

# Model Of Legal Pluralism In The Protection Of Balinese Cultural Heritage

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## MODEL OF LEGAL PLURALISM IN THE PROTECTION OF BALINESE CULTURAL HERITAGE

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### Abstract

*The cultural heritage of Bali encompasses the entire cultural heritage that is material and non-material, man-made and natural, which is inherited by the generation of Balinese people who preceded the successor generation of Balinese. Balinese cultural heritage as an element of culture, carries a variety of instrumental functions in the order of life of the Balinese people, including: the functions of ontology, psychology, politics and economics. The function of ontology is a function of identity markers for Balinese people, both on the order of national and international communities. Psychological instrumental function is a function of self-identification of a community that determines the condition of the mentality of a cultural community. The instrumental function of politics is a function of self-identification of a community to choose to live bound in a community unit based on common interests, namely the shared interests of community members that are recognized by the community's cultural expression. The instrumental function of the economy is the function of culture as an economic resource. In the last instrumental function, Balinese culture is the only example in the order of life of national and international communities, in which Balinese culture carries a real function as an economic resource. The sustainability of these functions needs to be maintained and improved, both in the context of the sustainability of the role and function of culture and in the context of the economic sustainability of Bali tourism. In an effort to provide direction, foundation and legal certainty in organizing the preservation of Balinese Cultural Heritage, arrangements must be made. The protection, maintenance, development and utilization of Balinese cultural heritage activities are not enough to rely solely on the role of the local government, but there must also be the involvement of the legal unity of indigenous peoples in Bali to be able to provide legal protection for the Balinese cultural heritage. The legal pluralism model is very appropriate to be a protection design for the Balinese cultural heritage. State law, customary law and Hindu religious teachings have a similar role in efforts to protect the Balinese cultural heritage.*

**Keywords :** *Legal Pluralism, Balinese Cultural Heritage*

### INTRODUCTION

The island of Bali with its uniqueness in the era of globalization has had an impact on the rapid development of tourism which has contributed to the creation of employment and investment, but on the other hand has resulted in high migration to Bali, especially in southern Bali, both from Bali

and outside of Bali. The development of Bali as a tourism destination cannot be separated from its cultural heritage.

Tourism has an important role in the development of Bali, in addition to supporting the economy, it can also reduce unemployment in Bali. However, it turns out tourism also provides negative aspects, especially for cultural developments in Bali if not done in the right way. Especially in the era of globalization, cultural exchange cannot be avoided. Do not get there, under the pretext of making the maximum profit from tourism commodities in Bali as if ignoring which things are sacred and which are profane. The Balinese culture until now in the remote areas there are many cultures that are sacred in nature and not to be exhibited in the general public, especially for tourists.

The threat of capitalization to Balinese culture as a tourism commodity certainly cannot be separated from the economic strength that becomes an attraction. However, this certainly cannot be fully justified, the Balinese culture which is classified as sacred must remain steady. It is necessary to intervene and the participation of all parties and means to be able to run cultural heritage that is far from the values of capitalization. In Bali, religious symbols are not uncommon, sacred objects become commodities that are traded for the sole purpose of being a tourist attraction. Religious symbols, sacred objects should still be in their realm as sacred cultures and not to become tourism commodities, they should be filtered out. One means that can be used to filter western culture (read: capitalization) towards cultural heritage in Bali is law.

Law here is certainly not only a law in terms of substance, but in the sense of a legal system. The law referred to here is the existence of legal structure participation, legal substance, and community legal culture. In protecting the Balinese cultural heritage there is not only the role of the state but there is also the role of indigenous peoples there as a form of legal pluralism to filtrate the capitalization of Balinese cultural heritage. Based on the brief description of the background, we can briefly formulate the problems examined regarding How is the legal pluralism model used as a filtration capitalization of cultural heritage in Bali?

