

Learning Law from Customary Village: Implementation of the Value of Consensus Deliberation in the Election of Customary Village in Bali

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Abstract

Customary Villages have autonomy in carrying out their duties and authorities as well as the right to regulate and take care of their own households, of course, they must have a Customary Village government in accordance with the traditions that have been hereditary in Customary Villages in accordance with their respective customary laws. The process of electing Customary Village Leaders in Bali which prioritizes

the principles of consensus deliberation which is part of the implementation of the autonomy of Customary Village Communities in Bali in electing Customary Village Leaders in customary life is in line with the Indonesian Nation and Nation State's life handle, namely Pancasila. This paper uses a normative legal research method. The problem is discussed with a legal and regulatory approach, a legal analysis approach and a legal concept approach. The determination of Customary Village Leaders in Bali in the framework of legal pluralism and its implementation in Customary Villages in Bali, currently is not only guided by regional law regulations in the form of Regional Regulations on Customary Villages in Bali, but must also be guided by customary laws that apply in each Customary Village in Bali in the election of Customary Village Leaders in Bali.

Keywords

Customary Village; Election; Consensus Deliberation.

I. Introduction

Customary Villages have autonomy in carrying out their duties and authorities as well as the right to regulate and take care of their own households, of course, they must have a Customary Village government in accordance with the traditions that have been hereditary in Customary Villages in accordance with their respective customary laws. The process of electing Customary Village Leaders in Bali which prioritizes the principles of consensus deliberation which is part of the implementation of the autonomy of Customary Village Communities in Bali in electing Customary Village Leaders in customary life is in line

with the Indonesian Nation and Nation State's life handle, namely Pancasila. This paper uses a normative legal research method. The problem is discussed with a legal and regulatory approach, a legal analysis approach and a legal concept approach. The determination of Customary Village Leaders in Bali in the framework of legal pluralism and its implementation in Customary Villages in Bali, currently is not only guided by regional law regulations in the form of Regional Regulations on Customary Villages in Bali, but must also be guided by customary laws that apply in each Customary Village in Bali in the election of Customary Village Leaders in Bali.

Customary Villages in carrying out their duties and authorities as well as the right to regulate and take care of their own households must of course have a Customary Village government in accordance with the traditions that have been carried out in Customary Villages for generations in accordance with their respective customary laws. Talking about the government of Customary Villages in Bali, it is interesting to refer to the provisions of Article 1 Number 14 of the Regional Regulation of the Province of Bali Number 4 of 2019 concerning Customary Villages in Bali (hereinafter referred to as the Regional Regulation on Customary Villages in Bali), which states that "Customary Village Government is the implementation of a community life system in Customary Villages related to Parahyangan [Parahyangan, is a harmonious relationship between humans and God Almighty], *Pawongan* [*Pawongan*, is a harmonious relationship between humans and fellow humans], and *Palemahan* [*Palemahan* is a harmonious relationship between humans and the surrounding environment] which is recognized and respected in the system of government of the Unitary State of the Republic of Indonesia.

Recognition and respect for Customary Villages in Bali as a distinctiveness of Bali has existed in legal provisions both made by the Central Government and made by the Regional Government. As a Customary Law Community Unit (KMHA), Customary Villages in

Bali have the authority to manage their own territory. Related to one of the traditional rights of Customary Villages in Bali in taking care of their own households through the right to form customary law rules, another term in Bali is called *Awig-Awig*¹ or *Pararem*². This Customary Villages is called a self-regulating community. Namely making rules for their own community. Customary villages in Bali have the authority to make their own legal rules in the form of customary village *awig-awig* which is the natural authority³, which has been brought since the birth of the customary village. Customary Law or *awig-awig* in Bali cannot be separated from the customary village itself, which is a joint of customs in the local customary village⁴ (Witari, et al., 2020). One of the authorities of the Customary Village is to carry out the process of electing the leaders of the Customary Village in Bali independently, currently commonly known as the *Ngadegang Bandesa Adat*, *Kelian Adat* or Other Names (as the Leader of the Customary Village in Bali). There are at least 2 (Two) types of laws that govern, namely state law and customary law in choosing Customary Village Leaders in Bali.

¹ *Awig-Awig* is a rule made by the Customary Village and/or Customary Banjar which applies to the *Krama Desa Adat*, *Krama Tamiu*, and *Tamiu*.

a. *Krama Desa Adat* is a resident of the Balinese Hindu community who is *Mipil* and is registered as a member of the local Customary Village;

b. *Krama Tamiu* is a member of the Balinese Hindu community who is not *Mipil*, but is registered in the local Customary Village; and

c. *Tamiu* is a person other than the *Krama Desa Adat* and *Krama Tamiu* who are in the area/area of the Customary Village temporarily or located in the local Customary Village and registered in the local Customary Village.

