

## ABSTRACT

This research is based on the fact that the existence of indigenous people community has not received a fair protection by the state so that the nature of acknowledgement by the state is merely pseudo recognition. As a result, it remains in a weak position. The expectation for “legal status” strengthening for such a community emerged following the enactment of Law Number 6 of 2014 concerning villages. The objective of this research is to analyze the organizing of indigenous people community to indigenous village in Bali Province viewed from the legal politics perspective. The problem statements of the research included: (1) philosophical values that live in the indigenous people community in Pakraman Indigenous Village in Bali; (2) the application of the organizing of indigenous people community to Indigenous Village as mandated by Law Number 6 of 2014 concerning Villages in Bali Province; and (3) the formulation of legal politics on the organizing of indigenous law community which is responsive to the need for the strengthening of indigenous law community.

This research used the socio-legal approach, which is a combination between the doctrinal law research and empirical law research. Its data consisted of primary ones obtained directly from data sources and secondary ones obtained from literature studies. They were collected through content analysis field notes. The data were then analyzed by using the qualitative method considering that the collected data were qualitative. The analysis was done interactively, which consisted of four components, namely: data collection, data reduction, data display, and conclusion drawing.

The results of the research are as follows: Firstly, the philosophical values that live in the indigenous law community in Pakraman Indigenous Village, Bali include *Tri Hita Karana* and *Tri Kaya Parisudha*. *Tri Hita Karana* includes *Parahyangan* – good relation with God, *pawongan* – good relation with other people, and *palemahan* – good relation with nature. *Tri Kaya Parisudha* is three fundamentals of holy human behaviors, namely: thinking holy thoughts (*manacika*), saying the truth (*wacika*), doing right things (*kayika*). Secondly, the application of the organizing of indigenous people community to indigenous village in Bali is the mandate of Law Number 6 of 2014 through the construction of indigenous village stipulation and the formation of indigenous village. There are three aspects of the organizing of indigenous people community, namely: (1) legal structure: the village administration system is dual in nature, namely: *Pakraman* Indigenous Village and Official Village; (2) legal substance: there is a norm conflict between Article 6 and Explanation of Article 6 of Law Number: 6 of 2014 concerning the inconsistency of necessity to choose one of the village types; and (3) legal culture: most of the communities represented by academicians, public figures, *Perbekel* and *Bendesa* claim that the provision Article 6 cannot be implemented in Bali. Thirdly, the formulation of legal politics of the organizing of indigenous law community that is responsive includes: (1) Changing the integrated village model into a *co-existence* model; (2) giving autonomy to the community of *caturpraja* (four divisions of power), namely: *zelfwetgeving*, *zelfluitvoering*, *zelfrechtspraak*, and *zelfpolitie*; and (3) the organizing of indigenous people community to indigenous village with requirements that are not burdensome, and (4) Limited revision to Law no. 6 of 2014 and encourage customary territorial arrangements through the Draft Law on the Recognition and Protection of Indigenous Peoples.

Keywords: Legal politics, organizing, indigenous people community, indigenous village, Bali

## INTISARI

Latar belakang penelitian ini didasari pada fakta keberadaan kesatuan masyarakat hukum adat belum mendapat perlindungan yang adil dari negara sehingga sifat pengakuan negara hanya semu (*pseudo recognition*). Konsekuensinya, masyarakat hukum adat tetap dalam posisi yang lemah. Harapan penguatan “status hukum” bagi kesatuan masyarakat hukum adat muncul pasca lahirnya UU No. 6 Tahun 2014 tentang Desa. Tujuan penelitian untuk menganalisis penataan kesatuan masyarakat hukum adat menjadi desa adat di Provinsi Bali dari perspektif politik hukum. Permasalahan penelitian meliputi: (1) Nilai-nilai filosofis yang hidup dalam kesatuan masyarakat hukum adat di Desa Adat *Pakraman* Bali; (2) Penerapan penataan kesatuan masyarakat hukum adat menjadi Desa Adat yang diperintahkan UU No. 6 Tahun 2014 Tentang Desa di Provinsi Bali; dan (3) Formulasi politik hukum penataan masyarakat hukum adat yang responsif terhadap kebutuhan untuk memperkuat masyarakat hukum adat.

Metode penelitian menggunakan pendekatan *sosio-legal* yang merupakan kombinasi antara metode penelitian hukum doktrinal dan metode penelitian hukum empiris. Data penelitian ini terdiri dari data primer yang langsung diperoleh dari sumber pertama dan data sekunder yang merupakan data yang diperoleh dari hasil penelaahan literatur. Cara pengumpulan data yang dilakukan peneliti melalui studi dokumen, yang disertai dengan studi lapangan. Analisis data dilakukan secara *kualitatif*, mengingat data yang terkumpul berupa data kualitatif yang dilakukan sejak kegiatan pengumpulan data, reduksi data, penyajian data dan penarikan kesimpulan

Hasil penelitian menunjukkan: Pertama, Nilai-nilai filosofis yang hidup dalam masyarakat hukum adat di Desa Adat *Pakraman* Bali yakni *Tri Hita Karana* dan *Tri Kaya Parisudha*. *Tri Hita Karana* meliputi *Parahyangan* berbentuk hubungan baik dengan Tuhan, *pawongan* berupa hubungan baik dengan sesama manusia dan *palemahan* yakni hubungan baik dengan alam. *Tri Kaya Parisudha* merupakan tiga dasar perilaku manusia yang suci yaitu berpikir yang bersih (*manacika*), berkata yang benar (*wacika*), dan berbuat yang benar (*kayika*). Kedua, Penerapan penataan kesatuan masyarakat hukum adat menjadi desa adat di Bali merupakan perintah UU No. 6 Tahun 2014 melalui konstruksi penetapan desa adat dan pembentukan desa adat. Ada tiga aspek penataan kesatuan masyarakat hukum adat yakni (1) *legal structure*, sistem pemerintahan desa bersifat dualitas antara Desa Adat *Pakraman* dan Desa Dinas; (2) Aspek *legal substance*, ada permasalahan konflik norma Pasal 6 dengan Penjelasan Pasal 6 UU No. 6 Tahun 2014 mengenai ketidakkonsistenan keharusan memilih salah satu jenis desa; dan (3) Aspek *legal culture*, sebagian besar masyarakat yang diwakili akademisi, tokoh masyarakat, *Perbekel* maupun *Bendesa* menyatakan ketentuan Pasal 6, tidak dapat diterapkan di Bali. Ketiga, Formulasi politik hukum penataan masyarakat hukum adat yang responsif meliputi: (1) Mengganti model *integrated village* menjadi model *co-existence* (2) Pemberian otonomi komunitas *catur praja* yakni *zelfwetgeving*, *zelfluitvoering*, *zelfrechtspraak*, dan *zelfpolitie* (3) Penataan kesatuan masyarakat hukum adat menjadi desa adat dengan syarat-syarat yang tidak memberatkan; dan (4) Revisi terbatas UU No. 6 Tahun 2014 serta mendorong pengaturan wilayah adat melalui Rancangan Undang-Undang Pengakuan dan Perlindungan Masyarakat Hukum Adat (RUU PPMHA).

Kata kunci: politik hukum, penataan, kesatuan masyarakat hukum adat, desa adat, Bali