

**Article History**

Received: 20 Mar 2025

Reviewed: 3 May 2025

Accepted: 28 June 2025

Published: 8 July 2025

Sacred Justice: The Autonomy of Traditional Villages in Resolving Customary Disputes in Bali

Dewa Krisna Prasada^{1*}, Ni Putu Sawitri Nandari², Kadek Julia Mahadewi³, Komang Satria Wibawa Putra⁴

^{1,2,3,4} Universitas Pendidikan Nasional, Indonesia

*correspondence email : krisnaprasada@undiknas.ac.id

Abstract

The aim of this study is a fundamental part of Indonesia's state structure, as it has existed since Indonesia's independence and has been recognized within the legal framework. This recognition is enshrined in Article 18B of the 1945 Constitution and reinforced by Law No. 6 of 2014 on Villages. In Bali, customary law communities, known as krama desa, have special rights, including autonomous governance over local affairs. This study focuses on the autonomy of customary villages in Bali, particularly in resolving customary disputes.

The study method used is normative legal research with a legislative approach, analyzing the legal provisions governing customary villages and their dispute resolution mechanisms.

The novelty of this research contributes to the discourse on legal certainty and justice for customary law communities by clarifying the extent of the authority of customary villages in resolving customary law violations.

The results of the study indicate that customary villages in Bali have legal authority to resolve customary law violations, as stipulated in Article 104(d) of the Village Law and Article 24(l) of the Bali Customary Village Regulation. This affirms their role in maintaining order through customary law traditions.

In conclusion traditional villages in Indonesia, including in Bali, are constitutionally recognized and granted autonomy in governance and dispute resolution. To enhance legal certainty, traditional villages should establish clear procedural guidelines (awig-awig) for resolving disputes through traditional deliberative assemblies (paruman adat). This approach can ensure justice while maintaining environmental and social harmony within the customary legal system.

Keywords : Adat villages; Customary law, Autonomy, Legal certainty

Abstrak

Tujuan penelitian ini merupakan bagian fundamental dari struktur kenegaraan Indonesia, karena telah ada sejak Indonesia merdeka dan telah diakui dalam kerangka hukum. Pengakuan tersebut tercantum dalam Pasal 18B Undang-Undang Dasar 1945 dan diperkuat oleh Undang-Undang Nomor 6 Tahun 2014 tentang Desa. Di Bali, masyarakat hukum adat, yang dikenal sebagai krama desa, memiliki hak-hak khusus, termasuk tata kelola pemerintahan yang otonom atas urusan lokal. Penelitian ini berfokus pada otonomi desa adat di Bali, khususnya dalam menyelesaikan sengketa adat. Penelitian ini berusaha menjawab dua pertanyaan kunci: (1) Bagaimana posisi hukum desa adat dalam hukum positif Indonesia? dan (2) Apa saja kewenangan desa adat dalam menyelesaikan pelanggaran adat di Bali?

Metode penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan

perundang-undangan, dengan menganalisis ketentuan-ketentuan hukum yang mengatur desa adat dan mekanisme penyelesaian sengketa.

Kebaruan penelitian ini berkontribusi pada wacana kepastian hukum dan keadilan bagi masyarakat hukum adat dengan mengklarifikasi sejauh mana kewenangan desa adat dalam menyelesaikan pelanggaran adat.

Hasil penelitian menunjukkan bahwa desa adat di Bali memiliki kewenangan hukum dalam menyelesaikan pelanggaran adat, sebagaimana diatur dalam Pasal 104(d) UU Desa dan Pasal 24(l) Peraturan Desa Adat Bali. Hal ini menegaskan peran mereka dalam menjaga ketertiban melalui tradisi hukum adat.

Kesimpulan penelitian Desa adat di Indonesia, termasuk di Bali, secara konstitusional diakui dan diberikan otonomi dalam tata kelola pemerintahan dan penyelesaian sengketa. Untuk meningkatkan kepastian hukum, desa adat harus membuat pedoman prosedural yang jelas (*awig-awig*) untuk menangani sengketa melalui majelis musyawarah (*paruman adat*). Pendekatan ini dapat menjamin keadilan sekaligus menjaga keselarasan lingkungan dan sosial dalam masyarakat hukum adat.

Kata kunci: Desa adat; Hukum adat, Otonomi, Kepastian hukum

1. INTRODUCTION

Indonesia, as an island, has seen numerous administrative dynamics since its independence, characterized by constitutional alterations from the 1945 Constitution to the RIS Constitution, the 1950 UUDS, and ultimately reverting to the 1945 Constitution via the Presidential Decree on July 5, 1959. The reform era from 1999 to 2002 resulted in constitutional modifications that established the 1945 Constitution as the definitive constitution.¹ This alteration is not merely a legal formality; it also signifies the state's endeavor to address societal issues, including the presence of customary villages. The acknowledgment of customary villages as public legal entities following the modification of the 1945 Constitution demonstrates that the Indonesian constitution is progressively embracing legal plurality and reinforcing local communities within a democratic and participatory governance framework.²

The 1945 Constitution of the Republic of Indonesia functions as the fundamental legal framework of the Indonesian state, delineating important state principles and confirming the legal status of all community entities, including villages. The constitutional function of villages is established in Article 18 Paragraph (1), which delineates Indonesia into provinces, districts, and cities with autonomous local governance, and Article 18B Paragraph (2), which acknowledges and honors adat (customary) communities and their traditional rights, provided they are preserved and aligned with constitutional principles. These provisions demonstrate Indonesia's dedication to legal plurality and recognition of community-based government within the national framework.

Act Number 6 of 2014, referred to as the Village Law, offers additional details regarding

¹ Undang-Undang Dasar NRI, "Undang-Undang Dasar Neraga Republik Indonesi 1945" (1945).

² I Ketut Sudantra, *Pengakuan Peradilan Adat Dalam Politik Hukum Kekuasaan Kehakiman* (Denpasar: Swasta nulus, 2016).

the legal status and governance of villages. This legislation implements the constitutional directive by delineating the framework, jurisdiction, and independence of villages, including adat villages, within the national legal framework. It underscores the significance of regional regulations in acknowledging and empowering adat villages in accordance with their distinct social and cultural identities, thereby strengthening the state's role in facilitating community self-governance while conforming to overarching principles of decentralization and democratic engagement.

Adat villages that are part of the Indonesian state are also specified in the village law, where in Article 1, it is determined that the village is an Adat village. It is further elaborated that the village or adat village has a traditional legal institution and territorial boundaries authorized to regulate and administer the government and the interests of the local community based on traditional origin rights. With the vast space in granting adat village autonomy, there should be rules that give adat village authority, especially in village autonomy, to resolve minor disputes or disputes, especially in Bali in resolving customary (adat) disputes.

Social life in Adat village communities is not spared in problems. One of them is a dispute, which by definition is a dispute between 2 (two) or more people where one party feels aggrieved. According to Nurmaningsih, a dispute is between a party to an agreement because of a default by the other party in the agreement.³ The dispute was reaffirmed by Takdir Rahmadi, who stated that a dispute is a condition where individuals are trapped in a situation of factual disputes or disputes according to the parties' views.⁴ From the definition of a dispute above, disputes in the dispute category can be found in the community's social life in adat villages. In 2021, a customary land dispute in Bali caught the public's attention. This dispute involved a Guwang Adat Village resident in Gianyar Regency with the Guwang Adat Village. The main issue in this dispute case is the use of land considered private property, used as a public facility in the field of education by the Guwang Adat Village and the Gianyar Regency Education Office. In this case, the impact of losses the Guwang adat village community suffered is anxiety and fear of taking over land considered ancestral heritage.⁵ In a different year, 2022, a land dispute resulted in the imposition of kanorayang customary sanctions or an agreement on the residents of the adat village of Taro, Gianyar Regency. In this customary dispute, the adat village party resolves the dispute by giving customary sanctions to its citizens, who considered this dispute to cause an uncomfortable situation in the social environment of the Taro t adat village.⁶

The case above is an example of a dispute that will always exist in the life of the adat village community, especially in Bali. Therefore, it is essential to have clarity regarding the autonomy of traditional villages in resolving disputes in the lives of indigenous villagers in

³ Nurmaningsih Amriani, "Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," in *Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan* (Jakarta: PT. Raja Grafindo Persada, 2012), 13.

⁴ Takdir Rahmadi, "Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat," in *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat* (Jakarta: PT. Raja Grafindo Persada, 2017), 1.

⁵ Wirnaya, "Kasus Sengketa Tanah, Desa Adat Lakukan Gugatan Balik," *Balipost*, 2021.

⁶ Bali Tribune, "Warga Taro Dikanorayang, Kemenkumham Turun Tangan," *Bali Tribune*, 2022.

order to provide legal certainty for indigenous villagers in resolving disputes regarding land or cases containing criminal elements. Another thing that is no less important is the existence of justice and balance that is obtained for indigenous villagers who experience disputes in Bali. Based on the description of the background above, there are formulations of problems that become the focus of the topic of this study, including 1. What is the legal status of adat villages under Indonesian law? 2. What is the extent of the authority held by adat villages in resolving customary disputes, with a particular focus on Bali?

This study aims to the legal position and jurisdiction of adat villages in adjudicating customary conflicts, particularly in Bali. Despite being acknowledged under Article 18B(2) of the 1945 Constitution and the Village Law (Act No. 6 of 2014), the extent and implementation of their dispute resolution authority remain ambiguous, especially concerning land disputes and customary punishments (*kanorayang*). This research aims to elucidate ambiguities through legal and empirical analysis, evaluate the efficacy of *adat*-based processes, and recommend modifications to enhance their role in administering justice within the national legal framework.

Scientific inquiry necessitates novel contributions by engaging with relevant prior studies to establish originality and demonstrate how the present research builds upon or diverges from existing scholarship. This study explores the autonomy of adat villages, particularly their legal status, rights, and authority in adjudicating customary disputes in Bali. Several foundational studies provide critical insights into this research.

Sitari Candra Dewi and Dewa Nyoman Rai Asmara Putra examine dispute resolution mechanisms in the context of village head election conflicts, emphasizing the efficacy of alternative dispute resolution (ADR) through non-litigation channels. Their findings underscore the practical advantages of ADR, which align with the customary dispute resolution processes in Bali's adat villages, where traditional elders or customary leaders (*bendesa adat*) serve as mediators in conflict resolution.⁷ Similarly, Gede Dewangga Prahasta Dyatmika et al. analyze the role of adat leaders in resolving disputes in Klubagolit, East Nusa Tenggara, highlighting their central function in addressing minor disputes due to their profound understanding of customary law. Their study reinforces the argument that adat leaders in Bali similarly function as primary adjudicators in resolving customary disputes, underscoring the significance of customary law in upholding social order and community cohesion.⁸

Furthermore, Ewil Danil's research on the application of customary law in criminal cases within Indonesia's legal positivism framework demonstrates that, despite Indonesia's codified legal system, customary law remains instrumental in resolving minor disputes and adat-related

⁷ Sitari Candra Dewi Dewa Nyoman Rai Asmara Putra, "Problematika Model Penyelesaian Sengketa Pemilihan Kepala Desa," no. 1516051049 (2014): 1–18.

⁸ M. Hamidi Masykur Gede Dewangga Prahasta Dyatmika, Imam Kuswahyono, "Peran Kepala Adat Dalam Penyelesaian Sengketa Tanah Nepang Antara Desa Adobala Dengan Desa Redontena Di Kecamatan Klubagolit, Adonara (Studi Di Kabupaten Flores Timur, Nusa Tenggara Timur)," *Peran Kepala Adat Dalam Penyelesaian Sengketa Tanah Nepang Antara Desa Adobala Dengan Desa Redontena di Kecamatan Klubagolit, Adonara (Studi Di Kabupaten Flores Timur, Nusa Tenggara Timur)* 1, no. 14 June 2015 (2015): 1–20, <https://core.ac.uk/download/pdf/11715904.pdf>.

offenses within indigenous communities. These studies establish a solid scholarly foundation for the present research, which extends the discourse by examining the legal position of adat villages within Indonesia's positive law framework, assessing the extent of adat jurisdiction in resolving land disputes and the imposition of customary sanctions (kanorayang), and evaluating the efficacy of adat-based dispute resolution mechanisms in ensuring legal certainty and justice.⁹

This study also seeks to identify existing challenges and propose legal reforms to strengthen the regulatory framework governing adat villages, ensuring that customary legal practices align with the principles of justice and legal certainty. By integrating doctrinal legal analysis with empirical findings, this research addresses a critical gap in legal scholarship by providing a comprehensive assessment of adat village autonomy in customary dispute resolution, with a specific focus on Bali's indigenous legal system.

This study offers a fresh perspective by conducting a comprehensive analysis of the autonomy and authority of adat villages in Bali in resolving customary disputes. Unlike previous research that primarily focuses on alternative dispute resolution (ADR) models or the general role of customary leaders, this study specifically examines the legal ambiguities and challenges faced by adat communities within Indonesia's formal legal framework. By grounding the discussion in constitutional and statutory provisions, particularly Article 18B(2) of the 1945 Constitution and Act Number 6 of 2014 on Villages, this research seeks to bridge the gap between customary legal traditions and Indonesia's positive law. A key contribution of this study is its focus on land disputes and the imposition of customary sanctions (kanorayang)—issues that have historically been contentious in Bali. While prior studies have explored ADR mechanisms and the role of adat leaders in dispute resolution, this research extends the analysis to the legal complexities of adat adjudication, particularly in the context of Indonesia's hybrid legal system, where customary law coexists with national laws.

By incorporating empirical case studies, such as the customary land dispute in Guwang Adat Village and the kanorayang sanctions in Taro Adat Village, this study provides a concrete examination of real-world disputes, illustrating the practical challenges faced by adat villages in enforcing their authority. Unlike research that primarily documents customary practices, this study goes further by proposing legal and policy recommendations to strengthen adat governance, ensuring that customary dispute resolution mechanisms align with principles of legal certainty and justice. By integrating doctrinal legal analysis with empirical findings, this research fills a critical gap in the literature, offering a comprehensive assessment of adat village autonomy and the barriers to its effective implementation. Beyond academic discourse, the findings have practical implications for legal practitioners, policymakers, and indigenous communities, contributing to broader discussions on the recognition, protection, and legal certainty of adat governance within Indonesia's evolving legal landscape.

⁹ E. Danil, "Konstitusionalitas Penerapan Hukum Adat Dalam Penyelesaian Perkara Pidana," *Jurnal Konstitusi* 9, no. 3 (2012): 583–96.

2. METHOD

In this study, the focus of the method that will be used is the normative legal research method. As stated in the definition of the normative legal research method, according to Peter Mahmud Marzuki, it is stated that the normative legal research method is a process of searching for the rule of law, principles in law, or legal doctrines used to answer legal issues that will be studied in the legal research.¹⁰ This study also uses a statute approach. An exciting explanation from Peter Mahmud above can be related to why this research uses normative legal research methods. The issue of the autonomy of adat villages in Bali in the position and authority to resolve disputes is still unclear. The state of customary law communities and adat villages are recognized, not to forget that the existence of a village law also strengthens the position of adat villages in Bali. However, there is still an apparent ambiguity of norms where there are no clear principles regarding the autonomy of adat villages in Bali to efforts of indigenous villages to resolve disputes in their territories independently.

3. DISCUSSION

The duality of village governance in Bali, comprising adat villages (customary law villages) and official villages (government administrative villages), has profound historical origins and persists in influencing local governance today. Adat villages adhere to customary law and traditional authority, whilst official villages operate under state law and administration. This study examines the legal status and autonomy of adat villages within Indonesia's constitutional framework, focusing on their function in customary dispute settlement. This study employs a normative legal research methodology to investigate the exercise of authority by adat villages in accordance with Article 18B of the 1945 Constitution, the 2014 Village Law, and local regulations in Bali, emphasizing their involvement in adjudicating civil and minor customary offenses through deliberation (*paruman adat*) and restorative justice mechanisms. The findings underscore the necessity for explicit legal recognition and procedural frameworks to enhance the power of adat villages while preserving harmony between customary and state legal systems.

3.1 The Position of Adat Villages in Positive Law in Indonesia

The village is etymologically a word that comes from Sanskrit. Kartohadikusoemo in Wayan P. Windia and Ketut Sudantra stated that the word village is the same as the word state, country, or nagari. Where all the words have the meaning of the word, namely homeland, homeland, and homeland.¹¹ The province of Bali recognizes 2 (two) types of villages, namely adat villages and official villages. The two types of villages have their respective systems and functions. The adat village is a village institution that carries out customary law. At the same time, the official village is a government institution or organization that carries out its function to carry out administration, such as managing identity cards, family cards, and matters concerning officials (government).¹²

¹⁰ Peter Mahmud Marzuki, "Penelitian Hukum," in *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010), 35.

¹¹ Wayan P. & I ketut Sudantra Windia, *Pengantar Hukum Adat Bali, Pengantar Hukum Adat Bali* (Denpasar: Udayana University Press, 2016).

¹² Windia.

The duality of Bali's traditional and official villages is not new. This duality of villages in Bali had existed since the era of the kingdoms, even before the Majapahit era ruled in Bali. Citing the research of V.E. Korn in I Made Suwitra et al. stated that villages in Bali are autonomous, characterized by the ownership of wealth, separate rules, and freedom from other powers.¹³ It was further explained that the understanding of village autonomy in Bali that there was no intervention from other parties could be understood in understanding the village situation when there was no influence from the kings even before the Majapahit era, which at this time showed politics that broke the bonds between the village and the royal power in the past that era.¹⁴ It can be reaffirmed that the duality of the official village and the adat village is a legacy of history and is still ongoing. This is because, until now, official villages and adat villages can still harmonize or coordinate side by side and cooperate in village development.

The dualism of villages in Bali does not mean that there are differences in village areas between the adat villages and official villages. Currently, in Bali, there are 1,493 (one thousand four hundred and ninety-three) adat villages in 9 (nine) regencies/cities in Bali, where the number of villages above includes the number of official villages. It was reiterated that the difference between the official and adat villages was only in the type of village administration. In its implementation, the village service carries out administrative operations such as population registration related to the status of village residents as citizens. Interestingly, adat villages also handle population but in a traditional way, such as population matters related to rights and obligations in adat villages, such as rights and obligations in places of worship (*parahyangan*), territorial areas of adat villages (*palemahan*), and rights and obligations. In terms of social relations between indigenous villagers (*pawongan*).¹⁵

This paragraph delineates the coexistence of two types of communities in Bali: adat villages and dinas villages. Dinas villages constitute a type of village governance acknowledged in Law No. 6/2014 on Villages (hereinafter referred to as the Village Law), which affirms that villages are the smallest governmental units empowered to manage governance, development, and community empowerment within the framework of the Unitary State of the Republic of Indonesia (NKRI). Article 18B paragraph (2) of the 1945 Constitution acknowledges customary villages, asserting that the state recognizes and respects customary law communities and their traditional rights, provided they remain extant and align with societal development and the principles of the Republic of Indonesia. The Village Law recognizes the existence of customary villages in Article 6, paragraphs (1) and (2), which differentiate between villages and customary villages based on ancestral rights and local customs. The legal relationship between official villages and customary villages remains problematic, particularly

¹³ I Made Suwitra, I Ketut Selamat, and Luh Kade Datrini, "Penguatan Kapasitas Lpd Desa Adat Di Bali Melalui Penyusunan Awig-Awig," *Jurnal Hukum & Pembangunan* 50, no. 3 (2021): 676, <https://doi.org/10.21143/jhp.vol50.no3.2762>.

¹⁴ Suwitra, Selamat, and Datrini.

¹⁵ I Gusti Agung Putu Sutarja, "Legalitas Dan Implementasi Pungutan Desa Adat Terhadap Penduduk Nonpermanen Di Wilayah Desa Adat Kerobokan" 18, no. 1 (2021): 68–80.

concerning authority in conflict resolution, customary land management, and the application of customary law within the national legal framework. Certain regulations, such as Government Regulation (PP) No. 43/2014 concerning the Implementation Regulations of the Village Law, emphasize the administrative mechanisms of official villages, whereas customary villages derive their authority from customary law, which is frequently unwritten and varies by region.

The relationship between *desa dinas* and *desa adat* in Bali exemplifies legal pluralism, wherein state law and customary law coexist within the local governance framework. Bedner and Van Huis (2008) elucidate that Indonesia encounters difficulties in reconciling customary law with the contemporary legal framework, particularly regarding customary village autonomy, which frequently conflicts with state regulations concerning natural resource management and land dispute resolution.¹⁶ Bali Province Regional Regulation No. 4/2019 on Customary Villages establishes the status of customary villages as legal entities entitled to govern their own customary lands, encompassing social, cultural, and economic dimensions. This rule must conform to national legal provisions, including the Basic Agrarian Law (UUPA) Number 5 of 1960, which governs the status of customary land within the national land law framework. Davidson and Henley (2007) demonstrate that the application of customary law frequently encounters challenges due to its incompatibility with formal state legal concepts, particularly in land dispute cases and customary punishments.¹⁷ Consequently, despite the robust legal foundation of customary villages in the constitution and associated regulations, challenges persist in reconciling customary laws with state regulations, particularly concerning legal authority in dispute resolution and the status of customary land in Bali.

In Bali, dispute resolution at the *desa adat* and *desa dinas* levels employs several processes, contingent upon the nature of the disagreement. *Desa dinas*, as a component of the formal governmental framework, adheres to dispute resolution protocols established by national legislation, including the village law and supplementary rules. Disputes of an administrative nature or pertaining to public policy at the village level are often handled through community discourse, facilitated by the *camat*, or escalated to the district court if local mediation fails to yield a resolution. Conversely, customary villages play a more extensive role in addressing customary conflicts related to social interactions, customary land, customary rights, breaches of customary standards, and the enforcement of customary punishments (*awig-awig* and *dresta*). According to Bali Province Regional Regulation Number 4 of 2019 regarding Customary Villages, these villages possess the competence to autonomously adjudicate customary issues in accordance with their respective customary laws. Dispute resolution typically occurs through the *Majelis Desa Adat* (MDA) or local customary institutions, with the *bendesa adat* (customary village head) serving as the principal mediator in the customary justice process.¹⁸

¹⁶ Adriaan Bedner and Stijn van Huis, "The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 164, no. 2 (2008): 165–93, <https://doi.org/10.1163/22134379-90003655>.

¹⁷ David Henley Jamie S. Davidson, *The Revival of Tradition in Indonesian Politics The, Solutions*, vol. 3, 2007, 1–4.

¹⁸ Agni Yoga Nugraha and Kushandajani, "Analisis Relasi Majelis Desa Adat (MDA) Kabupaten Badung Dan

Dispute resolution systems in customary villages typically emphasize discourse and consensus through a restorative approach, aiming to restore social equilibrium within customary communities without resorting to formal court processes. In customary land disputes in Bali, the resolution process emphasizes negotiations rooted in local wisdom, allowing the conflicting parties to attain an equitable solution while adhering to the relevant customary law. In certain instances of customary disputes, Balinese customary villages implement *kanorayang*, a social or economic sanction imposed on parties seen to have breached customary rules, with the objective of preserving social harmony and averting protracted conflict.¹⁹ Nonetheless, although adat village dispute resolution methods possess substantial credibility within local communities, concerns persist, especially about their limited official recognition by the national legal system. Consequently, it is essential to enhance laws that govern the interplay between customary law and state law to promote successful dispute resolution in customary villages while adhering to national legal standards.

The existence of the adat village and the official village is quite clearly described above, where it can be seen that there is an inseparable relationship between the adat village and the official village. However, the legality of the relationship between the t adat village and the official village has not been explicitly regulated in the village law, government regulations, or other regulations. This provision regarding the relationship between the adat village and the official village is essential to clarify the autonomous rights of each element between the adat village and the official village. Generally, the relationship between traditional and official villages today is only functional, namely consultative and coordinating between the adat village administrators (*prajuru desa adat*) and the *perbeke*.²⁰ However, it should be emphasized that the cooperation between traditional and official villages is still in the realm of village development. This can be proven in the preparation of development programs, where this collaboration is carried out annually by holding village-level deliberation called the Musrembang.²¹ Associated with this study, adat villages still carry out autonomy in the realm of village development with official villages. However, in terms of efforts to resolve minor disputes or minor criminal problems, there is still no clarity regarding village autonomy rights, especially for adat villages in authority to resolve minor disputes. In the eyes of Indonesian positive law.

3.1.1 Autonomy Theory of Customary Law Community

The theory of autonomy for indigenous peoples will use the teachings of 3 (three) legal experts who are experts in customary law, namely Ter Haar, Cornelis van Vollenhoven, and

Pemerintah Kabupaten Badung Ddalam Pengembangan Pariwisata Daerah," *Journal of Politic and Government Studies* 13, no. 2 (2024): 228, <https://ejournal3.undip.ac.id/index.php/jpgs/article/view/43285>.

¹⁹ Wiwin Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa Adat," *Unes Law Review* 6, no. 4 (2024): 9889–97, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4>.

²⁰ Luh Putu Suryani I Made Restu Putra, I Wayan Arthanaya, "Hubungan Fungsional Desa Pakraman Dengan Desa Dinas Dalam Pelaksanaan Pembangunan Di Desa Pererenan Menurut Uu No. 6 Tahun 2014" 1, no. 2 (2020): 426–30.

²¹ I Made Restu Putra, I Wayan Arthanaya.

Sally Falk Moore. At the beginning of this study, it emphasized the reasons why using this theory. In simple terms, customary law communities are part of adat villages. It is the same as the term *ubi societas ibi ius* by Cicero, which means where there is society, there is the law.²² Likewise, there is an adat village where there is a customary law community.

The village is the forerunner of the formation of a state, for it is only natural that each village has its autonomy which customary law communities will carry out. To emphasize the above, Ter Haar stated that the customary law community unit is a collection of individuals who are stable and have power.²³ Power here can be interpreted that the customary law community follows an autonomous rule that exists in the village. Autonomy, according to Van Vollenhoven, can be understood through the teachings of *catur praja*, which consists of activities in the formation of legislation (*zelfwetgeving*), carrying out these habits or rules independently (*zelfvoering*), conducting the judicial system independently (*zelfrechtpraak*), and forming a separate police unit (*zelf-politie*).²⁴ There is a more modern classification of village autonomy by Sally Falk Moore, called semi-autonomous society unity. A semi-autonomous society or semi-autonomous social field is defined by Moore procedurally where it is stated that a semi-autonomous society can produce rules and customs and symbols that originate from within, but this is very vulnerable to the intervention of rules or regulations. Decisions from the outside world around him. It is further said that this semi-autonomous social society can form regulations and means for its members to remain submissive and even coercive, where these rules do affect members of this semi-autonomous society.²⁵

The use of autonomy theory within traditional Balinese villages is evident in the resolution of diverse conflicts that emphasize local wisdom and the community's social structure. In the land dispute between Klecung Customary Village and Kerambitan Castle in Tabanan, Bali, the customary village actively engaged in conflict resolution via customary methods that honored traditional values and relevant customary law.²⁶ The function of Bendesa Adat as the leader of the customary village is essential in mediating internal conflicts. In Buduk Traditional Village, the Bendesa Adat serves as a mediator in resolving inherited land disputes, adhering to the village *awig-awig* that governs inherited property and the responsibilities of heirs.²⁷

In Desa Adat Sanur Kaja, the resolution of land conflicts related to tourism occurs in five stages: recognition, diagnosis, agreement, implementation, and evaluation. This procedure

²² Albar Andi Ardillah, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional," *Jurnal Hukum Kenotariatan* 1, no. 1 (2019): 18–32.

²³ B. Ter Haar Bzn, *Asas-Asas Dan Tatahan Hukum Adat, Asas-Asas Dan Tatahan Hukum Adat* (Bandung: Mandar Maju, 2011).

²⁴ Sudantra, *Pengakuan Peradilan Adat Dalam Politik Hukum Kekuasaan Kehakiman*.

²⁵ Sudantra.

²⁶ Ni Made Mariska Ayu Utari and Gede Indra Pramana Piers Andreas Noak, "PERAN DESA ADAT DALAM KONFLIK SOSIAL: STUDI KASUS KONFLIK TANAH ANTARA DESA ADAT KLECUNG DAN PURI KERAMBITAN DI TABANAN, BALI," *Triwikrama: Jurnal Ilmu Sosial* 4, no. 12 (2024): 40–50, <https://doi.org/doi.org/10.6578/triwikrama.v4i12.5918>.

²⁷ I Gede Suka Widyantara, I Ketut Sukadana, and Diah Gayatri Sudibya, "Peranan Bendesa Dalam Penyelesaian Sengketa Tanah Waris Di Desa Adat Buduk," *Jurnal Analogi Hukum* 2, no. 1 (March 4, 2020): 32–36, <https://doi.org/10.22225/ah.2.1.1606.32-36>.

illustrates how indigenous villages assert sovereignty in managing and resolving land disputes while preserving local social and cultural cohesion.²⁸

Based on the theory of the autonomy of indigenous peoples from the experts above, it can be seen that this theory is relevant to this study. The most substantial reason is that all of the theoretical explanations above broadly state that adat village consisting of customary law communities can regulate the rules of the region and its village residents autonomously.

3.2 The Legal Position of Balinese Adat Villages in Indonesian Positive Law

Traditional villages formally have a recognized position in the fundamental constitution of Indonesia, namely Article 18 b of the 1945 Constitution of the Republic of Indonesia. In that article, the existence of indigenous peoples is recognized but with conditions, where these conditions indicate the existence of indigenous peoples within the territory of the Republic of Indonesia, which is a member of the Unitary State of the Republic of Indonesia. adat villages must not conflict with the basic principles of the state. Looking at the hierarchy of legislation in Indonesia, of course, to see the position of adat villages in Indonesia, one can examine the 2014 village law. The state provides recognition and respect for villages before the Unitary State of the Republic of Indonesia. In addition, this provision clarifies the status and legal certainty of adat villages in the constitutional system in Indonesia. Article 5 is more specifically to determine the position of adat villages domiciled in regencies/cities throughout Indonesia, which is adat villages in the province of Bali.

The village law provides room for mentioning the term village as stipulated in Article 6 paragraph (2). In that article, the mention of a village or adat village can be adjusted to the usage in the local area. Studying the mention of adat villages or villages in Bali, there are dynamics of the term adat village names. Seen from a historical perspective, the term adat village starts from the village community called krama or karaman. The village at that time was called *wanua* or *banua*, where this term can be seen in the Trunyan Village inscription in the 10th century.²⁹ In the orde baru era, the term *wanua* was rarely used and became a adat village, where this term was stipulated in 1986 by Regional Regulation Number 6 of 1986. In the modern era, the term has undergone changes, which were marked in 2001 by the ratification of the Regional Regulation of the Province of Bali Number 3 In 2001 (from now on Perda Desa *Pakraman*), this regional regulation stipulates that villages in Bali are called *Desa Pakraman*. However, in 2019, the term *Pakraman* village changed to adat village marked by ratifying the Customary Village Regulation in Bali. Be it adat village or a *Pakraman* village, and formally in its provisions, it does not change the essence of the meaning of a adat village, namely the legal customary (adat) community in the Province of Bali, which has a unity of tradition and social life of the Hindu community that has existed for generations in the ties of *Kahyangan Tiga*. Where each village has its territory and assets. Furthermore, the essential thing in this study is that both the adat village regulation and the *Pakraman* regulation have determined

²⁸ Dea Revina et al., "Peran Desa Adat Dalam Penyelesaian Konflik Lahan Untuk Pariwisata (Studi Kasus Di Desa Adat Sanur Kaja)," *Jurnal Kertha Desa* 8, no. 12 (2020).

²⁹ Sudantra, *Pengakuan Peradilan Adat Dalam Politik Hukum Kekuasaan Kehakiman*.

the autonomy of adat villages in Bali by emphasizing that every pakraman village has the right to regulate and manage its household independently.

The acknowledgment of customary villages in Bali within Indonesian positive law has been reinforced by numerous rules that establish a legal foundation for their existence and societal role. The Village Law and the 2019 rule on indigenous villages in Bali are significant regulations that acknowledge indigenous villages as legal entities with the capacity to govern and administer their households according to applicable customary law. The implementation of this recognition encounters problems, including the duality of the village government structure between official and customary villages, resulting in normative conflicts and discrepancies in legal application.³⁰

Customary villages in Bali are empowered to address many social and legal matters locally by instituting customary regulations, including awig-awig and pararem. In the realm of environmental security, the Bali Provincial Government promulgated Governor Regulation Number 26 of 2020 regarding the Integrated Environmental Security System Based on Customary Villages (Sipandu Beradat). This legislation governs 1,493 customary villages in Bali to establish their regional security systems in collaboration with the police, so fostering interaction between the state legal system and customary law in preserving community security and order.³¹

Nonetheless, the jurisdiction of indigenous villages in addressing social and legal matters remains constrained by national legislation. Indigenous communities have autonomy in managing their internal matters; nonetheless, they must ensure that their regulations and decisions align with superior laws and regulations. This necessitates that indigenous communities consistently collaborate with local government to ensure that implemented policies align with national legal principles, so fostering harmony between customary law and state law in the governance practices of Bali.

Nevertheless, it does not preclude the potential for conflict between state law and customary law in Indonesia due to the divergent concepts and values embraced by the two systems. Statutory law, characterized by its formality and uniformity, occasionally conflicts with customary law, which is more adaptable and rooted in local traditions. In natural resource management, customary laws regulating community rights frequently conflict with state policies that emphasize economic development and investment, resulting in social tensions and the loss of access to traditional territory.³² In Bali, indigenous villages possess autonomy in the organization and management of their houses in accordance with established customary

³⁰ A.A. Istri Eka Krisna Yanti, "Kewenangan Pengelolaan Desa Wisata Dalam Perspektif Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 Tentang Desa Adat Di Bali," *Kerta Dyanmika* 16, no. 2 (2020): 59–68, <https://doi.org/https://doi.org/10.46650/kd.16.2.738.59-68>.

³¹ Komang Indra Apsaridewi et al., "Interaksi Hukum Daerah Dan Hukum Adat Dalam Sistem Pengamanan Terpadu Berbasis Desa Adat (Sipandu Beradat) Di Bali" 5, no. 2 (2022): 77–90, <https://doi.org/https://doi.org/10.32795/vw.v5i2.3409>.

³² Ramadhan, Syafrizal, et al., "Harmonisasi Hukum Adat Dan Konstitusi Nasional: Studi Konflik Pengelolaan Sumber Daya Alam Di Indonesia Ramadhan," *Nusantara; Journal for Southeast Asian Islamic Studies* 20, no. 2 (2024), <https://doi.org/http://dx.doi.org/10.24014/nusantara.v20i2.33987>.

law. This autonomy may be compromised by state law involvement, particularly where there is a contradiction between adat regulations and national legislation. The implementation of the Customary Village-Based Integrated Neighborhood Security System (Sipandu Beradat) exemplifies the interaction between the state legal system and customary law, wherein customary villages collaborate with state law enforcement officials to uphold community safety and order.³³

To resolve these possible disputes, alignment between statutory law and customary law is essential. One strategy involves amending regulations to acknowledge and honor customary law, while also enhancing the participation of indigenous peoples in the policy formulation process affecting them. Consequently, the autonomy of indigenous communities in addressing issues within their territory can be preserved, provided that their resolutions adhere to the principles of national law and uphold human rights.³⁴

The Adat villages in Bali have legal independence in adjudicating customary issues, informed by the philosophical principles of *Tri Hita Karana*, which prioritize harmony among humanity, nature, and the divine. Their jurisdiction is acknowledged under national and local legal frameworks, including the 2019 Bali Adat Village Regulation and the Village Law, which empower them to conduct peace trials for civil disputes and adjudicate matters using customary law. Nonetheless, their authority on customary infractions is constrained, especially in addressing criminal charges, which must conform to national legal standards. The resolution of such issues generally adheres to a deliberative procedure termed *parasparo*, executed in *sangkep* (customary courts), embodying a restorative justice framework. Although adat leaders may resolve minor customary infractions via penal mediation, severe criminal cases are under the purview of national courts, underscoring the legal limitations on adat village authority in Bali.

