

## The Existence of Customary Land and its Utilization Pattern for Tourism Business

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### ABSTRACT

The purpose of this study are: (1) A comparison of the existence of customary land rights owned by indigenous villages in Gianyar Regency and those owned by indigenous communities in Banyuwangi Regency.; and (2) patterns of utilization of customary land for the provision of tourist facilities and attractions. Customary land owned by Batuan Traditional Village and Padangtegal Traditional Village in Gianyar Regency, Bali still exists mainly in the form of customary village *druwe* land. Meanwhile, the Osing Indigenous Community of Kemiren Village in Banyuwangi Regency, East Java is not explicitly recognized as having customary land rights over land or other physical resources. Customary rights are reflected in the ownership of intangible cultural assets/heritage, such as art, rituals, and traditions. The utilization of customary rights for tourism businesses in Batuan Customary Village and Padangtegal Customary Village is managed individually or institutionalized by customary villages based on local regulations. (*awig-awig* and/or *pararem*). Whereas in the Osing indigenous community of Kemiren Village there is the utilization of intangible cultural heritage owned by indigenous communities such as art, rituals, and traditions as tourist attractions and attractions.

### KEYWORDS

customary village; customary community; customary land; tourism.

### INTRODUCTION

The enactment of Law No. 5/1979 on Village Administration had a significant impact on the existence of customary law communities, especially in Java. The issuance of Law 5/1979 has changed the paradigm of customary law communities, which are called *Adatrechtsgemeenschappen*.<sup>1</sup> The intended change is in the form of a perspective of indigenous law communities to consolidate the Customary Law Association known as "Desa" into an "Administrative Village" in the form of a Village with its Village Chief and Sub-District with its Head of Sub-District, which is oriented towards funding from the State (Government). The unconscious result is that there is no longer a Customary Law Association known as the "Village" which is "*Otonom* (autonomous) and *Otohton* (autohtonous)". Meanwhile, Bali managed to maintain the existence of its customary law alliance body known as "*Desa Adat*". Thus, Bali recognizes two systems of village government, namely: the official village government system known as "*Keperbekelan* and *Keluurahan*" as the executor of the government tasks above it and the autonomous and autohtonous customary village government system. The consolidation of "Village" as a

<sup>1</sup> B.Ter Haar, 1974, *Beginselen en Stelsel van Hek Adatrecht (Asas-Asas dan Susunan Hukum Adat)*, Terjem. Soebekti Poesnoto, PT. Pradnya Paramita, Jakarta, p.29.

customary law alliance body is the choice of the customary law community in Java which has implications for the disappearance of the existence of a customary law alliance body called "Village" in Java, so that with the enactment of Law 5/1979, the customary law alliance body is no longer known in Java because of a choice, which is relevant to the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) which formulates:

The State recognizes and respects the unity of customary law communities and 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 the Republic of Indonesia, which are regulated by law.

The formulation of the provisions of this article wants to emphasize that the state will continue to recognize and respect the existence of customary law communities in Indonesia if the customary law communities continue to maintain themselves and do not merge into administrative villages according to the options given by Law 5/1979, such as Bali.

Bali is quite different from other regions in Indonesia, although it is given the choice to become a "Desa Administrasi" or "Desa Dinas" which is accompanied by funding or financing of all village programs from the State or Government, but the Balinese customary law community still maintains its Customary Law Association known as "Desa Adat" as an autonomous and autonomous customary law community that has its own uniqueness. In addition, there are also "Desa Administrasi/Desa Dinas" which are regulated by Law 5/1979 and which have been amended by Law No. 6/2014 on Villages. The choices made by customary law communities certainly have risks that should be realized and accepted, because they are regulated in legislation.

With the different choices made by indigenous peoples in Java and Bali, it is interesting to be the subject of Cooperation research in order to be able to negate the existence of customary law alliance bodies or indigenous peoples in the development of state law and the models used by each community in managing their cultural identity as a leading village tourism destination, such as the phenomenon observed in Bali with the object of Gianyar Regency and Banyuwangi Regency with the object in Osing Kemiren Village, East Java.

Bali has been known for its tourism since 1920, when the Dutch government introduced the concept of "Balinesering" to make traditional villages into living museums, meaning that traditional villages previously known as "Traditional Villages" will be preserved. Colonial politics that seemed to want to defend Bali from the destruction caused by its relationship with the outside world, seemed to be supported by a policy that sought to develop Balinese culture to appear more advanced known as the "*Balinisering*" Movement in the 1920s, as a Balinese cultural development movement under the umbrella of colonial power. By groups concerned with Balinese culture, the Balinisering concept is then used to develop Balinese culture, especially its arts. So various elements of Balinese art (buildings with carvings, dances, music, etc.) can be developed more vibrantly. In this way, although the Dutch government wanted to isolate Bali from outside relations, the impact was to make Bali more famous, and visited by outside visitors. In terms of tourism, this situation benefited the Dutch colonial government. The result was then a means of promotion to attract foreign tourists during the Dutch East Indies government. Meanwhile, in Banyuwangi, an indigenous community that exists is known as the Osing Tribe. Both of these areas are tourist destinations where tourism businesses and activities have penetrated into villages and come into contact with indigenous peoples or customary communities and their customary rights.

