

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

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ABSTRACT: Cultural tourism in Bali has evolved into a strategic sector in regional development, yet it continues to face complex legal and public policy challenges. The Balinese customary communities, with their *desa adat* system, *awig-awig* customary laws, and social structures, serve as the backbone of tourism's success. However, formal state regulations are often not fully adaptive to the dynamics of local culture. This study examines legal issues in the management of customary tourism villages and subak irrigation systems, focusing on four representative areas: Penglipuran Customary Village (Bangli), Tenganan Pegringsingan (Karangasem), Subak Umalimbing (Badung), and Subak Sembung (North Denpasar). Tourism management in these areas reveals disparities between state law and customary law. Key issues include the status of customary land, the institutional framework for tourism village management, and the limited involvement of local governments. Through Focus Group Discussions (FGDs), legal seminars, and community assistance programs, the study highlights the need to formulate pluralistic and contextual public policies. Regional Regulation No. 5 of 2020 and Minister of Home Affairs Regulation No. 33 of 2009 have yet to provide specific provisions regarding customary-based ecotourism. Therefore, a culturally meaningful legal policy design is required to ensure the sustainability of tourism and protect the rights of indigenous legal communities as the primary stakeholders in culture-based development in Bali.

KEYWORDS: Balinese Cultural Tourism, Legal Pluralism, Ecotourism

BACKGROUND

Tourism is a strategic sector in national development, contributing to foreign exchange earnings, generating employment opportunities, and strengthening cultural diplomacy. In Indonesia, tourism is not merely an economic sector but also an integral component of cultural strategy and social development. In Bali, cultural tourism has become the central axis of regional development and local identity. The Balinese people, with their customary systems and local wisdom, play a pivotal role in the success of tourism; however, they also face various regulatory and social challenges arising from large-scale development pressures that are sometimes unresponsive to the local cultural structure.

Public policy in the tourism sector reflects the political decisions of the state, encompassing the processes of formulation, implementation, and evaluation of regulations by state institutions. In practice, however, not all policies are capable of addressing the cultural dimensions of indigenous communities. As emphasized by Dunn, public policy is a series of courses of action designed and implemented by state actors to achieve specific objectives; however, its effectiveness is highly dependent on the socio-cultural context in which the policy is applied.¹

Public policy is reflected in legal politics, namely the direction or policy framework of the state concerning the formulation, implementation, and enforcement of law. Mochtar Kusumaatmadja emphasizes that law is not merely an instrument of regulation but also a tool of social engineering capable of driving social transformation toward prosperity.² Therefore, the law must be able to adapt to the social structure and local culture in which it is applied.

However, the legal reality in Indonesia demonstrates a persistent gap between written law and living law. Satjipto Rahardjo describes law as a social phenomenon rather than merely a collection of fixed rules.³ Eugen Ehrlich asserts that the true law is

¹ William N. Dunn, *Public Policy Analysis*, 5th ed., New York: Routledge, 2018, hlm. 15–17.

² Mochtar Kusumaatmadja, *Hukum, Masyarakat, dan Pembinaan Hukum Nasional*, Bandung: Alumni, 2002, hlm. 3–4.

³ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2000, hlm. 24–25

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

living law, namely the norms that emerge and are practiced within society, rather than merely the laws enacted by legislative bodies.⁴ Bali adheres to customary law, and local norms such as *awig-awig* and *perarem* play a significant role in regulating community behavior, including the management of tourism resources.

Balinese cultural tourism is inseparable from its deep connection to Hinduism, the structure of *desa adat* (customary villages), the subak irrigation system, and the philosophy of *Tri Hita Karana*. This interconnection makes Bali's tourism development model highly contextual and distinctive. The legal politics of tourism in Bali has undergone significant evolution, from Regional Regulation No. 3 of 1974 on Cultural Tourism which first introduced the concept of *loka wisata* to Regional Regulation No. 5 of 2020, which sets forth standards for the implementation of cultural tourism. Although progress has been made, the existing legal framework has not yet been fully responsive to the dynamics on the ground.

Legal issues are clearly evident in the management of customary tourism villages, such as *Desa Adat Penglipuran* in Bangli Regency. In this case, cooperation between the customary village and the local government is often not anchored in adequate regulations. This situation creates legal vulnerabilities and uncertainty in protecting the rights of indigenous communities. The top-down model of tourism development implemented by the state sometimes overlooks the cultural autonomy of indigenous communities in managing their living spaces and traditional heritage.⁵

The policy on environmentally friendly tourism development has, in principle, been regulated under Minister of Home Affairs Regulation No. 33 of 2009, which emphasizes the importance of integration in planning, utilization, and control of tourism potential based on local resources. In practice, however, ecotourism is often inaccurately equated with tourism villages, despite the absence of a specific legal instrument governing the management of ecotourism by customary villages.

The Indigenous Balinese communities inhabiting the island of Bali possess unique characteristics not found in other regions of Indonesia, or even the world. The richness of Balinese cultural values is recognized not only by the Unitary State of the Republic of Indonesia but has also received acknowledgment and appreciation from the international community. Therefore, public policy law concerning tourism villages in Bali particularly those grounded in Hinduism, local traditions, customary law, and Balinese culture is both important and highly relevant for scholarly investigation. In the development of tourism in Bali, the potential of legal pluralism as a form of local wisdom can be further cultivated as an alternative approach to preserving sustainable cultural tourism within the framework of public policy law.

Therefore, a legal approach that is not only legal-formal but also contextual and cultural is required. This study examines the dynamics of law and public policy in the management of culture-based tourism in Bali, with a particular focus on four representative areas: *Desa Adat Penglipuran* (Bangli), *Desa Adat Tenganan Pegringsingan* (Karangasem), *Subak Umalambing* (Sibang Kaja, Badung), and *Subak Sembung* (Peguyangan, North Denpasar). These four sites represent various forms of interaction between customary law, cultural values, and state intervention in tourism management.

METHODS

This study uses a qualitative approach with a case study method to examine in depth the dynamics of legal politics and public policy in developing culture-based tourism villages in Bali. This approach is considered suitable for understanding social and legal phenomena that are contextual, complex, and closely linked to local values and indigenous community practices.

The research focuses on four representative locations: *Desa Adat Penglipuran* (Bangli), *Desa Adat Tenganan Pegringsingan* (Karangasem), *Subak Umalambing* (Sibang Kaja, Badung), and *Subak Sembung* (North Denpasar) which were purposively selected because they reflect unique interactions between customary law, local cultural structures, and state regulations in tourism management.

Data collection was carried out through participatory observation to directly observe customary law practices and tourism management; in-depth interviews with customary leaders, tourism village managers, and local government officials; Focus Group Discussions (FGDs) as a dialogue forum between indigenous communities, government, and academics to develop legal solutions based on pluralism; and document analysis of regulations such as Regional Regulation No. 5 of 2020, Minister of Home Affairs Regulation No. 33 of 2009, and Bangli Regent Regulation No. 6 of 2014, as well as local legal documents such as *awig-awig* and *perarem*.

The data were analyzed using a descriptive-qualitative method within a socio-legal approach to understand the interaction between state law and customary law in the field of public policy. The results were then processed inductively to identify patterns

⁴ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, Harvard University Press, 1936.

⁵ Gede Raka, "Otonomi Budaya dan Kritik atas Kebijakan Pariwisata," *Jurnal Ilmu Sosial dan Humaniora*, Vol. 10, No. 2, 2018, hlm. 87–99.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

in legal policy formulation and explore opportunities to integrate legal pluralism into the framework of sustainable cultural tourism development.

RESULTS AND DISCUSSION

2.1 The Construction of Legal Politics in the Development of Culture-Based Tourism Villages in Bali

2.1.1 Cultural-Meaningful Law in the Perspective of Customary Villages

Tourism development in Bali has unique characteristics because it is closely integrated with cultural and environmental dimensions. As a cultural tourism destination, tourism in Bali cannot be understood solely as an economic activity, but rather as a sphere where the interaction between state law, local values, and the social structures of indigenous communities occurs dynamically. In this context, the legal politics of developing tourism villages must be designed with a culturally meaningful approach. This means that legal policies should not be formulated only in a normative-formal manner but must also be rooted in the local values of Bali's indigenous communities, while prioritizing cultural preservation and ecological sustainability. This perspective is grounded in the view that law must possess social relevance, cultural context, and functional value within the social structure of the community it serves.

This idea aligns with Von Savigny's theory, which asserts that law is a reflection of the "spirit of the people" (volkgeist) and arises from the legal consciousness that develops within society, rather than merely being the product of the state's formal construction. According to Savigny, law must be rooted in local customs, traditions, and value systems in order to be effectively applied and recognized by the community.⁶

The principles of culture-based ecotourism require tourism management that prioritizes environmental conservation, local community empowerment, and the protection of indigenous cultural values. As stipulated in the Bali Provincial Regulation (Peraturan Daerah) No. 5 of 2020 on the Standards for the Implementation of Balinese Cultural Tourism, this policy affirms that ecotourism in Bali must incorporate cultural principles such as Tri Hita Karana, ensuring that tourism development proceeds in harmony with environmental preservation and the empowerment of indigenous communities.

Constitutionally, the direction of Indonesia's cultural policy is affirmed in Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that "The State shall advance the national culture of Indonesia amid world civilization by guaranteeing the freedom of the people to preserve and develop their cultural values." This provision not only reflects the recognition of the rich cultural diversity inherent within Indonesian society, but also affirms the State's constitutional obligation to protect and promote the development of local cultures. In essence, Article 32 of the 1945 Constitution serves as a normative pillar in shaping a culturally meaningful legal policy one that is grounded in respect for the diversity of values, social systems, and cultural expressions that thrive within the community.⁷

In the realm of cultural politics theory, David Kertzer asserts that culture is not a neutral entity but is constantly produced and reproduced through the exercise of power.⁸ The state often acts as a dominant agent in framing the narrative of national culture, which may risk overlooking local expressions. Furthermore, according to Satjipto Rahardjo, legal politics is a conscious effort to direct the development of law so that it aligns with the values of justice and social realities.⁹ This implies that law should not be drafted in an abstract manner or detached from the socio-cultural structure of indigenous communities; rather, it must be able to interpret the relationship between indigenous communities, their living environment, and local value systems. Furthermore, Satjipto emphasizes the role of law as a tool of social engineering, namely, a means of shaping or directing societal behavior toward more ideal conditions.¹⁰ Thus, Satjipto explains that effective law is not derived solely from the text of legislation, but rather from the "living law," namely, the body of norms that grow and are respected within the daily practices of society. This theory is highly relevant to the existence of customary law, traditional villages, and local institutions within Balinese society.

This view is reinforced by Mahfud MD, who regards legal politics as the process and policy through which the state formulates laws to achieve national objectives, such as social justice and the welfare of the people.¹¹ Thus, culturally meaningful legal politics entails the recognition, protection, and empowerment of Bali's customary legal system as an integral part of the legal development strategy and the sustainable advancement of cultural-based ecotourism.

⁶ Von Savigny, Friedrich Carl, *On the Different Methods of Treating the History of Law*, trans. by Ernest J. Helfenstein, Washington: The Co-operative Publishing Company, 1897, hlm. 15-20.

⁷ Sri Soemantri, *Bahan-bahan Sosialisasi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Sekretariat Jenderal MPR RI, 2012, hlm. 58

⁸ David I. Kertzer, *Ritual, Politics, and Power*, Yale University Press, 1988, hlm. 4-6.

⁹ Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, 2000, hlm. 120.

¹⁰ Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, Genta Publishing, 2009, hlm. 54-55.

¹¹ Mahfud MD, *Politik Hukum di Indonesia*, Rajawali Pers, 2009, hlm. 6-7.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

This approach can be linked to Theodore Lowi's policy theory, which distinguishes between distributive, redistributive, and regulatory policies.¹² In this context, culturally based ecotourism policies in Bali should ideally fall under the category of redistributive policy, namely policies that return to local communities the control over their cultural and natural resources.

In addition, Clifford Geertz emphasized that culture is a system of symbols that gives meaning to social actions.¹³ Therefore, the legal approach to culture-based ecotourism should not view culture merely as an economic asset, but as a living value system preserved by indigenous communities. The law should be directed not only as an instrument to facilitate investment, but also as a mechanism to maintain balance between local wisdom, ecological sustainability, and the protection of the rights of indigenous peoples.

Finally, in the perspective of I Wayan Wesna Astara, "Culturally Meaningful Law" is law that is concretized from the values and culture of Balinese indigenous communities by practicing local law (awig-awig) as customary village policy in managing tourism villages in Bali.¹⁴ This reflects a local-based approach as the foundation for norm formation and decision-making in development governance.

The term "Culturally Meaningful" in legal politics carries the important understanding that law cannot remain neutral toward local culture. On the contrary, law must emerge from respecting and protecting cultural values that are alive and preserved across generations by the community. In this approach, law is understood not merely as a collection of written norms, but as a reflection of social relations, history, and cultural practices that shape the identity of local communities. In studies conducted in four customary villages and subak systems in Bali, the concept of "Culturally Meaningful Legal Politics" is evident in social-legal practices.

Satjipto Rahardjo's view of law as a social institution inseparable from the context in which it develops reflects a progressive legal approach that positions law not merely as a normative institution, but as a tool of social transformation aimed at achieving substantive justice.¹⁵

Within this framework, law is not seen as a rigid and static structure, but as a dynamic process that adapts to social change. Satjipto explicitly states that "law must side with the people and not serve as a protector of the status quo," as the essence of progressive law is to free law from mere formalism so that it can respond to the real needs of society.¹⁶ This theory aligns with the perspective of Eugen Ehrlich, who emphasizes that "the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself".¹⁷

The responsive legal approach introduced by Philippe Nonet and Philip Selznick also emphasizes the importance of law as a means that adapts to social needs, rather than merely serving as a coercive instrument of state power.¹⁸ In responsive law, the legal system is required to be open to critique, reflective of social values, and accommodating of societal dynamics. In the context of Bali, the existence of customary institutions such as Desa Adat, Kertha Desa, and the Subak system demonstrates that the community has long maintained its own legal mechanisms that are responsive to spiritual values, ecological concerns, and communal solidarity, well before the establishment of formal state legislation.

Furthermore, the contextual legal approach views law not as universal and ahistorical, but as a product of social and cultural constructions specific to a particular time and place.¹⁹

This approach invites us to understand law not merely from the text, but from its context: how norms are formed, negotiated, and practiced in everyday community life. The concept of "Culturally Meaningful Legal Politics," studied in four customary villages and subak systems in Bali, represents a concrete manifestation of this approach. There, law is not enforced through coercion, but embraced as an integral part of life with spiritual, social, and ecological significance.

Desa Adat Penglipuran in Bangli serves as a concrete example of culturally meaningful legal politics, where law does not exist as a neutral entity but is absorbed and lives alongside local values that have been practiced for generations. The concept of "culturally

¹² Theodore J. Lowi, *The End of Liberalism*, Norton & Company, 1969, hlm. 91–92.

¹³ Clifford Geertz, *The Interpretation of Cultures*, Basic Books, 1973, hlm. 5–7.

¹⁴ Wesna Astara I Wayan, Teori Hukum Bermakna Budaya Dalam Membedah Kasus Eksistensi Kerta Desa di Bali Menuju Harmonia tau Konflik, dalam "*Pergolakan Penguatan Desa Adat Bali: Silang Pandang Aneka Perspektif*", Pustaka Larasan, Denpasar, 2022, hlm. 231–240.

¹⁵ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), hlm. 2–5.

¹⁶ Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, (Jakarta: Kompas, 2009), hlm. 5, 125

¹⁷ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, diterjemahkan oleh Walter L. Moll (New York: Arno Press, 1975), hlm. 493.

¹⁸ Philippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law*, (New York: Harper & Row, 1978), hlm. 16–25.

¹⁹ Daniel S. Lev, *Hukum dan Politik di Indonesia: Kesenambungan dan Perubahan*, (Jakarta: LP3ES, 1990), hlm. 44–48.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

meaningful” here implies that law must originate from the social dynamics, spirituality, and ecology of the indigenous community. As Satjipto Rahardjo asserts, law functions as a tool of social engineering to protect substantive justice within a living society.²⁰ The development of Penglipuran into a tourism village did not originate from state policy, but from a local initiative to organize and revitalize their living space independently since the late 1980s. The community reorganized the settlement according to the Tri Mandala principle, reinforced the *angkul-angkul* (traditional gates), and consistently applied the *awig-awig* in social life. Recognizing this potential, the Bangli Regency government proposed a tourism cooperation, which was deliberatively accepted by the customary village through a Cooperation Agreement (*Perjanjian Kerja Sama*, PKS) and the Regent’s Regulation. Interestingly, the state functioned only as a partner, not as a controlling authority.

In the responsive law approach proposed by Nonet and Selznick, such a legal system demonstrates the ability to adapt to local values while promoting active community participation in determining the direction of development. The local government does not take over management but provides autonomous space for the customary village to administer tourism levies, collectively distribute revenues, and utilize village funds for the development of temples and customary public facilities.

The policy of not opening the village to private investors demonstrates consistency with the principle of cultural sovereignty. The community chooses to protect their living space from economic exploitation. From the perspective of contextual law, this illustrates that customary law in Penglipuran is not merely a static norm, but a historical process continuously maintained through the community’s collective consciousness. The placement of rule violators, such as cases of polygamy, in designated *karang memadu* areas also shows how customary law regulates social order based on local spirituality and morality. All these practices make the law in Penglipuran a living reflection of the values developed within the community, rather than merely the product of state legislation.

In the construction of legal politics, Desa Penglipuran presents an important narrative on the significance of legal pluralism and constitutional recognition of cultural autonomy. In accordance with Article 18B paragraph (2) of the 1945 Constitution, the state is obliged to respect and protect the existence of indigenous communities along with their traditional rights. More importantly, beyond mere formal recognition, the state must develop legal policies that respect, facilitate, and safeguard the legal systems that have independently existed within these customary communities.

Desa Adat Tenganan Peglingsingan is one of the Bali Aga villages that maintains a strong social system, customary law, and cultural traditions to this day. In the context of culturally meaningful legal politics, this village exemplifies that law is not merely understood as written rules from the state, but also lives within the values and customs of the indigenous community passed down through generations. The management of the tourism village in Tenganan is not entirely governed by written regulations from the customary village; rather, it is implemented based on *awig-awig* (customary rules). Although there are no specific regulations on tourism, the community establishes boundaries such as prohibitions on drone use, inappropriate attire, and photographing during customary ceremonies. This demonstrates that the indigenous community possesses its own legal awareness to preserve the sanctity of their culture.

Moreover, the land in this village is *ulayat* land, meaning it is collectively owned and cannot be sold to outsiders. The inheritance system in Tenganan is egalitarian, granting equal rights to men and women to inherit, provided they continue to live and marry within the village. These provisions serve not only social functions but also carry binding customary legal authority.

In managing tourism, the village has chosen not to impose an entrance fee for visitors. Instead, tourists are encouraged to give voluntary donations. This decision ensures that the village is not perceived merely as a spectacle. It demonstrates that the Tenganan community does not treat tourism as an ultimate goal, but as a means to introduce their culture, as long as customary values are respected.

Through these various customary policies, the Tenganan community shows that customary law can play a crucial role in preserving local identity and cultural sustainability. This aligns with the concept of culturally meaningful legal politics, which is a legal approach that places local values at the core of law formation and implementation. In other words, customary law in Tenganan is not merely a remnant of the past but constitutes a living legal system that remains relevant in addressing contemporary challenges. This aligns with Satjipto Rahardjo’s view,²¹ which holds that progressive law sides with the people, not with power. It does not merely adhere to the text, but to the meaning of justice as it lives within society.

Subak Sembung, located in Desa Adat Peguyangan, Denpasar City, represents a concrete example of the implementation of culturally meaningful legal politics within Balinese indigenous communities. As a traditional irrigation system grounded in social, ecological, and spiritual values, Subak Sembung continues to uphold customary law (*awig-awig*) despite pressures from modernization and the conversion of agricultural land into urban areas.

²⁰ Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, (Bandung: Sinar Baru Algensindo, 2007), hlm. 10–11.

²¹ Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, Jakarta: Kompas, 2009, hlm. 45.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

In an interview with Mr. Made Darayasa, the Pekaseh (head) of Subak Sembung, it was revealed that awig-awig remains the foundation for collective decision-making among subak members, covering irrigation management, cropping patterns, and the execution of customary ceremonies. He stated:

“We still adhere to awig-awig, as it has been our foundation since long ago. Regarding water allocation and planting schedules, everything is discussed collectively. If any issues arise, we resolve them through deliberation during the annual or quarterly meetings.”

This statement demonstrates that Subak Sembung relies on a community-based deliberation mechanism rather than the formal legal system of the state. It reflects the idea of culturally meaningful legal politics, which posits that law should emerge from the values and social needs of the local community. This concept aligns with Satjipto Rahardjo's view that good law is law born from social realities and that sides with the values that are alive within society.

The implementation of customary ceremonies and agricultural rituals is also actively carried out by the farmers as a form of respect for nature and their ancestors. Rituals such as Mendak Toya (opening the water from the dam), Ngeseh (for pregnant rice), and Dewa Nini (harvest ritual) are integral to the farming process. These ceremonies are not merely symbolic; they are part of the customary legal system that obligates all subak members to participate actively and collectively.

He added, “When we start opening the water, that is called Mendak Toya. There is a ceremony. Likewise, during harvest, we have Dewa Nini. These are part of our life in the subak, and this is also what we show to tourists.”

Furthermore, Subak Sembung has been developed as an educational ecotourism area that continues to uphold principles of sustainability and local control. Although it receives support from Corporate Social Responsibility (CSR) programs, such as PT Pertamina through the Uma Palak group, the management firmly rejects intervention by large investors. This refusal is based on concerns that community control over land and customary management systems could be undermined if ecotourism were entirely controlled by external parties.

He explained, “We do not want large investors. We are afraid our land will be taken over. Assistance from CSR programs like Pertamina is still acceptable because it is in the form of guidance, not takeover.”

This situation underscores that Subak Sembung serves as a concrete example of the success of customary law in facing the challenges of modernization without losing its cultural identity and institutional integrity. The customary legal system, which operates collectively, participatively, and with a sustainability-oriented approach, reflects the principles of culturally meaningful legal politics, where law is positioned not merely as a tool of state control, but as an instrument for preserving values, ecology, and community identity.

