

# Authority of Customary Village Heads in Bali from a Positive Legal Perspective at the Local Level

Dewa Krisna Prasada<sup>1\*</sup>, Kadek Ray Sulyantha, Ida Bagus Arya Lawa Manuaba<sup>3</sup>, I Putu Duta Krisna Dvaipayana<sup>4</sup>

<sup>1</sup>Faculty of Law, National University of Education|Bedugul Street No.39, Sidakarya, South Denpasar, Denpasar City, Bali 80224 Indonesia|krisnaprasada@undiknas.ac.id

<sup>2</sup>Ubon Ratchathani University|Sathonlamak Rd 85, Mueang Si Khai, Warin Chamrap District, Ubon Ratchathani 34190, Thailand|kadek.s@ubu.ac.th

<sup>3</sup>Markandeya Institute of Technology and Education|Kawan, Bangli, Bangli Regency, Bali 80614 Indonesia|aryalawamanuaba@markandeyabali.ac.id

<sup>4</sup>Directorate General of Treasury, Ministry of Finance, Gedung Keuangan Negara Jayapura| Ahmad Yani Street No. 8, Gurabesi, Jayapura. 14090 Indonesia|duta.krisna@kemenkeu.go.id

DOI: <https://doi.org/10.35719/ijlil.v6i2.424>

**Abstract:** Customary villages are an integral component of a nation, especially Indonesia. The customary village in the Province of Bali is a village that preserves cultural traditions and retains the traditional village governance system. The heads of customary villages in Bali are granted local authority under Law Number 6 of 2014 and Bali Provincial Regulation Number 4 of 2019, which pertain to customary villages. Nevertheless, a legal problem arises due to the lack of clarity regarding the authority of local-scale legislation mentioned above. This leads to overlapping and discriminatory actions by traditional village leaders in Bali. This study examines the limits of local-scale jurisdiction in the autonomy of customary village heads in Bali from a legal standpoint. This study employs a normative research methodology, utilizing a statute approach and analyzing legal concepts. The sample in this study uses primary legal materials, specifically laws and regulations, from Indonesia. The methodology employed in this work involves using prescriptive legal analysis approaches. This study finds that the jurisdiction of customary village heads in Bali is constrained by the notions of authority and local context. The authority of the head of the customary village encompasses traditional, cultural, religious, and economic activities, all confined to the territory or land controlled by the customary village. Contribution of this research to enhance the comprehension of indigenous village chiefs in Bali on the local jurisdiction of indigenous leaders, so preventing legal discrepancies that may result in overlapping authority and prejudice within the community.

**Keywords:** Authority, customary village heads, local scale, overlapping, discrimination

**Abstrak:** Desa adat merupakan komponen yang tidak terpisahkan dari suatu bangsa, khususnya Indonesia. Desa adat di Provinsi Bali merupakan desa yang melestarikan tradisi budaya dan mempertahankan sistem pemerintahan desa adat. Kepala desa adat di Bali diberikan kewenangan lokal berdasarkan Undang-Undang Nomor 6 Tahun 2014 tentang Desa dan Peraturan Provinsi Bali Nomor 4 Tahun 2019 tentang Desa Adat di Bali, yang berkaitan dengan desa adat. Namun demikian, masalah hukum muncul karena kurangnya kejelasan mengenai kewenangan peraturan perundang-undangan berskala lokal yang disebutkan di atas. Hal ini menyebabkan tindakan overlapping dan diskriminatif oleh para tokoh desa adat di Bali. Penelitian ini mengkaji batas-batas yurisdiksi skala lokal dalam otonomi kepala desa adat di Bali dari sudut pandang hukum. Penelitian ini menggunakan metodologi penelitian normatif. penelitian ini juga menggunakan pendekatan perundang-undangan dan analisis konsep hukum. Sampel dalam penelitian ini menggunakan bahan hukum primer, khususnya peraturan perundang-undangan, dari Indonesia. prosedur yang digunakan dalam penelitian ini menggunakan teknik analisis legal preskriptif. Hasil temuan dari penelitian ini yaitu Yurisdiksi kepala desa adat di Bali dibatasi oleh konsep kewenangan

INDONESIAN JOURNAL OF LAW AND ISLAMIC LAW (IJLIL)

Volume 6 Number 2 July-Desember 2024;

ISSN 2721-5261 E-ISSN 2775-460X



Indonesian Journal of Law and Islamic Law (IJLIL) is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)

dan kerangka lokal. Dimana batasan kewenangan kepala desa adat meliputi kegiatan tradisi, budaya, agama, dan ekonomi, yang semuanya terbatas pada wilayah atau tanah milik desa adat. Kontribusi Penelitian ini untuk meningkatkan pemahaman kepala desa adat di Bali tentang yurisdiksi tingkat lokal para pemimpin desa adat di Bali untuk mencegah inkonsistensi hukum yang dapat menyebabkan overlapping otoritas dan diskriminasi terhadap masyarakat.

**Keywords:** Kewenangan, kepala desa adat, skala lokal, overlapping, diskriminasi

## Introduction

Customary Villages are traditional villages that adhere to customary law and evolve through their ancestral connections. Customary villages, often called traditional villages, play a crucial part in shaping modern culture and identity on a global scale. These villages serve as a reflection of the cultural value found in many rural environments. According to Ioanna Katapidi, customary villages are cultural heritage locations with various property ownership patterns. These villages are susceptible to normative social and economic changes that affect all settlements but are particularly noticeable in smaller rural communities.<sup>1</sup> The spatial configuration of the terrain is perceived as the arrangement and organization of the traditional village. Traditional villages possess tangible and intangible forms of riches, which must be preserved in their cultural history. Preserving the cultural heritage of customary villages is crucial for the survival of indigenous communities. It serves as a valuable source of information about the customs and traditions of these villages.<sup>2</sup> Customary villages such as Indonesia serve as the foundation of a nation characterized by diversity and pluralism. Pluralism in Indonesia refers to the coexistence of multiple types of traditional villages, each with its own distinct culture, throughout different regions. Undoubtedly, the indigenous people play a crucial role in sustaining the village's existence.

Customary villages in Indonesia are inhabited by indigenous peoples who were present in the region before the country's independence. The presence of indigenous peoples is a fundamental aspect that must be considered in the state development process. Indigenous populations, accounting for 6% of the global populace, deserve equitable treatment in multiple domains, including social, economic, biological, and health sectors. This is necessary due to the enduring consequences of colonialism and the disruption of their traditional lifestyles.<sup>3</sup> The elevation of the living standards of indigenous peoples in the modern era necessitates the utmost attention to the development and empowerment of these communities. This should be reflected in the formulation and enforcement of laws and regulations. Ana C Rorato and her colleagues emphasized the significance of legal frameworks or jurisdictions that ensure the rights of Indigenous communities. One such provision is the recognition of customary land and the traditional governance structures that form the foundation of a customary village.<sup>4</sup> Preserving and maintaining the richness and culture of indigenous peoples is crucial, as their cultural legacy and traditional knowledge play a vital role in sustaining the natural ecology. Indonesia possesses diverse

---

<sup>1</sup> Ioanna Katapidi, "Heritage Policy Meets Community Praxis: Widening Conservation Approaches in the Traditional Villages of Central Greece," *Journal of Rural Studies* 81, no. September 2020 (2021): 47–58, <https://doi.org/10.1016/j.jrurstud.2020.09.012>.

<sup>2</sup> Chun Liu et al., "Pattern Identification and Analysis for the Traditional Village Using Low Altitude UAV-Borne Remote Sensing: Multifaceted Geospatial Data to Support Rural Landscape Investigation, Documentation and Management," *Journal of Cultural Heritage* 44 (2020): 185–95, <https://doi.org/10.1016/j.culher.2019.12.013>.

<sup>3</sup> Huong X.T. Nguyen et al., "Risk, Protective, and Biomarkers of Dementia in Indigenous Peoples: A Systematic Review," *Alzheimer's and Dementia* 20, no. 1 (2024): 563–92, <https://doi.org/10.1002/alz.13458>.

<sup>4</sup> Ana C. Rorato et al., "Brazilian Amazon Indigenous Peoples Threatened by Mining Bill," *Environmental Research Letters* 15, no. 10 (October 1, 2020): 1040a3, <https://doi.org/10.1088/1748-9326/abb428>.

civilizations and conventional wisdom in safeguarding the environment and its native inhabitants. This is because Indonesia is one of the most diverse countries in the Southern states.

Indonesia is a diverse country characterized by pluralism since it encompasses a range of customary villages, including traditional villages in Bali. Traditional Village The Bali Province acknowledges two distinct village forms: *Desa Adat* (traditional villages) and *Desa Dinas* (sometimes called administrative villages). These two types of villages serve different purposes and possess unique systems and organizational structures.<sup>5</sup> Nevertheless, the presence of recognized villages does not negate the presence of traditional villages in Bali. An official village is a governmental institution that performs administrative tasks, including managing identity cards and other official affairs. In 2016, Wayan P. Windia and I Ketut Sudantra explained that the word "official village" differentiates it from different types of villages, such as customary villages.<sup>6</sup> It is important to note that this study will not address the official village of Subak but rather concentrate on traditional communities in Bali.