The development of rural tourism has become a global trend. Villages and rural areas offer an authentic tourism site so that villages have an important function as tourist

destinations. As tourist destinations, villages and rural areas offer a variety of tourist attractions in the form of a combination of nature, culture, customs, and traditions. All of which become what visitors need in obtaining individual experiences.

There are several villages in Bali and Banyuwangi that have developed into tourist destinations where tourists stay and interact with the community. Tourists enjoy the village atmosphere and learn about the way of life, traditions, culture, local wisdom, and admire nature. Small-scale businesses run by the local community have grown to provide for the needs of tourists.

In the context of this kind of rural tourism, it often utilizes rural resources as a support in the provision of tourist facilities or attractions. These resources can be in the form of land, forests, waters, and others that are under the ownership of customary rights. In connection with these conditions, it is deemed necessary to conduct a study on the existence of customary land rights owned by villages or indigenous communities and their utilization and/or management models for tourism businesses. The purpose of this research is to find out: (1) a comparison of the existence of customary land owned by indigenous villages or indigenous communities in Gianyar Regency and Banyuwangi Regency; and (2) the pattern of utilization of customary land for the provision of tourist facilities and attractions.

## LITERATURE REVIEW

According to customary law, land has a very important position both because of the fact and because of its nature. Because of the fact that there is a very close relationship between the community and the land it occupies. This relationship is momunal religio. This relationship causes the community to acquire the right to control the land in question, to utilize the land, to collect the products of the plants that live on the land, to hunt the animals that live there. This right is called hak pertuanan or hak ulayat. Van Vollenhoven described it as "beschikkingrecht".<sup>2</sup> In Bali it is called "*hak prabumian*". The objects of customary rights are: land (land), water (waters such as rivers, lakes, beaches and their waters), plants that live wildly, animals that live wildly. So land and waters that are not controlled by individuals, legal entities, and the state can be declared as objects of ulayat rights. This customary land in Bali is better known as adat land or *druwe* land (*Desa Adat*).

In the dissertation research of I Made Suwitra, it was found that land tenure or ownership in Bali can be grouped into four main groups, namely state land, local government (*pemda*) proof fund land now known as local government asset land, full private land, and customary lands controlled or owned by customary villages called *druwe desa*.

Types of customary land or *druwe desa* can be classified into non-full individual land, such as village yard land (PKD), *Ayahan Desa* land (AYDS), and communally controlled land in the form of: Laba Pura Land, Setra Land, Market Land, and Field Land.<sup>3</sup>

Meanwhile, Boedi Harsono said that customary rights are a series of authorities and obligations of a customary law community, which relate to land located within its territorial environment, which is the main support for the livelihood and life of the community concerned throughout the period.<sup>4</sup> These powers and obligations fall into the field of civil law and some fall into the field of public law. The powers and obligations in the field of civil

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<sup>2</sup> Surojo Wignjodipuro, 1979, *Pengantar dan Azas-azas hukum Adat*, Alumni, Bandung, p.248.

<sup>3</sup> I Made Suwitra, 2009, "*Eksistensi Hak Penguasaan dan Pemilikan Atas Tanah Adat di Bali dalam Perspektif Hukum Agraria Nasional*", *Doctoral dissertation*, Universitas Brawijaya, Malang, repository.warmadewa.ac.id, p.159.

<sup>4</sup> Boedi Harsono, 2005. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1. Djambatan. Jakarta. p.186.

law relate to joint ownership rights over the land. Whereas in public law, the duty of authority to manage, regulate and lead the allocation, control, use and maintenance of the land rests with the Chief of the Customary (*Kepala Adat/Ketua Adat*). The conception of customary rights according to customary law has magical religious communalistic values that provide opportunities for individual land tenure, as well as rights that are personal in nature, however, customary rights are not the rights of individuals. So, it can be said that customary rights are communal in nature because they are the joint rights of members of the customary law community over the land concerned. The magical-religious nature refers to the communal land, which is believed to be something that has magical properties and is a legacy of the ancestors and ancestors of the indigenous community group as the most important element for their life and livelihood at all times and throughout life.

The issuance of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) did not provide criteria that could be used as guidelines in assessing whether or not customary rights existed, so Maria S.W. Sumardjono proposed three criteria that could later be used to assess whether or not customary law communities had customary rights, as follows:

- (1) The existence of customary law communities that meet certain characteristics as subjects of customary rights;
- (2) The existence of land/region with certain boundaries as *Lebensraum* which is the object of customary rights; and
- (3) The existence of the authority of customary law communities to carry out certain actions as described above.<sup>5</sup>

If these criteria are fulfilled, it means that it is in accordance with a sense of justice, because if the role of customary rights has diminished or no longer exists, it must be realized that this is because it has been elevated to the rights of the nation since August 17, 1945 and it is not appropriate to revive things that actually obscure the awareness of nationhood and one homeland. Conversely, if customary rights are considered to still exist, then recognition of these rights must be given along with the imposition of obligations by the state. Addressing whether or not customary rights still exist is not a "black and white" issue (whether or not the rights exist). Its existence, which is dwindling, but not believed to be lost, also requires its own thinking in determining the norms of its existence, so that no rights of a customary law community are neglected. In addition, the thickness of *ulayat* rights cannot be measured by material issues alone, but is also determined in matters relating to the customs and religion of a customary law community. This has often been ignored in past governments, where the taking of the customary land of a customary law community was measured by the tertiary interests of the nation to the exclusion of the primary needs of a customary law community. Therefore, no matter how thin the customary right is, if it is believed that it cannot be lost, its existence must be recognized and accommodated in a state norm, at least in the property rights law that will exist by involving regional people's representatives.<sup>6</sup>

Considering the use of customary law systems and conceptions in national agrarian law can be seen in the provisions and structure of Articles 1, 2, and 4 of the UUPA. Article 1 contains a statement that the highest land tenure right is that of the Indonesian nation, which

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<sup>5</sup> Maria S.W. Sumardjono. 2005. *Kebijakan Pertanahan antara Regulasi & Implementasi*, Edisi Revisi. Buku Kompas. Jakarta. p.57.