² *Pararem* is the rule/Decision of Paruman/Customary Village Deliberation Meeting and/or Banjar Customary that applies to the Customary Village Customs, *Tamiu Villages*, and *Tamiu*

³ Sudantra, (2008), *Pengaturan Penduduk Pendetang dalam Awig-Awig Desa Pakraman, Piramida*, 4 (1).

⁴ Witari, Paramadhyaksa, I.N dan Yudiantini, N.M, (2020), *Variasi Pemanfaatan Tanah Pelaba Pura Dalem di Desa Adat Kesiman, Denpasar, Mudra Jurnal Seni dan Budaya*, 35 (1). Doi:10.31091/mudra. v35i1.1030.

As a state legal instrument, it refers to the provisions of Article 29 Paragraph (2), (3), (4), (5), (6), and (7) of the Regional Regulation on Customary Villages in Bali. *Bandesa Adat, Kelian Adat* or Other Designations (as Customary Village Leaders in Bali), are selected by the *Krama Desa Adat* by consensus. *Bandesa Adat, Kelian Adat* or Other Designations are the designations of leaders in the Community in the Customary Village area. *Bandesa Adat, Kelian Adat* or other designations in carrying out their duties are assisted by the deputy of *Bandesa Adat* called *Petajuh*. Then there is the Secretary of the Customary Village called *Penyarikan*, and assisted by the Treasurer of the Customary Village called *Petengen/Juru Raksa*.

As a customary law instrument represented by the Decree of *Pasamuhan Agung* II of the Bali Customary Village Council in 2021 Number 12/KEP-PSM.II/MDA-BALI/X/2021, the *Awig-Awig* of Customary Villages, and *Pararem* of Customary Villages which specifically regulate the Process of election of *Bandesa Adat, Kelian Adat* or Other Designations. Where in general directs the process of *Bandesa Adat, Kelian Adat* or Other Designations are selected by the *Krama Desa Adat* by consensus deliberation.

That the culture of *ngadegang* election of Customary Village leaders through consensus deliberation carried out by Customary Villages has become an inspiration in the election of the leader of this nation, but in line with the current global development, the culture of deliberation and consensus elections has also shifted to direct elections through voting with a one man one vote mechanism, both openly and closed with a direct principle. public, free, confidential, honest, and fair. This situation has also affected the mechanism of *ngadegang*, the leader in the Customary Village in Bali, who previously prioritized elections by consensus to elections by voting, one man one vote.

A more worrying condition is the shift in the mechanism of *ngadegang* election of Customary Village leaders in Bali which includes the typology of Old Villages (*Desa Tua*) in Bali from adhering to the

model of descent and marriage order to a direct election model on the grounds of contemporary democracy. This shift in the system has eroded the values that live in the Indigenous Peoples in Bali who are the spirit of the Customary Village in Bali and also eroded the social attachment of the community, so that the sense of mutual belonging, togetherness, and unity has faded and has implications for the lack of harmony in life in the Customary Village.

The Regional Regulation on Customary Villages in Bali has officially come into effect since the date of promulgation, namely on May 28, 2019, is a serious effort by the Regional Government of Bali Province to restore the power of consensus deliberation in the order of customary life in Bali, where in Article 29 paragraph (2) it is stipulated that "*Bandesa Adat/Kelian Desa* or Other Designations are selected by the *Krama Desa Adat* by consensus deliberation". That the principle of *ngadegang* (election) of *Bandesa Adat / Kelian Desa* or Other Designations which is carried out through consensus deliberation is very much in accordance with the principles of Balinese customs, namely *manyama braya*, *gilik saguluk para sparos salunglung sabayantaka*, *sarpana ya* which should always be obeyed and preserved by every Customary Village people and *Prajuru Customary Village* in the implementation of the customary life order in Bali. There are arrangements for State Law and Customary Law in the *ngadegang Bandesa Adat/ Kelian Desa* or Other Designations and *Prajuru Adat*. In theory, it includes legal pluralism in *ngadegang Bandesa Adat/Kelian Desa* or Other Names and *Prajuru Desa* in Bali. This is what is then referred to in this article as Learning Law from Customary Villages: Implementation of the Value of Consensus Deliberation in the Election of Customary Village Leaders in Bali. The values of consensus deliberation, which are the principles of national and state life in living a democratic life based on the values of Pancasila, especially the 4th precept, are also implemented and guided and even regulated and applied in the process of electing Customary Village Leaders in Bali.

