International Journal of Judicial Law

Juridical consequences of pararem panepas wicara decision by Kerta Desa institute in resolving customary conflicts

Kadek Dwika Tirta Kusuma [1*], Anak Agung Istri Ari Atu Dewi [2]
[1-2] Faculty of Law, Udayana University, Indonesia

* Corresponding Author: **Kadek Dwika Tirta Kusuma**

Article Info

ISSN (online): 2583-6536
Volume: 03
Issue: 03
May-June 2024
Received: 09-04-2024;
Accepted: 12-05-2024
Page No: 29-35

Abstract
Seeing the development of the phenomenon of traditional villages that are harmoniously growing and existing from time to time is important to strengthen the existence of traditional villages, especially in Bali. one of the efforts made is by establishing the Regional Regulation of the Province of Bali No. 4 of 2019 concerning Traditional Villages in Bali. This regulation gives autonomy to traditional villages in Bali on a legal, formal, conceptual and juridical basis. The autonomy of the customary village in question is to organize customary justice and resolve customary cases/disputes in its territory through the *Kerta Desa* institution. The institution is then authorized to issue a decision, namely *Pararem Panepas Wicara*. However, a normative problem arises, where in the provisions of Articles 18 and 19 of the Village Customary Regulation which specifically regulate Pararem do not provide a detailed explanation regarding its legal force. So it is deemed necessary to study this issue further and in depth. The method used in this paper is a normative juridical research method. The results of this study are that juridical consequences will arise if the decision does not have strong legal force, then the parties will not comply with or implement the *Panepas Wicara Pararem* decision. Even though the Perda has been mandated to ratify and record the Pararem Panepas Wicara. It is felt that this has not provided legitimacy with strong legal force. It would be wiser if the phrase "force of law" was stated explicitly in Article 18 and/or 19 *Perda Desa Adat* which regulates *Pararem*, especially *Pararem Panepas Wicara* so that it can provide legal certainty and benefits for the parties to the dispute and also the *Krama Desa* concerned.

Keywords: Juridical Consequences; Pararem Panepas Wicara; Kerta Desa; Customary Conflict

Introduction

The existence of the Unity of Customary Law Peoples (hereinafter referred to as *Kesatuan Masyarakat Hukum Adat* (KMHA)) as a form of territorial unity is of course inseparable from the existence of customary villages. The centuries-long growth of indigenous villages has been accompanied by the development of the right of origin, traditional rights, and the right of indigenous autonomy to govern their own households. Indigenous villages have increasingly contributed greatly to the survival of the community in the nation and state (Arka, 2023: 7884) [2] Seeing the development of the phenomenon of Indigenous Villages that are in harmony with growing and existing from time to time is important to strengthen the existence of Indigenous Villages, especially in Bali.

As a result, on June 4, 2019, Bali Provincial Regulation No. 4 of 2019 concerning Customary Villages in Bali was officially enforced (hereinafter in this paper it is called *Perda Desa Adat*). The establishment of the Customary Village Regional Regulation transformed as a form of effort from the Bali Provincial Government (hereinafter referred to as the Bali Provincial Government) to deal with the problems experienced by traditional villages and the dynamics in them. Affirmation of the existence of traditional villages serves to raise the nobility contained in culture and tradition in Bali by empowering traditional villages in accordance with the motto and objectives of the Bali Provincial Government, namely, *Nangun Sat Kerthi Loka Bali*.

This regional regulation refers to Law No. 23 of 2014 concerning Regional Government, Article 236 paragraph 4. It is determined that in the establishment of local regulations, it is possible to contain local content material as long as it does not conflict with the provisions of laws and regulations. The implication is that the Customary Village By law that has been formed contains the right of customary villages to regulate and manage their own territories (Franshima, Pramana &; Jayanthi, 2019: 3) [6] There is then hope that the position of customary villages is increasing and also strong. In line with these expectations, the establishment of the Customary Village Regional Regulation provides a positive side, namely that there are separate benefits for traditional villages in Bali, through full facilitation by the Bali Provincial Government to the rights and obligations of traditional villages.

Legally formally, the concept and juridical basis of customary village autonomy arrangements can be found in Article 1 Number 8 of the Customary Village Regional Regulation which stipulates that as a form of unity of customary law communities located in Bali where in their position has an authentic (original) structure, certain areas, cultures in the form of traditions and their own property and other traditional rights. All of these things are formed for generations which are bound based on the unity of the bond of the holy place (*kahyangan tiga* or *kahyangan desa*). Furthermore, behind the rights he has, of course, there is the duty and authority to regulate and manage all these things independently. There is still the phrase "organizing and taking care of one's own household" which can then be equated with the term "Autonomy". Referring to the authentic interpretation in the explanation of the article that the Autonomy of Customary Villages is still explicitly and clearly regulated in the regulation of Article 1 Number 8 of the Customary Village Regional Regulation.