<sup>6</sup> K. Oka Setiawan. 2003. "Hak Ulayat Desa Adat Tenganan Pegringsan Bali Pasca UUPA". Cetakan I. *Disertasi*. Program Pascasarjana Fakultas Hukum Universitas Indonesia. Jakarta. p.189.

is the embodiment of all the people in the form of all Indonesian citizens. The Indonesian nation's land as a gift from God Almighty is national wealth, meaning that the nation's rights contain an element of ownership, such as the customary law community's customary rights. It is also emphasized in Explanation II (1) of the UUPA that the nation's right is (a kind of) customary right that is raised at the highest level, namely at a level that concerns the entire territory of the country. It is from the nation's right that land tenure rights are derived that are available to individuals, either directly (primary rights) or indirectly (secondary rights), including mortgage rights.

Article 2 of the UUPA confirms that, on the basis of the nation's right as referred to in Article 1, the state as an organization of power has the highest level of control. This is the second authority of the nation's right, which belongs to the field of public law. The implementation of this right is delegated to the state, as the organization of power of the entire people. However, it is also recognized that the state's power over land is more or less limited by the ulayat rights of the customary law community unit, as long as in reality they still exist (Elucidation II (2) of the UUPA).

The implementation of the right to control from the state can be delegated to autonomous regions and customary law communities, simply necessary and not against with national interest, according to the provisions of Government Regulations (article 2 paragraph (4) Basic Agrarian Law). In the elucidation of the article it is stated that the provision relates to the principles of autonomy and *medebewind*

According to K. Oka Setiawan, the delegation of state power to the regions, even to customary law communities in relation to customary rights, is a statement that should be supported. However, if it is mentioned as merely necessary, not contrary to the national interest, and by Government Regulation (not *Perda*) and referred to as *medebewind*, it seems that the Central Government is half-hearted in providing the delegation of state power to the regions. This atmosphere is certainly not in accordance with the spirit of autonomy that was originally raised by Law No.22 of 1999, Jo Law No.32 of 2004, Law No.23 of 2014 jo Law No.9 of 2015 concerning Regional government. However, it does not have to be interpreted that in its implementation it is exclusive and ignores the Republic of Indonesia.<sup>7</sup>

What is stated by K. Oka Setiawan, can be accepted and it can even be stated that the formulation of Article 2 paragraph (4) of the UUPA can be said to contain doubts and is a rubber article, which is multi-interpretative because it has not been able to provide some kind of certainty about the existence of customary rights of indigenous peoples themselves, because its recognition is conditional. However, it all depends on the political will of the government. This means that the government can just hand over some of its control rights to indigenous peoples with management rights or other relevant rights such as the control rights handed over to local governments known as Local Government Asset Land, which was previously known as Local Government Evidence Fund Land. The government's partial transfer of state control rights to indigenous peoples seems to be relevant to the spirit of reform as demonstrated by the various amendments to the 1945 Constitution.<sup>8</sup>

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<sup>7</sup> K. Oka Setiawan. 2003. *Op.cit.* p.186.

<sup>8</sup> Pasal 18 B ayat (2): Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan Prinsip Negara Kesatuan Republik Indonesia yang diatur dalam undang-undang.



## RESEARCH METHODS

This type of research uses empirical legal research conducted in two comparative regions, namely Gianyar Regency, Bali and Banyuwangi Regency, East Java. The sample locations in Gianyar Regency are Batuan Traditional Village in Sukawati District and Padangtegal Traditional Village in Ubud District. Meanwhile, the sample location in Banyuwangi Regency is Kemiren Traditional Village in Gelagah District.

This research uses primary and secondary data sources. Primary data sources are key informants who have a major role in the customary village government. Secondary data sources were indigenous village regulations. Primary data collection was conducted through structured interviews using a list of questions to key informants. The data obtained was analyzed qualitatively by understanding and reviewing the data that had been collected systematically so as to obtain an overview of the problem or situation under study.