II. Method

This paper uses a normative legal research method. The problem is discussed with a legal and regulatory approach, a legal analysis approach and a legal concept approach. The problem is studied using primary sources of legal materials referring to the provisions of laws and regulations, as well as using secondary sources of legal materials, in the form of legal literature, legal articles and other literacy. The collection of legal materials is carried out by citation techniques, then processed and analyzed with the theory of legal pluralism, then narrated descriptively, to then conclude.

III. Result & Discussion

Customary in the State is the concept that the Unity of Customary Law Communities in exercising their autonomy in managing and regulating their own households must still adhere to the fundamental principles that are the basis for the life of the Indonesian nation. These fundamental principles are generally known as Pancasila values. The values of Pancasila are one of the instruments to maintain the principles of the Unitary State of the Republic of Indonesia.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that the State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law. This means that the existence of the unity of customary law communities must still be recognized and given guarantees of their survival in the Unitary State of the Republic of Indonesia. Likewise, Article 28I paragraph (3) of the 1945 Constitution affirms that: Cultural identity and rights of traditional communities are respected in line with the development of the times and civilization.

Referring to the Constitutional Court Decision Number 31/PUU-V/2007 concerning the Testing of Law Number 31 of 2007

concerning the Establishment of Tual City, Maluku Province, where the Constitutional Court Decision contains the requirements for Recognition of the existence of the Customary Law Community Unit which is declared to be classified as still alive with conditions, including:

1. There is a society whose citizens have feelings as a group because of the values that are cared for together;
2. There are traditional institutions that grow traditionally;
3. There is Wealth and/or customary objects;
4. There are customary law norms that are still in force; and
5. There are certain regions.

The strengthening and advancement of Customary Villages in Bali has received state recognition and support through the birth of Law Number 15 of 2023 concerning the Province of Bali (hereinafter referred to as the Bali Provincial Law), as stipulated in Article 6 which states that "Within the territory of the Province of Bali there are Customary Village and *Subak* which are regulated by the Regional Regulations of the Province of Bali in accordance with the provisions of laws and regulations". Furthermore, Article 8 Paragraph (2) of the Bali Provincial Law states that "The Central Government can provide funding support in the context of strengthening the promotion of culture, customary villages, and *subak* through the Regional Government of the Province of Bali". This arrangement then also strengthens the existence of the Customary Village Regulation in Bali.

Customary villages are the unity of customary law communities in which there are indigenous peoples. Customary law societies are divided into territorial societies and genealogical societies. A territorial legal society or legal alliance is a fixed and orderly society, whose members are bound to a certain area of residence, both in a worldly relationship as a place of life and in a spiritual relationship as a place of worship for the spirits of ancestors. Meanwhile, a genealogical society or legal alliance is an orderly community unit, where its members are

bound to a common lineage from one ancestor, either indirectly due to marital ties or customary ties⁵. Regarding the function of traditional rights, H.M. Koesnoe stated that there are four functions related to traditional rights in the community alliance of rural law (customary) with regard to maintaining harmony between society and the universe including: government function, spirit maintenance function, religious maintenance function, and Customary law development function⁶.

The existence of Customary Villages in Bali is currently regulated in the Regional Regulation on Customary Villages in Bali. The implementation of the Customary Village Regulation in Bali has been running for more than 4 (four) years since it was established by the Governor of Bali, on May 28, 2019. The birth of the Regional Regulation on Customary Villages in Bali is certainly placed as a legal instrument to achieve noble ideals related to the existence of Customary Villages in Bali. Referring to the formal provisions of the Customary Village Regulation in Bali, stating the definition of Customary Village in Bali, in accordance with the provisions in Article 1 number 8 of the Regional Regulation on Customary Villages in Bali which states that Customary Villages are a unit of customary law communities in Bali that have territory, position, original structure, traditional rights, own property, traditions, manners of community life in a hereditary manner in the bond of sacred places (*Kahyangan Tiga* or *Kahyangan Desa*), duties and authorities as well as the right to regulate and manage their

⁵ Hadikusuma, Pengantar Ilmu Hukum Adat Indonesia, Bandung: CV. Mandar Maju, 2003, 108.