## DISCUSSION

It is interesting to explore the legal statement as a filtration capitalization of cultural heritage in Bali. At least there are several important concepts that need to be explained earlier, the first of which is about law. As previously stated above, the law that is expected to play a role here is law in the sense of a legal system. Legal systems that are in reality in society. Law in the reality of society is a system that works complementary. Borrowing the opinion of Lawrence Freidman (2009: 2-17), stating that law as a system consists of structure as a real element in the law as a permanent body framework in this case related to the structure of forming and law enforcement. The substance is composed of rules and regulations and the provisions of how the legal structure agency must behave related to the regulation of cultural heritage both by the government and indigenous peoples. Whereas legal culture is a social force that constantly moves the law which is an element of social attitudes and values related to public awareness in their interactions regarding the existence of cultural heritage.

One legal consequence in the context of society, the law will always be influenced and influence various factors, one of which is globalization. Globalization has changed society, including the law which has undergone changes in tune with the changing global society. The law in managing the life of the nation and state in Indonesia in the era of globalization has a very important role. Problems will arise when designing laws in the global era that are in accordance with Indonesian social values and structures. It is very necessary to be critical and willing to think openly and holistically in this matter. In accordance with the opinion of Yusriadi (2009: 54) states the idea that the law must be considered not independent of the economic, political, social and cultural fields in accordance with the reality in society.

Second, filtration capitalization can be interpreted as filtering or limiting western culture, one of which is capitalization. Capitalization referred to here can be equated as an activity that changes

something that initially does not have an economic aspect into something that has a fairly high selling power. Whereas, thirdly, cultural heritage can be interpreted as a tourism package that emphasizes cultural aspects as tourism commodities originating from the customs of the island of Bali. So, based on the above concept, it can be stated that what is meant by law as a filtration of capitalization of cultural heritage is law as a system that limits or screens all activities to make cultural heritage an unlimited commodity economy.

#### **BALI HAS LAWS THAT REGULATE CULTURAL HERITAGE**

The development of cultural heritage in Bali as a tourism commodity is certainly not without limitations. The provincial government of Bali, both legislative and executive, has formed Regional Regulations on Cultural heritage. Stipulated in the Regional Regulation of Bali Province Number 2 of 2012 concerning Bali Cultural heritage. This regulation was formed on the grounds that Balinese culture as part of Indonesian culture is the main foundation of Bali's tourism development, which is able to drive the potential of tourism in the dynamics of local, national and global life and that the development of tourism in Bali aims to encourage equal opportunity -big for the welfare of the community so that the ideal of tourism for Bali and not Bali is realized for tourism. Regional Regulation of Bali Province Number 2 of 2012 concerning Bali Cultural heritage is thick with the values of local wisdom of Balinese culture.

The development of law in Bali besides having to pay attention to local wisdom must also be based on legal foundation in Indonesia, namely *Pancasila* values which are then elaborated in the form of legislation, one of which is in the form of a regulation on cultural heritage in Bali. Related to efforts to build a law that is the guardian of cultural heritage in *Pancasila*-based Bali it needs to be emphasized that the law of cultural heritage should be framed with enthusiasm from the 5 (five) values in *Pancasila*.

One of Bali's local wisdoms in the Regional Regulation of Bali Province Number 2 of 2012 concerning Bali Cultural heritage is *tri hitakarana*. *Trihitakarana* is a philosophy of life of the Balinese people that contains three elements that build a balance and harmony of the relationship between humans and God, humans and humans, and humans and their environment which is a source of prosperity, peace and happiness for human life. Bali tourism is based on Balinese culture imbued by the teachings of Hinduism and the philosophy of *trihitakarana* as the main potential by using tourism as a vehicle for its actualization, so that a dynamic reciprocal relationship between tourism and culture is realized that makes both develop synergistically, harmoniously and sustainably for can provide welfare to the community, preservation of culture and environment

Content material that prioritizes local wisdom is a form of legal political choice of the Bali Provincial Government to guard tourism still on the Balinese cultural heritage rails. The Bali Provincial Government in the era of regional autonomy has the authority to highlight its regional characteristics but still in the frame of *Pancasila* values. The politics of law itself is interpreted as a policy line used by the provincial government of Bali in establishing its regional regulations.