## RESULTS AND DISCUSSION

### *The Existence of Village Druwe Land as Village Customary Land*

#### *Batuan Traditional Village*

Customary land is often equated with customary land, which is land owned by an alliance, group, tribe, clan, village and so on that does not belong to an individual, even though the person concerned has utilized it for his or her survival.<sup>9</sup> On the other hand, Valerie Jaqueline Leonore Kriekhoff states that customary land can be defined as land on which customary rules apply.<sup>10</sup> These customary lands are referred to as *druwe desa* (customary) lands in the *Awig-Awig* of *Desa Adat* in Bali. These village *druwe* lands are individually controlled by the village *krama* (members) in the form of PKD, AYDS land which is also called non-full individual land. The village *Druwe* land is also controlled by the village in the form of *Setra* land, *Laba Pura* land, Market land, Field land, *Rurung* (road), *Celebutan Toya* (water source), *tempar sandar jukung* (boat), beach land used for salt making, *Melasti* ceremony place, *banjar* land, field land (unoccupied) used to carry out religious ceremonies, such as *ngaben*, *mukur* (ngeroras), *Catu* land (position) either as *Bendesa* (Head of Adat), *Jero Mangku* (leader of religious ceremonies).

Customary land rights that still exist and are owned or controlled by Batuan Traditional Village, including Village Yard Land, Village *Ayahan* Land, *Laba Pura* Land, *Setra* Land, and Village *Druwe* Land, other land.

#### *1) Village Yard Land*

Village yard land is customary land (*druwe desa*) whose control is carried out by the village *krama* (*Ngarep*, *Murwa*, *Seket*) customary to build housing in almost the same area known as "*sikut satak*", which is approximately 6 (six) are that can be used as a sacred place (*Merajan*), residential houses, sacred buildings (*Bale Daja / Dangan*), buildings for meetings (*Bale Dauh*), kitchens, barns, drums. With a layout referencing the philosophy of Tri Hitakarana and Asta Kosala. This Village Land cannot be made into individual property rights or owned by individuals, is hereditary, may not be traded or inherited to other people who are not indigenous village *krama* except with the approval of the village *krama* through

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<sup>9</sup> M. Suastawa Dharmayuda. 1987. *Status dan Fungsi Tanah Adat Bali Setelah Berlakunya UUPA*. Cetakan I. CV Kayu Mas. Denpasar. p.27.

<sup>10</sup> Valerie Jaqueline Leonore Kriekhoff. 1991. "Kedudukan Tanah Dati sebagai tanah adat di Maluku Tengah, suatu kajian dengan memanfaatkan pendekatan antropologi hukum". *Disertasi*. Program Doktor Ilmu Hukum Fakultas Pasca Sarjana Universitas Indonesia. p.24.

paruman. Utilization of PKD land must be carried out in accordance with the provisions in awig-awig which are oriented towards the principle of benefits for oneself, family and customary village.

In addition to PKD land which is used by the traditional village krama as a place to live (housing), other types of land that are also included in the Village *Druwe* Land in Batuan Traditional Village include *ambal-ambal*, village market land/*tenten*, and *telajakan* land (empty land on the side of the village road where there are no houses or road boundary land behind it). These three customary lands have not been regulated for utilization in the *awig-awig*.

The rights and obligations for the traditional village *krama* who occupy PKD Land in Batuan Traditional Village have not been explicitly stated in the *awig-awig* of the traditional village. However, in reality, it has been carried out in accordance with customs and habits. The traditional village krama who controls PKD land has the right to erect various buildings and plant various plants, and raise animals as needed for consumption with his family, not for business purposes. This restriction implies prioritizing physical and mental balance (*sekala* and *niskala*) and not causing disturbance to other parties, especially neighbors. This tenure right is only to use and benefit from it for generations by giving obligations to the Customary Village called "*ayahan*", which is in the form of labor (such as *gotong royong*) and material (dues *pipil*, building money, *piodalan* or religious ceremonies) in maintaining the *Kahyangan Desa*, *Banjar* and all infrastructure in the customary village area. However, currently this maintenance is carried out with the *Desa Dinas*, Regency and Provincial governments in the concept of coexistence.

If the PKD land is not well-maintained by the village *krama* who occupies the land, for example due to death without leaving heirs or being left behind by transmigration/moving to another area, then the PKD land is again controlled by the customary village or becomes the right of the customary village. It is relevant to the concept of "*Mulur Mungkret*" put forward by Iman Sudyat as one of the characteristics of the relationship between the individual rights of the village krama and the customary village over the village *druwe* land tenure rights in the form of PKD or AYDS, namely thickening or thinning. Or in other words, if individual tenure rights are strong (thick), then customary village tenure rights are weakened (thinning), or vice versa, if individual tenure rights are weakened (thinning), then customary village tenure rights are strengthened (thickening).<sup>11</sup>

## 2) *Village Ayahan Land*

This Ayahan Desa Land (AYDS) is land owned by the traditional village whose cultivation is left to the traditional village krama. This land is used as agricultural land, such as fields and plantations. Tanah Ayahan Desa can be located within the territory (*wewidangan*) of the customary village or outside the territory of the customary village itself. The pattern and procedure for the utilization of this Village Ayahan Land has not been written in awig-awig but has been carried out for generations according to the pattern received due to inheritance. Information obtained from the Bendesa and Prajuru of the traditional village is that the Ayahan Village Land is cultivated by a number of traditional village members. This land is also used as a place to build a house for the *ngarep krama* and there is an obligation to carry out the accompanying *ayah ngarep*. The indigenous village krama who work on this Village Ayahan Land only have the right to cultivate and collect products from the land with the obligation to give some of the results to the Village for the purpose of financing *piodalan* ceremonies at the Village Temple.

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<sup>11</sup>Iman Sudyat. 1981. *Hukum Adat Sketsa Asas*. Liberty. Yogyakarta. p.3.

