

# Subak

*by* I Putu Sastra Wibawa

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## 12 Legal Pluralism In *Subak* Regulation In Bali

I Putu Sastra Wibawa

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Faculty of Religion and Culture, Hindu University of Indonesia, Denpasar, Indonesia

*e-mail: sastra@unhi.ac.id*

### 1 ABSTRACT

Subak as a part of Balinese culture is a social organization that has the potential to improve the welfare of the community through its main activities in regulating the use of water for irrigation of rice fields, so it needs to be recognized and respected its existence along with its traditional rights. To maintain the existence of Subak, the Government Provincial of Bali through its authority in the era of autonomy to form a local regulation that specifically regulates the Subak, which is contained in local regulations Number 9 of 2012. Interesting to be studied Subak as an institution based on Pancasila, Indonesian Constitution, concept of tri hita karana, and imbued Hindusm. Then, in term of legal theory, Subak arrangement pertained in the implementation of legal pluralism theory into the local regulations in Bali, Thus the study needs to be done, 1) What is principles of legal pluralism contained in the local regulations on Subak, and 2) Why local regulations on Subak need to be framed in the politics of legal pluralism. The theory used to dissect the theory of legal pluralism and the theory of recht state, using normative research methods, with the statute, conceptual, analytical, and philosophy approach.

**Keyword.** Legal Pluralism, Subak

### 8 Introduction

Subak is a traditional organization in the field of water use at the level of agricultural effort on indigenous peoples in Bali that are socio-agrarian, religious, economic, which historically continue to grow and develop. Although Subak is a typical irrigation system in Bali imbued by Hinduism, mainly because religious ritual ceremonies that always accompany each activity, also have noble values that are universal and highly relevant to the concept of sustainable development. These values are the philosophy of *Tri Hita Karana* which underlies every Subak activities. In Subak juridical sense, Subak stipulates in local regulation No. 9 of 2012 on Subak stating "Subak as part of Balinese culture is a social organization has the potential to improve the welfare of the community through its main activities regulating water use for irrigated rice fields", so it needs to be recognized and respected its existence and its traditional rights.

As has been described above Subak has now received juridical recognition through Bali Provincial Regional Regulation No. 9 of 2012 about Subak. Subak arrangements in the law products of the regional regulations at least give an illustration that the Subak regulation is an indispensable part of the authority of the province of Bali in the era of regional autonomy

to establish regulations in accordance with the regional characteristics, in addition Subak arrangements in local regulations in Indonesia have affirmed that Indonesia Adheres to the politics of pluralism law based on enforcement on more than one legal system in a social environment. Therefore, based on the description, it is interesting to examine the politics of legal pluralism with the arrangement of Subak in Bali, namely, 1) regarding the underlying foundations of political pluralism in the governance of Subak in Bali, and 2) political principles of legal pluralism in the setting of Subak in Bali. Based on these thoughts, this research raised the title "Political Legal Pluralism in Subak Settings in Bali"

### Research Method

This research uses normative research, using approach of legislation, conceptual approach, annex approach and philosophical approach. This study uses primary legal materials in the form of Bali Provincial Regulation No. 9 of 2012, as well as secondary legal materials in the form of documents and library materials to support primary legal materials. Analysis of legal materials is analyzed qualitatively with interpretative methods

## Results and Discussion

The law in the Indonesian context, which has a diversity of socio-cultural systems, still survives to maintain its traditions, customs or customs. Has its own normative dimension that cannot be generalized, or simply uniformed with the presence of state law, although its format or is produced by even the most democratic formal mechanism. This context, local people with a system with a soul or local characteristics need state recognition. People's law is a product born of the people, managed and maintained by the people in their own way. It is related to social relations, where the people's law is a manifestation of the soul of society. Indispensable critical attitude and willingness to think open and holistic in this case. In accordance with the idea that the law should be considered not separated with the economic, political, social and cultural fields after the reality in society (Yusriadi, 2009). Law in the reality of society is a system that works complement each other. To borrow Freidman opinion, to declare law as a system composed of structure as a real element in law as a permanent body framework in this case related to the structure of the shaper and enforcer of law (Freidman, 2009).

The approach of legal pluralism in complementing ways to resolve problems occurring in local communities becomes relevant. This approach to legal pluralism is critically not merely a law (local) as reality, or law as a social reality. Similarly, legal pluralism is that there is more than one legal system prevailing in an interconnected society (Beckmann, 2001). The conception of legal pluralism is very important to be reinvented, as local laws are necessary for the context of particular cases, but also because they are needed to support and respond to legal social movements in order to dismantle the rule-centered paradigm order, or in the sense of placing legal pluralism movement's respect, protection and fulfillment of human rights. Legal pluralism can be viewed as facilitating fully discrete choices that ascribe to one legal order or another (Choudhury, 2017). Legal pluralism answers the needs of local people to live their own laws without having to rely on state laws. Therefore, the state must understand and provide a wider space of diversity of local

legal mechanisms in solving their own problems, including expressly appreciating its existence as a law applicable in society.

The politics of legal pluralism in the setting of Subak in Bali there are several underlying reasons, among others: *First*, Political pluralism of *Subak* in local regulations: perspectives of state law. This is in accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states "the state of Indonesia is a state of law". The country of law which is embraced by Indonesia cannot be separated from the law which guarantees the values of justice, certainty, and expediency. In line with the opinion of Satjipto who holds Gustav Radbruch's opinion that the law is required to fulfill the basic values of the law, namely justice, utility, and legal certainty. All three elements must be complementary to one another. *Subak* part of the environmental, sustainable environmental part of rights. The birth of the public lawsuit because the public is aware that the law as part of the legal system is an instrument to protect their rights to obtain justice. If the law does not protect their rights, then they should sue the law (Sulistyowati, 2011).

*Second*, Political law pluralism *Subak* in local regulation: perspective facts of Law pluralism. Political regulation by law in Indonesia can not simply adopt a uniform, absolute and centralized regulatory model for a community full of heterogeneity both physically and socially. The reality of the diversity and plurality of such communities often leads to legal conflicts, especially in the management of natural resources, land, agriculture and the environment.

*Third*, Political legal pluralism of *Subak* in local regulation: perspective of regional autonomy and content of local regulation. *Subak* recognition in regional regulation as part of the unity of Balinese customary law community along with its traditional rights is within the sphere of regional autonomy. If you look at the purpose of regional autonomy in terms of decentralization, there is a government goal to pay attention and take into account the specificity of a particular region. Pluralism is inevitable, requiring a fairly neutral political norm to preserve the integrity of the state. Broadly speaking, the content of regional regulation No. 9/2012 on *Subak* related to the politics of legal pluralism is outlined on the

basis that law is plural if it meets at least 3 (three) elements, namely community culture, state law, and religious, ethical and moral elements (Menski, 2015) is illustrated in the form of the table below:

**Table 1**  
**Content Matter of Local Regulation about Subak in Bali**

| No | Moral, Etika, dan Agama |       | Negara   |             | Unsur Masyarakat                                    |                             |
|----|-------------------------|-------|--|-------------|---|-----------------------------|
|    | Unsur                   | Pasal | Unsur  | Pasal       | Unsur   | Pasal                       |
| 1  | Parhyangan Subak        | 1,6   | Government, Governor, regent                   | 1,5,8,10,13 | Subak   | 1,3,4,5,6,7,8,9,12,15,16,17 |
| 2  | Hindu Religion          | 2     | Pancasila                                      | 2,9         | Tempekan/Munduk                                     | 1                           |
| 3  | Value Hindu Religion    | 8     | Constitution of the Republic of Indonesia 1945 | 2,9         | Krama Subak   | 1,5,8,10,15,18,20           |
| 4  | Justice Value           | 11    | Regulation of Desa Dinas                       | 9,14        | Pawongan Subak, Palemahan Subak                     | 1,4,5,6                     |
| 6  |                         |       |  |             | awig-awig subak.                                    | 1,6,8,9,10,12,15,16,19,23   |
| 7  |                         |       |  |             | Pekaseh/Kelihan                                     | 1,18                        |
| 8  |                         |       |  |             | Majelis Subak                                       | 1,20,21                     |
| 9  |                         |       |  |             | Paruman   | 1,15,17,18                  |
| 10 |                         |       |  |             | Tri Hita Karana                                     | 2,17                        |
| 11 |                         |       |  |             | paras paros segilik seguluk selunglung sebayant aka | 8                           |
| 12 |                         |       |  |             | Prajuru Subak                                       | 12,14,15,19,22              |
| 13 |                         |       |  |             | Desa Adat   | 14                          |

Based on the above table, it is also interesting to review some articles as an example of the application of legal pluralism in the Regional Regulation on Subak among others: Article 2 states Subak based on Pancasila, Constitution of the State of the Republic of Indonesia 1945 and the concept of Tri Hita Karana is imbued with Hinduism. This article can be understood that the element of legal pluralism has entered into the regional

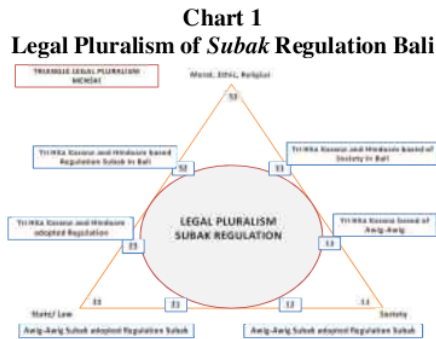
regulation on Subak. Furthermore, Article 5 Paragraph (1) states the change of boundary and the function of the weakness can be done based on the agreement of *krama Subak*, after obtaining approval from the regent/ mayor concerned. The existence of cultural elements of society, the role of the state as well as elements of religion, ethics, and moral show elements of legal pluralism has entered into the regional regulations on Subak. Then, Article 9 paragraph (1) states every Subak should have *awig-awig*. Paragraph (2) states that *awig-awig* should not conflict with Pancasila, Constitution of the State of the Republic of Indonesia 1945 and the laws and regulations. The existence of cultural elements of society, the role of the state as well as elements of religion, ethics, and moral show elements of legal pluralism has entered into the regional regulations on Subak. Article 17 paragraph (3) states that the procedure for receiving, managing and using Subak income is regulated through *paruman*, with the aim of increasing productive efforts based on Tri Hita Karana philosophy. The existence of cultural elements of society, the role of the state as well as elements of religion, ethics, and moral show elements of legal pluralism has entered into the regional regulations on Subak.

The provision of space for *awig-awig* and *perarem* from Subak as an institution in *pakraman* village is one form of recognition of local law by the state. This is in line with the conception of legal pluralism (Sastra Wibawa, 2016). Based on the description, at least it can be understood that Bali provincial regulation No. 9 of 2012 on Subak has adhered to the principles of legal pluralism. The principles of legal pluralism contained in the regional regulation are: 1) That there is a state recognition of Subak as an agrarian institution that is socio-religious, either as a legal subject, Subak governance structure, Subak regulation (*awig-awig*) effectiveness, As well as other traditional rights inherent, 2) That the recognition, respect and protection of Subak as a socio-religious agrarian organization as a form of fulfillment of human rights, and 3) That the Government of Bali Province has had a good response to the existence of Subak so that.

Subak regulation with legal pluralism model because it is seen to give legal effectiveness (Olson, 2017). There is a legal pluralism in the field of irrigation water management in Bali. The legal plurality of Subak arrangements in



Bali can be briefly illustrated by the following legal pluralism chart:



The chart above illustrates that the *Subak* arrangement in the political framework of legal pluralism belongs in the politics of strong legal pluralism. The No 1 indicates the existence of the Society, No 2 shows State / Law, and No 3 shows Moral, Ethic, and Releigious. Further, No 13 states that *Tri Hita Karana* is the basis of *awig-awig* that prevails in the community, No 12 states *awig-awig Subak* received recognition from the regional regulation, so next for the numbers 21, 23, 31, and 32 which in short states the relationship 3 (three) elements there by forming legal pluralism in the *Subak* setting. In accordance with the opinion of Griffiths (Hartono, 2003) which states that strong legal pluralism sees that all existing legal systems are equal in society, there is no hierarchy of the legal system. Between morals, ethics, and religion with the regional regulation of *Subak* and *awig-awig Subak* as a culture of society have a mutually reinforcing relationship with each other.

### Conclusion

First, the foundation that reinforces the politics of legal pluralism in the governance of *Subak* in Bali, among others: 1) The perspective of the rule of law, in the sense that the *Subak* arrangement is based on the value of justice, certainty and usefulness, 2) The perspective of legal pluralism, meaning diversity and regional specificity need to be regulated In the form of local regulations, and 3) Perspectives, regional autonomy and content function content *Subak* regulations that are based on decentralization.

Second, the regional regulation on *Subak* has been in accordance with the political principles of legal pluralism

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