⁶ Irfan Nur Rahman, dkk, Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukumadat Dalam Proses Pengujian Undang-Undang Di Mahkamah Konstitusi, *Pusat Penelitian dan Pengkajian Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia*, 2011, 4

own household. Based on these provisions, there are elements in customary villages in Bali, including⁷;

1. It is a unit of customary law communities in Bali. The meaning of the unity of the customary law community is a society that is a member of a unified legal system based on the right to togetherness.
2. Having territory, meaning that every customary village in Bali can be said to be a customary village if it has its own territory with certain boundaries, both physical and natural boundaries.
3. Position, meaning that the customary village has a clear legal position as a legal subject who can carry out legal acts on behalf of the customary village itself.
4. Original structure, meaning that the customary village has an original composition both from the government system, economic system, etc. which has been carried out for generations and has not been influenced by outside culture.
5. Traditional rights, meaning that customary villages have rights that are traditionally attached to the customary village, for example, customary forest management rights, marine management rights, traditional land management rights, etc.
6. Wealth itself, meaning that the customary village has wealth, both natural wealth, objects and other wealth that is controlled communally by the customary village for the common needs of the indigenous people.
7. Tradition, meaning that customary villages have customs that are inherited and preserved from generation to generation both in terms of customs, arts and culture.
8. The manners of community life are hereditary in the bond of a sacred place (*kahyangan tiga* or *kahyangan desa*), meaning that every customary village has a sacred place called a *kahyangan desa* as proof of a common bond.

⁷ I Putu Sastra Wibawa, dkk, (2020), Tata Cara Penyuratan Dan Pendaftaran *Awig-Awig* Desa Adat Di Bali (Dari Desa *Mawacara* Ke Bali *Mawacara*), *Mudra Jurnal Seni Budaya*, 35 (3), 260.

9. Duties and authorities as well as the right to regulate and manage their own households, meaning that customary villages have the authority to regulate their own households including issuing their own rules in regulating their territory.

Steps are needed to be able to face challenges and solve the problems experienced by Customary Villages, both institutionally as the subject of Customary Village law, and those experienced by the *Krama Desa Adat* itself. One of them is by implementing Good Customary Village Governance. Especially with the reality of the diverse origins of Customary Villages in Bali, which are generally common in various literatures are typologized into 3 (three) types of Customary Villages in Bali, namely *Bali Aga*, *Apanaga*, and *Bali Anyar*.

1. *Bali Aga* Customary Village, is a Customary Village that is classified as this typology is mostly located in mountainous areas (but there are some in coastal areas), which are descendants of indigenous Balinese people, has a collective government system, both based on descent, age level, and collectively alternately/*rigrigan*, which is not affected by the Majapahit kingdom system. This Customary Village still adheres to the traditions of the original Balinese Hindu era or pre-Majapahit without the influence of Javanese Hindu culture originating from Majapahit.
2. *Bali Apanaga* Customary Village, is a Customary Village that has been influenced by the Majapahit government system, traditions and culture originating from Majapahit, such as the economic system, leadership system and social stratification of the community, usually in the area of this Customary Village has a relationship with the regional leadership or the power of the local King.
3. *Bali Anyar* Customary Village, is a Customary Village that was born or grew after the independence of the Republic of Indonesia, and grew due to population and regional growth, including the movement or transmigration of residents to find a livelihood.

Customary Villages in carrying out their duties and authorities as well as the right to regulate and take care of their own households must of course have a Customary Village government in accordance with the traditions that have been carried out in Customary Villages for generations in accordance with their respective customary laws. Talking about the government of Customary Villages in Bali, it is interesting to refer to the provisions of Article 1 Number 14 of the Regional Regulation on Customary Villages in Bali, which states that "Customary Village Government is the implementation of community life in Customary Villages related to *Parahyangan*, *Pawongan*, and *Palemahan* which are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia". The implementation of community life in Customary Villages related to *Parahyangan*, *Pawongan*, and *Palemahan* is carried out on the basis of the institution of the Customary Village Government and the Decision Makings Institution.

Article 28 Article Paragraph (2) of the Regional Regulation on Customary Villages in Bali outlines the elements that exist in the Institution of Customary Village Government, consisting of:

- a. *Prajuru* Customary Village;
- b. *Sabha Desa*;
- c. *Kerta Desa*; and
- d. *Banjar Adat*/Banjar Suka-Duka or other names.