### 3) *Laba Pura Land*

*Laba Pura* land is land intended for the benefit of financing the maintenance of the temple which is regulated in *awig-awig* even though it is not explicit, but in real terms it is carried out from generation to generation according to appropriateness. It should be informed, that every traditional village in Bali generally recognizes the existence of *Kahyangan Tiga* temples namely *Pura Dalem*, *Pura Puseh*, and *Pura Desa* and other temples controlled by traditional villages, such as *Pura Melanting* which is usually built near the Village Market. Among these temples, some have *Laba*, either in the form of rice fields, fields, or moor. The cultivation of *Laba Pura* land is carried out by *Jero Mangku* (the leader of traditional ceremonies or prayers in the temple concerned).

Physically, *Tanah Laba Pura* in Batuan Traditional Village consists of paddy fields, moorland, *setra* (graveyard) land, as well as *taru agung* and coconut trees located on the roadside in the customary village. According to the provisions of the local *awig-awig*, it is explained that the proceeds from the utilization of *Laba Pura* land are used to finance *adat* activities.

*Krama desa adat* who cultivate the *Laba Pura* land are obliged to be responsible for everything related to *adat*, both regarding its maintenance, *adat* order/security, and the integrity of *adat*. In return, the cultivator has the right to cultivate the land and collect its produce. A portion of the proceeds from the cultivation of the land is handed over to the *adat* village to be used for financing *adat* activities.

### 4) *Druwe Desa Land*

*Druwe Desa* land in Batuan Traditional Village is customary land owned by the traditional village which is utilized to establish primary school education facilities and to establish the *Perbekel* Office.

### 5) *Another Land*

Other land owned by Batuan Traditional Village is land purchased by the village. This land has been used for a parking lot and several plots of land are planned for economic activities, such as for a *tenten* (shop/mart).

## ***Padangtegal Traditional Village***

Customary rights owned or controlled by Padangtegal Traditional Village include Village Yard Land, Temple Land, Village *Druwe* Land, and the source of water.

### 1) *Village Yard Land*

The types of utilization or use of Village Land in Padangtegal Traditional Village use the concept of *Tri Hita Karana*. From the *Parahyangan* aspect, this customary land is utilized by the traditional village *krama* to build a *sanggah/pamerajan* (sacred place); the *Pawongan* aspect, utilized for housing; and the *Palemahan* aspect, utilized for business, such as livestock pens, stalls, shops, and so on.

The utilization of the Village Land is regulated in *awig-awig* and *pararem* where the utilization is intended for the original residents who are *mipil* and Hindu. Migrants (*tamiu* and *krama tamiu*) are not allowed to have rights to customary land because this customary land cannot be traded. With the provision of conversion through the Complete Systematic Land Registration (PTSL), the ownership status of customary land is carried out in the name of the customary village and below it contains information on the name of the resident who occupies the land. Every resident has the right to use and utilize customary land as long as



they are a *krama* (resident) of the village and participate in *nyungsung Kahyangan Tiga*. Every resident who utilizes village land is obliged to maintain customary activities.

#### 2) *Laba Pura Land*

The *Plaba Pura* land owned by Padangtegal Customary Village consists of *Plaba Pura Wet* and *Plaba Pura* purchased from the proceeds of customary village business. This customary land is in the form of customary forest, which was originally 7.5 hectares and has been expanded to 26 hectares. The land for this expansion was purchased by the customary village from the proceeds of the customary village business. This customary forest is utilized as a very popular Monkey Forest tourist attraction in the Ubud area of Bali. The utilization of this customary land is regulated in *awig-awig* and *pararem* relating to the Monkey Forest Tourist Attraction. The customary village has the right and obligation to manage the Monkey Forest Tourism Object, both in maintenance and in managing the business results of the tourist attraction for development in the Padangtegal Customary Village.

#### 3) *Druwe Desa Land*

*Druwe Desa* Land in Padangtegal Traditional Village is land owned by the traditional village that is utilized to build *Banjar* Hall facilities. The utilization of *Druwe Desa* Land is regulated in the local *awig-awig*. The Hall is used to carry out traditional activities involving the traditional *banjar krama* and each *krama* is obliged to maintain its cleanliness and maintenance.

#### 4) *The Source of Water*

In addition to land as customary rights, Padangtegal Traditional Village also has customary rights to water sources. This is the source of water from Beji Temple, which is located in the Monkey Forest Tourism Object. The utilization of this source of water is regulated in the *awig-awig* of the customary village. The source of this water functions as a sacred place and can be utilized as holy water for cleansing (*melukat*). People who are allowed to enter this place are only people who will do *melukat*, not for tourists who are just visiting. However, tourists who intend to visit this place are allowed on the condition that they must wear Balinese traditional clothes and not be dirty (*cuntaka*) for women.

### ***Osing Kemiren Traditional Village***

In a workshop of the Indigenous Peoples Rights Defense Network (JAPHAMA) in Tana Toraja on 1993, the following definition of indigenous peoples was formulated: a group of people who have ancestral origins (from generation to generation) in a certain geographical area, and have their own value system, ideology, economy, politics, culture, social, and territory. Referring to the above definition, it means that customary law communities have the following characteristics: 1) has ancestral origins for generations, 2) lives in a certain geographical area, 3) has its own value system, 4) has its own ideology, 5) has its own economic system, 6) has its own political order, 7) has its own cultural diversity, 8) has its own social structure and life, and 9) still implements its customs, culture and customary law.