#### **BALI CULTURAL HERITAGE LAW IS CLASSIFIED AS RESPONSIVE LAW**

As stated earlier, the law referred to in this paper is not only a law in terms of regulation but also includes the participation of law enforcers and the legal culture of society. The role of the government and its organs as law enforcers to prevent and take action against the capitalization of cultural heritage in Bali. The government forms rules and enforces them in accordance with the principles of the rule of law. Borrowing the opinion of Asshiddiqie (2006: 151-162) is one of the characteristics of a legal state, namely the principle of legality and protecting human rights. In other words, the establishment of a Cultural heritage Regional Regulation by the Government of Bali Province as a form of actualization of the translation of the rule of law in Indonesia. Cultural heritage

regulations in Bali were established to guarantee the principle of legality of protection for cultural heritage in Bali and on the other hand also protect human rights.

In addition to the role of the government, there is also the role of the community in maintaining Balinese cultural heritage far from capitalization values. Community participation is regulated in the provisions of Article 24 paragraph (1) which states that the Community has the right to obtain the widest opportunity to participate in tourism management, then in Paragraph (2) stating the Rights as referred to in paragraph (1) include: as a worker in a tourism business, as a tourist attraction manager, carry out promotions; and sit in tourism institutions. Not only the community in the private sense of individuals who have a role to play in maintaining cultural heritage in accordance with traditional values and Balinese culture, there are also roles for traditional institutions in Bali, in this case customary village, better known as customary village. In accordance with the provisions of Article 25 which states that customary village and / or other traditional institutions can work with local governments to make efforts to prevent tourism activities that are not in accordance with Balinese cultural heritage.

The regulation of the role of the government and the community in the regulation on cultural heritage in Bali can be classified as a local regulation that has led to a law that has a responsive type. As Mahfud M.D (1998: 25) argues based on Nonet and Selznick's view that responsive law is a law based on urgent social needs and on social justice issues, promoting justice based on the public's desire to achieve substantive justice.

Thus, the law here is both the structure, substance, and legal culture of the community which is regulated in the Regional Regulation of Bali Province Number 2 of 2012 concerning Bali Cultural heritage not only to achieve the legal goal of justice, but also to achieve the values of legal certainty and the value of legal benefits for the community. It also means that the Balinese cultural heritage law guarantees legal certainty for the protection of Balinese cultural heritage and also guarantees the fulfillment of the values of legal benefits for the community. This is in accordance with the objectives of the law itself, namely to achieve justice, guarantee legal certainty, and achieve benefits for the community.

#### **The Model of Legal Pluralism as a Filtration of the Capitalization of Balinese Cultural Heritage**

It cannot be denied together that the beauty of Balinese cultural heritage depends on the extent to which tourism actors maintain tourism in Bali on the Balinese cultural-minded rail and far from capitalist values. In the provisions of Article 27 paragraph (3) Regional Regulation of Bali Province Number 2 of 2012 concerning Bali Cultural heritage outlines that tourism entrepreneurs are obliged to preserve Balinese culture, maintain and respect religious norms, customs, culture and values that live in the local community, build tourism facilities with style Balinese architecture or at least beautified by highlighting the characteristics of Balinese cultural arts, spatial planning and its components, and preventing all forms of acts that violate decency and illegal activities in the business environment. Thus, the regulation on Balinese cultural heritage filters all forms of tourism businesses that want to reduce the values of the distinctiveness of Balinese culture while still giving limits to the sacred and profane culture.