In 2001, the term "*Desa adat*" (traditional village) transformed and was replaced by the name "*Desa Pakraman*", as stated in Bali Provincial Regulation Number 3 of 2001 about *Desa Pakraman*. The word "*Desa adat*" is being reintroduced following the 2019 regional law on customary villages in Bali. Nevertheless, it is crucial to highlight that regardless of the specific name used, it is essential to have a comprehensive understanding of the customary villages in Bali, including all its components. This knowledge is crucial in facilitating a more profound comprehension and appreciation of traditional practices and customary laws. Customary villages are establishments that enforce customary law, and they have just acquired legal protection by enacting Bali Provincial Regulation Number 4 of 2019, which specifically addresses the governance of customary villages in Bali. Customary villages in Bali possess distinct characteristics, one of which is their governance system, indicating the existence of a structured governmental organization inside the customary village setting. Customary villages possess intangible elements in their organizational behaviour known as customary law, derived from local wisdom and traditional knowledge.<sup>7</sup> Customary law is a form of intellectual property that can influence the functioning of the conventional village governance system established by the village head, also known as *Bendesa Adat*, among the Balinese indigenous community.

The traditional form of governance in Bali is characterized by the leadership of the head of the customary village (*bendesa adat*). This system is in place because customary villages possess resources that require careful management and preservation by the indigenous village community based on their ancestral connections and traditional wisdom. The traditional wisdom in Bali is effectively executed and passed down from generation to generation in traditional communities. The customary village government system, which operates under customary law, is implemented through different means, including agricultural methods, village governance, traditional house construction, and other related practices.<sup>8</sup>

<sup>5</sup> M. Mandaka, A. Sasmito, and T. S. Andadari, "Study of Indigenous Village Settings in Bali," *IOP Conference Series: Earth and Environmental Science* 780, no. 1 (2021), <https://doi.org/10.1088/1755-1315/780/1/012038>.

<sup>6</sup> Wayan P. & I ketut Sudantra Windia, *Introduction to Balinese Customary Law, Introduction to Balinese Customary Law* (Denpasar: Udayana University Press, 2016), 52.

<sup>7</sup> I. Nyoman Kusuma Adnyana MAHAPUTRA et al., "Organization Behavior, Intellectual Capital, and Performance: A Case Study of Microfinance Institutions in Indonesia," *Journal of Asian Finance, Economics and Business* 8, no. 4 (2021): 549–61, <https://doi.org/10.13106/jafeb.2021.vol8.no4.0549>.

<sup>8</sup> Ni Made Yudiantini, "Traditional Concept Toward the Sustainable Built Design in Bali," *IOP Conference Series: Earth and Environmental Science* 738, no. 1 (2021), <https://doi.org/10.1088/1755-1315/738/1/012060>.

This refers to Edy Yusuf Nur Samsu Santosa's 2003 research titled "Perandesaadat in Tourism Development in Bali," which indicates that the role of customary villages and the authority of their heads remains confined to customary matters and traditions, with a predominant emphasis on the community's spiritual and social dimensions.<sup>9</sup> Piers Andreas Noak articulated a contrasting viewpoint in his 2016 research titled "The Position and Authority of Customary Villages and Official Villages in Bali After the Enactment of Law Number 6 of 2014 concerning Villages in an Administrative Perspective," asserting that customary villages possess authority not only in the realm of magical religious practices but also in administrative functions, which are executed concurrently and complementarily with official villages.<sup>10</sup> In 2017, I Ketut Sudantra and colleagues conducted research titled "Customary Justice System in the Customary Law Community Units of Pakraman Village in Bali," revealing that customary villages in Bali possess a judicial system authorized to adjudicate various legal matters, including disputes and violations of local laws.<sup>11</sup> Putu Sastra Wibawa and colleagues, in their 2020 research titled "Measuring Authority and Institutional Relations Between Customary Village Councils and Customary Villages in Bali," elucidated that the head of a customary village in Bali possesses greater authority and responsibility to assist and advise the community in the effective governance of customary villages.<sup>12</sup>

Currently, the legal status of customary villages lacks consistency, leading to doubt over the power of the customary village head. This is particularly evident due to the absence of specific legislation for indigenous peoples in Indonesia. This contradicts the principles of the notion of legal certainty. Attaining legal certainty is of utmost importance within the framework of the customary village government system, as it guarantees transparency and fairness in administering customary rights and regulating communal affairs. Robert Pangihutan Radjagoekgoek and Awwal Muhammad Shafiu highlighted the crucial significance of legal certainty for all stakeholders, particularly the government. They argue that legal certainty plays a pivotal role in achieving broader objectives, such as national development and community well-being.<sup>13</sup> Due to the lack of legal clarity regarding the financial matters of the customary village head, the legal actions taken can be ambiguous, unpredictable, and unstable. As a result, each individual serving as the head of the customary village can arbitrarily manage their affairs and personal interests. Attaining legal certainty is a crucial objective in establishing and implementing legislation, as it guarantees the supremacy of law and fosters stability within society. Legal certainty is a fundamental tenet of the rule of law, which guarantees that the law's implementation is both predictable and uniform. To provide legal certainty, it is necessary to have laws and regulations that are explicit, unambiguous, and applied consistently. This will create a solid and dependable

---

<sup>9</sup> Edy Yusuf Nur Samsu Santosa, "Peran Desa Adat Dalam Pengembangan Pariwisata Di Bali," *Aplikasia* 4, no. 2 (2003): 202–17.

<sup>10</sup> Piers Andreas Noak, "Kedudukan Dan Kewenangan Desa Adat Dan Desa Dinas Di Bali Pasca Pemberlakuan UU Nomor 6 Tahun 2014 Tentang Desa Dalam Perspektif Administratif," *Jurnal Hukum Dan Budaya* 4, no. 2 (2016): 1–12.

<sup>11</sup> I Ketut Sudantra, Tjok Istri Putra Astiti, and I Gusti Ngurah Dharma Laksana, "Sistem Peradilan Adat Dalam Kesatuan-Kesatuan Masyarakat Hukum Adat Desa Pakraman Di Bali," *Jurnal Kajian Bali (Journal of Bali Studies)* 7, no. 1 (2017): 85, <https://doi.org/10.24843/jkb.2017.v07.i01.p06>.

<sup>12</sup> I Putu Sastra Wibawa, I Wayan Martha, and I Komang Dedi Diana, "Menakar Kewenangan Dan Tata Hubungan Kelembagaan Antara Majelis Desa Adat Dengan Desa Adat Di Bali," *Vidya Wertta: Media Komunikasi Universitas Hindu Indonesia* 3, no. 1 (April 30, 2020): 96–105, <https://doi.org/10.32795/vw.v3i1.671>.

<sup>13</sup> Robert Pangihutan Radjagoekgoek and Awwal Muhammad Shafiu, "Estimating The Exploration And Production (E&P) Industry's Rig Contract Business Owner," *Yuridika* 39, no. 1 (2024): 31–42, <https://doi.org/10.20473/ydk.v39i1.44966>.

legal framework for those who hold leadership positions in customary villages and communities.

Given Indonesia's self-proclaimed status as a nation governed by the rule of law, it is evident that the hierarchy of laws and regulations in the legislative process is given significant consideration. Thus, the customary village regulations in Bali originated from Law Number 6 of 2014, which deals explicitly with Villages and is commonly known as village laws. Regrettably, the requirements outlined in Article 19 of the village law still demonstrate a lack of clarity on the definition of local-scale authority, leading to ambiguity in the article above. Those above Balinese customary village norms are significantly influenced by this, particularly in Article 24, letters h and m, and Article 25, paragraph 1, letter e. Nevertheless, the forthcoming paragraph will elucidate this legal matter. The article's ambiguity about the customary village head's small-scale jurisdiction creates uncertainty about the nature of the local authority. What is the specific nature of the local authority? What are the specific boundaries of the jurisdiction that the head of the customary village can exercise at the local level?

The chief of the customary village has the highest position in the village's leadership and is required to establish a distinct boundary for the village's livestock. If the provisions of the law have a dual interpretation, it contradicts the intended authority. Authority theory encompasses the notion that specific persons or organizations possess the rightful ability and entitlement to make decisions and carry out acts that impact others.<sup>14</sup> Legal clarity is essential for establishing the authority of the customary village head. This is particularly important when considering the extent of authority, encompassing social, political, and organizational contexts. An examination of the legal authority of the customary village head is crucial due to its impact on shaping both positive and negative behaviour and outcomes. The previous explanation aligns with the idea of authority elucidated in Danel Aditia Situngkir's research, which posits that authority is a fundamental concept comprising several authorities demonstrated by the exercise of power towards a specific set of individuals or control over a particular domain of governance.<sup>15</sup> Based on the explanation above, it is evident that determining the authority of each position is crucial at both the local and national levels. This is noteworthy because it directly affects the community, particularly those residing in the environment or customary village area.

The issue of inadequate standards in the provisions of the village law has resulted in a lack of apparent authority for customary villages at the local scale. This has led to overlapping jurisdiction by the head of the customary village. The insufficiency of these requirements is evident in the Balinese customary village ordinances, specifically in Article 24, letters h and m, and Article 25, paragraph 1, letter e, as previously mentioned. Article 24, letters h and m grant local-scale authority to customary village chiefs, enabling them to implement customary law and settle customary cases, thereby legitimizing their role.<sup>16</sup> Article 25, paragraph 1, letter e clearly defines the power of the local community in a Balinese customary village to govern their customary rights, specifically concerning their

---

<sup>14</sup> Mahdi Syahbandir et al., "Imeum Mukim Advocacy in Prevention of Environmental Pollution in Aceh Jaya According to Customary and Islamic Law," *Samarah* 5, no. 2 (2021): 741-59, <https://doi.org/10.22373/sjhc.v5i2.10698>.

<sup>15</sup> Danel Aditia Situngkir, "Getting to Know the Theory of Democracy and the Theory of Authority in Danel Law," *Encyclopedia of Journal* 5, no. 4 (2023): 105-13, <https://doi.org/https://doi.org/10.33559/eoj.v5i4.1745>.

<sup>16</sup> Bali Province, "Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages in Bali, Article 24 letter h "The authority of Customary Villages based on the right of origin as referred to in Article 23 includes: Development of customary law life in accordance with the principles of Bali Mawacara and Mawacara Village"; m "Settlement of customary/speech cases based on customary law".

customary area, also known as the *praduwen*.<sup>17</sup> The chief of the traditional village in Bali frequently abuses his position regarding social issues at the local level. In 2021, community groups in Bali claimed instances of persecution against traditional village chiefs who were stopped from practising their religious worship. This was justified because the land in question was considered a customary right of the respective village.<sup>18</sup> In 2024, not only will there be violations of the right to worship, but there will also be customary village leaders who exploit their authority by using customary law as a pretext to control the issuance of property purchase and sale permits, which require their authorization. Thus, the leader of this traditional village requested a dowry of 10 billion rupiah to get the authorization for the transaction.<sup>19</sup>

The cases demonstrate a deficiency in comprehending the theory of authority, which is the foundation for the traditional village head's perception of themselves as the possessor of authority. T. M. Scanlon posited that the foundation of power should rest upon the ethical concept of adhering to communal ideals and shared comprehension.<sup>20</sup> The absence of moral principles and solid cultural values undermines establishing and maintaining a competent and ethical administration. The previous explanation aligns with Moh Gandara's perspective that authority is a structured system bestowed by the state and governed to establish and maintain effective governance.<sup>21</sup> Regrettably, the scenario above exemplifies the current exploitation of the customary village leader's position, wherein customary rights or customary law are exploited, leading to conflicting views and discriminatory practices based on the leader's authority.

The absence of legal clarity about the autonomy of customary village heads in exercising authority at the local level leads to instances of overlapping and discrimination by these village leaders. Customary village autonomy primarily centres around community governance and development, aiming to enhance public services and empower customary villages to achieve greater self-sufficiency and prosperity.<sup>22</sup> However, the concept of autonomy for customary villages is undermined by the presence of self-serving personal interests that harm the community, as demonstrated in the case above. Local autonomy and authority structure, as specified by village statutes, lacks specificity and clarity. In his research, Huan Yu discussed the legal ambiguity surrounding lunar flight, which arises from the absence of a globally acknowledged agreement. As revealed by his research, legal certainty encompasses the notion that the law should possess clarity, predictability, and consistency. This ensures that individuals and organizations can reliably comprehend the

---

<sup>17</sup> *Ibid*, Article 25 paragraph (1) letter e "Local authority on the scale of Customary Villages as referred to in Article 23 includes the management: padruwen customary villages/customary customary areas".

<sup>18</sup> Fardi Bestari, "ISKCON Reports the Governor of Bali to Komnas HAM," *Tempo*, June 8, 2021, <https://foto.tempo.co/read/89276/iskcon-laporkan-gubernur-bali-ke-komnas-ham>; Kadek Melda Luxiana, "Feeling Obstructed from Worship, ISKCON Reports the Governor of Bali to Komnas HAM," *detiknews*, June 8, 2021, <https://news.detik.com/berita/d-5597690/merasa-dihalangi-beribadah-iskcon-laporkan-gubernur-bali-ke-komnas-ham>.

<sup>19</sup> Ahmad Faiz Ibnu Sani Hasan, Adil Al, "Case File of Balinese Traditional Village Allegedly Extorted Rp10 Billion Businessman Transferred to Court," *Tempo*, 2024, <https://metro.tempo.co/read/1869460/berkas-kasus-bendesa-adat-bali-diduga-peras-pengusaha-rp10-miliar-dilimpahkan-ke-pengadilan>; KumparanNEWS, "Balinese Berawa Traditional Village Becomes a Suspect in Rp 10 Billion Investor Extortion Case," *KumparanNEWS*, 2024, <https://kumparan.com/kumparannews/bendesa-adat-berawa-bali-jadi-tersangka-kasus-pemerasan-investor-rp-10-miliar-22fT3WIU9Ue>.

<sup>20</sup> T. M. Scanlon, "The Aims and Authority of Moral Theory," *Oxford Journal of Legal Studies* 12, no. 1 (1992): 1–23, <https://doi.org/10.1093/ojls/12.1.1>.

<sup>21</sup> Moh Gandara, "Authority of Attribution, Delegation and Mandate," *Khazanah Hukum* 2, no. 3 (2020): 94, <https://doi.org/10.15575/kh.v2i3.8187>.

<sup>22</sup> Enny Agustina, "The Role of Community Empowerment Carried Out By Village Government in the Regional Autonomy Era," *UNIFIKASI: Jurnal Ilmu Hukum* 6, no. 1 (2019): 34, <https://doi.org/10.25134/unifikasi.v6i1.1483>.

rights, obligations, and consequences associated with their actions.<sup>23</sup> Legal certainty is a crucial aspect of the rule of law, guaranteeing that individuals may effectively organize their affairs and make informed decisions within the legal framework.<sup>24</sup>

The theory of legal certainty posits that legal certainty ensures the enforcement of the law, hence improving the proportionality of rights and facilitating the implementation of enforceable decisions.<sup>25</sup> Establishing legal certainty at the local level for the leader of the customary village can serve as a means to clearly define the authority granted to the appropriate individuals. This allows these individuals to align their activities with the applicable norms and regulations. This research aims to elucidate the authority of the customary village head in the context of public legal action and the prescribed extent of the authority of the customary village government as defined by laws and regulations.

The objective of this research is to contribute to the establishment of unambiguous legal regulations that will assist customary village heads in avoiding overlapping responsibilities in managing customary villages. Additionally, the research aims to guide how to effectively address issues within the customary village setting following the authority vested in the village heads.

The leader of the customary village, who serves as the highest authority in managing the village, must clearly understand their obligations and duties. Indonesia is a nation that upholds the rule of law, meaning that the actions of its citizens must adhere to the legal regulations set by the government. This is based on the idea of legal certainty. Legal certainty encompasses having clear and unambiguous guidelines and regulations that safeguard fundamental human rights and provide equal and unbiased treatment to all individuals.<sup>26</sup> In his research on the critical appraisal of legal responses to cyber-terrorist activities in the United Kingdom, Xingxing Wei explains that legal uncertainty can lead to uncertainty about the extent and limits of the law.<sup>27</sup> Legal uncertainty refers to the lack of clarity regarding which activities are prohibited and how they will be understood and enforced. The author highlights that the presence of legal uncertainty may lead to an increase in excessive criminalization and disproportionate responses.

The explanation above elucidates that establishing legal certainty about the local jurisdiction of the customary village head can offer transparency to the village administration and the community, enabling them to comprehend the extent and boundaries of the customary village head's authority. The tasks and authorities of customary village leaders become more complex due to the changing and adaptable nature of customary villages. To ensure clarity regarding the responsibilities and powers of the customary village head, it is imperative to establish precise laws outlining the capacity of the customary village head following well-defined legal regulations.

---

<sup>23</sup> Huan Yu and Mingyan Nie, "Acceding to the Moon Agreement to Acquire Legal Certainty: An Optional Solution for China in the New Era of Lunar Exploration and Exploitation," *Acta Astronautica* 212, no. December 2022 (2023): 665–71, <https://doi.org/10.1016/j.actastro.2023.08.035>.

<sup>24</sup> Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia," *Heliyon* 9, no. 11 (November 2023): e21280, <https://doi.org/10.1016/j.heliyon.2023.e21280>.

<sup>25</sup> Dr Karolina La Fors, "Legal Remedies For a Forgiving Society: Children's Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities," *Computer Law & Security Review* 38 (September 2020): 105430, <https://doi.org/10.1016/j.clsr.2020.105430>.

<sup>26</sup> Christian Koenig and Anton Veidt, "Lifting a Regulatory Millstone around 5G Investors' Neck – 5G Network Slicing versus EU-Net Neutrality?," *Telecommunications Policy* 47, no. 10 (2023): 102653, <https://doi.org/10.1016/j.telpol.2023.102653>.

<sup>27</sup> Xingxing Wei, "Rule of Law or Not? A Critical Evaluation of Legal Responses to Cyberterrorism in the UK," *Computer Law and Security Review* 53, no. April 2016 (July 2024): 105951, <https://doi.org/10.1016/j.clsr.2024.105951>.

This article examines the responsibilities and powers of the head of the customary village in effectively managing the village in compliance with the law while avoiding any encroachment of authority that could be detrimental to the customary village institution and the community.

### Research Methods

This study employs a legal research methodology that utilizes a legislative approach and involves investigating legal concepts. Peter Mahmud Marzuki asserts that legal research lacks the terms normative or empirical; instead, it necessitates the application of a prescriptive legal research methodology. Furthermore, legal research involves identifying applicable laws relevant to community life activities.<sup>28</sup> Therefore This research sample comprises primary legal sources, including the 1945 Constitution of the Republic of Indonesia, Law Number 6 of 2014 regarding Villages, Law Number 23 of 2014 regarding Regional Government, Law Number 15 of 2023 regarding the Province of Bali, and Regional Regulation of the Province of Bali Number 4 of 2019 regarding Customary Villages in Bali. This study's secondary sources of legal documents are literature and publications pertaining to customary villages and indigenous peoples. This study methodology employs prescriptive legal analysis tools.

### Results and Discussion

#### Legal knowledge and Legal Certainty for Traditional Village Heads in Bali

Power tends to corrupt, and absolute power corrupts absolutely. The origin of this well-known phrase can be traced back to a remark made by Lord Acton in a letter dated April 5, 1887.<sup>29</sup> Christopher Lazarski explores Acton's concept of "civil liberties" as a system that advocates for the division and limitation of power, contrasting it with a system where the state has unrestricted authority over individuals.<sup>30</sup> Acton's word refers to an ideal system of government that aims to safeguard individual freedom from the corrupting effect of power. This statement is also cited as a reference in endeavours to restrict the government's jurisdiction or those in positions of power in countries that uphold the rule of law system and liberal political ideology. In another research endeavour, Brian Martin comprehended Acton's statement that power could harm its wielders, leading them to perceive every person under their authority as lacking in worthiness of respect and more susceptible to exploitation.<sup>31</sup> An intriguing aspect of Brian Martin's research is that those in positions of power who aim to preserve their control would actively restrict the dissemination of information to individuals subordinate to them. Carole L. Jurkiewicz and Roger G. Brown present an alternative perspective that contradicts Acton's belief that the intention behind excessive power is not intrinsically immoral.<sup>32</sup> Competent leaders can successfully negotiate an organisation's political dynamics while upholding solid ethical principles. Carol and Roger argue that those in positions of power with a high level of "ethical reasoning" will be utterly devoid of any intention or guilty mind (*mens rea*) when engaging in corrupt actions.

---

<sup>28</sup> Peter Mahmud Marzuki, *Legal Research, 16th Print* (Jakarta: KencanaPrenada Media Group, 2021), 60.

<sup>29</sup> Christopher Lazarski, *Power Tends to Corrupt Lord Acton's Study of Liberty* (DeKalb: Northern Illinois University Press, 2012), 11.

<sup>30</sup> *Ibid*, 174.

<sup>31</sup> Brian Martin and Information Liberation, "Power Tends to Corrupt," *The Expository Times* 110, no. 4 (1999): 128, <https://doi.org/10.1177/001452469911000407>.

<sup>32</sup> Carole L. Jurkiewicz and Roger G. Brown, "Power Does Not Corrupt Absolutely: An Empirical Study," *Public Integrity* 2, no. 3 (July 27, 2000): 195–210, <https://doi.org/10.1080/15580989.2000.11770833>.



This study allows for an analysis of Acton's opinion on a specific cause. Similar to the instance mentioned in the previous background, the leader of a traditional village in Bali has engaged in corrupt practices by misusing the authority granted under the customary village regional regulation of 2019. The actions of the head of the relevant customary village, through overlapping and discriminating, demonstrate an attempt to control information to further personal political agendas and exert dominance. It is important to note that the conduct of the heads of the customary villages mentioned might be classified as individual cases, and this study does not generalise that all customary village chiefs have engaged in corrupt practices while in power. In this article, it is essential to mention that the purpose is to prevent future instances of overlapping and discrimination by traditional village leaders in Bali. This preventive approach is being emphasized.

Legal knowledge is one method of preventing overlapping and prejudice by customary village leaders. Legal knowledge should be promoted by establishing clear and precise legal guidelines, particularly concerning the responsibilities and financial obligations of the leaders of local traditional villages. Legal clarity on the jurisdiction of the customary village leader at a local level must be ensured, specifically by establishing precise legal regulations governing their authority. Legal certainty is the notion that the law should be unambiguous, foreseeable, and consistent, enabling persons and legal entities to plan their actions and make judgments confidently. Legal certainty can be understood by considering three key factors: (1) legal regulations, (2) legal subjects, and (3) legal implementation.<sup>33</sup>

### **The Legal Position of the Head of Customary Village in Bali**

Regarding jurisprudence or legal matters, the appointment of the head of a traditional village is currently governed by two distinct laws: the village law and the 2019 customary village regulation in Bali. These laws expressly outline the powers and responsibilities of the customary village head. From a legislative standpoint, the customary village head is classified under the indigenous people's portion of the Indonesian constitution, specifically in Article 18B paragraph (2) of the 1945 State Law of the Republic of Indonesia. Nevertheless, the article above remains broad in scope as it pertains to the acknowledgement of the leader of the traditional village, which falls under the classification of the "cohesion of the traditional legal community".<sup>34</sup> More precisely, the position of the village head is referred to in the initial section of the village government regulations outlined in the 2014 village law. "*Bendesa adat*" refers to the customary village head in Bali, as defined in Article 1 number 16 of the 2019 Bali customary village regulation.<sup>35</sup>

The legal matters of customary village chiefs are explicitly outlined in laws and regulations. According to Article 25 of the village legislation, the head of a customary village is defined as a legal entity with a position in the village government. Nevertheless, this village regulation does not specify the role of the traditional village leader. This provision is

---

<sup>33</sup> Kaisa Huhta, "Anchoring the Energy Transition with Legal Certainty in EU Law," *Maastricht Journal of European and Comparative Law* 27, no. 4 (2020): 425–44, <https://doi.org/10.1177/1023263X20932056>; I. Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "Ius Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31–45, <https://doi.org/10.29303/ius.viii.1170>.

<sup>34</sup> Republic of Indonesia, Constitution of the Republic of Indonesia of 1945, Article 18B paragraph (2) "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".

<sup>35</sup> Provinsi Bali, Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 Tentang Desa Adat Di Bali, Pasal 1 angka 16 "*Bandesa Adat atau Kubayan atau dengan sebutan lain adalah Pucuk Pengurus Desa Adat*".

now restricted to the position of village leader.<sup>36</sup> It is necessary to establish unambiguous phrases and definitions for establishing the role of the customary village head. As previously mentioned, Bali consists of two distinct types of village structures: official and customary villages. Explicitly stating precise rules in legal regulations on the distinction between customary villages and official villages is crucial for ensuring legal clarity. By establishing unambiguous laws, the role of the customary village leader will be more defined and will not have unintended consequences on the regulations under their authority. In the context of Balinese customary village culture, the role of the customary village head is specifically defined as the highest position within the customary village government. This definition addresses any gaps or deficiencies in the regulations outlined in the village law. To comprehend the role of the head of a customary village, it is imperative to grasp the structure of the customary village. The present study establishes a standard for identifying customary villages known as distinctive patterns. Gaining insight into the spatial distribution of indigenous villages is crucial for revealing the knowledge, principles, and connections between humans and nature that constitute these communities. Chun Liu and his colleagues elucidated that spatial patterns refer to the arrangement of elements within traditional villages as fundamental structures that mirror the sociocultural milieu and the interplay between humans and the natural world.<sup>37</sup> The particular tendencies are observable in traditional governance, religious beliefs, cultural practices, and local wisdom or traditional knowledge. The spatial arrangement of homes, roads, water sources, and natural features in the customary village area jointly define the character of customary village settlements.

Customary villages, as elucidated in his exposition, possess a distinctive governance structure characterized by the presence of an organized body. The highest position within this organization is referred to as the chief of the conventional village or by an alternative designation. The primary role of the customary village leader encompasses promoting cultural values beliefs, and the ability to adapt to societal changes to foster the community's growth and empowerment. It is crucial to be attentive to this matter to prevent cultural erosion and the decline in the population of indigenous peoples. This phenomenon is evident in Fabrice Monnat's studies on the decline of traditional communities in Sumba due to their inability to adjust to societal changes. The study's findings indicate that economic development and cultural globalization have led to cultural degradation and a decline in indigenous peoples. This decline is attributed to the gradual abandonment of traditional villages and the erosion of their customs, rituals, and religious beliefs associated with the marapu culture.<sup>38</sup> The decline of customary villages can be attributed to the reluctance of the village authority to adapt and the government's neglect of the cultural traditions of these communities.