Based on the above limitations, it can be concluded that in Banyuwangi Regency there are no customary law communities as referred to in the definition above. In Banyuwangi, there are no indigenous peoples that have their own territories and their own administrative arrangements. However, in Banyuwangi there are many communities that have their own customary rituals, culture and customary law, but it is difficult to sort them out in a firm territory. So, in Banyuwangi, it is more appropriate to call them *adat* communities rather than customary law communities. At the level of semantic empiris, the mention of

customary communities and customary law communities in Banyuwangi has been used as the same meaning to mark the identity of groups in society.

The existence of the Osing Tribe and its culture is still maintained and developed in Kemiren Village, Glagah District, Banyuwangi Regency. The Osing tribe in Kemiren Village still exists and continues to be preserved and maintained by the Osing community. This existence is certainly proven by various efforts made by the Osing community in Kemiren Village. The efforts made by the Osing Kemiren community in preserving and maintaining the existence of Osing culture, customs and traditions include routinely performing Osing traditional rituals, preserving the Osing language, maintaining Osing characters and principles, revamping and introducing Osing culture and collaborating with the community, village government, and the Banyuwangi Regency Culture and Tourism Office.

### ***Comparison of the Existence of Customary Rights***

From the results of research on the existence of customary rights owned by indigenous villages between the Batuan Traditional Village and Padangtegal Traditional Village and the Osing Kemiren Indigenous Community, a comparison can be drawn as shown in Table 1 below:

**Table 1.** Comparison of the existence of customary rights of Batuan Traditional Village and Padangtegal Traditional Village with Osing Kemiren Traditional Community

No	Element	Batuan Traditional Village	Padangtegal Traditional Village	Osing Kemiren Traditional Community
1	Institutionalization of traditional villages	The institution of clear customary villages as autonomous and autochthonous villages that meet the criteria as customary law communities.	The institution of clear customary villages as autonomous and autochthonous villages that meet the criteria as customary law communities.	Indigenous communities do not have clear institutions that are autonomous and autonomous. It does not meet the criteria of a customary law community, but rather a customary community whose people still hold and practice strong customary traditions.
2	Recognition of customary rights	Resources (especially land) that are communal rights of indigenous villages or owned by indigenous villages still exist and their utilization is regulated by local regulations	Resources (especially land) that are communal rights of indigenous villages or owned by indigenous villages still exist and their utilization is regulated by local regulations	Indigenous communities are not explicitly recognized as having customary rights to land or other physical resources. Customary rights over natural resources no longer

No	Element	Batuan Traditional Village	Padangtegal Traditional Village	Osing Kemiren Traditional Community
		( <i>awig-awig</i> and/or <i>pararem</i> )	( <i>awig-awig</i> and/or <i>pararem</i> )	exist, but only traditional rights of ownership over intangible cultural assets/heritage, such as art, rituals and traditions.
3	Utilization of customary rights for tourism business	There is utilization of land or other resources belonging to indigenous villages that are utilized and managed individually or by indigenous village institutions for tourism businesses. The utilization is regulated in local regulations ( <i>awig-awig</i> and/or <i>pararem</i> )	There is utilization of land or other resources belonging to indigenous villages that are utilized and managed individually or by indigenous village institutions for tourism businesses. The utilization is regulated in local regulations ( <i>awig-awig</i> and/or <i>pararem</i> )	There is a utilization of intangible cultural heritage, such as art, rituals, and traditions as attractions and tourist attractions that are deliberately created in one village location in the middle of rice fields.

### **Utilization Pattern of Customary Rights for Tourism Business**

#### **Batuan Traditional Village**

Batuan Village is one of the cultural tourism destinations in Gianyar Regency. This village has mainstay tourist attractions in the form of cultural heritage sites, performing arts, literary arts, and Batuan style painting which is an intangible cultural heritage. In addition, Batuan Village also has the potential for natural attractions that are no less unique and interesting, including Bembengan Waterfall, Alas Arum Forest, rice fields, and rivers (*Tukad Bisil*, *Tukad Wos*, and *Tukad Petanu*).

The tourism industry in Batuan Village has developed not only from the aspect of tourist attractions, but also tourism businesses. In this village, there are several tourism businesses, such as home stays, hotels, restaurants, art studios, and performance venues. It can be said that this village has integrated tourist attractions, accommodation, culinary, and creative economy into the tourism industry.

The development of Batuan Traditional Village as a tourist destination certainly requires land to build tourist business facilities, including the use or utilization of customary land owned by the traditional village. This research reveals the types and patterns of use or utilization of land owned by indigenous villages to support tourism businesses, as follows:

1. Utilization of *Ayahan* Village Land by residents or traditional village crews to provide various tourism facilities, such as home stays, souvenir stalls, and food stalls.
2. Utilization of *Druwe Pura* Land, namely the environment of the *Desa* and *Puseh* Temple as a cultural tourist attraction managed by the Batuan Traditional Village. Utilization of the *Desa* and *Puseh* Temple environment as a tourist attraction generates income for the traditional village and generates small businesses owned by the surrounding community.