By referring to this authentic interpretation, customary village autonomy conceptually means authority accompanied by the ability of customary villages to manage their own households. It can be concluded that a certain set of powers within the scope of the autonomy order has actually been given to the customary village itself. Follow-up to the granting of autonomy to customary villages in the legal order of the state is realized through the establishment of Customary Village By laws. If viewed the business is intended as a form of direct derivation of the provisions of Article 18B paragraph (2) of the 1945 Constitution. The Constitution as one of the legal instruments towards the recognition of the existence of KMHA and its traditional rights should indeed be further regulated in the regulations below. As a result, the current position of customary village autonomy has been based on strong resources, both from their own nature (original autonomy) and recognition given in the legal system of laws and regulations in Indonesia (Sudantra, Sukerti &; Atu Dewi, 2015: 17) [16].

One of the autonomy of customary villages is to organize customary courts and resolve customary cases/disputes in their areas. Based on Article 24 of the Customary Village Regional Regulation as contained in letters l and m, the article specifies that customary villages have the authority based on the right of origin to hold peace hearings on customary/customary speech cases of a civil nature; and resolve customary/speech cases based on customary law. Referring to these provisions, it is possible for village communities to resolve customary conflicts through an institution called *Kerta Desa Adat* (hereinafter referred to as KDA). KDA here in solving customary/speech cases acts based on local customary law as an institution authorized to receive, examine, and resolve problems that occur within the scope of customary villages. Literally, the definition of KDA is contained in Article 37 paragraph (1) of the Customary Village Regional Regulation. Furthermore, paragraph (3) explains that in the event that peace is not achieved, KDA can make decisions in accordance with *Awig-Awig* and/or *Pararem* Desa Adat. If it is felt that the settlement of customary/speech cases by KDA cannot meet the wishes of the parties to the dispute, it can be taken over by the Customary Village Council (hereinafter referred to as *Majelis Desa Adat* (MDA)) according to its level.

It is undeniable that there are options for communities to resolve customary/speech cases they experience through state legal mechanisms and customary institutions. The existence of existing mechanisms develops as a social reality. Where in the midst of community life (especially in KMHA) the customary justice system turns out to move hand in hand with the judiciary according to the state legal system (state court). Finally, the existing reality (the movement of customary courts) develops into an entity and the fact of legal pluralism cannot be ruled out (Sudantra, 2016: 20) [14] In line with the statement above, customary justice has been implemented through an institution called KDA. KDA is based on local customary law to resolve customary/speech cases. One of the customary law products that can be formed by KDA is the *Pararem Panepas Wicara* Decision. Based on the provisions of Article 18 of the Customary Village Regional Regulation, it can be known as *Pararem Panepas Wicara* as a *Pararem* that is useful in solving customary/speech cases (Widiari, Rideng &; Suryani, 2021: 287) [18].

However, normative problems arise, where the provisions of Articles 18 and 19 of the Customary Village By law that specifically regulate *Pararem* do not provide a detailed explanation regarding its legal force. The legal force in question is the power of the *Pararem Panepas Wicara* Decision issued by the Village Kerta Institute as a form of decision on the settlement of customary disputes/cases that occur. So that the indecision in the *Pararem* norms creates uncertainty and uselessness for the litigants and the Village Krama involved. So it is considered necessary to study this problem further and in depth.

Research on aspects of dispute resolution / customary cases by speech through KDA institutions has been carried out by previous researchers, such as: I Made Somya Putra (2015) [12] concerning Speech Resolution Through Courts by the Main Council of Pakraman Village (Mudp) of Bali Province which focuses on the regulation and stages of the dispute resolution process or customary cases by the Main Council of Pakraman Village (or currently called the Customary Village Council) which is not much different from the stages that conducted by the *Kerta Desa Adat* institution (Putra, 2015: 709-710) [12] Furthermore, research conducted by Ni Made Lidia Lestari Karlina Dewi (2016) on the Role of Pakraman Village in the Formation of Perarem Related to Land Use Change Conflict Resolution (Case Study in Pakraman Tunjuk Village, Tabanan Regency) which focuses on the important role of Pakraman Village in resolving land use change conflicts in Pakraman Tunjuk Village through the role of Pakraman Village Prajuru Pakraman. The involvement of Pakraman village prajuru in dispute resolution by conducting paum/paruman which produces a perarem containing the

