

# The Legal Position of Customary Management (Prajuru Adat) in the Lease Agreement Leases the Utilization of Laba Pura Land in Tumbak Bayuh Village, Mengwi District, Badung Regency

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**Abstract:** This paper examines and analyzes related to the use of land that has occurred a transfer of functions that previously emphasized the magical and social religious nature has led to economic aspects. The development of globalization today brings very fundamental changes in the economic world, including in the field of land. Lands in Bali that emphasize magical religious properties have shifted towards the economic and pragmatic. The economic aspect is prioritized in improving the welfare of the community by utilizing customary lands in Bali. For indigenous peoples, land has a very important function because without land humans cannot live and land is also a place where indigenous peoples live and land also provides livelihoods for it because land has a very important function. *Prajuru adat* (customary management) legal position in the lease agreement leases the use of customary land from *Labu Pura* in Tumbak Bayuh Village, Mengwi, Badung, Bali. This research uses empirical legal research, using primary data and secondary data. Primary data by conducting interviews and field studies, in addition to using research results and relevant books in assessing this problem. The results of the study found that the legal position of *prajuru adat* as a legal subject in carrying out legal acts in the form of lease agreements for *labu pura* land can be said to be valid and based because customary management can represent as a legal subject of the object of the *labu pura* land.

**Keywords:** utilization of land profit temple, legal position, light and cash.

## I. INTRODUCTION

The development of globalization today brings very fundamental changes in the economic world, including in the field of land. Lands in Bali that emphasize magical religious properties have shifted towards the economic and pragmatic. The economic aspect is prioritized in improving the welfare of the community by utilizing customary lands in Bali. For indigenous peoples, land has a very important function because without land humans cannot live and land is also a place where indigenous peoples live and land also provides livelihoods for it because land has a very important function.[1]

Such is the importance of soil factors in human life so that land can have various values such as political values,

social values, economic values, and even religious values. Considering that these things cause the community's need for a regulation and legal certainty of the land in such a way, so that every owner of the land plot can be guaranteed in defending his property rights against interference from other parties. [2]

The control of land rights until now has often caused conflicts both vertically and horizontally due to mutual claims of ownership, namely on the one hand claims that are based on continuous physical control, while on the other hand claims are based on ownership of rights according to proof of letters in the form of certificates. Conflicts as a result of the transfer of land rights can occur against lands that were originally controlled according to customary law and then converted according to the Basic Agrarian Law. These lands in Bali are known for their customary lands in various types such as land of *labu pura*, *labu banjar*, *labu desa* (adat), land of *pekarangan desa*, land of *ayahan desa*, Land of *setra*, land of market, land of hall. [3]

In Badung Regency in Tumbak Bayuh Village, Mengwi, the use of customary land in the form of *labu pura* land has changed which was previously intended for social interests has begun to shift towards a financial nature. The role of customary practices also plays an important role in the transition of more profit-making uses.

In this paper, we will examine the legal position of *Prajuru adat* in the lease agreement for the use of customary land from *Labu Pura* in Tumbak Bayuh Village, Mengwi, Badung, Bali?

## II. RESEARCH METHODS

This research will use empirical legal research, which will be supported by secondary data primary data. Primary data in the form of field data used with interview techniques directly to traditional practitioners at the research site. Furthermore, it will be supported with primary legal materials and secondary legal materials. From the materials of the results of previous research and also laws and regulations that are relevant to the problem posed. The approaches used

include the fact approach and the sociological approach. The researchers were conducted at the research site in Tumbak Bayuh Village, precisely on land owned by *Banjar Jerowan* in Tumbak Bayuh Village, Mengwi District, Badung Regency

### III. RESULTS AND DISCUSSION

#### *Lease Agreement According To Balinese Customary Law*

In the sense of customary law, renting land is a legal act in which the party who rents it hands over the land to the tenant within a predetermined period of time. And since that time also the right to land has passed from the owner to the tenant. So, the lease agreement according to customary law is cash and real. [4] Customary law that applies in the life of the people in Bali accommodates values that are still recognized and believed to provide benefits and welfare for indigenous peoples.[5] Cash and light suggest that an act committed by the community or individual must be known by the public and carried out in cash in the sense that there is no payment that is installment in Balinese customary law in terms of buying and selling land.

That in the rental of the land of the *laba pura* must find an agreement in terms of the rental of the land of the profit of the temple then a meeting/*paruman* must be held or a meeting in advance, this meeting/*paruman* is organized by the temple collector to discuss the plan for the rental of the land of the profit of this temple. Within the authority there are arbitrage.

