole traditional adat communities in the multicultural country of Indonesia in general. Why? The only reasons are as follows:

First, Legal based of the development desa adat/desa pakraman will not remain be an awig-awig as customary law of Balinese traditional community which regalutes skala and niskala world view and spheres in the daily life of the community rather it enforce and must be under the supervision of the Act Number 6 Year 2014 regarding Village and its implemented regulations namely the State law;

Second, It means that philosophy and essence, function and the role of desa adat or desa pakraman absolutely change in physically as well as terminate and perish in reality within the life Balinese community;

Third, Traditional adat government structure and governance system should be change in accordance with the governance system of desa dinas or administrative village; in one side desa adat or desa pakraman should govern the administratice and bureaucratic affairs under the structure of regional government, and on the other side the desa adat is at the same time in charge to govern and responsible about cultural, adat tradition and rituals as well as Hindu religion affairs;

Fourth, It means that nuance of the skala and niskala spheres and world view of the desa adat or desa pakraman should totally be ignored in the daily life of Balinese village and community;

Fifth, In relation to governance system of desa adat or desa pakraman, in term of adat government structure in particular, village officials or prajuru desa election and time of duty mechanism, as well as legal status of village property that has skala (physically) and niskala (magisch, spiritually, and religious) nuances and values in the eyes of Hindu Balinese community should become the physically property of the regional government;

Sixth, Village officials or prajuru desa should officially be responsible and liabel for the use of village financial empowerment that given by the regional government in the form of official financial report every year as administrative village legal obligation. In case of corruption conducted by the desa adat officials that will absolutly be qualified as a crime in accordance to criminal law.

REFERENCES
Regulation:
Undang-Undang Dasar 1945 (nama UUD sebelum Perubahan).
Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (nama UUD setelah Perubahan).
Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 tentang Pemerintahan Daerah.
Undang-Undang Republik Indonesia Nomor 6 Tahun 2014 tentang Desa.
Putusan Mahkamah Konstitusi Nomor 3/PUU-VIII perihal Pengujian Undang-undang Nomor 21

Books: