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Reformulation of a Legal Policy Affirming Recognition of Indigenous Community Units

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This research aims to discover the philosophical foundation for the existence of traditional Pakraman villages as indigenous community units, and to diagnose the reasons why the legal policy affirming recognition of indigenous community units through organisation to become Indigenous Villages, in Law No. 6 Year 2014, has failed to be implemented, and to reformulate a legal policy affirming recognition of indigenous community units through organisation to become Indigenous Villages that are ideal and responsive. The research method uses a socio legal research approach. The research results show that Pakraman villages in Bali are essentially autonomous indigenous community units which adhere to the philosophical values of Tri Hita Karana and Tri Kaya Parisudha. The legal policy affirming recognition of indigenous community units to become Indigenous Villages in Bali, according to Village Law, is to be implemented by establishing or forming new Indigenous Villages. However, its requirements cannot be met because Indigenous Villages must be integrated with Official Villages. Therefore, a new responsive legal policy must be formulated affirming recognition of indigenous community units as Indigenous Villages: First, by replacing the integrated village model with a model of co-existence. Second, by giving full autonomy to Indigenous Villages, including catur praja, which is the authority to form their own regulations, run their own government, implement their own justice system, and execute their own police duties. Third, by facilitating the requirements for organising indigenous community units to become Indigenous Villages. Fourth, by regulating indigenous community units to become owners of indigenous ulayat land.

Keywords: *legal policy; indigenous communities; Indigenous Villages; Village Law; legal pluralism.*

Introduction

The existence and recognition of indigenous community units was acknowledged by the Founding Fathers when compiling the State Constitution of the Republic of Indonesia. This acknowledgment was written in the explanation of Article 18 of the 1945 Constitution prior to

its amendment. This cannot be separated from the indigenous communities that existed long before Indonesian independence and held a strategic place in the struggle for independence for the Republic of Indonesia.

Philosophically, the close connection between the state and indigenous communities means that the state of Indonesia, as the highest organisation of power, is obliged to recognise, in the sense of protecting, guarding, fulfilling the rights, and respecting, indigenous community units. Paragraph IV of the Preamble to the 1945 Constitution states that Pancasila is the foundation and philosophy of the Indonesian nation and contains the noble values of the nation's culture (Kusumastuti, 2016). Pancasila contains religious values (in the first principle) (Intan, 2019; Makin, 2018), humanitarian values (in the second principle), values of unity (in the third principle) (Ch, Irawan, & Pane, 2017), values of democracy (in the fourth principle), and values of justice (in the fifth principle). The essence of the Indonesian state's recognition of and respect for the existence of indigenous communities is the state's obligation to meet the philosophical mandate of the humanitarian values, values of unity, and values of justice contained in Pancasila.

Legal policies which recognise the existence of indigenous community units can be found in various legislation, hierarchically beginning with the 1945 Constitution and ending with local regulations. The preamble and articles of the 1945 Constitution are the source of all of Indonesia's national legal policies. Article 18B clause (2) of the 1945 Constitution mandates the recognition of and respect for indigenous community units. The recognition of indigenous community units carries the following consequences: (1) recognition of indigenous community units as subjects of law; (2) recognition of indigenous government structure and order; (3) recognition of indigenous law; (4) recognition of the ownership rights of indigenous property, including indigenous territory or ulayat land.

In reality, the existence of indigenous community units has not yet received fair respect and protection from the state because the state has only awarded it pseudo recognition (Nurjaya, 2011). As a consequence, these indigenous community units are still in a weak position politically, economically, socially, and culturally, more so when coming face to face with the state institution. Even though indigenous community units are recognised by the 1945 Constitution, as stated in article 18B clause (2), the nature of this recognition is still conditional. This makes the existence of indigenous community units susceptible to not receiving their rights and not being recognised, despite the fact that historically, indigenous communities existed and were sovereign bodies prior to the establishment of the Indonesian nation.

Based on the empirical facts, the recognition and protection of indigenous communities in Indonesia is still far from expectations (Anggoro, 2017). In the study of legal policies, the state still positions indigenous communities as "objects of law" rather than "subjects of law" in their capacity as bearers of rights and obligations. New hope of affirming recognition and "legal status" of indigenous communities arose with the introduction of Law No. 6 Year 14 about Villages (Vel, Zakaria, & Bedner, 2017). With the establishment of the Unitary State of the Republic of Indonesia came the first laws regulating Villages and Indigenous Villages (Dewi, 2017). Statutory Regulations are an expansion of state legal policies, and as such they should implement the mandate of the state constitution. Village Law specifically regulates "Indigenous Villages", as the implementation of a legal policy organising indigenous community units in Indonesia, but its regulation has given rise to a complex set of problems.

Village Law, which was ratified on 15 January 2014 and applies to the whole of Indonesia, has had crucial implications for the existence of indigenous Pakraman villages in Bali. The spirit of Village Law is to implement Article 18B clause (2) of the 1945 Constitution, but instead it has created its own set of problems in Bali. The primary source of these problems is the inconsistency and lack of clarity in Article 6 of Village Law, which forbids overlapping or dualism of Indigenous Villages and Official Villages in any one area, and in the event of such dualism, a choice must be made between the Official Village and the Indigenous Village. In reality, sociologically there is a dual government system in the Pakraman villages and Official Villages in Bali, a system that is harmonious and has existed for centuries. The diversity, or what Law No. 6 Year 2014 on Villages refers to as overlapping, between Indigenous Villages and Official Villages in Bali, has never caused problems in the past because each has its own different duties and responsibilities which support each another.

Method

This research uses a socio-legal approach. A socio-legal method is developed in an interdisciplinary way to explain legal phenomena in a social, political, and cultural context (Md Hashim, Che Soh, Wok, & Md Said, 2015; Silambi, Yuldiana, Alputila, & Wijaya, 2019). A socio-legal research method is a combination of normative and empirical legal research methods (Allen & Blackham, 2018; Chen, 2017). The data used in this research consists of primary data and secondary data. The primary data was obtained from data sources through interviews (Latchem-Hastings, 2018; Webley, 2010). The secondary data already existed and could be obtained from the results of a review of literature related to the research material.

The research subjects were respondents with direct experience and interviewees who were willing to give their opinions on the object of the research. The location of the research was the province of Bali, which consists of 9 regencies/cities. The researcher collected research samples at 2 locations in city centres (in Denpasar City and Badung Regency) and 5 locations far from city centres (in the Regencies of Gianyar, Tabanan, Karangasem, Bangli and Buleleng). Interviews with respondents were selected using purposive sampling. The data analysis used a hermeneutic interpretation which translated legal texts not only in terms of legal formal aspects based on the exact text, but also by looking at the factors that formed a background to social, political, and cultural aspects (Doll & Walby, 2019: Koutidou, 2014; Newman, 2016).

Discussion

Pakraman villages as autonomous indigenous community units

In the view of Van Vollenhoven, Indigenous Villages in Bali, which are also known as Pakraman villages, are indigenous community units that represent one of 19 indigenous circles in the Dutch East Indies region. The indigenous community units that exist in the form of Pakraman villages in the Bali province are an example of the pluralism of indigenous community units that exist in an indigenous environment (Nirarta Samadhi, 2001). In Bali Province Local Regulation No. 3 Year 2001 about the Pakraman Village, it states that Pakraman villages are indigenous community units in the province of Bali, which share the same traditions and social etiquette as the Hindu community that has been passed down in the

association of Kahyangan Tiga or Kahyangan Desa, and which have their own area and property, and the right to manage their own domestic affairs.

The autonomy of Pakraman villages has strong foundations, being based on their inherent nature (original autonomy) (Eghenter, 2018), and on the power of the state, or the recognition acknowledged in Article 18B of the 1945 Constitution. The autonomy of Pakraman villages, which in essence is the authority to manage their own domestic affairs within the framework of the Unitary State of the Republic of Indonesia, is proof of the existence of legal pluralism in Balinese village government. Legal pluralism (Griffiths, 1986; Rahbari, 2018; von Benda-Beckmann, 2002) can be defined as the enforcement of Indonesian state law on one hand and community law that exists and is maintained in the form of indigenous or customary law (awig-awig) on the other, in the indigenous community units of Balinese Pakraman villages.

The extent of Pakraman village autonomy is as follows:

First, forming its own regulations (zelfwetgeving). Pakraman villages have autonomy or power to establish their own rules of law, known as awig-awig, which are regulated by a village consultative body called paruman desa. Every Pakraman village in Bali must have its own awig-awig (Wardana, 2015).

Second, running its own government (zelfluitvoering). Pakraman villages have a government structure with its own duties and responsibilities. The government structure and system in every Pakraman village may vary. In general, the government structure in Balinese Pakraman villages is made up of the bendesa or kelian desa, the kerta desa and the sabha desa. The bendesa or kelian desa is the head of the Indigenous Village (the executive body), the kerta desa is the Indigenous Village judicial institution (the judiciary), and the sabha desa is the Indigenous Village consultative institution (the legislative). Positions beneath the bendesa include the indigenous banjar, pecalang, subak (Roth, 2014), Village Economy Institution, saka truna, and other community groups.

Third, implementing its own justice system (zelfrechtspraak). Indigenous justice is implemented to restore an equilibrium that has become unstable as a result of a violation of indigenous law. Pakraman villages have the authority to resolve indigenous disputes in their own area in accordance with the awig-awig, presided over by the Kertha Desa. Trials usually take place openly in the large hall (Balai Agung). The goal is to shame those involved in the dispute, thus creating a deterrent effect. There are three kinds of traditional sanctions for violators: harta danda, or paying a stipulated fine; jiwa danda, or excommunication; and askara danda, or holding a purification ceremony.

Fourth, executing its own police duties (zelfpolitie). In a Pakraman village, the pecalang have the job of maintaining order and security in the particular Indigenous Village in their area. The provincial government of Bali, through Provincial Regulation Number 4 Year 2019 about Indigenous Villages in Bali, regulates the existence of pecalang. Based on this Provincial Regulation, the pecalang in Indigenous Villages, who are also known as Jaga Bhaya, are a traditional Balinese security task force in Indigenous Villages whose job is to maintain order and security in the wewidangan area of the Indigenous Village. In their capacity as traditional police, the pecalang also serve as officers who carry out the decisions of the indigenous court.

Philosophical values of Pakraman villages as indigenous community units.

Values of Tri Hita Karana

Tri Hita Karana is a life philosophy of indigenous communities which is based on Hindu teachings. Pakraman villages in Bali are indigenous communities characterised by their association with the Hindu philosophical foundation that lies at the centre of the lives of indigenous communities in Bali, known as Tri Hita Karana (Nama & Sugiarto, 2016). The term Tri Hita Karana is literally formed from the words tri, which means three, karana, which means reason, and hita, which means happiness (Roth & Sedana, 2015).

Tri Hita Karana is the basic principle for the realisation of a harmonious relationship between man, the universe, and God. Parhyangan means establishing a good relationship with God, pawongan means establishing a good relationship with other human beings, and palemahan means establishing a good relationship with the universe. Tri Hita Karana has become the true spirit of every facet of life in the indigenous communities in Balinese Pakraman villages (Gusti Ketut Agung Ulupui & Gurendrawati, 2018; Surtikanti, Syulasmi, & Fatimah, 2019). For the Hindu community in Bali, all aspects of life are believed to be the manifestation of the three elements of parhyangan, pawongan and palemahan (Parker, 2017). Awig-awig are rules governing the behaviour of members of indigenous communities in building good relationships with God (parhyangan), other human beings (pawongan), and nature (palemahan).

The indigenous community units in Balinese Pakraman villages always endeavour to behave in a balanced way towards their natural surroundings, and an awareness that the universe is a complexity of interrelated elements that make up a universal system. The indigenous communities of Pakraman villages believe that the basic value of indigenous life in Bali is the value of balance (Raga, 2014). This value of balance is realised in two ways. First, by always making an effort to form relationships with the natural elements and life around them. Second, by trying to create an atmosphere of peace and calm for all living creatures and nature, where human beings are just one element of the universe.

Values of Tri Kaya Parisudha

Tri Kaya Parisudha is a life concept that originates from Hindu teachings. The term Tri Kaya Parisudha comes from the words tri, which means three, kaya, which means movement, and parisudha, which means holy. Hence, Tri Kaya Parisudha means three holy actions. There are three human behaviours that must be purified, namely thinking clean and pure thoughts (manacika), speaking the truth (wacika), and doing the right thing (kayika). Therefore, Tri Kaya Parisudha is an endeavour to cleanse or purify these three human actions (Budiarta & Krismayani, 2014).

The application of the values of Tri Kaya Parisudha in Pakraman villages can be explained in more detail as follows. First, Purification of the Mind (Manacika). Three kinds of implementation for controlling the mind in an attempt to purify it are mentioned in Saracamuscaya: not wishing for anything indecent, not having negative thoughts about other living creatures, and not denying the laws of karma. Second, Purification of Speech (Wacika). There are four kinds of action for controlling speech: not lashing out, not speaking harsh words to anyone, not vilifying or defaming others, and not breaking promises or lying. Third,

Purification of Physical Actions and Behaviour (Kayika). There are three main aspects that must be controlled: not harming other living creatures, not cheating or causing harm to others, and not committing adultery (Rosalina, 2017).

The close connection between the philosophical values of Tri Hita Karana and Tri Kaya Parisudha in Balinese Pakraman villages and the values of Pancasila as the life principles of the Indonesian people can be seen clearly in the formulation of the motto of the Indonesian nation, which is Bhinneka Tunggal Ika (Unity in Diversity). In Article 36A of the 1945 Constitution, it states that the State Symbol is Garuda Pancasila, and the state motto is Bhinneka Tunggal Ika, which means 'though we are different, we are still one'.

Organisation of indigenous community units to become Indigenous Villages based on Law No. 6 Year 2014 about Villages.

Requirements for indigenous community units

Article 96 of Law No. 6 Year 2015 about Villages states that the central government, provincial government, and regency/city government should organise indigenous community units to become Indigenous Villages. The indigenous community units, which in the past have been a part of village areas, are to be organised as Indigenous Villages with a construction that combines the function of self-governing communities and local self-government. There are 3 (three) requirements that must be met by indigenous communities if they wish to change their status to become Indigenous Villages, which are regulated in Article 97 of Village Law, as outlined below.

First, the indigenous community unit and its traditional rights are still in existence, whether territorially, genealogically, or functionally. The implication of this is that the indigenous community unit, and its existing traditional rights, must own its own territory (an imperative requirement), as well as fulfilling at least one or a combination of the following elements of a community: citizens who shared group emotions; an indigenous government institution; indigenous wealth or property; and/or a set of indigenous norms (alternative requirements).

Second, the indigenous community unit and its traditional rights are viewed in accordance with the development of the community. The indicator of this is whether its existence is recognised based on prevailing laws as a reflection of the development of values that are considered ideal in the community, either for general laws or sectoral laws; and the substance of its traditional rights is recognised and respected by the members of the community unit concerned and the broader community, and does not contravene human rights.

Third, the indigenous community unit and its traditional rights do not go against the principles of the Unitary State of the Republic of Indonesia, and do not disturb the existence of the Unitary State of the Republic of Indonesia as a political and legal entity. The indicator of this is that it does not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia, and the substance of its indigenous norms fulfils and does not violate the provisions of statutory regulations.

Constructions of the organisation of indigenous communities to become Indigenous Villages

The organisation of indigenous community units to become Indigenous Villages can only be done using 2 (two) forms of construction, namely by establishing Indigenous Villages or forming Indigenous Villages. This regulation can be found in the explanation Section of Village Law, which in essence stresses that the Establishment of an Indigenous Village for the first time should be guided by Chapter XIII about Special Provisions for Indigenous Villages, and the Formation of a new Indigenous Village should be guided by the provisions in Chapter III about the Organisation of Villages in Village Law.

In the construction for the establishment of Indigenous Villages, as stated in Village Law, the requirements are extremely difficult. First, the imperative requirement is the attachment of a map of the boundaries of indigenous territory. An indigenous community is used to living with indigenous law that is unwritten but has effective enforceability (Ramstedt, 2014). Second, the procedure for the establishment of an Indigenous Village through a Local Regulation, which is preceded by the formation of an indigenous community committee, based on a Decree by the Minister of Internal Affairs Number 52 Year 2014, is not logical. The reason for this is that the structure of the Indigenous Community Committee in a particular city or regency consists only of internal members of the Local Government, headed by the Local Secretary, and supported by the Head of Village Work Unit, Head of Law Division, and Head of Sub-district as members. The structure of this committee does not involve independent members, such as community leaders, cultural leaders, or other members of the indigenous community concerned, so the results of any study by the committee will be objective.

Third, the time limit is very short, only one year since the enforcement of Village Law. Based on Article 116 clause (3), the date of enforcement of Village Law is 15 January 2014, which means that the time limit of one year is only until 15 January 2015. This one-year time limitation is a very difficult requirement because new Local Regulations must be supported by political will from the local executive and legislative bodies.

The mechanism for the formation of a new Indigenous Village has very difficult requirements, for a number of reasons. First, the organisation of indigenous community units to become Indigenous Villages must pass through the political process of formulating a Local Regulation, to which a map of the boundaries of village territory must be attached. Second, the construction of formation of an Indigenous Village has the additional requirement of a minimum number of inhabitants, which according to Article 8 of Village Law is at least 5,000 people or 1,000 heads of household for the Bali area. Third, the time required for processing the formation of an Indigenous Village is quite long, as regulated by Article 8 of Village Law. The formation of an Indigenous Village must first pass through the stage of a preliminary village, which can increase its status to become a village or Indigenous Village within a period of one to three years.

Weaknesses of the legal policy organising indigenous communities in Village Law

The legal policy of a statutory regulation is the values and philosophy underlying the creation of a norm in the law. Consequently, in order to understand the legal policy of Village Law, it is necessary to study article by article the norms that are contained in the Village Law. As a

legal product, Village Law contains a number of fundamental weaknesses in the organisation of indigenous community units to become Indigenous Villages. These are outlined below.

Inaccurate choice of legal policy organising Indigenous Villages with a model of integration

Article 6 clause (1) of Village Law states that, "Villages include Official Villages and Indigenous Villages". In the explanation of Article 6, it states that, "These provisions are to prevent the overlapping of territory, authority, and institutional duplication between an official Village and Indigenous Village in one area, therefore in one area there is only either an official Village or Indigenous Village. In the case that overlapping has already occurred between an official Village and Indigenous Village in one area, one type of Village must be chosen, in accordance with the provisions of this Law". Two aspects of Article 6 of Village Law can be criticised – its material aspect (substance) and its formal aspect (legal drafting).

In terms of its substance, there is a lack of clarity and conflict of norms between Article 6 and its explanation in Village Law. Article 6 clause (1) states that Villages include official Villages and Indigenous Villages. The conjunction "and" indicates a cumulative nature in the equal status, which can be understood to mean there are 2 (two) social entities or social institutions, namely the official Village and the Indigenous Village. However, the explanation of Article 6 contains a contradictory statement, namely that in one area, there is "only" an official Village or Indigenous Village. The conjunction "or" indicates an alternative nature, so that "it is obligatory to choose one" type of Village in accordance with the provisions of Village Law.

On the aspect of legal drafting, Article 6 of Village Law states that Villages include official Villages and Indigenous Villages. The norm of this article means that the official Village and Indigenous Village are two different legal entities or subjects of law but have equal status. The official Village and Indigenous Village is understood to be the same entity, whereas according to Article 6 of Village Law, they are two different entities. This is a form of inconsistency in the aspect of legal drafting. The use of the word "and" indicates a cumulative detail, and therefore it cannot be understood as an alternative detail which requires the selection of one type of village – the official Village or Indigenous Village. Not a single provision throughout the length of the regulation of Official Villages and Indigenous Villages in Village Law requires that Indigenous Villages must be changed into Official Villages or vice versa, except the explanation of article 6. There is therefore both an inconsistency and contradiction between the stipulations of Article 6 and its explanation. This leads to difficulties in its implementation in the field.

In its empirical reality, the relationship between Pakraman Villages and Official Villages displays a duality, a synergy that offers mutual support and reinforcement, not a rivalry due to the obvious differences in function. It is not clear what the argumentation was which led to the logic for formulating a Village Law that requires the Bali Province to choose only one type of village, from either the Indigenous Village or Official Village. Philosophically, the essence of this policy of recognition should not destroy what already exists and bring to life what is already dead. The Balinese community is conducive to the existing duality of the Indigenous Village and Official Village, and there is therefore no need to destroy either one or the other. There has been a suggestion to exempt Bali from the obligation to choose one particular type of village, as regulated by Village Law, because it is unsettling for the Balinese people who have always

lived in harmony with the duality between the Indigenous Village and Official Village (interview with Wayan P. Windia, Professor in Balinese Indigenous Law, Law Faculty, Udayana University, Bali, 27 May 2018).

According to I Wayan Rideng, an academic from Panji Sakti University, Bali, (interview, 11 August 2018), the provisions of Article 6 Law No. 6 Year 2014 contain norms that intervene in the autonomy, independence, and existence of Indigenous Villages, of which the essence, function, and role is very different from those of villages based on state law. Under closer observation, it appears that the provisions intervene in the indigenous institution system, the establishment of Indigenous Village rules, the formation, unification, and dissolution of Indigenous Villages, and Indigenous Village assets that have a nuance of sekala and niskala, because Indigenous Villages are viewed as and treated as Official Villages according to the local government system at village level as an organ of central government.

Incomplete regulation of indigenous territory in Village Law

Village Law is the first law to follow up on the norms of Article 18B clause (2) of the 1945 Constitution. The ruling of the Constitutional Court Number 35/PUU-X/2012, which declares that indigenous forest is no longer a part of state forest but is forest that is found in the territory of indigenous communities, this is expanded on in Village Law in Chapter XIII about the Special Provisions of Indigenous Villages. Article 18B clause (2) of the 1945 Constitution declares that the State recognises and respects indigenous community units and their traditional rights as long as they continue to live and abide by the social developments and principles of the Unitary State of the Republic of Indonesia, as regulated by law (Hammar, 2018). In essence, this norm awards recognition to indigenous communities in three aspects that are completely related to one another, namely owners rights, legal subjects, and owners of indigenous territory.

Article 97 clause (2) of Village Law states that indigenous community units and their traditional rights that still exist must own territory as an imperative requirement. Article 103 in conjunction with Article 19 in Village Law regulates the authority of Indigenous Villages based on original rights, including the authority to organise and manage ulayat land or indigenous territory which must "be in accordance with the provisions of statutory regulations". In the explanation section, it states that the authority of indigenous community units with regard to regulating ulayat land rights refers to the provision of related sectoral statutory regulations. Village Law is incomplete in its regulation of indigenous territory because it fails to pay attention to other sectoral legislation such as Basic Agrarian Law.

Difficulty in requirements for affirming recognition of indigenous community units to become Indigenous Villages

There are two constructions in Village Law for the process of organising indigenous community units to become Indigenous Villages, namely the construction of establishment of Indigenous Villages and the construction of formation of Indigenous Villages. These two constructions both have requirements that are extremely difficult to fulfil. The requirements stipulated in Village Law that present the greatest burden for indigenous community units are as follows: (a) the number of inhabitants, for the area of Bali, must be at least 5,000 people or 1,000 heads of household (Article 8); (b) a map of territorial boundaries must be attached

(Article 101); and (c) a time limit of only one year is allowed for the establishment of an Indigenous Village, as stipulated in Article 116 of Village Law.

In reality, implementation of the stipulated one-year time limit for the process of establishing an indigenous community unit to become an Indigenous Village is impossible to achieve, so Article 116 of Village Law is no more than a norm on paper.

Formulation of a responsive legal policy affirming recognition of indigenous community units

The Preamble and Articles of the 1945 Constitution are the source of all national legal policies in Indonesia. The state has an obligation to strive to ensure the general welfare of all the Indonesian people. The people who have bound themselves to the Indonesian nation are reflected in the motto on the State Symbol, Garuda Pancasila: Bhinneka Tunggal Ika, which means Unity in Diversity (Pedersen, 2016). The traditional rights of all the people, who are made up of various classes and ethnic groups, with different religions, customs, and habits, and were formed as a community of law that existed before the establishment of the Indonesian nation, are still recognised and respected.

The state created a legal policy affirming indigenous communities by organising them to become Indigenous Villages, as regulated in Village Law. With the construction which combines the function of a self-governing community and a local self-government, it was hoped to affirm these indigenous community units that in the past have been a part of Official Villages, by organising them to become Official Villages and Indigenous Villages. Indigenous Villages have the function of government, village finance (Antlöv, Wetterberg, & Dharmawan, 2016), village development, as well as facilities and supervision from the city/regency government. In this position, Villages and Indigenous Villages receive the same treatment from Central Government and Local Government.

The selected model of legal policy in Village Law, which regulates the relations between Villages and Indigenous Villages, cannot be separated from the legal policy about the relations between state law and unwritten indigenous law. There are two models that can be offered as a choice for a legal policy organising Indigenous Villages and villages in the formulation of Village Law, namely the integrated village model and the model of co-existence. The choice to use an integrated village model can be seen in Article 6 and the explanation of Village Law. This policy, which states an obligation to choose one type of village, namely an Official Village or an Indigenous Village in one area, is proof that the model of an integrated village is the choice of legal policy for Indigenous Villages outlined in Village Law.

Implementation of Article 6 of Village Law has caused unrest and has a strong potential to create conflict for the indigenous community units in Balinese Pakraman villages. The root of the problem is the inconsistency of Article 6 of Village Law, which demands the choice of only one type of village. The research results show the opposing differences between Indigenous Villages and official Villages. Indigenous leaders (bendesa) believe, “it is better to register Indigenous Villages”. On the contrary, Official Villages (Perbekel) say, “it is better to register Official Villages”. When the object of the interview was broadened, it was found that the majority wanted to preserve the current system of village duality. Several leading figures in the Balinese community stated that it would be better to preserve the duality of Indigenous Villages

and Official Villages because it has been proven that they can live in harmony up to the present day (interview with I Wayan Supat, Head of Indigenous Village (Bendesa) Penglipuran, Bangli Regency, 23 May 2016).

The Main Pakraman Village Assembly (Majelis Utama Desa Pakraman or MUDP), as the representative of the organisation of Pakraman villages in the Bali province, even proposed that Bali could be excluded from this rule, allowing the two types of village – the Indigenous Villages and Official Villages – to continue to exist side by side with their different functions. The indigenous Pakraman village functions more in the social, cultural, customary, and religious domain, while the Official Village functions more in the management of government administration and development (interview with Ida Bagus Geger, Head of Law Division, Local Badung Regency Government, Bali, 26 May, 2016).

In Village Law, there is an inconsistency between the doctrine and its text, since the doctrine promotes the welfare of indigenous communities but the reality of its organisation is dominated more by political issues (Tamatea, 2011), financial matters, and control of natural resources. Another inconsistency is related to practice in the community. The spirit of Village Law, which wishes to elevate indigenous community units, is instead weakening them. Pakraman villages will lose their autonomy, which is the spirit of the entity of indigenous community units, because in the scheme of Village Law, they are designed to become government organs that carry out the governmental, developmental, and financial function. If the scheme of Village Law is enforced, these inconsistencies with the pluralistic nature of the Constitution and the ideology of Pancasila with its Bhinneka Tunggal Ika motto will become increasingly obvious (Tokawa, 2016).

The fact that the construction of the legal policy affirming recognition of indigenous community units through organisation to become Indigenous Villages is saddled with requirements that are difficult to meet because the model of village integration used is unsuitable and rejected by the Balinese community, together with the inconsistencies between Village Law and the ideology of Pancasila, are important findings in this research. Referring to these indicators, the legal policy affirming recognition of indigenous community units to become Indigenous Villages, which is embraced by Village Law, can be qualified as a legal policy of pseudo recognition rather than genuine recognition.

Table 1: Comparing Legal Policies for Organising Indigenous Community Units in Village Law and in an Ideal Format

Legal Policy for Organising Indigenous Communities in Village Law	**Ideal Legal Policy for Organising Indigenous Communities**
Basis 1. Article 18B clause (2) UUD Year 1945 2. Village Law	**Basis** 1. Article 18B clause (2) UUD Year 1945 2. Village Law 3. Values that exist in indigenous community units