Zijie Zhou and Xin Zheng argue that the existing approach to sustainable rural development often fails to recognize these traditional villages' cultural continuity and history. An instance of excluding the presence of indigenous communities arises from the conflict between safeguarding the distinctiveness and customs of these villages and the

---

<sup>36</sup> Republic of Indonesia, Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, Article 25 "The Village Government as referred to in Article 23 is the Village Head or who is called by another name and who is assisted by the Village apparatus or who is called by another name".

<sup>37</sup> Liu et al., "Pattern Identification and Analysis for the Traditional Village Using Low Altitude UAV-Borne Remote Sensing: Multifaceted Geospatial Data to Support Rural Landscape Investigation, Documentation and Management."

<sup>38</sup> Fabrice Monna et al., "Deep Learning to Detect Built Cultural Heritage from Satellite Imagery. - Spatial Distribution and Size of Vernacular Houses in Sumba, Indonesia -," *Journal of Cultural Heritage* 52 (2021): 171-83, <https://doi.org/10.1016/j.culher.2021.10.004>.

drive for economic progress and modernity. Zijie Zhou elaborated on the method of empowering indigenous villages in the present time, which involves adopting an integrated approach that combines conservation and development. This approach focuses on the "cultural path" perspective, emphasising the importance of cultural values and historical connections in revitalization efforts. These efforts will be further detailed in the government framework.<sup>39</sup> Upon examining these two perspectives, it becomes evident that the government must make further efforts to enhance the alignment of customary villages. The presence of customary villages is crucial in promoting sustainable development within a nation. To prevent conflict and cultural decline, it is imperative to establish a legal framework that promotes equality of cultural values and aligns with the country's constitution. The purpose of this is to establish legal certainty regarding the existence of customary village governments and to ensure that the government provides local-scale authority for the implementation of the power of customary village heads without any overlapping or discrimination.

It is crucial to have a well-defined legal framework to ensure legal certainty regarding the jurisdiction of the customary village head, as stipulated in laws and regulations. As previously elucidated, conflicts may arise between conventional rural communities and the governing authorities. It is crucial to prevent the government from being indifferent towards the customary village government, as this might lead to overlapping authority and discriminatory measures by the customary village head, resulting in losses for the community. The first case example in the background pertains to restricting particular belief groups in Bali. This restriction limits the fundamental right to belief as imposed by customary village heads. Regrettably, this dispute, which aims to advocate for justice on behalf of minority communities, involves the leaders of traditional villages and includes the local government of Bali province, specifically the Governor of Bali. The Governor's involvement in this matter is aimed at restricting religious freedom and enabling instances of overlapping authority and persecution by the traditional village leaders in Bali.<sup>40</sup>

The preceding explanation demonstrates the execution of the Customary Village Head's jurisdiction, which does not align with the current legal regulations. What is the reason for that? From a legal standpoint, the appointment of the customary village head should align with the responsibilities and powers outlined in Article 26, paragraph (2) letter g and paragraph (4) letter c. These provisions stipulate that the customary village head must promote and uphold peace and order within the village community.<sup>41</sup> The terms fostering and nurturing in this provision encompass a wide range of actions, which leads to the conclusion that the customary village head, as illustrated in the case mentioned above, has not effectively exercised his local authority. It is essential to recognize that promoting and maintaining does not include having the power to discriminate against or violate the fundamental rights of any person. Article 29, specifically in letters b, c, d, and f of the same law, explicitly states the behaviour the customary village head must adhere to. This includes refraining from making self-serving decisions that favour others, avoiding abuse of authority, and prohibiting discrimination against individuals or specific groups. Furthermore, it is strictly forbidden for the traditional village's leader to accept any

---

<sup>39</sup> Zijie Zhou and Xin Zheng, "A Cultural Route Perspective on Rural Revitalization of Traditional Villages: A Case Study from Chishui, China," *Sustainability (Switzerland)* 14, no. 4 (2022), <https://doi.org/10.3390/su14042468>.

<sup>40</sup> See Bestari, ISKCON Reports the Governor of Bali to Komnas HAM.

<sup>41</sup> Republic of Indonesia, *Op.Cit* Village Law, Article 26 paragraph (2) "In carrying out the duties as referred to in paragraph (1), the Village Head is authorized to: letter g. foster peace and order in the Village community; paragraph (4) letter C. maintaining peace and order of the village community".

monetary compensation, products, or services while carrying out their responsibilities. This also applies to the leader of the traditional village mentioned in the previous scenario.<sup>42</sup>

Article 32 of the Balinese customary village rules ensures that there is no overlapping or discrimination by customary village leaders, as stated in the provisions that are subordinate to the village law. Concerning the instance above, the village leaders must adhere to the guidelines outlined in sections c and d. This entails refraining from misusing their responsibilities and power and avoiding any actions that may cause distress to the residents inside their respective customary village territories.<sup>43</sup> The heads of customary villages in Bali must recognize and acknowledge their duty to uphold and preserve a harmonious coexistence between peace and the well-being of indigenous peoples or residents within their jurisdiction, as outlined in Article 26 of the Balinese customary villages regulation. Unfortunately, in the scenario above, it is regrettable that the traditional village leader disregards the principles outlined in Article 26, which should be implemented and entrusted to them. Therefore, this study aims to provide explicit guidance to each traditional village leader on understanding and exercising the power and autonomy of traditional villages to avoid any future issues related to overlapping and discrimination.

### **Concretization of Local Scale Autonomy of Customary Village in Bali**

In this instance, customary villages' autonomy is distinctly separate from the regional autonomy enforced by the local authority. Autonomy allows individuals or groups to act within their authority and judgment. Autonomy, often known as procedural autonomy, is achieved by procedural frameworks that must adhere to the principles of efficacy and equal rights for all individuals.<sup>44</sup> In his research on Nigerian state autonomy, Eghosa E. Osaghae elucidated that autonomy is a bilateral conflict that hinges on its efficacy and durability, contingent upon the degree to which autonomy is mutually agreed upon and accepted by a collective rather than alone by the state.<sup>45</sup> The notion of autonomy is primarily designed for local governments or parliamentary parties to implement national development following state principles. What is the specific sort of autonomy that is designed for customary villages? Currently, Indigenous communities possess a form of self-governance that is limited to their immediate surroundings and is based on distinctiveness, traditional practices, and local culture. Mirza Satria Buana's research further underscores the notion that the principle of autonomy aims to both foster and govern matters that fall under the jurisdiction of a particular region, encompassing the safeguarding of local distinctiveness, customs, and culture.

Nevertheless, Mirza's explanation confirms that the principle of autonomy is specifically designed for local governments. However, considering the constraints above on autonomy, it is possible to apply the principle of autonomy to indigenous settlements at a

---

<sup>42</sup> *Ibid*, Article 29 "The Village Head is prohibited: letter b. making decisions that benefit oneself, family members, other parties, and/or certain groups; letter c. abuse of its authority, duties, rights, and/or obligations; letter d. committing discriminatory acts against certain residents and/or groups of society; letter f. money, goods, and/or services from other parties that may influence the decision or action to be taken;"

<sup>43</sup> Bali Province, *Op.Cit*, "Article 32 of the Customary Village Prayer as referred to in Article 29 paragraph (1) is prohibited: letter c. abuse of duties, obligations, and authority; and letter d. committing acts that disturb the Krama in the Traditional Village;"

<sup>44</sup> Michael Bohlander, "Legal Advice in Criminal Proceedings in the Federal Republic of Germany," *Criminal Law Forum* 3, no. 3 (1992): 401-18, <https://doi.org/10.1007/BF01096362>; Katri Havu, "Eu Law in Member State Courts: 'Adequate Judicial Protection' and Effective Application - Ambiguities And Nonsequiturs in Guidance By The Court of Justice?," *Contemporary Readings in Law and Social Justice* 8, no. 1 (2016): 158, <https://doi.org/10.22381/CRLSJ8120167>.

<sup>45</sup> Eghosa E. Osaghae, "The State and Ethnic Autonomy in Nigeria," *Regional and Federal Studies* 13, no. 2 (2003): 84-105, <https://doi.org/10.1080/13597560308559428>.

local level. The Bali customary village regulation clearly states in its section on weighing and explaining the article that customary villages possess inherent autonomy focused on the principles of originality, traditional rights, and self-governance through the traditional village administration.<sup>46</sup> The autonomy of Balinese customary villages is constrained by three principles outlined in chapter three of the Balinese customary village regulations. These principles, namely *parahyangan*, *pawongan*, and *palemahan*, are rooted in the traditional knowledge of the Balinese customary people, *Tri Hita Karana* (THK).

*Parahyangan*, within the context of Balinese customary villages, refers to the duty of the village head to uphold and protect sacred sites and their associated rituals. Religious texts and the traditional laws of each village typically guide this responsibility. According to Article 7, paragraphs (1), (2), and (4) of the Balinese customary village laws, the head of the customary village is authorized to oversee and ensure the proper execution of religious ceremonial activities and customs in a manner that is environmentally and socially sustainable.<sup>47</sup>

*Pawongan* refers to the autonomous governance of Balinese customary villages, granting authority to the head of the village to promote harmony within the community while adhering to the social structure dictated by customary law and cultural traditions. Legally, the social structure within the confines of *pawongan* is defined in article 8, specifically in paragraph (2), which categorizes the inhabitants of customary villages into three groups: *krama desa* (Indigenous village residents), *krama tamiu* (Hindu residents of traditional villages who are not native to customary villages but are officially recognized as part of them), and *tamiu* (non-Hindu residents who are officially registered as living in the customary village area).<sup>48</sup> While there may be variations in the language used, there is no discrimination against the rights and responsibilities of the three groups above of citizens. The distinctions among the three groups of residents mentioned above are confined to their duty towards sacred sites and the observance of ancient customs. Nevertheless, individuals are entitled to a clean and secure environment, while their specific responsibilities may differ based on their unique customary laws.<sup>49</sup>

---

<sup>46</sup> province of Bali, *Op.Cit.*, Considering "that Traditional Villages that have grown and developed over the centuries and have the right of origin, traditional rights, and original autonomy rights to govern their own households, have made a great contribution to the survival of the community in the nation and state; Explanation of Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali: Customary Villages that have grown and developed for centuries in Bali and have the right of origin, traditional rights, and native autonomy rights to govern their own households, have proven to make a great contribution to the survival of the community in the nation and state".

<sup>47</sup> Province of Bali, *Op.Cit.*, Article 7 paragraph (1) "Parahyangan as referred to in Article 6 paragraph (1) is a harmonious relationship between the Traditional Village Krama and Hyang Widhi Wasa in the bond of village kahyangan and/or Kahyangan Tiga; paragraph (2) Kahyangan Customary Village and/or Kahyangan Tiga as referred to in paragraph (1) is the responsibility of the Customary Village; paragraph (4) "Parahyangan and other holy places in the Traditional Village Village are the responsibility of their respective leaders according to the local dresta".

<sup>48</sup> *Ibid*, Article 8 paragraph (2) "Krama as referred to in paragraph (1) consists of: a. Krama Desa Adat, namely Balinese residents of the Hindu community who are Mipil and registered in the local Customary Village; b. Krama tamiu, namely Balinese Hindu residents who are not Mipil but are registered in the local Traditional Village; and c. Tamiu, namely people other than the Traditional Village Krama and Tamiu Krama who are in the Traditional Village Wewidangan temporarily or reside and are registered in the local Traditional Village".

<sup>49</sup> Ni Ketut Kantriani, "Pengaturan Penduduk Pendetang (Krama Tamiu ) Di Tinjau Dari Hukum Adat Bali," *Vyavahara Duta* 13, no. 1 (2018): 63–70, <https://doi.org/10.25078/vd.v13i1.533>; I M A Widiani, D G Sudibya, and ..., "Penerapan Awig-Awig Terhadap Krama Tamiu Di Desa Adat Peladung, Karangasem.," *Jurnal Konstruksi ...* 4, no. 2 (2023): 190–95, <https://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/view/6802%0Ahttps://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/download/6802/4520>.

The *palemahan* aspect is a form of local-scale autonomy that the leader of the customary village intends to prioritize since it directly pertains to their sovereignty over the *Wewidangan* area. Every traditional village chief must analyze the meaning of *Wedidangan* in the light of vulnerability and legislation. *Palemahan* refers to a cohesive communication system between native villagers and the traditional village setting known as *Wewidangan*. *Wewidangan*, in a comprehensive sense, refers to a defined territory inside customary villages, as stipulated in Article 1 number 32 of the Bali customary village laws.<sup>50</sup> Specifically, it can refer to Article 10 paragraph (2), which defines *Wewidangan* as either communal or individually held land belonging to customary villages and privately owned land owned by wealthy individuals.<sup>51</sup> Within a customary area, there are two distinct types of land that own different ownership yet serve the same purposes: religion, tradition, culture, and economy.<sup>52</sup> The head of the customary village must recognize that their authority over local-scale matters is restricted to four areas: religion, tradition, culture, and economy, specifically regarding the use of land functions that pertain to the customary village. This authority does not extend to acts of persecution or searching for administrative papers, primarily when conducted on privately owned land. Additionally, they do not have the power to issue land sales and purchase permits in exchange for an administrative fee.

To clarify, local autonomy is emphasized to avoid authority conflicts between the head of the customary village and the government or other law enforcement agencies. Upon examining the case above, it becomes evident that the leader of the traditional village shows a lack of comprehension of the correlation between power and authority. This phenomenon also occurs in research about authority and power. Christopher McMahon elucidated the distinction between power and authority to mitigate the risk of failure in the exercise of authority by those in positions of power. Christopher McMahon explicitly clarified that power refers to the capacity to compel or sway the actions of others, whereas authority denotes the lawful entitlement to use that power.<sup>53</sup> Autonomy is a crucial factor that must be considered in the philosophy of authority. Christopher McMahon further elucidated the incorporation of the autonomy component in the theory of authority, emphasizing that each human possesses autonomy, even when subjected to the authority of another person. It is clarified that even when individuals are under the control of others, they nevertheless possess a certain level of independence and ability to make decisions for themselves. The fundamental principle for granting autonomy through authority is prioritizing the right to direct power. Furthermore, legitimate and enforceable authority can be established by upholding a balanced degree of individual autonomy or equality among the people involved.<sup>54</sup>

In Peter M. Blau's study, the theory of authority proposed by Weber states three primary forms of legitimate authority: conventional, charismatic, and legal-rational power.<sup>55</sup> Weber's explanation states that traditional authority is derived from enduring conventions

---

<sup>50</sup> Province of Bali, *Op.Cit.*, Article 1 number 32 "Wewidangan or Wewengkon, hereinafter referred to as Wewidangan Desa Adat is an area of Customary Village that has certain boundaries".

<sup>51</sup> *Ibid*, Article 10 paragraph (2) "Palemahan Customary Village includes land owned by Customary Villages and rich land that is communal or individual".

<sup>52</sup> *Ibid*, Article 10 paragraph (3) "Customary Village Land as referred to in paragraph (2) has customary, religious, traditional, cultural, and economic functions; paragraph (4) Rich land as referred to in paragraph (2) has customary, religious, traditional, cultural, and economic functions for its owners while still paying attention to the social function of land rights.

<sup>53</sup> Christopher McMahon, *Authority and Democracy, Political Theory* (New Jersey: Princeton University Press, 1994), 25.

<sup>54</sup> *Ibid*, 195.

<sup>55</sup> Peter M. Blau, "The American Science Association," *Scientific American* 2, no. 57 (September 25, 1963): 305-16, <https://doi.org/10.1038/scientificamerican09251880-196a>.

and the preservation of tradition. Charismatic authority is based on a leader's exceptional personal attributes and heroic nature. Legal-rational authority is derived from objective laws, regulations, and hierarchical systems. The concept of authority is closely associated with evaluating information by those in positions of power before making a decision. Patrick Wilson explains in Carrie A. Boettcher's work that authority theory is a concept that examines explicitly how individuals evaluate the credibility and reliability of sources of information. The fundamental elements of authority theory involve individuals evaluating the cognitive authority of an information source, which refers to its capacity to shape their thoughts and judgments. This assessment is based on various variables, including the information source's expertise, credibility, and dependability.<sup>56</sup> The normative thought and analysis of Hannah Arendt and Joseph Raz, as discussed in Mark Haugaard's work, focuses on determining the legitimacy of authority and its rightful exercise. Hannah Arendt and Joseph Raz argue that legitimate authority is characterized by granting individuals "dispositional power-to" rather than simply exerting "power over" them. The normative analysis evaluates authority structures by considering liberal-democratic principles such as freedom and self-determination.<sup>57</sup>

Regarding this study, the leader of a traditional village in Bali must comprehend the local jurisdiction, encompassing traditional and legally reasonable power. Furthermore, when making a decision and carrying it out, the traditional village leader must assimilate accurate information and prioritize the delegation of power while avoiding using force. Every traditional village leader must comprehend the significance of exercising autonomous authority at the local level. Local-scale refers to a specific range of behaviours or thoughts constrained by particular factors. According to Jose Daniel Teodoro, the term "local scale" refers to the level of analysis or action centred on a particular geographical area, community, or stakeholder group rather than being focused on a national or global level.<sup>58</sup> "local scale" refers to a small and well-defined geographical area, such as a city, district, or region. In this context, the local scale is focused on the distinct characteristics and context of the local community.<sup>59</sup> To establish a comprehensive understanding of the power and autonomy of the head of the customary village at the local scale, it is necessary to describe this understanding in a single article within the village law and its accompanying rules.

It is crucial to expressly state this comprehension of the local level in the legal rules to restrict the authority of the customary village head and avoid any lack of consideration or knowledge of their power. The endeavour to comprehend this local scale involves two distinct phases: internal and external. Internally, the legal awareness of the customary village head should be enhanced by training to prevent any legal logic flaws, similar to the instance stated above. The second phase involves external backing through the use of legal tools. The study will examine the necessity for the head of the customary village to possess legal knowledge and logical reasoning to exercise their authority. An example of a legal logical fallacy is when the leader of a traditional village imposes restrictions and bans on

---

<sup>56</sup> Carrie A. Boettcher, "Navigating Monsters: Credibility in the Twittersphere," *Proceedings from the Document Academy* 7, no. 1 (2020): 1–15, <https://doi.org/10.35492/docam/7/1/10>.

<sup>57</sup> Mark Haugaard, "What Is Authority?," *Journal of Classical Sociology* 18, no. 2 (2018): 104–32, <https://doi.org/10.1177/1468795X17723737>.

<sup>58</sup> Jose Daniel Teodoro et al., "Co-Designing a Research Agenda for Climate Adaptation in El Salvador's Coffee Sector: A Transdisciplinary Perspective," *Environmental Science and Policy* 153, no. January (2024), <https://doi.org/10.1016/j.envsci.2024.103678>.

<sup>59</sup> Reihaneh Bandari et al., "Prioritising Sustainable Development Goals, Characterising Interactions, and Identifying Solutions for Local Sustainability," *Environmental Science and Policy* 127, no. June 2021 (2022): 325–36, <https://doi.org/10.1016/j.envsci.2021.09.016>; James R.A. Butler et al., "Adapting Scenarios for Climate Adaptation: Practitioners' Perspectives on a Popular Planning Method," *Environmental Science and Policy* 104, no. August 2019 (2020): 13–19, <https://doi.org/10.1016/j.envsci.2019.10.014>.

religious practices on behalf of the village government. The state government regulates religious activities according to the rules of Article 10, paragraph (1) letter f of Law 23 of 2014 concerning the Regional Government.<sup>60</sup> According to Article 37 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997, the Land Deed Making Officer (PPAT) is the authorized entity responsible for granting a purchase and sale permit in legal acts relating to the sale and purchase of land.<sup>61</sup>

Examining the illicit behaviours exhibited by customary village leaders, including discriminatory actions against specific groups and attempts to extort based on their authority, clearly demonstrates the lack of legitimacy in the local autonomy norms to which they adhere. Overlapping is a concept that accurately describes the acts of the traditional village chief mentioned before. To ensure peace for all community members living in the traditional village setting in Bali, it is imperative to restore the authority of the local period in the village law and strengthen regional ties in Bali.

### Conclusion

The specific determination of legal certainty on the power of customary village leaders is necessary. There is a need to revise the rules to provide more detailed information on the power of local authorities in carrying out the responsibilities of the customary village head, as stated in the village law and the regional regulations of Bali province concerning customary villages. Furthermore, it is imperative to enhance the legal understanding of customary village chiefs to ensure their decision-making on the governance of customary villages is not marred by legal fallacies. This measure aims to restrict the authority of the traditional village leader to prevent any activities that contravene legal provisions or infringe upon the powers vested in the position of the traditional village leader. This paper aims to elucidate the role and responsibilities of the head of the customary village in Bali and Indonesia in addressing various issues and managing the village. It emphasizes the importance of maintaining harmony in the lives of the villagers within the customary village setting in Bali.

### Bibliography

- Agustina, Enny. "The Role of Community Empowerment Carried Out By Village Government in the Regional Autonomy Era." *UNIFIKASI : Jurnal Ilmu Hukum* 6, no. 1 (2019): 34. <https://doi.org/10.25134/unifikasi.v6i1.1483>.
- Bali, Provinsi. PERATURAN DAERAH PROVINSI BALI NOMOR 4 TAHUN 2019 TENTANG DESA ADAT DI BALI (2019). <https://jdih.baliprov.go.id/produk-hukum/peraturan-perundang-undangan/perda/24744>.
- Bandari, Reihaneh, Enayat A. Moallemi, Rebecca E. Lester, David Downie, and Brett A. Bryan. "Prioritising Sustainable Development Goals, Characterising Interactions, and Identifying Solutions for Local Sustainability." *Environmental Science and Policy* 127, no. June 2021 (2022): 325–36. <https://doi.org/10.1016/j.envsci.2021.09.016>.
- Bestari, Fardi. "ISKCON Laporkan Gubernur Bali Ke Komnas HAM." *Tempo*, June 8, 2021.

---

<sup>60</sup> Republic of Indonesia, Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government, Article 10 paragraph (1) Absolute government affairs as intended in Article 9 paragraph (2) includes: f. "Religion."

<sup>61</sup> Republic of Indonesia, "Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, Article 37 paragraph (1) "Transfer of land rights and ownership rights to flats through sale and purchase, exchange, grants, income in business and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if it is evidenced by a deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations".



- <https://foto.tempo.co/read/89276/iskcon-laporkan-gubernur-bali-ke-komnas-ham>.
- Boettcher, Carrie A. "Navigating Monsters: Credibility in the Twittersphere." *Proceedings from the Document Academy* 7, no. 1 (2020): 1–15. <https://doi.org/10.35492/docam/7/1/10>.
- Bohlander, Michael. "Legal Advice in Criminal Proceedings in the Federal Republic of Germany." *Criminal Law Forum* 3, no. 3 (1992): 401–18. <https://doi.org/10.1007/BF01096362>.
- Butler, James R.A., Anne Marte Bergseng, Erin Bohensky, Simona Pedde, Matt Aitkenhead, and Rohan Hamden. "Adapting Scenarios for Climate Adaptation: Practitioners' Perspectives on a Popular Planning Method." *Environmental Science and Policy* 104, no. August 2019 (2020): 13–19. <https://doi.org/10.1016/j.envsci.2019.10.014>.
- Christopher Lazarski. *Power Tends to Corrupt Lord Acton's Study of Liberty*. DeKalb: Northern Illinois University Press, 2012.
- Fors, Dr Karolina La. "Legal Remedies For a Forgiving Society: Children's Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities." *Computer Law & Security Review* 38 (September 2020): 105430. <https://doi.org/10.1016/j.clsr.2020.105430>.
- Gandara, Moh. "Kewenangan Atribusi, Delegasi Dan Mandat." *Khazanah Hukum* 2, no. 3 (2020): 94. <https://doi.org/10.15575/kh.v2i3.8187>.
- Hasan, Adil Al, Ahmad Faiz Ibnu Sani. "Berkas Kasus Bendesa Adat Bali Diduga Peras Pengusaha Rp10 Miliar Dilimpahkan Ke Pengadilan." *Tempo*, 2024. <https://metro.tempo.co/read/1869460/berkas-kasus-bendesa-adat-bali-diduga-peras-pengusaha-rp10-miliar-dilimpahkan-ke-pengadilan>.
- Haugaard, Mark. "What Is Authority?" *Journal of Classical Sociology* 18, no. 2 (2018): 104–32. <https://doi.org/10.1177/1468795X17723737>.
- HAVU, KATRI. "EU LAW IN MEMBER STATE COURTS: 'ADEQUATE JUDICIAL PROTECTION' AND EFFECTIVE APPLICATION – AMBIGUITIES AND NONSEQUITURS IN GUIDANCE BY THE COURT OF JUSTICE?" *Contemporary Readings in Law and Social Justice* 8, no. 1 (2016): 158. <https://doi.org/10.22381/CRLSJ8120167>.
- Huhta, Kaisa. "Anchoring the Energy Transition with Legal Certainty in EU Law." *Maastricht Journal of European and Comparative Law* 27, no. 4 (2020): 425–44. <https://doi.org/10.1177/1023263X20932056>.
- INDONESIA, REPUBLIK. UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 23 TAHUN 2014 TENTANG PEMERINTAHAN DAERAH (2014).
- Jurkiewicz, Carole L., and Roger G. Brown. "Power Does Not Corrupt Absolutely: An Empirical Study." *Public Integrity* 2, no. 3 (July 27, 2000): 195–210. <https://doi.org/10.1080/15580989.2000.11770833>.
- Kantriani, Ni Ketut. "Pengaturan Penduduk Pendetang (Krama Tamiu ) Di Tinjau Dari Hukum Adat Bali." *Vyavahara Duta* 13, no. 1 (2018): 63–70. <https://doi.org/10.25078/vd.v13i1.533>.
- Katapidi, Ioanna. "Heritage Policy Meets Community Praxis: Widening Conservation Approaches in the Traditional Villages of Central Greece." *Journal of Rural Studies* 81, no. September 2020 (2021): 47–58. <https://doi.org/10.1016/j.jrurstud.2020.09.012>.
- Koenig, Christian, and Anton Veidt. "Lifting a Regulatory Millstone around 5G Investors' Neck – 5G Network Slicing versus EU-Net Neutrality?" *Telecommunications Policy* 47, no. 10 (2023): 102653. <https://doi.org/10.1016/j.telpol.2023.102653>.
- KumparanNEWS. "Bendesa Adat Berawa Bali Jadi Tersangka Kasus Pemerasan Investor Rp 10 Miliar." *KumparanNEWS*, 2024. <https://kumparan.com/kumparannews/bendesa->

- adat-berawa-bali-jadi-tersangka-kasus-pemerasan-investor-rp-10-miliar-22fT3WIU9Ue.
- Kurniawan, I. Gede Agus, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara. "Ius Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31-45. <https://doi.org/10.29303/ius.viii.1170>.
- Liu, Chun, Yujie Cao, Chen Yang, Yuan Zhou, and Mengchi Ai. "Pattern Identification and Analysis for the Traditional Village Using Low Altitude UAV-Borne Remote Sensing: Multifeatured Geospatial Data to Support Rural Landscape Investigation, Documentation and Management." *Journal of Cultural Heritage* 44 (2020): 185-95. <https://doi.org/10.1016/j.culher.2019.12.013>.
- Luxiana, Kadek Melda. "Merasa Dihalangi Beribadah, ISKCON Laporkan Gubernur Bali Ke Komnas HAM." *Detiknews*, June 8, 2021. <https://news.detik.com/berita/d-5597690/merasa-dihalangi-beribadah-iskcon-laporkan-gubernur-bali-ke-komnas-ham>.
- MAHAPUTRA, I. Nyoman Kusuma Adnyana, Ni Luh Putu WIAGUSTINI, I. Ketut YADNYANA, and Ni Luh Gede Sri ARTINI. "Organization Behavior, Intellectual Capital, and Performance: A Case Study of Microfinance Institutions in Indonesia." *Journal of Asian Finance, Economics and Business* 8, no. 4 (2021): 549-61. <https://doi.org/10.13106/jafeb.2021.vol8.no4.0549>.
- Mandaka, M., A. Sasmito, and T. S. Andadari. "Study of Indigenous Village Settings in Bali." *IOP Conference Series: Earth and Environmental Science* 780, no. 1 (2021). <https://doi.org/10.1088/1755-1315/780/1/012038>.
- Martin, Brian, and Information Liberation. "Power Tends to Corrupt." *The Expository Times* 110, no. 4 (1999): 128. <https://doi.org/10.1177/001452469911000407>.
- Marzuki, Peter Mahmud. *Legal Research, 16th Print*. Jakarta: KencanaPrenada Media Group, 2021.
- McMahon, Christopher. *Authority and Democracy. Political Theory*. New Jersey: Princeton University Press, 1994. <https://doi.org/10.1177/009059178000800209>.
- Monna, Fabrice, Tanguy Rolland, Anthony Denaire, Nicolas Navarro, Ludovic Granjon, Rémi Barbé, and Carmela Chateau-Smith. "Deep Learning to Detect Built Cultural Heritage from Satellite Imagery. - Spatial Distribution and Size of Vernacular Houses in Sumba, Indonesia -." *Journal of Cultural Heritage* 52 (2021): 171-83. <https://doi.org/10.1016/j.culher.2021.10.004>.
- Nguyen, Huong X.T., Kate Bradley, Bridgette J. McNamara, Rosie Watson, Roslyn Malay, and Dina LoGiudice. "Risk, Protective, and Biomarkers of Dementia in Indigenous Peoples: A Systematic Review." *Alzheimer's and Dementia* 20, no. 1 (2024): 563-92. <https://doi.org/10.1002/alz.13458>.
- Noak, Piers Andreas. "Kedudukan Dan Kewenangan Desa Adat Dan Desa Dinas Di Bali Pasca Pemberlakuan UU Nomor 6 Tahun 2014 Tentang Desa Dalam Perspektif Administratif." *Jurnal Hukum Dan Budaya* 4, no. 2 (2016): 1-12.
- Osaghae, Eghosa E. "The State and Ethnic Autonomy in Nigeria." *Regional and Federal Studies* 13, no. 2 (2003): 84-105. <https://doi.org/10.1080/13597560308559428>.
- Peter M. Blau. "The American Science Association." *Scientific American* 2, no. 57 (September 25, 1963): 305-16. <https://doi.org/10.1038/scientificamerican09251880-196a>.
- PROVINSI BALI. PERATURAN DAERAH PROVINSI BALI NOMOR 4 TAHUN 2019 TENTANG DESA ADAT DI BALI, PROVINSI BALI § (2019).
- Radjagoekgoek, Robert Pangihutan, and Awwal Muhammad Shafiu. "Estimating The Exploration And Production (E&P) Industry's Rig Contract Business Owner."

- Yuridika* 39, no. 1 (2024): 31–42. <https://doi.org/10.20473/ydk.v39i1.44966>.
- Republik Indonesia. Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, Republik Indonesia § (1997).
- . Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 4 § (1945).
- Rorato, Ana C., Gilberto Camara, Maria Isabel S. Escada, Michelle C A Picoli, Tiago Moreira, and Judith A. Verstegen. “Brazilian Amazon Indigenous Peoples Threatened by Mining Bill.” *Environmental Research Letters* 15, no. 10 (October 1, 2020): 1040a3. <https://doi.org/10.1088/1748-9326/abb428>.
- Santosa, Edy Yusuf Nur Samsu. “Peran Desa Adat Dalam Pengembangan Pariwisata Di Bali.” *Aplikasia* 4, no. 2 (2003): 202–17.
- Scanlon, T. M. “The Aims and Authority of Moral Theory.” *Oxford Journal of Legal Studies* 12, no. 1 (1992): 1–23. <https://doi.org/10.1093/ojls/12.1.1>.
- SITUNGKIR, DANIEL ADITIA. “MENGENAL TEORI DEMOKRASI DAN TEORI KEWENANGAN DALAM ILMU HUKUM DANIEL.” *Ensiklopedia of Journal* 5, no. 4 (2023): 105–13. <https://doi.org/https://doi.org/10.33559/eoj.v5i4.1745>.
- Sudantra, I Ketut, Tjok Istri Putra Astiti, and I Gusti Ngurah Dharma Laksana. “Sistem Peradilan Adat Dalam Kesatuan-Kesatuan Masyarakat Hukum Adat Desa Pakraman Di Bali.” *Jurnal Kajian Bali (Journal of Bali Studies)* 7, no. 1 (2017): 85. <https://doi.org/10.24843/jkb.2017.v07.i01.p06>.
- Syahbandir, Mahdi, Dahlawi Maz, Wais Alqarni, and Munawwarah Samad. “Imeum Mukim Advocacy in Prevention of Environmental Pollution in Aceh Jaya According to Customary and Islamic Law.” *Samarah* 5, no. 2 (2021): 741–59. <https://doi.org/10.22373/sjhk.v5i2.10698>.
- Teodoro, Jose Daniel, Suzanne Marselis, Antonella Maiello, and Achim Häger. “Co-Designing a Research Agenda for Climate Adaptation in El Salvador’s Coffee Sector: A Transdisciplinary Perspective.” *Environmental Science and Policy* 153, no. January (2024). <https://doi.org/10.1016/j.envsci.2024.103678>.
- Undang-Undang. UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 6 TAHUN 2014 TENTANG DESA, Republik Indonesia § (2014). <https://doi.org/10.1145/2904081.2904088>.
- Wei, Xingxing. “Rule of Law or Not? A Critical Evaluation of Legal Responses to Cyberterrorism in the UK.” *Computer Law and Security Review* 53, no. April 2016 (July 2024): 105951. <https://doi.org/10.1016/j.clsr.2024.105951>.
- Wibawa, I Putu Sastra, I Wayan Martha, and I Komang Dedi Diana. “MENAKAR KEWENANGAN DAN TATA HUBUNGAN KELEMBAGAAN ANTARA MAJELIS DESA ADAT DENGAN DESA ADAT DI BALI.” *VIDYA WERTTA : Media Komunikasi Universitas Hindu Indonesia* 3, no. 1 (April 30, 2020): 96–105. <https://doi.org/10.32795/vw.v3i1.671>.
- Widiana, I M A, D G Sudibya, and ... “Penerapan Awig-Awig Terhadap Krama Tamiu Di Desa Adat Peladung, Karangasem.” *Jurnal Konstruksi ...* 4, no. 2 (2023): 190–95. <https://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/view/6802%0Ahttps://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/download/6802/4520>.
- Wijatmoko, Erlan, Armaidly Armawi, and Teuku Faisal Fathani. “Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia.” *Heliyon* 9, no. 11 (November 2023): e21280. <https://doi.org/10.1016/j.heliyon.2023.e21280>.
- Windia, Wayan P. & I ketut Sudantra. *Pengantar Hukum Adat Bali. Pengantar Hukum Adat Bali*. Denpasar: Udayana University Press, 2016.
- Yu, Huan, and Mingyan Nie. “Acceding to the Moon Agreement to Acquire Legal Certainty:

- An Optional Solution for China in the New Era of Lunar Exploration and Exploitation.” *Acta Astronautica* 212, no. December 2022 (2023): 665–71. <https://doi.org/10.1016/j.actaastro.2023.08.035>.
- Yudantini, Ni Made. “Traditional Concept Toward the Sustainable Built Design in Bali.” *IOP Conference Series: Earth and Environmental Science* 738, no. 1 (2021). <https://doi.org/10.1088/1755-1315/738/1/012060>.
- Zhou, Zijie, and Xin Zheng. “A Cultural Route Perspective on Rural Revitalization of Traditional Villages: A Case Study from Chishui, China.” *Sustainability (Switzerland)* 14, no. 4 (2022). <https://doi.org/10.3390/su14042468>.