prohibition of developers from entering the Pekraman Tunjuk Village area. The existence of this initiative shows that the pakraman village prajuru has carried out his function as a village justice of peace (Karlina Dewi, 2016: 435-446) Then research conducted by I Ketut Sudantra, Tjok Istri Putra Astiti, I Gusti Ngurah Dharma Laksana about the customary justice system in the unity of the customary law community of Pakraman village in Bali which focuses on the existence of customary justice (*Kertha Desa*) when facing cases submitted to him. Furthermore, the stages of examining, adjudicating, and deciding are carried out based on Balinese customary law. As manifested in the village *awig-awig* of pakraman, *pararem*, and/or *sima-dresta*. The scope that becomes the competence of customary courts includes all cases that occur in the Pakraman village area and are submitted for resolution to Prajuru as Village Kertha (Sudantra, Putra Astiti &; Laksana, 2017: 85-104) [17].

Of the three previous studies, critical studies as well as efforts to find out the regulation and juridical consequences of the Pararem Penepas Wicara decision have never been carried out which makes the element of novelty in writing this journal so that this research is an original research. This study is also oriented to answer two formulations of problems, namely: (i) How are the regulations related to the authority of the Village Kertha Institute in producing the decision of Pararem Penepas Wicara?, and (ii) What are the juridical consequences of the decision of Pararem Penepas Wicara?

Method

The method used in this paper is the normative juridical law research method. Normative legal research positions legislation as an object in research. This article uses a statutory approach (Statute Approach) and a conceptual approach (conceptual approach), as well as a comparison approach with data sources derived from primary legal materials and secondary legal materials, this is because what will be examined are various legal rules (Efendi, Joenaidi &; Ibrahim, 2018: 132) [4] Legal materials are then collected through literature research by analyzing the substance contained in each Legal materials related to the topic of the problem. The existing legal material becomes the basis for instantly sharpening the analysis carried out. The laws and regulations used in this article become primary legal materials that are inventoried continuously, then juxtaposed with related legal materials in the form of journals and other research results accompanied. The data analysis used is a descriptive technique that provides an objective picture of the legal phenomenon raised; comparative techniques are comparing primary legal materials with other primary legal materials as well as prescriptive techniques that are not limited to providing studies and analysis of legal issues related to the regulation of the Pararem Panepas Wicara Decision and the juridical consequences of the decision (Marzuki, 2011: 251) [9].

Results and Discussion

Arrangements related to the authority of the Village Kertha Institution in producing Putusan Pararem Panepas Wicara

As mentioned earlier, the purpose of this Customary Village Regional Regulation was formed as an effort to strengthen the role and position of customary villages. This regional regulation aims to legitimize the existence of customary village autonomy and its traditional rights that existed before the country was formed. Another objective that is no less important is to encourage awareness of customary village law on the rights it has. In addition, the presence of this Regional Regulation also spurs traditional villages in Bali to explore all potential advantages such as tradition and local genius owned by each traditional village niskala or sekala under the auspices of *Tri Hita Karana* as a concept of Hindu teachings to support the progress of traditional villages (Franshima, Pramana &; Jayanthi, 2019: 3) [6].

Referring to the explanation above, it is important for indigenous villages to run and develop their autonomy. This autonomy includes the rights and authority of customary villages to guarantee and preserve their existence. Another part that has a positive impact on the implementation of customary village autonomy is to provide progress in the customary village management system in sharing sectors. This autonomy is guaranteed then legal certainty by the government through the regulation of the Customary Village By laws in Bali. The implementation of recognition of the diversity of village autonomy and recognition of indigenous autonomy can be understood by referring to the views of C. Van Vollenhoven. He argued that autonomy includes activities (*catur praja*) such as the formation of own laws and regulations (*zelfwetgeving*), self-implementation (*zelffuitvoering*), conducting self-justice (*zelfrechtspraak*), and conducting self-policing duties (*zelf-politie*) (Mulyanto, 2015: 422). Based on Van Vollenhoven's residual theory in his book "*Omtrek Van Het Administratief Recht*", dividing government power / functions into four known as chess theory, namely:

a. The function of governing (*bestuur*) is related to the modern state, the function of bestuur has a broad meaning, which is not only limited to the implementation of laws. Even in stages to interfere in the affairs of people's lives, both in the economic, socio-cultural and political fields.
b. The function of the police (*politie*) can be said to be a function to carry out preventive supervision, namely forcing residents of an area to obey law order and hold prior guard (preventive), with the aim of creating conduciveness and stability in the community.
c. The function of adjudicating (*justitie*) is a repressive supervisory function in nature which means that this function carries out concrete, accompanied by a pattern of law enforcement based on the rule of law fairly.
d. The function of regulating (*regelaar*) is a statutory task to obtain or obtain all legislative results in a material sense. The result of this regulatory function is not a law in the formal sense (made by the president and the DPR), but a law in a material sense, that is, every rule and decree made by the government has binding force on all or part of the territorial population of a country.

In relation to the four areas above, it is known that customary villages have four spheres of activity. Then in general the four scopes can be described as follows and then discussed one by one as follows (Sudantra, Sukerti &; Atu Dewi, 2015: 17) [16]:

1) The power to form its own laws

The law in question is the *awig-awig* of a traditional village which in its formation is patterned on local customs (*dresta*). As a juridical technical term, the definition of the concept of awig-awig desa adat can be found in the latest regulation related to customary villages, namely in Article 1 number 29

of the Regional Regulation on Customary Villages in Bali, which states it as a set of norms formed initially by Customary Villages and / or Banjar Adat that apply to *Krama Desa Adat*, *Krama Tamiu*, and *Tamiu*. Then in Article 13 paragraph (5) of the Customary Village Regional Regulation further regulated the mechanism for the formation of the awigs. In the article, it is explained that the *Awig-Awig* Procedure is further regulated in the Governor's Regulation.

2) Power to exercise self-government

Operationally, government power in customary villages is held by village administrators called *prajuru desa adat* (*paduluan* or formerly *desa*). Article 1 number 15 of the Customary Village By law clearly states that this prajuru is the "administrator" of the customary village. More details in Article 28 paragraphs (1) and (2) of the same regulation stipulate that the governance of Customary Villages consists of institutional elements of Customary Village government consisting of: a. *Prajuru Desa Adat*; b. Traditional Village *Sabha*; c. *Kerta Desa Adat*; and d. *Banjar Adat/Banjar Suka-Duka* or other designations.

3) Power Performs Its Own Security Duties

Customary villages also have the power to carry out their own security duties, which are operationally carried out by *Pacalang*. According to the formulation of the *Pacalang Semiloka* held in Ubud, Gianyar in 2001, *pacalang* is a traditional security system of Balinese people in the form of a task force consisting of several people and authorized to maintain regional security and order both at the banjar level and / or the Pakraman village area. The existence of pacalang is regulated in the Customary Village By law, namely in Article 1 number 20 which specifies as follows: "*Pacalang Desa Adat* or *Jaga Bhaya Desa Adat* or other designations hereinafter referred to as Pacalang, is a traditional Balinese security task force formed by Customary Villages which has the task of maintaining security and order in the area in the Customary Village area". Pacalang also has another task, namely participating in assisting the duties of state security forces after coordinating with the Customary Village Prajuru as mandated in Article 47 paragraph (3) of the Customary Village By law.

4) Power to Exercise Own Judiciary

Naturally, customary villages regulate the mechanisms for resolving cases that occur in customary village areas through judicial functions that manifest from the adjudicating power possessed by the customary law community unity of customary villages. The mechanism for solving cases even gets a special portion in traditional village awigs because it is regulated in its own chapter, namely *Wicara* and *Pamidanda* (Problems / Cases and Sanctions). The involvement of customary village stewards in the implementation of the trial took place in stages. For example, the *Awig-awig* of Batumulapan Traditional Village, Nusa Penida, Klungkung Regency, which was created in 1998, has norms that accommodate the authority to impose sanctions for mistakes or violations committed by its residents. The spark of sanctions is of course decided through a decision-making mechanism likened to a judicial mechanism. This fact shows that there is actually the ability of indigenous villages to carry out their own justice (*zelfrechtspraak*).

Based on the explanation of the theory above, we can know later that customary villages have the authority, one of which is to form customary courts. Indeed, in a pluralistic Indonesian society, many legal systems apply as social control. Thus, the theory of legal pluralism becomes appropriate and suitable in studying the nature of judicial recognition according to customary law from the perspective of the Indonesian legal system. This theory is often used in practice, the development and change of law. One of the figures involved in the movement was John Griffiths who came up with the theory of legal pluralism. The enforceability of more than one legal order in society is at the core of the theory (Sudantra, 2016: 20) [14] This dynamic is then reflected in the current conditions that occur in a plural Indonesian society. Broadly speaking, this theory of legal pluralism wants to convey that the active legal system of more than one in society is natural. In line with the views of John Griffiths, I Nyoman Nurjaya has a similar view. He explained that the fact of legal plurality usually describes a situation where more than one legal system interacts and coexists in parallel in activities and interactions in one social life of the community (Nurjaya, 2008: 4) [11].

However, if examined based on the provisions of laws and regulations related to Customary Village Autonomy. This can be seen through the regulation of Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages in Bali (*Perda Desa Adat*). There is a mention of the authority of Customary Villages which can also be an object to see the contents and boundaries of the Customary Village Autonomy itself. This authority can be seen in Article 23 of the Customary Village Regional Regulation which stipulates that "Customary Village Authority includes authority based on the right of origin and local authority at the scale of Customary Villages". This authority is then further elaborated in Article 24 and Article 25 of the Customary Village Regional Regulation which includes, one of which is the holding of customary/speech case settlement hearings in civil or customary law as stated in letters **l** and **m** (Fauziyah, 2021: 58-74) [5].

Speech technically in *awig-awig* can be interpreted as a judicial mechanism within the scope of customary villages. The term "customary court" is unfortunately still unknown in some traditional village *awig-awig*. Some of the scribes who regulate this mention the term "village kerta" in the chapter on Speech and Pamidanda. Kerta means judge or court while village is the customary village itself. The phrase can be interpreted as "village judiciary" which carries out judicial functions in customary villages. Even though customary justice has been conceptualized as a judicial system that lives, develops and is practiced in KMHA which functions to resolve cases that occur within the relevant customary law community. We can find that the awigs of traditional villages have regulated this customary court but not in its entirety (Sudantra, 2014: 314-315) [15] If there are villagers who are suspected of committing a violation of the law and then tried in a forum provided for it, then the residents are said to be "*kasangkepang*", "*sangkepang banjar*" or "*paumang banjar*" (Sudantra, Sukerti &; Laksana, 2017: 89-90) [17].

Grammatically, these terms have general meanings and have not specifically described customary courts. The root word kasangkepang is "sangkep", while the root word "paumang" is "paum". Both contain the same meaning, namely meeting, meeting or conducting a meeting, which means a meeting to talk about something. It is likely that people talk about anything in the meeting, so it is not necessarily a matter of discussion to solve a case. Therefore, it seems that the term

"kertha desa" can be used to refer to the customary justice system that lives and is practiced in customary villages on the grounds that the term fits the local mention of Bali. The use of this term is considered appropriate, in addition to because it has been mentioned in several awig-awig of pakraman village, grammatically the term "kertha desa" can represent a description of the concept of customary justice and is appropriately used to refer to the customary justice system that lives and is practiced by customary villages in Bali (Sudantra, Sukerti &; Laksana, 2017: 89-90) [17].

Another opinion from Hedar Laujeng defines customary justice that is developed is "a judicial system outside state law that grows and develops in KMHA in Indonesia, where the court is based on local customary law" (Laujeng, 2003: 1) [8] Meanwhile, in the latest Customary Village Regional Regulation, provisions related to the understanding and existence of this KDA institution have been regulated. In such a way, it can be found in Article 1 number 18, namely *Kerta Desa Adat* is a partner institution of *Prajuru Desa Adat* which carries out the function of resolving customary/speech cases based on customary law in force in the local Customary Village. The definition is then in line with the description of the duties and authorities of the KDA institution that has been explained earlier in the introduction. Article 36 of the same regulation also explains that KDA is formed by *Prajuru Desa Adat* and consists of *Prajuru Desa Adat* itself; and *Krama Desa Adat* who has commitment, experience, and expertise in the field of customary law, sent by *Banjar Adat*.

These regulatory points can be interpreted that the KDA Institution actually cannot be kept away from the role of Customary Village Prajuru (Customary Village Steward). As part of the traditional village management structure itself, these Customary Village Stewards then have a vital role. Then in carrying out its duties and functions, KDA is guided by *Awig-Awig* and / or *Pararem Desa Adat*. The existence of the phrase "based on customary law" can be interpreted as products of customary village law.

Regarding the customary village law products, there are 3 (three) legal products that can be formed or used based on the Customary Village Regional Regulations. One of them is *Pararem* which can be defined as the rules/decisions of *Paruman Desa Adat* as the implementation of *Awig-Awig* or regulating new matters and/or solving customary/speech cases in Customary Villages as stated in Article 1 number 30 of the Customary Village Bylaws. The types of *Pararem* consist of:

a. *Pararem Panyacah*, that *Pararem* made to carry out Awig-Awig;
b. *Pararem Pangelé*, that a separate *Pararem* made to regulate things that have not been regulated in *Awig-Awig*; and
c. *Pararem Panepas Wicara*, namely *Pararem* which is a decision on the settlement of customary cases/*wicara*.

It can be concluded based on the explanation above, which refers to the conception of catur praja theory coupled with the pattern of legal pluralism which has become a social reality in community life, especially in the life of customary law people, which is the basis that animates the implementation of customary village autonomy. So that in concept and theory, customary villages are authorized, one of which is to hold hearings on customary disputes/cases that occur in their territory. This description is also supported by arrangements related to the authority of customary villages in resolving customary cases/disputes through KDA institutions regulated in the Customary Village Regional Regulations. This arrangement is also the legal basis for customary villages in issuing the *Pararem Panepas Wicara* Decision as previously explained.

Juridical Consequences of the Putusan Pararem Panepas Wicara

In an effort to draw a common thread from the conception of Legal Pluralism as explained earlier. There is Sally Falk Moore's theory of a "semi-autonomous" social field. Broadly speaking, what is to be conveyed in the theory is the existence of a semi-autonomous community unity that cannot be excluded from the complexity of state society. Based on the construction of this theory, the unity of customary law communities (hereinafter referred to as KMHA) forms semi-autonomous social groups within a smaller framework than the community-based legal unity controlled by the state, namely the state itself. Its autonomy is not necessarily carried out in full, but is limited and supervised by the state (Sudantra, 2016: 28) [14] That way, KMHA can actually still implement its autonomy rights with the consequence of the possibility of vulnerable intervention from the state (Sudantra, 2016: 29) [14].

The explanation of the theory above illustrates the friction between KMHA and the state as a larger community unit. The friction then created factors that were seen as influencing the implementation of customary rules by KMHA. The rules of customary law that still have material force, can be seen from the circumstances, namely (Yulia, 2016:111-112) [19]:

a. Whether the structure of indigenous peoples is still maintained or has changed?
b. Whether the customary head and his customary law apparatus still play the role of customary law officers?
c. Is there still often a resolution of cases with similar decisions?
d. Whether formal customary law creeds are still maintained or have shifted or changed?
e. Whether customary law does not contradict Pancasila and the Constitution and national legal politics?

Can be used as a comparison article, where in Article 13 paragraph 3 of the same regulation it is explained that both the express and unexpressed *Awig-Awig* have the same legal force. While the explanation of *Pararem* legal force is not explicitly explained in the same regulation. The absence of the phrase "force of law" creates confusion and uncertainty about the legal force possessed by *pararem*. Considering that Pararem is also one of the legal products that can be formed by Indigenous Villages other than *Awig-Awig*. Other arrangements related to customary courts can also be attached as a comparative comparison, namely regarding the concept of judgment by customary courts, the Papua Special Autonomy Law regulates it in Article 51 paragraph (6) which specifies that "The decision of the customary court regarding criminal offenses whose cases are not requested for re-examination as referred to in paragraph (4), shall be the final decision and have permanent legal force."

It is important to note that in the settlement of customary cases/speeches, *Prajuru* is allowed to determine the attitude when making his decision. Of course, by referring to *awig-awig* or *pararem* traditional villages when the litigants do not find common ground. In cases involving violations of the law, *Prajuru* considers the severity of the perpetrator's guilt

as the basis for determining the sanctions (*pamidanda*) imposed on the perpetrator. *Pararem* is in the form of determining sanctions through paruman (meeting) of traditional villages similar to awig-awig in terms of binding legal force (Sudantra, Astiti &; Laksana, 2017: 101) [17].

As can also be seen in article 18 paragraph (2) letter c provides an explanation related to *Pararem Panepas Wicara*, namely *Pararem* which is a decision to settle customary / speech cases. Of course, as a judgment, the *Pararem Panepas Wicara* must have definite legal force to guarantee whether the decision can later be implemented and executed or not. By guaranteeing the executory power of customary court decisions through a strict legal instrument, it is expected that the parties will be willing to implement the results of the decision voluntarily.

Although theoretically KMHA has the ability and capability to apply its rules firmly. Reality speaks the opposite, where social reality shows that litigants do not always obey all decisions issued by local customary law authorities. Even more so in the conditions of KMHA which have changed over time. When practiced directly, in fact customary court decisions do not have good faith from the parties to the dispute to respect the decision (Sudantra, 2016: 254) [14] In the end, there are only 2 (two) options that will be faced, namely to let the customary court's decision be ignored or KMHA inevitably imposes it in its way.