3.2.1 The Authority of Adat Villages in Dispute Resolution Efforts in Bali

Adat villages in Bali have characteristics, especially in managing indigenous peoples. Bali's characteristic adat villages possess a noble philosophical value called the *Tri Hita Karana* teachings. Philosophically, *Tri Hita Karana* is Hindu religious teaching which is the values that grow in the life of the Balinese indigenous people. In contrast, *Tri Hita Karana* means three (*tri*), cause (*karana*), and happiness (*hita*). Balinese indigenous people believe and believe that the cause of happiness and prosperity in life in this world is to balance life by always maintaining good relations with *Ida Sanghyang Jagatkarana, Jaganatha* (God the Creator), *bhuana* (universe), and *manusa* (humans).³⁵

The manifestation of *Tri Hita Karana*'s philosophy is the community's behavior, as stated in its various organizational structure. Although varied, one thing inherent in all t adat villages in Bali is that the adat village is an autonomous religious and social organization, where the

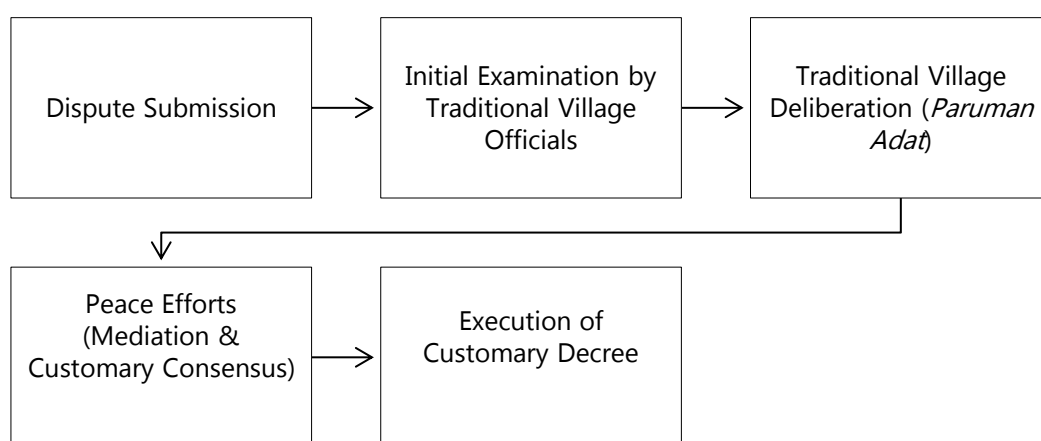
³³ Apsaridewi et al., "Interaksi Hukum Daerah Dan Hukum Adat Dalam Sistem Pengamanan Terpadu Berbasis Desa Adat (Sipandu Beradat) Di Bali."

³⁴ Ramadhan, Syafrizal, et al., "Harmonisasi Hukum Adat Dan Konstitusi Nasional: Studi Konflik Pengelolaan Sumber Daya Alam Di Indonesia Ramadhan."

³⁵ Windia, *Pengantar Huk. Adat Bali*.

meaning of autonomy here has the right to manage its household independently. Concerning the authority of adat villages in efforts to resolve customary disputes or customary violations, it is necessary to look at the legal norms, namely the village law and the Bali adat village regulation in 2019.

Descriptively, the authority of the adat village is determined in Article 104 letter d of the village law, which determines the settlement of customary disputes, which must be settled based on legal customary in each customary area but must be in line with the principles of human rights, where in the settlement efforts prioritize the way of deliberation. Furthermore, in letter e, it is determined that holding a typical peace session in dispute resolution must follow the provisions of the legislation. From this provision, there is still ambiguity regarding the concrete form of the customary village court within its authority, specifically in the autonomy right to settle existing customary cases. For this reason, this study will continue the study seen from the local regulations on traditional Balinese villages according to the locus of this study, namely traditional villages in Bali. In the provisions of the local regulations on traditional villages in Bali, there are 2 (two) things that are in the spotlight regarding the autonomy of traditional villages in their authority to resolve customary cases, both customary disputes, and customary violations, the first in the provisions of Article 24 letter l which stipulates that traditional villages have the authority to hold a peace trial for civil cases/customary speeches and the second in letter m which determines that in settlement of customary cases/customary village talks, it is obligatory to resolve them with customary law. So far, the case in the customary village dispute has been completed. In terms of legal certainty, it is clear where the authority of the traditional village is in the settlement of customary civil disputes.³⁶ However, it should be realized that social problems in customary law communities are not only civil problems, but there are other problems of a criminal nature which are called customary violations.



Customary conflict resolution in Bali is conducted through systems established in the awig-awig (customary norms) of each village. The procedure often commences with a

³⁶ Provinsi Bali, "Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 Tentang Desa Adat Di Bali," Provinsi Bali (2019).

grievance lodged by the disputing party to the prajuru of the customary village, who thereafter engages in preliminary mediation to attain a conciliatory resolution. Should the initial mediation fail, the case will be referred to the traditional village deliberation forum, termed *paruman* or *sangkep*, where all members of the customary community may engage in seeking a resolution that is equitable and aligned with customary norms.³⁷ Traditional village leaders play a significant part in the conflict settlement process. The *Bendesa adat*, as the chief of the *adat* village, acts as the primary mediator, enabling communication between the conflicting parties. Moreover, institutions like *Kerta Desa* function as customary judicial entities to implement resolutions established in the *paruman*. Decisions are conclusive and obligatory, with penalties varying from apologies to social exclusion (*kesepekan*), contingent upon the severity of the offense committed.