### ***Padangtegal Traditional Village***

Padangtegal Village is in the middle of the famous Ubud tourist destination. Padangtegal Village has been widely known by tourists, both domestic and foreign tourists, especially because of the existence of Monkey Forest Tourism Objects in this village.

Besides the Monkey Forest Tourism Object, the tourism industry in Padangtegal Village has developed in a structured manner with various types of businesses, including accommodation, restaurants, travel services, entertainment, souvenir businesses, creative economy, and other tourism support businesses. The tourism industry in Padangtegal Customary Village interacts strongly with the lives of indigenous people, including in the utilization of resources that are customary rights in customary villages. The utilization of customary rights owned by indigenous villages has merged with the utilization for the benefit of the tourism business. This research revealed that the pattern of use or utilization of land owned by indigenous villages for tourism businesses is as follows:

1. Utilization of Village Land by villagers to provide various tourism facilities and businesses including hotels, homestays, stalls, shops, and so on, in addition to its main function as a place to live. This pattern of land utilization can only be managed by residents who are the original residents, using the concept of *Kahyangan Tiga*. Buildings on land owned by the customary village that are rented out for business activities require approval from *Prajuru Adat* through *paruman/sangkep*. This land cannot be traded for tourism or other purposes.
2. Utilization of Plaba Pura Land and Druwe Village Land as a Monkey Forest Tourism Object managed by the Traditional Village. Druwe Village Land in the form of Banjar Hall is also utilized by the traditional *banjar krama* for tourism support business activities. The use of Banjar Hall for a place of business must be with the knowledge of Head of Banjar.
3. Utilization of water sources in Beji Temple as a spiritual tourism attraction (melukat and religious activities) managed by parties given responsibility by the Customary Village.

### ***Osing Kemiren Indigenous Community***

Kemiren Village is one of the villages in Banyuwangi whose inhabitants still uphold Osing customs and culture. Therefore, in 1995 Kemiren Village was designated by the East Java Provincial Government as an Osing traditional tourism village. The uniqueness of Kemiren's tourism attraction as an Osing Traditional Tourism Village rest on the rural nature and agrarian culture of the Osing people.

The tourist attraction of Kemiren Village is based on a combination of natural and cultural attractions. The natural tourist attraction is the atmosphere of rice fields and plantations. Cultural attractions include traditional arts, traditional rituals, traditional architecture, and rice cultivation traditions. In addition to natural and cultural tourism attractions, Kemiren Village has artificial tourism attractions that are relied upon to attract tourist visits, namely the Osing Tourism Platform and swimming pool.

The most popular traditional art in Banyuwangi is Gandrung dance, an Osing performance art in which there are dances and songs involving a female dancer who dances together with guests (mainly men) with the accompaniment of typical Javanese-Balinese fusion musical instruments. Gandrung dance in its performance is supported by various elements, namely dancers, musicians, musical instruments, songs, dance movements, and arena or stage. Each element has its own duties and roles. Gandrung dancers are usually also followed by a clown or *pengudang* player whose role is to provide jokes related to the dance performed by Gandrung dancers. In addition, in Gandrung performances there are also

*pemaju*, which are spectators who dance with the Gandrung dancers. This is similar to the Joged Bumbung dance in Bali.

Another prominent traditional art in Banyuwangi is Barong. Barong is the name for a mythological or sacred animal found in Javanese and Balinese society. These animals are believed to have magical powers and are considered sacred by the people who believe in them. The Osing barong in Kemiren is a manifestation of barong art that is different from Javanese, Balinese or Chinese barong traditions. Nevertheless, elements of absorption from various other cultures are quite visible and enrich this art.

Other traditional arts include Angklung, which is similar to Angklung music in other parts of Indonesia, Kuntulan (an Arabic-Islamic art), Burdah (like Kuntulan, an Arabic-Islamic music), Gedhogan (an ancient traditional art of the Osing people that lives and develops in rural areas and is mostly played by farmers), Jaran Kencak (a type of Jaranan art), and Mocoan Lontar Yusuf (a tradition of reading old religious literature).

Kemiren is rich in traditional rituals which are usually related to life cycles such as birth, marriage, death. There are two major traditional rituals that are preserved by the Kemiren community and included in the Annual Tourism Calendar of Banyuwangi Regency, namely Barong Ider Bumi and Tumpeng Sewu. Barong Ider Bumi is a symposium to ward off bad luck held on every second day of Shawwal month. Meanwhile, Tumpeng Sewu is a village cleaning ceremony for Kemiren residents. The ritual, which is believed to keep away from disaster, is held every Dhulhijjah month on the night of Monday or the first Friday.

There are three prominent forms of traditional architecture in the Osing Kemiren community, namely, traditional Osing house architecture, paglak, and kiling. The traditional Osing house is divided into the main rooms; bale (living room/family room), jrumah (private room in Osing houses) and pawon (kitchen), all three of which are the center of the unity of the house, and supporting rooms that are not always owned by every house; amper (front porch), ampok (side porch), pendopo (space between bale and jrumah in Using houses) and lumbung (place to store rice).

*Paglak* is a simple hut with a height of 5 to 10 meters, made of bamboo with a roof of braided coconut leaves or in the form of *welitan*. *Paglak* is usually built by Osing farmers in the middle of rice fields between the rice fields with the main function as a place for farmers to rest. *Paglak*'s high construction makes it easier for farmers to keep an eye on rice-eating birds.