Subak Umalambing, located in Desa Adat Sibangkaja, Badung Regency, exemplifies the continued relevance of customary law within modern social dynamics. Although rooted in traditional agricultural systems, this subak has evolved into an educational ecotourism area without losing its cultural foundations. Within the framework of culturally meaningful legal politics, Subak Umalambing underscores the importance of customary law as a living system that adapts to contemporary developments.

According to an interview with I Wayan Suwendi Artha, the Pekaseh of Subak Umalambing, agricultural management continues to be based on awig-awig regulating water distribution, cropping patterns, and the performance of customary ceremonies such as Mapag Toya and Dewa Nini. However, the existing customary rules do not explicitly address the prevention of agricultural land conversion. In practice, land conversion often occurs due to socio-economic pressures or increasing residential needs resulting from population growth. This situation highlights the limitations of customary law in protecting agricultural land, especially when awig-awig is not reinforced by village regulations or state legal policies.

According to I Gede A.B. Wirawan, within the Balinese customary legal system, subaks possess internal structures and norms, but their effectiveness largely depends on synergy with the village and formal recognition by the state. Moreover, the ecotourism development programs conducted by Subak Umalambing in collaboration with partners such as Green School and the Astungkara Way Foundation are substantively effective but still lack formal written legal frameworks. Most collaborations are conducted orally and have yet to be codified into perarem or written agreements, which may create normative gaps in case of future conflicts of interest.

Such customary law issues underscore the urgency of culturally meaningful legal politics an approach that encourages state law to not only rely on formal norms but also recognize and reinforce the living norms within society. As Franz Magnis-Suseno asserts, morally legitimate law is law that aligns with the community's consciousness of justice and the common good.²² Therefore, strengthening subak institutions through the drafting of ecotourism perarem becomes a crucial step to reinforce the position of customary law, ensuring it is recognized not only culturally but also juridically.

²² Franz Magnis-Suseno, *Etika Politik: Prinsip Moral Dasar Kenegaraan Modern*, Jakarta: Gramedia, 1991, hlm. 138.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

Subak Umalambing, with all its dynamics, represents a concrete example of living law, as described by Eugen Ehrlich: that true law is the law practiced by the community in daily life, rather than merely codified in statutes.²³ When the Subak community continues to perform rituals, engage in deliberation for decision-making, and maintain ecological balance, they are effectively practicing a contextual and culturally meaningful legal system.



Picture 1. Prohibitions at Subak Sembung

2.1.2 The Legal Relationship between the State and Customary Villages in Cultural Autonomy and Tourism Authority

The relationship between the state and customary villages within the framework of cultural autonomy and tourism authority in Bali is the result of a long process of legal recognition of the existence of customary law communities. Customary villages are not new entities but are integral parts of Balinese social structure that existed long before the formation of the modern state. The legal status of customary villages as legitimate legal subjects is recognized in Law No. 6 of 2014 concerning Villages, particularly Article 6 paragraph (1) letter b, which affirms that villages have the authority to regulate and manage their own domestic affairs based on ancestral rights and customary practices that are alive within the community.

The recognition above is further clarified in Bali Provincial Regulation No. 4 of 2019 concerning Customary Villages in Bali, which states that a customary village is a unity of customary law community in Bali that possesses its own territory, status, original structure, traditional rights, assets, traditions, and social etiquette maintained over generations within sacred sites (Kahyangan Tiga or Kahyangan Desa). It also includes duties, authorities, and the right to regulate and manage its own domestic affairs. Article 5 specifies that customary villages hold the status of legal subjects within the governance system of Bali Province.

In the context of tourism, the involvement of customary villages is crucial, as Balinese tourism is rooted in local cultural values passed down through generations. Bali Provincial Regulation No. 5 of 2020 concerning Standards for the Implementation of Cultural Tourism explicitly positions customary villages as a central pillar in the development and preservation of sustainable cultural tourism. The participation of customary villages is not merely symbolic; it serves as an instrument to safeguard local wisdom values that constitute the identity of Balinese society.

However, in practice, the relationship between the state and customary villages is not always equal. Despite formal recognition being granted, there remains a dominance of legalistic and administrative approaches from the state, which tends to standardize governance and often conflicts with the principles of deliberation and collective consensus inherent in customary communities. This phenomenon reflects what John Griffiths describes as interlegality the encounter between formal and non-formal legal systems within the same social space, where state law and customary law may compete, dialogue, or compromise depending on the local context and power dynamics.²⁴

Research findings across multiple sites underscore the complex dynamics of the state–customary village relationship. In Desa Adat Penglipuran, tourism governance is autonomously managed by the customary authorities (prajuru adat) through awig-awig and perarem. The state's role is largely facilitative providing support, collecting taxes, and establishing partnership agreements though in some instances these arrangements are perceived as insufficiently equitable, failing to fully uphold principles of justice and local self-determination. In Desa Adat Tenganan Pegriingsingan, the community asserts an even stronger stance against external intervention, actively resisting cultural commercialization and regulating tourist documentation to safeguard the sanctity of their

²³ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, Cambridge: Harvard University Press, 1936, hlm. 493.

²⁴ John Griffiths, "What is Legal Pluralism?", *Journal of Legal Pluralism and Unofficial Law*, Vol. 24, 1986, hlm. 3–5.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

rituals. Collectively, these cases illustrate that customary law maintains profound social legitimacy and operates as a robust foundation for autonomous, culturally anchored tourism governance.



Picture 2. Discussion on the Cooperation Agreement (PKS) between Penglipuran Traditional Village and the Bangli Regency Government.

Meanwhile, in subak areas such as Subak Sembung and Subak Umalambing, ecotourism management faces challenges from land-use conversion and the dominance of economic interests. Subak Sembung has been able to maintain a balance between agriculture and tourism due to the support of CSR programs and the strengthening of institutional capacity through regular deliberations. Conversely, Subak Umalambing in Badung continues to face legal challenges, as there is still no *pararem* or *awig-awig* specifically regulating ecotourism cooperation and the control of land-use conversion. This weakness shows that although the traditional system is culturally strong, without written regulations, legal protection of traditional living spaces becomes vulnerable.

In the framework of legal philosophy, such a relationship requires an understanding of law that goes beyond formal legality. According to Franz Magnis-Suseno, law is morally valid only if it aligns with the community's awareness of justice and the common good.²⁵ Satjipto Rahardjo emphasizes that the ideal law is not merely one that stops at the text, but a law that exists as a liberating force and stands on the side of the people.²⁶

Roscoe Pound, an American legal philosopher, distinguished between the concepts of "law in books" and "law in action." He stated: "The law in books is not the law in action; the legal order as we find it in codes and statutes often fails to reflect the actual functioning of legal institutions in society."²⁷

Through this perspective, Pound emphasizes that the law as lived in social practice (law in action) is often more effective in regulating social behavior than written law (law in books), which does not always reflect the real needs and complexities of social life. Therefore, the understanding of law cannot be limited to written norms alone but must be viewed within the sociological context in which the law is applied.

Ali Achmad Churiyah, in his journal published in *Jurnal Dinamika Hukum*, states that customary law as living law holds high legitimacy because it contains local values that are not only normative but also spiritual and ecological. Such living law becomes an integral part of the social structure of the community, and its continuity is only possible if the state does not impose a singular formal-positivistic logic.²⁸

In his book titled *Toward a New Legal Common Sense*, Boaventura de Sousa Santos asserts that state law is not the only legitimate form of legality. He states that there are various forms of law living within society, including customary law, community law, and other informal legal practices. He views the dominance of the state over the legal system as a historical construct, not an inevitability. Therefore, to achieve true justice, the state must recognize legal pluralism as a social fact that must be involved in the legal process and the development of law itself.

This is emphasized in his quote: "We must recognize that there are many forms of legality and that state law is only one of them. The monopoly of the state over the legal field is a historical construction, not a necessity. Legal pluralism is a social fact that must be acknowledged and engaged with if justice is to be achieved."²⁹

Thus, the legal relationship between the state and customary villages must move towards a paradigm of partnership and asymmetric autonomy. The state should not dictate customary villages through top-down regulations but instead needs to create

²⁵ Franz Magnis-Suseno, *Etika Politik*, Jakarta: Gramedia, 1991, hlm. 138.

²⁶ Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, Jakarta: Kompas, 2009, hlm. 45.

²⁷ Roscoe Pound, *An Introduction to the Philosophy of Law*, New Haven: Yale University Press, 1922, hlm. 15.

²⁸ Ali Achmad Churiyah, "Living Law dan Integrasi Hukum Adat dalam Sistem Hukum Nasional," *Jurnal Dinamika Hukum*, Vol. 16, No. 3, 2016, hlm. 322.

²⁹ Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, London: Routledge, 2002, hlm. 85.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

a space for dialogue to harmonize norms participatively. Strengthening the capacity of customary law through *perarem*, *awig-awig*, and institutional support is key to achieving substantive justice and the sustainability of culture-based tourism.

2.2 Policy Model Formulation Based on Legal Pluralism for Tourism Villages

2.2.1 Non-Litigation Mechanisms through Customary Deliberation and Arbitration as Conflict Resolution

Conflict resolution in Bali's customary communities has long relied on non-litigation mechanisms rooted in local wisdom and communal social structures. A distinctive form of resolution is "*wicara adat*," a deliberative forum led by customary leaders such as *Pemangku*, *Prajuru*, or *Kertha Desa* to reach consensus on conflicts or disputes. *Wicara* is not merely informal discussion but a customary legal forum with social legitimacy, normative authority, and high moral sanctions within the customary community. In *wicara*, disputing parties are listened to fairly, encouraged to reconcile with the spirit of "*nyamabraya*" (togetherness), and guided to find a middle ground that preserves social harmony among community members.

Philosophically, *wicara* reflects the fundamental principles of Balinese customary law, namely the principles of deliberation (*sangkep*), propriety (*subha*), balance (*rwa bhineda*), and harmonization (*nyamabraya*). Koentjaraningrat stated that the collective and communal nature of Indonesian society highly values harmony, making deliberation-based resolutions more preferred than formal, confrontational procedures.³⁰ In line with this view, Howard Zehr in his book *The Little Book of Restorative Justice* explains that restorative justice revolves around three basic principles:

"Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."³¹

This statement affirms that restorative justice is a legal approach emphasizing the participation of all parties involved in an offense to collectively identify harms, needs, and responsibilities. The goal is to restore disrupted social relationships and achieve substantive justice.

The mechanisms of customary deliberation (*wicara*) and *adat* arbitration can be understood through the legal pluralism approach as proposed by John Griffiths. Griffiths views legal pluralism as the presence of more than one legal order within the same social field. According to him, law is not solely sourced from the state but also emerges from social communities, belief systems, and local practices that are recognized as legitimate by society. This perspective highlights the coexistence of state law alongside non-state legal systems such as customary law, religious law, and other normative orders. Legal pluralism acknowledges that these different legal orders interact and operate simultaneously, each with its legitimacy and authority within their social contexts. This approach supports recognizing and respecting customary dispute resolution practices like *wicara* and *adat* arbitration within the broader legal framework.³² In this context, customary law is not merely a complement to the formal legal system but an integral part of the living legal system that functions effectively in regulating the life of the community.

Sally Falk Moore describes customary law systems as a form of "semi-autonomous social field," which refers to a social domain that has the capacity to create, apply, and enforce its own norms relatively independently, while still existing within a broader social and legal framework under the state. This means that customary law communities govern themselves with their own rules and symbols but remain influenced by the larger state's legal and social systems. Moore's concept highlights the partial autonomy of these communities, recognizing their ability to self-regulate within the constraints and influences of external state laws. This perspective is crucial for understanding the coexistence and interaction between state law and customary law in plural legal systems.³³

The concept explains how customary villages (*desa adat*) in Bali can develop their own customary judicial systems through institutions such as *Kertha Desa* or *Majelis Desa Adat* (MDA). These institutions perform judicial and mediation functions based on local values. *Kertha Desa* acts as the customary court, led by customary chiefs (*Prajuru*) along with other village elements, which examines, adjudicates, and decides cases based on Balinese customary law (*awig-awig*). The cases handled include disputes and violations of customary regulations within the village jurisdiction. If cases cannot be resolved at the *Kertha Desa* level, they can be escalated to the *Majelis Desa Adat* (MDA), which holds a higher authority in customary judicial matters. This aligns with the idea of legal hybridization introduced by Boaventura de Sousa Santos, which merges state law elements with local customary law to create a more contextual and socially relevant form of justice. According to Santos:

³⁰ Koentjaraningrat, *Pengantar Ilmu Antropologi*, Jakarta: Rineka Cipta, 2009, hlm. 234.

³¹ Howard Zehr, *The Little Book of Restorative Justice*, New York: Good Books, 2002, p. 37.

³² John Griffiths, "What is Legal Pluralism?", *Journal of Legal Pluralism and Unofficial Law*, Vol. 24, 1986, hlm. 3.

³³ Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review*, Vol. 7, No. 4, 1973, hlm. 720.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

"There is no such thing as a unified legal experience; rather, legal life is an ongoing process of hybridization among different legal orders."³⁴

He emphasizes that legal experience in society is never singular but rather the result of the interaction of various legal systems living side by side. Therefore, substantive justice can only be achieved when there is recognition of the diversity of legal sources and a dialogic space between state law and customary law.

In practice, these forms of dispute resolution are clearly manifested in various Balinese customary villages. In Penglipuran Customary Village, any disputes among residents or violations of tourism regulations are resolved through *paruman adat* (customary meetings) led directly by the *Prajuru Adat* (customary authorities). In this context, the role of the state is limited to tax collection or administrative facilitation, while mechanisms of social control are entirely governed by the customary legal system. Similarly, in Tenganan Pegringsingan Village, conflicts related to territorial boundaries, tourism, or violations of cultural values are addressed through closed customary forums that strictly uphold the village's sacred values. The village government even rejects state intervention, perceiving it as lacking an adequate understanding of Tenganan's customary values.

As an entity of agrarian customary law, the *subak* institution plays a significant role in local dispute resolution. In Subak Sembung (Denpasar), regular deliberations (*wicara*) are held among *krama subak* (*subak* members) to resolve issues such as water distribution, planting schedules, and conflicts related to agrotourism management. The decisions reached through these discussions are formalized in written agreements and are often more respected than municipal regulations, as they are perceived to be fairer and more aligned with local values. In contrast, Subak Umalimbing (Badung) has yet to establish specific *perarem* (customary regulations) concerning tourism, leading to recurring conflicts with tourism operators that are inadequately addressed. This highlights the need for codification of customary law to strengthen the role of customary arbitration as an effective dispute resolution mechanism.

From an institutional perspective, the *Majelis Desa Adat* (MDA) plays a central role in fostering, guiding, and strengthening the system of customary conflict resolution. As stipulated in Bali Provincial Regulation No. 4 of 2019 concerning *Desa Adat* (Customary Villages), Articles 29 and 30 affirm that the MDA is an official body responsible for safeguarding the existence of customary villages and providing advisory input to the government on matters related to customary law. In cases of inter-village conflicts or tourism-related collaborations, the MDA may serve as both mediator and facilitator, while also reinforcing the authority of customary decisions to ensure their formal recognition by the government.

State law has also created space for the recognition of customary community arbitration through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which stipulates that arbitration may be conducted by non-governmental institutions, including customary institutions. This provision provides a legal basis for forums such as *Kertha Desa* or *Majelis Alit* to issue decisions that are both legitimate and socially binding. In line with Franz von Benda-Beckmann, the state legal system should not monopolize dispute resolution, as communities tend to place greater trust in local mechanisms that are contextual and capable of resolving issues swiftly without bureaucratic complexities.³⁵

2.2.2 Integration of Traditional Village and Subak Authority in the Formulation of Culturally-Based Tourism Regulations

In the development of culture-based tourism villages in Bali, the integration of authority between traditional villages (*desa adat*) and *subak* constitutes a fundamental pillar to ensure the sustainability of tourism development that is not solely economically driven, but also attentive to ecological, social, and spiritual dimensions. As a traditional socio-legal entity, the *desa adat* plays a central role in regulating norms, religious rites, and social order through *awig-awig* and *perarem*. Meanwhile, *subak*, as a traditional irrigation system recognized as a UNESCO World Cultural Heritage, holds a vital role in maintaining environmental balance, agricultural production, and the spiritual relationship between humans and nature.

Juridically, the existence and authority of *desa adat* and *subak* are recognized within the framework of national and regional law. Law No. 6 of 2014 on Villages acknowledges *desa adat* as a legal entity vested with original rights (*hak asal-usul*) (Article 103) and guarantees the collective rights of indigenous communities through the principles of recognition and subsidiarity. At the regional level, Bali Provincial Regulation No. 4 of 2019 on Traditional Villages affirms that *desa adat* holds authority over customary affairs, traditions, arts, culture, and local wisdom (Articles 4 and 5). Meanwhile, *subak* also possesses social authority, governed through *awig-awig* and an institutional structure comprising *pekaseh* and *krama subak*.

To broaden the scope of legal analysis, the responsive law theory developed by Philippe Nonet and Philip Selznick can serve as a relevant alternative framework. This theory posits that good law is law that can effectively respond to social needs, remains flexible,

³⁴ Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 2nd Edition, London: Routledge, 2002, hlm. 89.

³⁵ Ranz von Benda-Beckmann, *Reconsidering the Relationship between Law and Society*, Leiden: VU Press, 2002, hlm. 35.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

and is open to public participation in its formulation.³⁶ In this context, the integration of authority between desa adat and subak can be viewed as a form of responsive law, as it accommodates local values, customary social structures, and the ecological needs of agriculture.

In addition, the concept of communitarian law developed by Amitai Etzioni offers an important perspective in the development of community-based regulations. Etzioni emphasizes that a good society must strike a balance between rights and social responsibilities, while fostering individual autonomy without neglecting the collective moral commitments within the community. He states:

“A good society balances rights and responsibilities. It fosters individual autonomy but insists on mutual obligations. Communities are built not only on shared interests but on shared values and moral commitments.”³⁷

This perspective becomes highly relevant as communal values such as gotong royong (mutual cooperation), deliberation, and social harmony have long served as the foundation for legal decision-making and local resource management. In practice, several villages in Bali have successfully implemented the integration of authority between desa adat and subak in the governance of culture-based tourism. One example is Jatiluwih Village in Tabanan Regency, where collaboration between prajuru desa adat and pekaseh subak has resulted in the formulation of internal regulations governing the number of tourist visits, the distribution of entrance fee revenues, and prohibitions on construction projects that could damage the terraced rice landscape recognized as a UNESCO World Heritage Site. These regulations not only safeguard the ecological and aesthetic values of the landscape but also protect the social structures and traditional irrigation systems that have been passed down through generations. In Tenganan Pegringsingan Village (Karangasem), customary awig-awig serves as a regulatory filter to preserve the sanctity of the area and establish protocols for tourist visits. This demonstrates that the synergy between these two customary institutions can effectively maintain a balance between cultural preservation, environmental sustainability, and community-based economic development.

From the perspective of Balinese customary law, the formulation of policies based on desa adat and subak reflects several fundamental principles, including: (1) the Principle of Deliberation (Asas Musyawarah), which mandates collective decision-making; (2) the Principle of Balance (Asas Keseimbangan), which refers to the Tri Hita Karana philosophy emphasizing harmony among humans, nature, and spirituality; and (3) the Principle of Mutual Cooperation (Asas Gotong Royong), as a manifestation of social solidarity in resource management and decision implementation. These principles should serve as the foundation for drafting Village Regulations (Peraturan Desa or Perdes) or other regional regulations governing tourism villages.

The Majelis Desa Adat (MDA), as the representative body of traditional villages, holds a strategic role in harmonizing customary interests with regional development objectives. Pursuant to Article 30 of Bali Provincial Regulation No. 4 of 2019, the MDA is vested with the authority to provide guidance, empowerment, and advisory opinions on policies concerning traditional villages. Institutional collaboration between the MDA and Subak forums at the regency/municipal level needs to be strengthened to enable them to serve as key actors in formulating equitable and sustainable cultural tourism policies.

Thus, the integration of authority between desa adat and subak within tourism regulations not only contributes to the effectiveness of tourism governance but also represents a concrete manifestation of legal pluralism and the recognition of indigenous community rights. In the era of regional autonomy and sustainable development, strengthening the roles of these two customary entities is a crucial strategy for shaping tourism in Bali that is deeply rooted in culture and local wisdom. Beyond that, this approach serves as a manifestation of a participatory development model that upholds local values, ensures environmental sustainability, and prevents the marginalization of customary law amid the current of modernization. Moving forward, regulations that integrate customary and subak structures are not merely required as legal mechanisms but as expressions of ecological, cultural, and social justice within the national legal framework.

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³⁶ Philippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law*, New Brunswick: Transaction Publishers, 2001, hlm. 78

³⁷ Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda*, New York: Crown Publishers, 1993, hlm. 18.

Law in the Cultural Sphere: Public Policy Law in the Development of Culture-Based Ecotourism in Bali

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CONCLUSION

This study demonstrates that *desa adat* and *subak* in Bali are not merely cultural heritage entities but also serve practical functions in the governance of culture-based tourism. Both institutions play a pivotal role in maintaining a balance between environmental preservation, the strengthening of local identity, and the enhancement of community welfare. The *desa adat* performs social and cultural regulatory functions through *awig-awig* and customary institutions, while the *subak* ensures the sustainability of agricultural systems and ecological harmony through collective values and well-established internal mechanisms.

The successful management of tourism villages in several locations in Bali, such as Penglipuran, Tenganan, Subak Umalambing, and Subak Sembung, illustrates that collaboration between *desa adat* and *subak* can produce governance systems that are efficient, inclusive, and contextually appropriate. This is reinforced by regional regulations such as Bali Provincial Regulation No. 4 of 2019, which provides a legal basis for the existence and authority of *desa adat* and recognizes the structure and role of *subak* within Bali's social system.

Overall, the integration of authority between *desa adat* and *subak* in tourism regulations not only enhances governance effectiveness but also strengthens the legitimacy of local law as part of sustainable development grounded in local wisdom. Institutional strengthening, regulatory harmonization, and affirmative policy support from the government are key to ensuring that this governance model can endure and thrive amidst the challenges of globalization and the commercialization of tourism.

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