It is not impossible that the decision of the customary court in its execution is not accompanied by the voluntary will of the party affected by the decision. This shows the unsteadiness of the community towards the customary judiciary which is starting to waver. Juridical consequences arise if the decision does not have strong legal force, then the parties will not comply with or implement the decision of *Pararem Panepas Wicara*. They will tend not to care and ignore the emergence of the decision. The question arises then when the parties to the dispute do not have a good will to implement the Pararem Panepas Wicara Decision, whether the village krama through the Village Sabha can force the parties to implement the decision or not? From here, there is still a lack of clarity regarding affirmation in norms and practical implementation. Of course, this is contrary to the certainty and expected expediency as well as the purpose of the law itself.

As Jeremy Bentham's brainstorming quoted in the book "Fundamentals of Legal Philosophy: What and How is Indonesian Legal Philosophy" by Darji Darmodiharjo which is quoted again in a journal entitled "Conception of Utilitarianism in Legal Philosophy and Its Implementation in Indonesia" by Zainal B. Septiansyah and Muhammad Ghalib. It can be defined Utilitarianism or Utilism as a school that puts expediency as the main goal of law. Expediency here is defined as happiness. So, whether or not a law is bad or just depends on whether the law gives happiness to humans or not (Septiansyah, Zainal & Ghalib, 2018: 28) [13].

This happiness should be felt by every individual. But if it is impossible to achieve (and certainly impossible), it is sought that happiness is enjoyed by as many individuals as possible in the society (nation), (the greatest happiness for the greatest number of people) (Septiansyah, Zainal &; Ghalib, 2018: 28) [13] The parameter of the purpose of the law according to Bentham is the greatest happiness for as many people as possible so that the good and bad of the law depends on the benefits provided by the law in society (Kurniawan, 2022:291) [7].

Referring to the conception of utilitarianism, legal certainty regarding the legal force of *Pararem Panepas Wicara* should be regulated explicitly as the same is regulated in the *Awig-Awig* section. The inclusion of the phrase legal force in the *Pararem* arrangement is expected to provide legal certainty and also benefits for *Krama Desa Adat*, especially the parties to the dispute.

Indeed, Article 19 of the Customary Village Bylaw has confirmed that the Customary Village *Pararem* is made and ratified in the *Paruman* of the Customary Village which then applies since the kasobyahang in the Paruman. Furthermore, the Pararem was registered by the Prajuru Desa Adat to the provincial apparatus in charge of Customary Village affairs. However, the ratification and recording are considered not to provide legitimacy of strong legal force that can guarantee the parties to implement the decision. The extent to which *Krama Desa* can force the implementation of the judgment on the parties also depends largely on the legal force of the Pararem Panepas Wicara Decision. If it is wiser if the phrase "force of law" is expressly stated in Articles 18 and / or 19 of the Customary Village Bylaw which regulates *Pararem*, especially *Pararem Panepas Wicara*. It is hoped that with this affirmation, parties to disputes / litigants can customarily obey and implement the *Pararem Panepas Wicara* Decision. Local indigenous peoples also have the power then to pressure the parties to implement the decisions that have been issued without having to resort to other legal remedies.

Conclusion

Conceptually, theoretically and legally formal, customary villages are authorized to hold hearings on customary disputes/cases that occur in their territory. The settlement of disputes/cases is carried out through the *Kerta Desa* institution regulated in the Customary Village Regional Regulation. The *Kerta Desa* Institute in carrying out its duties has the authority to issue a decision in the settlement of customary disputes called the *Pararem Panepas Wicara* Decision. After the issuance of the ruling, theoretically the unity of customary law communities can require every citizen to be orderly and obey every rule or decision produced by customary villages. But reality did not match what was expected to happen. The dynamics that occur show the tendency of the parties to not respect the decisions of customary courts that have been given. Conditions where public trust in customary courts is beginning to waver, it is not impossible that customary court decisions no longer raise honorary spirits before litigants. Juridical consequences arise if the decision does not have strong legal force, then the parties will not comply with or implement the decision of *Pararem Panepas Wicara*. Although in the Regional Regulation it has been mandated to validate and record the *Pararem Panepas Wicara*. This is considered to have not provided legitimacy to strong legal force. If it is wiser if the phrase "force of law" is expressly stated in Articles 18 and / or 19 of the Customary Village Regional Regulation which regulates *Pararem*, especially *Pararem Panepas Wicara* so that it can provide legal certainty and benefits for the parties to the dispute and also the related Village Krama.