*Kiling* is the name of the windmill (propeller). *Kiling* is usually erected around rice fields or placed on a tree so that it gets more wind. *Kiling* also characterizes the territory of the Using agrarian community. *Kiling*, which is about 8 to 15 meters high, is made of bamboo, wood and or areca nut trees.

The natural atmosphere of rural Kemiren Village is characterized by rice fields and plantations, rivers, and a number of springs. The Kemiren community has a tradition of rice cultivation wrapped in rituals, including:

1. *Slametan dawuan*: A procession of prayers and congratulations held at the water source/irrigation network with the hope that the process of starting to cultivate rice fields goes well and the irrigation flow flows smoothly.
2. *Labuh nyingkal*: The procession of cultivating the land with a plow pulled by two oxen begins with prayers and salvations asking God for safety during the process.
3. *Nyawani ngurit*: The procession of sowing seeds is preceded by a prayer asking God to protect the plants from pests and diseases.
4. *Labuh tandur*: The procession of planting rice begins with a prayer asking God for the plants to grow fertile.



5. *Ngrujaki*: A procession of prayers and salvations asking God to make the rice plants grow perfectly and abundantly.
6. *Nylameti sawah*: It is a procession of prayers and congratulations to God so that the process of filling the rice grains takes place perfectly.
7. *Metik*: The procession of prayers and the ritual of placing offerings in the rice field huts as an expression of gratitude for the good and abundant rice yields.
8. *Labuh nggampung*: a procession of harvesting activities that begins with a prayer as a form of gratitude that the plants give good results.
9. *Ngunjat*: The procession of transporting rice to the house as a form of gratitude for the abundant harvest and can be brought home

## CONCLUSION

Customary land rights owned by Batuan Traditional Village and Padangtegal Traditional Village still exist, especially land that becomes communal rights of the traditional village or is owned by the traditional village whose utilization is regulated in local regulations (*awig-awig* and/or *pararem*). Meanwhile, the Osing Indigenous Community of Kemiren Village no longer has customary land because the village institution has been merged into an Administrative Village since 1979, which is since the enactment of Law No. 5 of 1979 concerning Villages. But what remains in the form of traditional rights on ownership of intangible cultural assets/heritage, such as art, rituals, and traditions. The utilization of customary rights for tourism businesses in Batuan Traditional Village and Padangtegal Traditional Village is managed individually or by the traditional village based on local regulations (*awig-awig* and/or *pararem*) in the concept of the right to control the Traditional Village. Meanwhile, in the Osing indigenous community of Kemiren Village, there is a utilization of intangible cultural heritage owned by the indigenous community such as art, rituals, and traditions as tourist attractions and attractiveness.

The existence of customary land owned by indigenous villages in Bali in general and the existence of indigenous communities in Banyuwangi needs to be maintained and strengthened with patterns of utilization for the sake of preserving and strengthening customs, culture, and traditions, as well as the community's economy in the midst of the advancement of the tourism industry.

## REFERENCES

- Ter Haar, B. (1974). *Beginnelsen en Stelsel van Hek Adatrecht (Asas-Asas dan Susunan Hukum Adat)*, Terjem. Soebekti Poesnoto, PT. PRadnya Paramita, Jakarta.
- Boedi Harsono. (2005). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1. Djambatan, Jakarta.
- Iman Sudyat. (1981). *Hukum Adat Sketsa Asas*. Liberty. Yogyakarta.
- Maria S.W. Sumardjono. (2005). *Kebijakan Pertanahan antara Regulasi & Implementasi*, Edisi Revisi. Buku Kompas. Jakarta. p.55.
- Parimarta, I Gde. (1998). "Desa Adat dalam Perspektif Sejarah", dalam *Majalah Dinamika Kebudayaan*. Lembaga Penelitian Universitas Udayana. Denpasar. Vol.1. September.
- Setiawan. K. Oka. (2003). "Hak Ulayat Desa Adat Tenganan Pegringsingan Bali Pasca UUPA". Cetakan I. Disertasi. Program Pascasarjana Fakultas Hukum Universitas Indonesia. Jakarta.
- Suastawa Dharmayuda. M. (1987). *Status dan Fungsi Tanah Adat Bali Setelah Berlakunya UUPA*. Cetakan I. CV Kayu Mas. Denpasar.
- Surojo Wignjodipuro. (1979). *Pengantar dan Azas-azas hukum Adat*, Alumni, Bandung, p.248.

- Suwitra, I Made. (2009). “Eksistensi Hak Penguasaan dan Pemilikan Atas Tanah Adat di Bali dalam Perspektif Hukum Agraria Nasional”, Doctoral dissertation, Universitas Brawijaya, Malang, repository.warmadewa.ac.id.
- Valerine Jaqueline Leonore Kriekhoff. (1991). “Kedudukan Tanah Dati sebagai tanah adat di Maluku Tengah, suatu kajian dengan memanfaatkan pendekatan antropologi hukum”. Disertasi. Program Doktor Ilmu Hukum Fakultas Pasca Sarjana Universitas Indonesia.
- Undang-Undang Dasar Negara RI 1945 Perubahan pertama, kedua, ketiga, dan keempat.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No.5/1999 tentang Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat.