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***“The Role of Traditional
Institutions in
Conflict Resolution”***

by

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ROLE OF TRADITIONAL INSTITUTIONS IN CONFLICT RESOLUTION

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1. Introduction

Traditional entities have played an important role from time immemorial. They have been maintained for generations. Each legal community in Indonesia recognizes the traditional entities. It is just different in how they name them from one community to the other. Thus, the history of the traditional entities are different and so was their growth. There are certain traditional entities that have been maintained and functionalized while others are extinct.

In Bali (and some part of Lombok island, i.e. West Lombok) we still recognize traditional entities that have been existing and maintained since time immemorial. These are *desa adat*, *banjar*, *subak*.

Desa adat or *Desa Dresta*, i.e. a unified legal community in Bali which maintains its own Hindu tradition for generations with its own *Kahyangan Tiga* (village three main temples) and with its own territory and wealth. This *desa adat* maintain its own autonomy.

Banjar is a community association which is part of *desa adat*, it maintains its own tradition in its own legal territory. It has its own leaders which on behalf of

the members carrying out duties for its own members's interests and has its own material and immaterial wealth.

Subak is the traditional Balinese association which controls irrigation. Subak has been in existence since the kingdom age in Bali. As a traditional institution, *subak* is a religious socio-cultural institution. In carrying out its duties, *subak* maintains its own rule which is stipulated in its *awig-awig*, both written or unwritten. The rules are adhered by its members otherwise they will be subjected to punishment according to the rules stipulated in *awig-awig*. Subak has played an important role in national development, especially in the irrigation system.

In Bali, the *desa adat* is a traditional institution that has been growing for ages throughout history. Its existence has made a valuable contribution to the survival of community life, the struggle for independence and national development. In addition it plays an important role in religion, socio-cultural, economic and security defense aspects.

Even today, *desa adat* plays an important role in organizing and maintaining both the community life of *desa adat* and national development. At the lowest level of the government hierarchy, *desa adat* runs the administration at the lowest hierarchy of an administration territory (*palemahan*) in the Republic of Indonesia. It still exists as a realization of national culture which needs to be protected and preserved.

During the revolution, *desa adat* was the basis in Bali while since the era of New Order rules, *desa adat* with the full support of the community plays an important role in maintaining national development.

Based on these facts above, the existence of *desa adat* as a legal community association that has been rooted in community life in Bali should be preserved, maintained and protected, so that they live on unimpaired and are responsive to the development of national administration and development.

As *desa adat* plays an important role, its existence should be maintained even more. Given this, the government of Bali has taken appropriate steps by passing local Regulation No. 06/1986 dated 25th June 1986 regarding the status, function and role of *desa adat* as a legal community association in Bali.

2. The Autonomy of the Adat (traditional) Village in Bali

Desa Adat in Bali is a legal community association which has an existence based on the common interest of the members who, in the name of God's will and point of view, have to share life together in organization in order to serve their own interests.

Desa adat exists as a social organization and administration organization directly below subdistrict head. It maintains its own authority so that it will run its own business. We have to note here that the autonomy is just in terms of socio-religious matters. *Desa adat* has its own Board called Prajuru Desa Adat to help

meet their members's goals, especially things such as basic needs (survival and security).

Prajuru Desa Adat (Board) is chosen and appointed by its members. They consist of:

- a. *Bendesa Adat*, i.e. the Chairman
- b. *Petajuh*, i.e. Vice Chairman
- c. *Penyarikan*, i.e. secretary
- d. *Kesinoman*, i.e. Courier
- e. *Pemangku*, i.e. the person in charge for religious ceremonies
- f. *Pesedahan/Petengen*, i.e. Treasurer

In order to exercise its autonomy, *desa adat* is provided with the authority to organize its members to enable the accomodation of all interests in a peaceful atmosphere. The authority of *desa adat* can be classified into three categories, i.e.;

- a. To draw up its own regulations to keep everything in order. This authority is discussed in a village meeting (*paruman/sangkepan desa*), for example to maintain order, peace and security in the community in connection with relationships amongst the community, relationship between the community and the environment, and relationship between the community and God, (this concept is called *Tri Hita Karana*).
- b. To maintain the socio-religious characteristics of the organization, i.e. to maintain and promote Hindu values and customary rules, promote culture, maintain and

preserve existing custom is so far as it gives a contribution to national development.

c. To accommodate conflicts due to conflicts of interest amongst the community or due to any acts that are not in accordance with the existing rules, and any acts considered to

disturb the community life as well. The execution of this power is either by peaceful means or the application of customary punishment. In accordance with the authority of the village to maintain its own administration, it is clear that the carrying out of the power is effective in the territory of the village. It is either follows *territoriality principle* and *personality principle*, especially for the member (*pengarep*) who under certain circumstances has to live outside the village but still has relationship with the village.

Therefore, every member of *desa adat* is obliged to follow its authority in order to maintain the social life of the *desa adat* as per their objectives. The structure of authority of *desa adat* is as follows:

a. *Bendesa Desa Adat* (Chairman)

If we examine the structure of organization of *Desa Adat*, we will find that *Bendesa Adat* holds the most critical position. He is considered as the leader of the village (*primus inter pares*). Consequently, he is particularly charismatic in his village.

b. *Sangkepan Desa Adat* (Village Meeting)

Sangkepan Desa Adat or meeting of *Desa Adat* is the manifestation of the democratic forum in the village. They discuss problem that the villagers are facing in the meeting.

c. *Awig-awig of Desa Adat*

Awig-awig are the rules carried out by the village which aim to maintain order and the security of social life. Therefore, we find punishment stipulated in *awig-awig* for the villagers who do not follow to the rules.

Thus, in *awig-awig* we find conducts which are prohibited and their customary punishment. These customary punishment are applied to a person, family or villagers themselves, depending on the degree of the conduct.

3. The Resolution of Customary Conflicts

Desa Adat is the center of hopes and the source of national culture since it aims to maintain a peaceful and secure life. The national way of life comes from and is rooted in village personality so we have a social life which is based on the spirit of religion and mutual cooperation.

In everyday life, everyone maintains relationship with one another since everyone has his own interest. It happens that sometimes they have common interest at the same time. Consequently, they need cooperation. On the other hand, there may

be conflicts of interest so that they need rules stipulating the rights and duties of each member of the community in order to accommodate these conflicts.

The traditional conflicts arise when reality is not accordance with what have been agreed together as stipulated in *awig-awig* or other customary rules. There are conflicts of criminal purpose such as stealing of sacred paraphernalia, moral offenses (*lokika sanggraha*, *amandel sanggama*, *gamia gemana*, *drati krama*), insult offenses (*wakpurusya*). There are also conflicts that are purely customary, such as *manak salah*, not carrying out customary duties, and other conducts.

The solution of non criminal conflicts which aim to restore the cosmic balance is not by trial. It is settled by *sangkepan* (village meeting) and the accused is subjected to customary punishment. The solution of customary criminal conflicts which aim to restore the cosmic balance is not by trial too. Consequently, criminal law can not be exercised. These include insult offenses, moral offenses (*lokika sanggraha*, *amandel sanggama*, *gamia gemana*, *drati krama*) and stealing of sacred paraphernalia. Nevertheless, sometimes customary criminal conducts are brought to formal trial.

From a criminology point of view, the solution of customary criminal conflict by *sangkepan* led by the head of *desa adat* is in accordance with the principle of the abolitionist movement which criticises the exercise of punishment in accommodating criminality. The reformists also state that conflict solution by punishment will not solve criminality problems.

They are called reformist because they have the opinion that a repressive system itself still can be maintained. However, revision is urgently needed, in order to eliminate any weakness of the law that might exist. On the other hand the abolitionist is non repressive. In other words, it is not how to reform but how to replace (Muladi, 1990; 19).

The role of *Bendesa* as chairman of *sangkepan* in handling customary conflicts and as village judge is similiar to the mediator in the Consensus model introduced by the Abolitionists. The Abolitionists want a more flexible communication so that the dispute between the doer and the victim can be easier taken care of. The main point of what the *bendesa* as "village peace judge" is trying to do is to escape from the formal trial and replace it with a socially oriented institution system.

Customary punishment which is applied to the doer by the *bendesa* in his capacity as village peace judge can be carried out by trial also. However, now there has been a change in the perception of the Supreme Court of Indonesia. By its decree No.1644 k/Pid/1988 dated May 15 1994, the Supreme Court can not accept a public prosecutor's charge against a defendant who breaks customary rules where the defendant has already been subjected to customary punishment by the *Bendesa* and the defendant is considered to have carried out the punishment.

Given this, it is to be noted that the Supreme Court of Indonesia still respects the traditional leaders's decision to punish the person who does not follow to

customary rules. There is no second punishment by sentencing in jail by the Court of the defendant who breaks customary rules (ex. article 5 section 3b of Regulations No.1/Drt/1951.jo. Article of Criminal Law). In other words, we can say that if the Traditional Leader does not apply customary punishment to the offender, the State Court has the right to bring him to trial in accordance with stipulation of ex article 5 (3) b of criminal Code (Ali Budiarjo, 82-83).

If the person who violated the law has been sentenced by the traditional leader, there will be no trial by Court. In case the traditional leader can not overcome the problem, let alone sentence the doer with customary punishment, the Court preserves the right to sentence the doer according to article 5 section 3 b of Regulations No. 1/Drt/1951.

Although we don't follow the "precedent principle", the Supreme Court's view above might be a guide for the lower Court in the application of customary punishment. What has been carried out by the Court until now in dealing with customary conflicts by sentencing the doer in jail is considered by the community to be unfair because it is considered that it has not yet restored the cosmic balance.

As criminal law and punishment as well is considered as ultimum remedium (the last chance), the customary punishment is supposed to be an alternative in the trial system. This has been realized by Committee of Bill of Criminal Code by including one form of custom punishment in book I of Criminal

Law, i.e. fulfillment of local customary duty as stipulated in Article 59 section 1 (5) jo. Article 89. Article 89 section 1 of book I Bill of Criminal Law states: the judge has the right to decide the local customary duty that as to be carried out by the criminal. The clarification of this article states that: Customary punishment such as fulfillment of local customary duty only can be executed if in fact, the local circumstances requires. Otherwise, it will lead to chaos in the community. However, it should not be against obedience and moral principles.

If this punishment of fulfillment of customary duty can be accepted in the future, it should be maintained as a reformation instrument to restore the human approach. However, its traditional nature as a traditional means to restore the cosmic balance should be maintained also. The nature of this punishment, therefore, is not a revenge for what has been done by the doer.

In the future, criminal law should consider all aspects regarding human nature and tradition in Indonesia culture (Muladi, 1990;15)