Article 29 Paragraph (1) of the Regional Regulation on Customary Villages in Bali, stipulates that the Customary Village *Prajuru* consists of at least the following:

- a. *Bandesa Adat* or other designations;
- b. *Patajuh Bandesa Adat* or *Pangliman* or other designations;
- c. *Panyarikan* or *Juru Tulis* or other designation; and
- d. *Patengen* or *Juru Raksa* or other designations.

Furthermore, in the provisions of Article 29 Paragraph (2), (3), (4), (5), (6), and (7) of the Regional Regulation on Customary Villages in Bali, it is successively stated that the Customary Village or other designations are chosen by the Village Krama by consensus deliberation. *Prajuru* Desa Adat (*Patajuh Bandesa Adat* or *Pangliman* or other designation; *Panyarikan* or *Juru Tulis* or other designation; and *Petengen* or *Juru Raksa* or other designation), are appointed and determined by the *Bandesa Adat* in the *Paruman Sabha Desa Adat*. The election of the Customary Village and the appointment of the *Prajuru* are arranged by *Awig-Awig* and/or *Pararem*. The term of office of the Customary Village Priest is in accordance with the *Awig-Awig* and/or *Pararem* that applies in the local Customary Village. The Customary Village Commanders carry out their duties and authorities collectively collegial. The Customary Village Coordinator can appoint general administration and financial staff as needed.

The variation of Customary Village Government in Bali is a potpourri of Customary Villages in Bali that should be regulated, maintained, so that the variation of political sovereignty owned by Customary Villages can be maintained. One of them is shown in the Regional Regulation on Customary Villages in Bali providing special arrangements related to *Desa Adat Tua*. Referring to the provisions of Article 53 Paragraph (1), (2), (3), and (4) of the Regional Regulation on Customary Villages in Bali, it is briefly stated that the *Desa Adat Tua* is the composition of the indigenous community in certain Customary Villages in Bali that has a collective government system (*ulu apad*). *Desa Adat Tua* has a procedure for determining *Prajuru* or *Paduluan* based on: lineage; or *ririgan*, *ketekan* (sequence). The organizational and institutional structure of the *Desa Adat Tua* follows the original structure, the *Parahyangan* management system, and the local community system/ *manut dresta*. *Desa Adat Tua* is authorized to regulate and manage the fields of customs, religion, traditions, arts and culture, as well as local wisdom in accordance with local customs.

In filling the *kaprajuruan*/management of Customary Villages in Bali, there are various mechanisms for *Ngadegang Bandesa Adat* or Customary Village leaders in Bali, namely the election mechanism (consensus deliberation), descendants, *saserodan/undagan/ririgan, nyanjan/tedun sekar*, and others. There is also through the appointment mechanism and there is even through the mechanism of *lekesan*. The variation of the mechanism of *Ngadegang* of traditional leaders is a potpourri of Customary Villages in Bali that should be regulated, maintained and managed, so that the variation of political sovereignty owned by Customary Villages can be

The Regional Regulation on Customary Villages in Bali, is a serious effort by the Regional Government of Bali Province to restore the power of consensus deliberation in the order of customary life in Bali, where in Article 29 paragraph (2) it is stipulated that "*Bandesa Adat / Kelian Desa* or Other Designations are selected by the *Krama Desa Adat* by consensus deliberation". That the principle of *Ngadegang* (election) of *Bandesa Adat / Kelian Desa* or Other Designations carried out through consensus deliberation is very much in accordance with the principles of Balinese customs, which must be obeyed and preserved by every *Krama Desa Adat* and *Prajuru Desa Adat* in the implementation of the customary life order in Bali.

The process of selecting Customary Village Leaders, either with the designation of Customary Village *Bandesa Adat, Kelian Adat*, or Other Designations in Customary Villages in Bali by way of consensus deliberation, is in accordance with the values of Pancasila as a way of life for the Indonesian nation. Pancasila is *staatsfundamentálnorm*, as a state ideology and state philosophy and at the same time is assumed to be self-implementing. Pancasila needs to be considered a normative fact. Statusization as a normative fact is a response to the fact that the state

has status Pancasila as a *staatsfundamentálnorm*⁸. As the basis of the state (ground norm) of the Indonesian nation, Pancasila has proven to be one of the unifying media in the life of society, nation and state in Indonesia⁹.