Subject	**Subject**
Only one village can be registered by the state, either a village, Indigenous Village, or integrated village, as a government subject	More than one village – namely a Village (government affairs) and Indigenous Village (indigenous affairs) – can be recognised as a legal subject, living side-by-side in a model of co-existence
Goal	**Goal**
To give clarity of status and legal certainty for the village, Indigenous Village, or integrated village as a government subject based on the paradigm of legal centralism in the Indonesian constitutional system	To implement the mandate of the Preamble to the 1945 Constitution which protects all citizens of all groups and classes so that legal certainty is needed for the status of co-existence villages based on the paradigm of legal pluralism in the Indonesian constitutional system
Substance 1. Central Government, Provincial Government, and District/City Government organises indigenous community units to become Indigenous Villages. 2. The legal policy organising indigenous community units as Indigenous Villages with a model of integration (to form integrated villages) requires the choice of either the village or the Indigenous Village as the only village that can be registered by the government through a Local Regulation. 3. The following requirements are difficult to meet in the process of organising indigenous community units: 1) Establishing an Indigenous Village has only a one-year time limit, with the formulation of a local law and attachment of a map of territorial boundaries. 2) Forming an Indigenous Village has a requirement in the Bali area of at least 5,000 people or 1,000 heads of household. 3) Incomplete regulation of ulayat land in Law No. 6 Year 2014, because it refers to the provisions of other sectorial statutory regulations.	**Substance** 1. The state organises indigenous community units by giving autonomy to communities in the form of authority to form their own laws (zelfwetgeving), run their own government (zelfluitvoering), implement their own justice system (zelfrechtspraak), and execute their own police duties (zelfpolitie). 2. The legal policy organising indigenous community units uses a model of co-existence villages, in which villages and Indigenous Villages support each other, because they each have their own different functions which do not negate each other. 3. Requirements need to be made that are realistic and can be met, without a one-year time limit or minimum number of inhabitants. 4. In the regulation of indigenous territory (ulayat land), regulations should be encouraged which regulate indigenous communities as the owners of indigenous land through a Draft Bill Recognising and Protecting Indigenous Communities in order to strengthen the autonomy of indigenous community units.

Based on the table above, the comparison of legal policies affirming recognition of indigenous community units to become Indigenous Villages in Village Law and in an ideal format shows different dimensions of consequence. The construction of the legal policy organising indigenous community units based on Village Law, which uses an integrated village model, cannot be implemented (in Bali) because it is constrained by requirements that are extremely difficult to meet, thus confirming the pseudo recognition in the legal policy affirming recognition of indigenous community units. The writer proposes a legal policy which organises indigenous community units using a model of co-existence, wherein Official Villages and Indigenous Villages exist side by side based on their own function, in accordance with the mandate in the Preamble to the 1945 Constitution. The village government system, with its model of duality between the Pakraman village and the Official Village, represents the needs of indigenous community units in Bali. This means that the life values of indigenous communities continue to be preserved. A legal policy from the state which is responsive in terms of strengthening the autonomy of indigenous community units can be referred to as a policy of genuine recognition.

Conclusion

In essence, traditional Pakraman villages are autonomous indigenous community units. The autonomy of Pakraman villages has strong foundations because it is based on their own inherent nature and is recognised by the state constitution, specifically in Article 18B clause (2) of the 1945 Constitution. Pakraman villages have autonomy, in accordance with the doctrine catur praja, which includes: forming their own regulations, or awig-awig; running their own government, headed by a prajuru, implementing their own justice system, supervised by the kertha desa, and executing their own police duties, by the pecalang. The autonomy of Pakraman villages as indigenous community units is founded on philosophical values that continue to exist, namely Tri Hita Karana and Tri Kaya Parisudha. The value of balance in Tri Hita Karana and Tri Kaya Parisudha is the basic life value of indigenous communities in Bali.

Affirmation of recognition of indigenous community units by organising them to become Indigenous Villages in the Bali province is an instruction of Village Law through the construction of establishing Indigenous Villages or forming Indigenous Villages. The construction for establishing Indigenous Villages has requirements that are difficult to meet, such as the one year time limit, while the construction for forming Indigenous Villages, with a requirement of at least 5,000 inhabitants or 1,000 heads of household, is impossible to achieve. The difficulty in implementing the affirmation of recognition of indigenous community units to become Indigenous Villages is increased by the weak nature of the legal policy contained in Law No. 6 Year 2014 about the Village, which organises Indigenous Villages using a model of integration and regulates indigenous territory in an inadequate way.

The formulation of a legal policy which is ideal and responsive in affirming recognition of indigenous community units to become Indigenous Villages can be devised as follows: First, making a fundamental change by replacing the integrated village model with a co-existence village model; Second, reinforcing the existence of indigenous communities through community autonomy (catur praja): zelfwetgeving, zelfluitvoering, zelfrechtspraak, and zelfpolitie; Third, transforming indigenous community units into Indigenous Villages with realistic requirements; and Fourth, establishing regulations and recognition of indigenous territorial rights (ulayat land rights) for indigenous community units, as the rightful owners, as

regulated through Laws Recognising and Protecting Indigenous Communities. An ideal legal policy organising indigenous community units should use a model of co-existence, wherein villages and Indigenous Villages live side by side in accordance with the mandate of the Constitution, so that the legal policy becomes an affirmation of genuine recognition by the state.

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