The function of customary villages in adjudicating customary land disputes in Bali is exemplified by the instance of Bungkulan Village, Buleleng Regency. Bungkulan Pakraman Village actively engaged in mediating customary land disputes, engaging village officials, *Kerta Desa*, the conflicting parties, and witnesses. Nonetheless, the issues encountered encompass the self-serving disposition of the parties involved, obstacles in locating witnesses, and the insufficiency of evidence necessary for the mediation process. Nevertheless, the mediation system used by Bungkulan Village remains a fundamental component in preserving social harmony and equilibrium within indigenous villages in Bali.³⁸

The authority of traditional villages in resolving customary violations that fall into the criminal realm is already implied in the principles of customary law and in norms in village laws and traditional village regulations in Bali. By definition, a customary offense is an act that is prohibited in a traditional village that causes an imbalance in a traditional village. Hilman Hadikusuma explains that customary offenses or crimes are a set of customary law rules that regulate events or wrongdoings that cause disturbances in the balance in society so that this wrongdoing will be resolved so that the balance of indigenous peoples is not balanced. disturbed.³⁹ For this reason, traditional village administrators who represent traditional villages have the authority to maintain their traditional villages so that they are always orderly and there are no disturbances that disturb the balance of the social life of indigenous peoples. The explanation above is specified in 103 letter f, which stipulates that the traditional village has the authority to maintain the peace and order of the customary village community based on the customary law applicable in each customary law.

The forms of efforts to resolve these customary violations are varied because customary law in Bali, in particular, has differences, and there are many. However, generally, the form of settlement of customary violations is carried out based on deliberation or, in Balinese

³⁷ Wayan P. Windia, *Mengenal Hukum Adat Bali* (Bali: Pustaka Ekspresi, 2023), 324.

³⁸ I Putu Prana Suta Arsadi, Ketut Sudiarmaka, and Ratna Artha Windari, "PERAN DESA PAKRAMAN DALAM MENYELESAIKAN SENGKETA TANAH ADAT DI DESA BUNGKULAN, KABUPATEN BULELENG," *Jurnal Komunitas Yustisia* 1, no. 1 (September 21, 2020): 21, <https://doi.org/10.23887/jatayu.v1i1.28655>.

³⁹ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia (Edisi Revisi)*, *Pengantar Ilmu Hukum Adat Indonesia (Edisi Revisi)* (Bandung: Mandar Maju, 2014).

customary law, called *parasparo*. Deliberations are carried out in customary courts called traditional courts or *sankep*. The form of this settlement is determined in Article 2 of the customary village regulation in Bali. Efforts to restore this balance are part of resolving criminal acts that are non-litigation or restorative justice. One form of restorative justice ideally carried out in settlement of customary crimes is penal mediation. Penal mediation is an approach that focuses on forming a forum that encourages meetings between the parties involved, both victims, perpetrators, and the existence of a neutral and impartial third party (mediator), where this mediator helps in communication so that the parties get an agreement on the outcome. forum decisions⁴⁰. However, the authority of the traditional village to settle customary criminal cases is not broad and only minor. Through village courts, traditional villages can only settle small cases peacefully. These cases are resolved by the village head and village officials based on the rights of authority regulated in the legislation.⁴¹

The resolution of customary disputes by customary villages in Bali often involves the application of customary law that has been passed down from generation to generation. This process is usually conducted through consensus deliberation in a traditional village forum, taking into account local wisdom values and the social balance of the local community. However, in certain cases, especially those relating to criminal offenses or human rights violations, this approach can clash with Indonesia's national legal system which regulates formal procedures and sanctions. For example, in handling bullying cases involving children as perpetrators, Balinese customary law tends to prioritize settlement through mediation and community agreement, while national law stipulates juvenile justice procedures with certain protection standards.⁴²

Conflicts between customary law and national law may arise when the customary sanctions imposed are deemed inconsistent with nationally and internationally recognized human rights principles. For example, some customary sanctions may involve corporal punishment or social ostracism that may violate the rights of individuals under national law. To address this potential clash, harmonization between the two legal systems is required. One approach is the adoption of mediation as an alternative dispute resolution that combines the principles of customary law with the national legal framework, thereby creating a solution that is fair and compliant with human rights norms.⁴³

Based on the description above, it can be concluded that Traditional Villages, especially in Bali, have a clear constitutional position and autonomy. This can be seen from the provisions of the village law and the traditional village regulations in Bali. Traditional villages have their authority in efforts to settle customary cases with the customary law of each region.

⁴⁰ I Made Agus Mahendra Iswara, "Nilai-Nilai Keadilan Restoratif Dalam Penyelesaian Tindak Pidana Adat Bali," in *Nilai-Nilai Keadilan Restoratif Dalam Penyelesaian Tindak Pidana Adat Bali* (Yogyakarta: Ruas Media, 2017), 27.

⁴¹ Hadikusuma, *Pengantar Ilmu Huk. Adat Indones. (Edisi Revisi)*.

⁴² Holys Abdiel Lumira, "Penyelesaian Kasus Perundungan Terhadap Pelaku Anak (Studi Perbandingan Antara Hukum Adat Bali Dengan Hukum Nasional)" (Universitas Atma Jaya, 2023).

⁴³ I Gusti Ayu Stefani Ratna Maharani, "Pengadopsian Mediasi Sebagai Alternatif Penyelesaian Sengketa Dalam Ranah Penyelesaian Konflik Hukum Adat di Bali Adoption," *Rewang Rencang: Jurnal Hukum Lex Generalis* 5, no. 3 (2024): 1–15, <https://doi.org/https://doi.org/10.56370/jhlg.v5i3.586>.

4. CONCLUSION

Traditional villages in Bali has a legally recognized status under the 1945 Constitution of Indonesia, which is further substantiated by the 2014 Village Law and Bali's 2019 Traditional Village Regulation. Their independence in adjudicating civil and customary criminal conflicts through deliberation (*parasparo*) inside customary courts (*paruman adat*) exemplifies the amalgamation of traditional conflict resolution methods with national legislation. The absence of explicit procedural legal provisions engenders ambiguity in the administration of justice at the village level. To augment legal certainty, traditional villages must codify preventive customary regulations (*awig-awig*) that are not only aligned with national legal standards but also rooted in local wisdom and lived cultural practices. By establishing clear procedural guidelines, this codification would empower traditional authorities including the Bendesa Adat, customary law enforcers, and Pecalang to carry out dispute resolution in a manner that is systematic, equitable, and responsive to both the normative values of adat and the formal expectations of state law.

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