The election of Customary Village Leaders in Bali by means of consensus deliberation is regulated in the *Awig-Awig* and in the *Pararem* as local wisdom owned by Customary Villages in Bali. Local wisdom in a nation is related to the identity of the nation, because each nation has an identity that is considered a national identity and is a characteristic of the nation or that distinguishes it from other countries. This identity can be said to be the personality of the nation, because the character possessed by the people in a country can be said to be the characteristic of the nation in the abstract. National identity is an overall characteristic of the nation, which distinguishes one nation from another¹⁰. The pattern of local wisdom in Indonesia is basically the personality of the Indonesian nation, which is immortalized by the founder of the nation in the form of the basic form and ideology of the state, namely Pancasila. On the other hand, the characteristics of local wisdom in Indonesia basically emphasize the common interest above other interests¹¹.

Furthermore, Article 53 paragraph (1) of the Governor of Bali Province Regulation Number 4 of 2020 concerning the Implementation Regulation of Regional Regulation Number 4 of 2019

⁸ Santoso, P. (2024). Normativitas Pancasila (Di Balik Kacamata Warganegara). *Pancasila: Jurnal Keindonesiaan*, 4(X), 1–10. <https://doi.org/10.52738/pjk.v4iX.525>, 1.

⁹ I Putu Sastra Wibawa, (2019), Peningkatan Mutu Pendidikan Tinggi Hukum Berbasis Pancasila, *Jurnal Penjaminan Mutu*, 5 (1), 1.

¹⁰ Hendrizal, H, (2020), Mengulas Identitas Nasional Bangsa Indonesia Terkini. *Pelita Bangsa Pelestari Pancasila*, 15(1), 1–21.

¹¹ Widiatmaka, P, (2022), Strategi Menjaga Eksistensi Kearifan Lokal sebagai Identitas Nasional di Era Disrupsi. *Pancasila: Jurnal Keindonesiaan*, 2(2), 142.

concerning Customary Villages in Bali states: Procedures for the Election of *Bandesa Adat* or Other Designations (as Leaders of Customary Villages in Bali) by deliberation based on the Guidelines for *Ngadegang Bandesa Adat* or Other Designations of Customary Villages in Bali. While paragraph (2) states: Guidelines for *Ngadegang Bandesa Adat* or Other Names for Customary Villages in Bali, prepared by the Provincial Level Customary Village Assembly and facilitated by the Bali Province Indigenous Peoples Development Office (PMA).

Bandesa Adat or Other Names in Customary Villages that are selected based on the consensus deliberation mechanism will be approved by the Customary Village Assembly. This is in accordance with Circular Letter Number 006/SE/MDA-Prov Bali/VII/2020 concerning the Process of *Ngadegang Bendesa Adat* or Other Names in the New Era Life Order during the Covid-19 Pandemic and Circular Letter Number 007/SE/MDA-Prov Bali/XI/2020 concerning the Application Mechanism for the Issuance of a Letter of Recognition of Traditional Village Officials issued by the Customary Village Council of Bali Province, which must be considered by the Customary Village for the creation of legal order and administrative order. According to Circular Letter Number 007, starting in 2021, the Customary Village Officers whose existence is recognized administratively by the Majelis Desa Adat Provinsi Bali are Customary Village Officers who have received a Decree of Determination, Inauguration, or Recognition by the Assembly, namely the *Majelis Madya Desa Pakraman*, including those that have been issued by the *Majelis Alit Desa Pakraman* before 2020. Then based on the Circular Letter of the Majelis Desa Adat Provinsi Bali Number 002/SE/MDA-Prov. Bali/IV/2020 concerning the Postponement of the *Ngadegang Bendesa Adat* or Other Names in Bali dated April 4, 2020. Lastly, until now, the Decree of *Pasamuhan Agung* II MDA Bali Year 2021 Number 12/KEP-PSM.II/MDA-BALI/X/2021 dated October 28, 2021 concerning Guidelines for *Ngadegang Bandesa Adat/Kelian Desa* or Other Designations and

Prajuru Desa Customary Villages which states that in general in Bali, it is enforced and directed in the election of Customary Village Leaders in Bali (Election of Customary Village Leaders, *Bandesa Adat*, *Kelian Adat*, Other Names for Customary Villages in Bali) through a consensus deliberation process.

The values of consensus deliberation in the election of Customary Village Leaders in Bali are interesting to refer to the Decree of the People's Consultative Assembly (MPR) Number I/MPR/2003, stating the points of Pancasila values, one of which is related to the 4th Precept which reads, "Democracy led by wisdom in deliberation/representation", is associated that the Unity of the Customary Law Community in Bali, on the one hand as a citizen and on the other hand as a citizen of the indigenous people, then some other items of the 4th Precept can be described as follows:

1. As citizens and citizens of society, every Indonesian has the same position, rights, and obligations. Example: Every human being has the same rights and obligations to obtain education.
2. It is not possible to impose the will on others. Example: We should not impose our own will on others too much, let alone commit bribery.
3. Prioritizing deliberation in making decisions for the common good. Example: When there are differences, we need to prioritize the aspect of deliberation, we must not want to win by ourselves.
4. Deliberation to reach consensus is overwhelmed by the spirit of family. Example: In deliberation, it is necessary to achieve the results that have been agreed upon together by supporting the family aspect.
5. Respect and uphold every decision reached as a result of deliberation. Example: We need to obey, accept and respect a decision that has been agreed upon and agreed upon.
6. With good faith and a sense of responsibility to accept and implement the results of the deliberation decision. Example: In accepting a decisions we need to be sincere in living it.

7. In deliberation, common interests are prioritized over personal and group interests. Example: In deliberation, it is necessary to focus on mutual interest rather than personal interests
8. Deliberation is carried out with common sense and in accordance with a noble conscience. Example: Deliberation we need to be cold and not emotional
9. The decisions taken must be morally accountable to God Almighty, uphold the dignity and dignity of human beings, the values of truth and justice prioritize unity and unity for the common good. Example: In the ratification of the decision, the decision should be in accordance with the norms in God and still maintain dignity
10. Give trust to trusted representatives to carry out the consultation. Example: Fully trusting and surrendering to the elected representatives to carry out their duties.

The process of electing Customary Village Leaders in Bali which prioritizes the principles of consensus deliberation which is part of the implementation of the autonomy of Indigenous Village Communities in Bali in electing Customary Village Leaders in customary life is in line with the Indonesian Nation and Nation State's life handle, namely Pancasila. Referring to Bernard L Tanya¹², stated that there are normative beliefs in Pancasila which are described in eight frames of Pancasila which are the spirit, logic and values that make Pancasila meaningful for Indonesia and become a fundamental basis in building the Indonesian legal system. The eight frames of Pancasila include:

1. The spirit of caring for Indonesianness, where the presence of Pancasila is for a pluralistic Indonesianness consisting of dozens of ethnic groups with a variety of cultural pluralities, traditions, religions and so on must be accepted as a reality that must be cared for and celebrated.

¹² Benard L. Tanya, *Pancasila Bingkai Hukum Indonesia*. Pancasila, *Genta Publishing*, 2015, 9.

2. The spirit of gentlemen agreement which is an honorable agreement (Founding Fathers) that respect each other, despite differences of opinion that are difficult to meet. On the basis of belief, values, principles, honor and great soul, the founders of the nation chivalricly and elegantly set aside the primordial path as a way of life (which is beneficial to themselves and their group) and chose to agree to take a tolerant way of life through Pancasila.
3. Lebens philosophie about living together in an Indonesian house, where Pancasila is a guideline for living together in an Indonesian house that is able to provide hope, provide confidence, and build the commitment of its residents to live in harmony and prosperity in it.
4. The spirit of organizing everything that is right, fair and good in various dimensions. This is the benchmark spirit that underlies the way of life in Indonesian houses so that every occupant, whoever he is in all his actions must start from the beginning to do what is right, fair and good in all things. Thus, this underlies the realization of spirit as a social ethics of the nation's citizens.
5. The necessity of caring for human values, justice and civilization, providing a nonantifical basis for Indonesian law to prioritize human values on the one hand, and the demand to act fairly and civilized on the other.
6. The necessity of maintaining national integration or maintaining the unity of Indonesia, this is intended to maintain the life of the nation which leads to the realization of national integration.
7. Taking care of the people, this is the Indonesian doctrine about state life. The populist can be interpreted as democracy but the democracy in question is democracy for the common life of the Indonesian nation which is inseparable from the dream of Indonesia which is getting stronger and stronger to become a home for its residents who want to live peacefully, peacefully and prosperously in it.
8. Social justice, this fifth precept is a doctrine about economic democracy, namely the necessity to realize social justice for all Indonesian people. This doctrine of democracy is the basis of state politics and law in caring for community life.

The practice of consensus deliberation as a genial tradition of Indonesian society is still strong, impressing its position in the communitarian framework (collectivism) which to a certain extent actually severely limits individual autonomy as criticized by liberals. The decisions produced by the formal system system are a reflection of the aspirations of the community through consensus deliberation which is social capital that must be revitalized for the needs of modern society deliberative¹³.