The village meeting/*paruman* is an incarnation of the principle of deliberation and consensus. Customary law essentially prioritizes the existence of deliberation of consensus both within the family, kinship relations, and dispute resolution involving indigenous villages. Similarly, in terms of decision-making regarding the rental of the temple's profit land, in order to obtain a mutual agreement on the lease of land belonging to the temple, a village *paruman* is held which must be attended by all the temple collectors. Deliberations are important on matters concerning common ownership. The land of *laba pura* is the land jointly owned by the collector of the temple, so there must be a mutual agreement on the part of the landowner to lease the land.

In the case of renting out authorized to the administrator of the temple collector, it remains to take into account the feasibility of the price in force at the moment, so that the price set is not below the current market price. The recommendation is given with the condition that if there is a violation of the rules and regulations that have been established and agreed upon at the time of the completion of all temple collectors, then the recommendation letter is declared invalid and revoked.

There is a relationship between humans and their land, so between indigenous peoples and the land they occupy there is a very close relationship and *is magically religious*, which causes indigenous peoples to obtain the right to control the land, utilize and collect the proceeds from it. [6]

According to F.D. Holleman, as quoted by Imam Sudiyat concluded that there are 4 general properties of Indonesian customary law, namely:

1. Magical religious nature is the rounding or fusion of words that contain elements of some traits or ways of thinking such as pology, animism, taboos, occult sciences and others.
2. (Comunally) is a trait that puts the public interest ahead of one's own.
3. Contan (cash) related to transactions usually in Indonesian society is cash (cash), namely achievements and counter achievements are carried out at once at that time.
4. Concrete (real) where in general the Indonesian people if they do legal acts are always concrete (real), for example in a lease agreement to rent customary land, the tenant submits the rent as proof or a sign that the agreement has been implemented. [7]

The procedure for renting *laba pura* land lease which is generally carried out among indigenous peoples has a cash and tangible nature, where the lease agreement to rent *laba pura* land based on customary law because it is carried out before the customary chairman or in other terms is called the customary chairman and the temple collector who acts as a person who guarantees the absence of a violation of the law in the lease agreement to rent *Laba pura* land. The implementation of a lease agreement with the guarantee of the customary chairman or customary administrator then the lease is considered clear so that the community recognizes its validity.

The chairman or customary administrator carries out what is regulated in customary law, for example in Pakraman Village, *awig-awig* is the substance of the rules. The subject of *awig-awig* is the village krama, so these *awig-awig* are designed according to the needs of the village krama. So there is an absolute balance between the *awig-awig* product and the *krama* of Pakraman Village itself. Because the product in the form of *awig-awig* is believed to have customary legal values whose substance contains value, ethical, moral and social ties.

Jhon Rawls with the concept of justice as *fairness*, in one aspect points to the value that directs each party to provide protection for rights guaranteed by law and on the other hand, protection ini ultimately provides benefits to each individual (element of benefit). (6) The principle of freedom in the sense of equal rights, namely justice which is seen as *fairness* by providing a higher position for the pretender to express his rights in the form of an agreement in *the paruman* (meeting) set forth in the minutes of a joint meeting that can provide legal protection.

Legal protection of the land of *laba Pura* or also known as the land of the temple is related to efforts to preserve indigenous lands that today are in dire need of attention. This is due to the increasingly rampant transition of *laba Pura* land

into individual property rights. The transition here is in the sense of being traded.

Legal protection can be divided into 2 (two) types, namely preventive legal protection and repressive legal protection. According to Philipus M. Hadjon "preventive legal protection aims to prevent disputes from occurring, while on the contrary repressive legal protection aims to resolve disputes." [9] Preventive legal protection is closely related to the formation of a decision by the government before a dispute occurs, therefore preventive legal protection encourages the government to take certain steps based on the decision it has established. Repressive legal protection is more focused on the existence of the judiciary to protect the human rights of the people.

Customary law dictates that it is forbidden to trade customary lands, particularly temple lands that have *magical religio* value with temples.[10] However, the increasing needs and value of land resulted in the exclusion of indigenous and religious interests to meet needs, which were generally based on economic needs.

Legal protection according to Setiono is an act or effort to protect society from arbitrary acts by rulers that are not in accordance with the rule of law, to realize order and tranquility so as to allow humans to enjoy their dignity as human beings. [11]

Based on the description above, protection efforts in terms of *laba pura* land focus more on preventive legal protection, because the problem is the extent to which the rules made by the government or by indigenous peoples can bring legal certainty for the protection of *laba pura* land, where the regulations are enforced and can adapt to the laws applicable in the indigenous community concerned, so that indigenous peoples can maintain the existence of customary lands, especially the *Laba Pura* land.