References

1. Amiruddin, Zainal Asikin. Pengantar Metode Penelitian Hukum. Jakarta: PT RajaGrafindo Persada, 2016.
2. Arka I. Ketut. Implementasi Perda Provinsi Bali Nomor 4 Tahun 2019 Terhadap Penanganan Perkara Adat Di

Desa Kutuh. Jurnal Inovasi Penelitian. 2023; 3(10):7883-7894.
3. Dewi. Ni Made Lidia Lestari Karlina. Peran Desa Pakraman Dalam Pembentukan Perarem Terkait Penyelesaian Konflik Alih Fungsi Lahan. Jurnal Magister Hukum Udayana. 2016; 5(3):435-446.
4. Efendi, Joenaidi & Ibrahim, Johnny. Metode Penelitian Hukum (Normatif dan Empiris), Jakarta: Prenada Media, 2018.
5. Fauziyah Fauziyah. Otonomi Desa Adat Pakraman Berdasarkan Perda Provinsi Bali Nomor 4 Tahun 2019 Tentang Desa Adat Di Bali. Mimbar Yustitia. 2021: 5(1):58-74.
6. Franshima IMD, Pramana GI, Jayanthi ASMM. Perda Nomor 4 Tahun 2019 Sebagai Perlindungan Hukum Atas Kuasa Dan Wewenang Desa Pakraman, 2019. Retrieved from https://scholar.google.com/scholar_url?url=https://ojs.unud.ac.id/index.php/politika/article/download/91190/46008&hl=en&sa=T&oi=gsb-gga&ct=res&cd=0&d=2470971555528771076&ei=D5U-ZKLAO4uyyATe1LDQAw&scisig=AJ9-iYu2-Jbf5yfudjV1qVJfhkvW diakses tanggal 18 April 2023
7. Kurniawan I. Gede Agus. Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme. Jurnal USM Law Review. 2022; 5(1):282-298
8. Laujeng Hedar. Mempertimbangkan Peradilan Adat. Seri Pengembangan Wacana: HuMa, 2003.
9. Marzuki, Peter Mahmud. Penelitian Hukum. Jakarta: Prenada media, 2011.
10. Mulyanto M. Keberlakuan UU No. 6 Tahun 2014 Tentang Desa Di Bali Dalam Perspektif Sosiologi Hukum. Jurnal Mimbar Hukum, 2015; 27(3):418-431.
11. Nurjaya, I Nyoman. Memahami Potensi dan Kedudukan Hukum Adat dalam Politik Hukum Nasional. makalah dalam Seminar Hukum Adat dan Politik Hukum Nasional: Fakultas Hukum Universitas Airlangga, 2008.
12. Putra, I.M.S. Penyelesaian Wicara Melalui Peradilan Oleh Majelis Utama Desa Pakraman (Mudp) Provinsi Bali. Jurnal Magister Hukum Udayana, 2015, 4(4):700-712
13. Septiansyah Zainal B, Muhammad Ghalib. Konsepsi Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia. Ijtihad 34. 2018; 34(1):27-34.
14. Sudantra, I.K. Pengakuan Peradilan Adat Dalam Politik Hukum Kekuasaan Kehakiman. Denpasar: Swasta Nulus, 2016.
15. Sudantra I. Ketut. Pengaturan peradilan adat dalam awig-awig desa pakraman: Studi pendahuluan tentang eksistensi peradilan adat dalam kesatuan masyarakat hukum adat desa Pakraman. Jurnal Magister Hukum Udayana. 2014; 3(2):44120.
16. Sudantra I Ketut, Ni Nyoman Sukerti, AA Istri Ari Atu Dewi. Identifikasi Lingkup Isi dan Batas-batas Otonomi Desa Pakraman dalam Hubungannya dengan Kekuasaan Negara. Jurnal Magister Hukum Udayana. 2015; 4(1):44189.
17. Sudantra I Ketut, Tjok Istri Putra Astiti, IGND Laksana. Sistem peradilan adat dalam kesatuan-kesatuan masyarakat hukum adat desa pakraman di Bali. Jurnal Kajian Bali. 2017; 7(1):85-104.
18. Widiari Ni Made I. Wayan Rideng, Luh Putu Suryani. Penerapan Sanksi Adat Bagi Penyalahgunaan Narkotika di Desa Adat Kesiman. Jurnal Interpretasi Hukum. 2021; 2(2):286-290
19. Yulia Buku Ajar Hukum Adat. Lhokseumawe: Unimal Press, 2016
20. Indonesia. Undang-Undang Dasar Republik Indonesia, 1945.
21. Indonesia. Undang-Undang Republik Indonesia Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua, Lembaran Negara Republik Indonesia Tahun 2001 Nomor 135, Tambahan Lembaran Negara Republik Indonesia Nomor, 4151.
22. Indonesia. Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 tentang Desa Adat di Bali