If tourism actors do not heed the rules contained in the regulation, the business actor will be sanctioned in accordance with the provisions of Article 33 Paragraphs (1) and (2) which provide sanctions ranging from administrative sanctions, written warnings, restrictions on business activities, and temporary suspension business activities. In addition, if the violation is more directed towards physical and non-physical destruction of tourist attractions and uses religious symbols, objects that are sacred with the sole purpose of being a tourist attraction, according to the provisions of Article 35 paragraph (1) can be sentenced convicted with confinement for a maximum of 3 (three) months or a maximum fine of Rp. 50,000,000 (fifty million rupiah). Paragraph (2) states that criminal acts as referred to in paragraph (1) are violations. Paragraph (3) states that in addition to threats to criminal

acts as referred to in paragraph (1), they can also be criminally punished in accordance with other laws and regulations.

So based on these provisions it is clear that the law contained in the cultural heritage regulations if using religious symbols, objects sacred with the sole purpose of being a tourist attraction (leading to activities of capitalizing on Balinese cultural heritage) will be sanctioned. This is what is meant by law as a means of filtration of capitalization of cultural heritage in Bali.

Not only through the product of regional law as part of state law as a means of filtration of capitalization of the Balinese cultural heritage, but also there is a role for Balinese customary law which also plays a role in conducting filtration capitalization of Balinese cultural heritage. The customary law referred to is the *awig-awig* local customary village as a law that grows from the needs of the community. So that in a top-down manner, namely the upper part of state law and the lower part of customary law as a form of pluralism, the means of filtration capitalize on Balinese cultural heritage.

Capitalist ideology is an ideology born of the view of life in western society, born on the basis of putting aside the values of religious teachings to regulate human life. Piliang (2004: 109), states that the world is infected with consumerism which is attributed to the fulfillment of service to lust, namely the lust of material, lust of power, lust of sexuality, lust of fame, passion for beauty, fitness, beauty and pleasure. So that there is little room to develop the sharpening of the heart, the growth of wisdom, the increase in faith, and the growth of wisdom. Consumerism is an inseparable part of the development of capitalism by globalizing global economic understandings in the era of globalization.

Using the law as a means of filtration of capitalization of Balinese cultural heritage supported by local wisdom of Bali will prevent the development of tourism that does not provide welfare to the local community. The practices of new forms of colonialism and imperialism have resulted in local communities being powerless to face the power of the large capital that enters. Also avoid the urge for norms in society, so that people avoid dis-orientation.

The use of law as a means of filtration of capitalist culture towards cultural heritage in Bali is a form of translation of the law for society not a law for capitalists. That is, law as a system is used as much as possible for the welfare of the people and safeguarding the noble values that exist in society is not a law which actually becomes a tool of development without limitation of capitalist values of western culture. This is also in accordance with the function of the law itself, namely as a controller of the social life of the community.

Do not intend to run an anti-foreign cultural movement but want to share the idea that it is important to filter with one's own culture. Law as a means of filtration of capitalist ideology remains in the legal signs that are guided by *Pancasila*, namely: the law of the Godhead, the law of humanity, the law that guarantees unity, the law that guarantees democracy and deliberation of consensus, and the law that guarantees fair justice with the mandate of the *Pancasila*. Law based on *Pancasila* is a law that has undergone a screening of all kinds of cultures that exist in other words as prismatic law.

## CONCLUSIONS AND SUGGESTIONS

Based on the discussion of the above problems it can be concluded that: Capitalization of cultural heritage in Bali needs to be prevented and filtered and facilities that can be used as a means of filtration of cultural heritage in Bali are laws in the form of Regional Regulations and traditional village *awig-awig* as part of the customary law, not only from the substantive side, but also requires encouragement and support from the law enforcement structure and the participation of indigenous peoples in Bali while maintaining Balinese cultural heritage based on Balinese local wisdom that is far from capitalist values. Suggestions that can be conveyed, namely: in using the law as a means of filtration capitalization of Balinese cultural heritage should still be guided by the values of local Balinese wisdom and values contained in *Pancasila*, so that in the future the law is expected to prosper the people as guardians of values noble cultural values of the nation.



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