If, examined more deeply, there is legal pluralism in terms of regulation and implementation related to the process of Election of Customary Village Leaders/*Ngadegang Bandesa Adat, Kelian Desa* or Other Names and *Prajuru Desa Adat* in Bali adhering to the concept of Legal Pluralism. Legal pluralism reduces the tension between universalism and localism so that social stability is maintained¹⁴. Pluralism is a legal concept that contains more than one legal principle and substance, and looks at the situation with different circumstances of existing social facts¹⁵. So, in this case, there have been products of regional law regulations and customary law that synergize to regulate the Election of Customary Village Leaders in Bali through consensus deliberation. In the process of electing Customary Village Leaders in Bali, it can be categorized into state legal pluralism as called

¹³ Farul Muszzaqi, (2012), Musyawarah Mufakat: Gagasan dan Tradisi Genial Demokrasi Deliberatif di Indonesia, *Jurnal Politik Indonesia*, 1 (2), 81.

¹⁴ James D.Fry. (2014). Pluralism, Religion, and Moral Fairness of International Law. *Oxford Journal: Law and Religion*, 3. <http://m.ojlr.oxfordjournals.org/content/by/year>.

¹⁵ William Twining, (2010), Normative and Legal Pluralism: A Global Perspective, *Duke Journal of Comparative and International Law. Duke Law University*, 20, 473. Duke Law University, <http://scholarship.law.duke.edu>.

Woodman¹⁶, or weak legal pluralism as called Griffiths¹⁷. State legal pluralism emerges when state law partly comes from the body of norms that have been formed as state law since the beginning and partly comes from non-state norms recognized by state law, such as customary law and religion. Pluralism is a characteristic of a pluralistic society based on Indonesia's differences in ethnicity, religion, customs, and regions, which are often referred to as the characteristics of a pluralistic society¹⁸. Tamanaha¹⁹ stated that legal pluralism exists everywhere, both at the level of local law, national law, transnational law and international law. From local and national level laws. The study of legal pluralism opposes the assertion that the law of the State has the highest authority over all others. Legal pluralism emerged as a challenge to state-centered legal concepts. The idea that state law is the only form of law used to regulate the community²⁰ in determining the Leadership of Customary Villages in Bali is certainly not fully applicable, because in the framework of legal pluralism and its implementation in Customary Villages in Bali, currently it is not only guided by regional law regulations in the form of Regional Regulations on Customary Villages in Bali. but must also be guided by the customary law that applies in each Customary Village in Bali in the election of Customary Village Leaders in Bali.

¹⁶ Gordon R. Woodman, *Mungkinkah Membuat Peta Hukum?’, dalam Tim HuMa, eds., Pluralisme Hukum: Sebuah Pendekatan Interdisiplin*, Jakarta: Penerbit Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), 2005.

¹⁷ John Griffiths, *Memahami Pluralisme Hukum, Sebuah Deskripsi Konseptual*, dalam Tim HuMa, eds., *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin*, Jakarta: Penerbit Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), 2005.

¹⁸ Nasikun. *Sistem Sosial Indonesia*, Jakarta: Rajawali Press, 1985.

¹⁹ Brian Z. Tamanaha, (2007), *Understanding Legal Pluralism: Past to Present, Local to Global*. *Sydney Law Review*, 29, 2007. St. John's Legal Studies Research Paper No. 07-0080. Available at SSRN: <https://ssrn.com/abstract=1010105>.

²⁰ Perez, *Legal Pluralism*, The Oxford Encyclopedia of American Political and Legal History, Donald T. Critchlow and Philip R. Vandermeer, Eds., 2012. Available At Ssrn: <https://ssrn.com/abstract=1929395>.

IV. Conclusion

Customary in the State is the concept that the Unity of Customary Law Communities in exercising their autonomy in managing and regulating their own households must still adhere to the fundamental principles that are the basis for the life of the Indonesian nation. These fundamental principles are generally known as Pancasila values. The values of Pancasila are one of the instruments to maintain the principles of the Unitary State of the Republic of Indonesia. The process of electing Customary Village Leaders in Bali which prioritizes the principles of consensus deliberation which is part of the implementation of the autonomy of Customary Village Communities in Bali in electing Customary Village Leaders in customary life is in line with the Indonesian Nation and Nation State's life handle, namely Pancasila. The determination of Customary Village Leaders in Bali in the framework of legal pluralism and its implementation in Customary Villages in Bali, currently is not only guided by regional law regulations in the form of Regional Regulations on Customary Villages in Bali, but must also be guided by customary laws that apply in each Customary Village in Bali in the election of Customary Village Leaders in Bali.

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Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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