This research found that the utilization of the profit land of *Melanting Tumbak Bayuh* Temple is currently used 320M2 (three hundred and twenty square meters) used for rice fields, fields and will be leased back, while 500M2 (five hundred square meters) of *laba pura* land is used to be leased to the tenant for business development.[12] The construction of a business on the profit land of the temple *melanting banjar jerowan* will not interfere with the preservation and existence of the *laba pura* land, because the collector of the temple *Melanting Banjar Jerowan* also actively participates in supervising business development activities carried out by the tenant and the temple collector can still use *laba pura* land if necessary.[13] In relation to spatial planning in Badung Regency as a direction to make the basis for the district government in issuing further permits for parties who use the space. Meanwhile, the use of space in Badung Regency is an effort to realize spatial structures and spatial patterns in accordance with spatial plans in an effort to realize spatial planning goals that can be realized in every regional spatial planning process, so that it is expected to realize successful

and effective space utilization in the management of space utilization and does not cause a decrease in space quality.[14]

The legal position of customary management as a legal subject in carrying out legal acts in the form of lease agreements against the land of *laba pura* can be said to be valid and based because customary management can represent as a legal subject of the object of *laba pura* land. However, in doing these deeds, it is necessary to have a meeting that is carried out in accordance with the concept of bright customary law.

#### IV. CONCLUSION

The agreement in the lease of renting the *laba pura* land is that in this lease agreement there is a party who rents and the party who rents, namely between the temple collector and the tenant, after an agreement occurs between the two parties where both parties agree to carry out the lease agreement, then the object of this lease is in the form of a *melanting laba pura* land owned by *Banjar Jerowan* located in *Tumbak Bayuh Village, Mengwi* Subdistrict, Badung Regency. The legal position of *prajuru adat* as a legal subject in carrying out legal acts in the form of lease agreements against the land of *laba pura* can be said to be valid and based because customary management (*prajuru adat*) can represent as a legal subject of the object of the *laba pura* land.[15] However, in doing these deeds, it is necessary to have a *paruman*/meeting that is carried out in accordance with the concept of bright customary law.

#### V. RECOMMENDATIONS

1. Customary Management (*Prajuru adat*) in carrying out legal acts utilizing customary lands, both *laba puras* and other customary lands, needs to do *paruman* (meeting) related to legal acts carried out by applying light and cash principle.
2. Traditional villages are expected to continue to supervise activities carried out by their Management (*prajuru*) who have the authority to carry out legal actions, especially in civil law.
3. For the community, in order for the entire community and temple collectors to make clear and bright in *awig-awig* (customary regulation) that regulate *laba pura* land, be it about renting *laba pura* land or buying and selling *laba pura* land, as well as from the Bali Provincial Government which issued regional regulations regulating *laba pura* land, so that *laba pura* land itself can always be maintained both in terms of legal protection and the preservation of *laba pura* land itself.

#### REFERENCES

- [1] B. Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan UUPA isi dan pelaksanaannya*. Jilid I *Hukum Tanah Nasional*, D, Cetakan Ke. Jakarta: jmbatan, 2003.
- [2] W. Prodjodikoro, *Hukum Perdata tentang Hak atas Benda*, Jakarta.: Jakarta : INtermasa, 1986, 1979.
- [3] F. Hukum and U. Warmadewa, "EKSISTENSI TANAH ADAT DAN MASALAHNYA," vol. 4, no. 1, 2020.

- [4] Mudjiono, Politik dan Hukum Agraria No Title. Yogyakarta: (Liberty : Yogyakarta, 1997.
- [5] I Made Suwitra, "Dampak Konversi dalam UUPA terhadap Status Tanah Adat di Bali," J. Hukum, vol. Vo.17 No.1, p. hal. 116.
- [6] M. S. Darmayuda, Status dan Fungsi Tanah Adat di Bali Setelah Berlakunya UUPA, EDISI, Cet. Denpasar.: Kayu Mas, 2002.
- [7] I. Sudiyat, Asas-Asas Hukum Adat., Yogyakarta.: Liberty, 1981.
- [8] J. Rawls, Theory of Justice. Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971.
- [9] P. M. Hadjon, Perlindungan Hukum bagi Masyarakat Indonesia sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi Negara. Surabaya: Bina Ilmu, 1987.
- [10] W. P. Windia, Bali Mawacara Kesatuan Awig-Awig, Hukum dan Pemerintahan Di Bali, Cetakan Pe. Denpasar: Udayana University Press, 2010.
- [11] Setiono, Rule Of Law (Supremasi Hukum). Surakarta: Universitas Sebelas Maret, 2004.
- [12] S. N. A. Windu, "Hasil Wawancara Penelitian , pada Hari Selasa 26 April Pukul 17.30 Wita.," 2022.
- [13] S. N. B. S. Yasa, "Hasil Wawancara Penelitian."
- [14] Si Ngurah Bagus Sugiartana Yasa, "Hasil Wawancara Penelitian dengan di Tumbak Bayuh, dengan Pengempon Pura Melanting Banjar Jerowan."
- [15] I Made Suwitra, Eksistensi Hak Penguasaan dan Pemilikan Atas Tanah Adat Di Bali, Cetakan Ke. Bandung: Logoz Publishing, 2010.