



**THE INDONESIAN ADMINISTRATIVE LAW MODEL FOR MANAGING
THE STATE MANDATED AFFAIR TO THE ADAT COMMUNITY: AN
EXPERIENCE OF BALI**

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ABSTRACT:

Indonesian *adat* village is an autonomous traditional community under the Constitution of the Republic of Indonesia. The State, in conformity with the Constitution, may not intervene the community internal affair. They may freely enjoy their historical and traditional rights within the State of Indonesia, including their traditional customary rights, cultural rights, historical rights, and self-governing authority. However, this status has produced an injustice with regard to the use of their culture. *Adat* community is an actual inheritance of the Balinese traditional culture. They own and maintain the culture under their own expense. But, when the culture produces tourism and tourism produces economic benefit, none of the benefit directly flows to the *adat* community. Most of them flows to the government and private sectors. Under McDougal's policy-oriented approach and taking the case of Bali, this article would explore the nature of such injustice, its causes, the formulation of needs, the administrative law policy schemes, and the administrative rules formulation model for fixing the problem.

Keywords: Administrative Law Model; State Mandated Affair; Adat Community; Bali; Indonesia





1 INTRODUCTION

The Indonesian *adat* village is an autonomous traditional community under the Constitution of the Republic of Indonesia 1945. It is known as a *kesatuan masyarakat hukum adat* or an *adat* community legal entity,¹ a community is recognized as a legal entity by the Constitution. Article 18B paragraph (2) of the Constitution stipulated that the State is under obligation to recognize and respect the *adat* community, along with their traditional customary rights, as long as they remain existed and conformed with the social progress and principles of the Unitary State of the Republic of Indonesia. Article 28 I paragraph (3) of the Constitution determines that cultural identity and rights of *adat* community are respected in accordance with the state social progress and civilization. The Elucidation of Article 18 of the original Constitution 1945² defines the *adat* community, is a legal entity. They attributed with several indicators such as original structure, defined territory, permanent community members, community social, cultural, and economic system, and an autonomous self-governing authority. The Constitution defines them as a particular territory within the state of Indonesia and the state is under commitment to respect their existence as long as they remain existed and in conformity with the principle of the Unitary State of Indonesia. In addition, any of state regulation affecting their existence shall always consider their historical rights.³ The only limitation set by the

¹ *Adat* is a set of custom, including its institutions and process, inherited by Indonesian traditional communities. It valid, obeyed, and operated within the community by the community. The Indonesian Dictionary defines *adat* as rules for human behavior which is obeyed by generation to generation of a traditional community. It also adefines as a form of a cultural ideas which consisted in an integrated cultural values, norms, rules, and regulations. Ministry of Education and Culture the Republic of Indonesia, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1988).

² The Constitution of 1945 (or the pre-amended Constitution) has been amended for four times. The first amendment has been performed by The People Consultative Assembly of the Republic of Indonesia in 19 October 1999. The second amendment in 18 August 2000. The third amendment in 9 November 2001. And, the fourth amendment in 10 August 2002. See the Constitution of The Republic of Indonesia 1945, Elucidation of Article 18 II.

³ Elucidation II of Article explains that within the territory of the state of Indonesia there are some 250 self-governing community (*zelfbesturende lanschappen*) which have their own territory (*volksgetneenschappen*) like village (*desa*) in Java and Bali, *negeri* in Minagkabau, *dusun* and *marga* in Palembang, etc. They have their original structure therefore they are considered as a particular area. The state is under commitment respecting their existence and each of the state regulation shall remind their historical rights.





Constitution, they may not act like a state within a state and contrary with any of the state law.⁴

There are some 250 communities all around Indonesia at the time of Indonesian independence and now has spread in a bigger number, like Bali in some 1.500 traditional villages all around the region of the Province of Bali. *Adat* community is an actual inheritance of the Balinese traditional culture. It is one of the important elements which create character, identity and image of place, which include Bali.⁵ So, they are the actual owner and maintainer of the culture. Contrary to almost all UNESCO legal instruments,⁶ most of Indonesian traditional culture is a living culture which is existed, practiced and maintained by the owner in their daily living within each of the *adat* village territory.⁷ Each traditional community has their own cultural site and landscape, socio-cultural system, community member as the supporter of the culture, cultural heritage and values, religion and ritual system. So, there are some 1.500 cultural sites and landscapes and 1.500 particular socio-cultural systems in Bali which share a common and particular living cultural pattern. Each *adat* village is responsible to manage at least 3 (three) village's temples and each village family member has to manage one family temple. Hence, there would some 4.500 total amount of *adat* village temples and some 1 (one) million family temples in Bali. They cost in at least some 7 (seven) trillion ADR per year for maintaining the ritual performance for the total villages and family temples. The all expensed by the each of *adat* village and *adat* family member.⁸

⁴ Elucidation I of Article 18 mentioned that Indonesia is a unitary state. Therefore, Indonesia shall not own an area would act like a state within their territory. All particular areas shall be governed by Act.

⁵ Tri Anggraini Prajnawrdhi, Sadasivam Karuppanan, and Alpana Sivam, "Preserving Cultural Heritage of Denpasar: Local Community Perspectives," *Procedia Environmental Sciences* 28 (2015): 557–66.

⁶ See Article 1 of the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 which define culture as a cultural heritage or dead cultural monument and rest the authority for managing such heritage in the hand of the government. This Convention presumes that cultural heritage is belong to government. In fact, in all living culture, cultural heritages belong to the community, the culture supporting. See also, UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003 which apply cultural heritage concept as a basic approach for regulating intangible cultural heritage. Hence, it puts the inheritance aside to the subject. In the living culture the inheritance is the core of the system, not the heritage.

⁷ It expresses at each culture system of all traditional community in Indonesia, such as: Dayak culture in Kalimantan, Nagari in West Sumatra, Papua culture in West Papua, Toraja culture in the Middle Sulawesi, Sasak culture in Lombok, etc.

⁸ Ida Bagus Wyasa Putra, "The Contextual Problem in the Development of Indonesian International Tourism Law," in *International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)* (Atlantis Press, 2018), 153–56.





Article 32 of the Constitution has mandated that the state shall under obligation to develop the national culture by means of assuring freedom of the society to preserve and develop the culture values and the local languages as a national cultural treasure.⁹ Indonesian national culture is an integrated network of all Indonesian traditional community cultures. Article 32 of the Constitution clearly stressed that the state shall responsible to maintain and develop the culture which suppose including the cost for its maintenance and development. In fact, the state under the strong influenced of the UNESCO's cultural management model has limited their duty only to the Indonesian cultural heritages¹⁰ excluded the living culture. This model has produced a huge lag between the state action with the Constitution's mandate and in another side an injustice against the *adat* community, as they have to expense the whole cost of the culture maintenance, but they have never enjoyed the economic benefit of such maintaining. In the case of Bali, culture has naturally positioned as an economic resource and produces tourism. When tourism produces economic benefit, the benefit does not flow to the *adat* community, but the government, both local and the central, in the form of tax and private sectors in the form of return, income, and profit.¹¹ These facts show two forms of injustice: *first*, the enjoyment of rights in the form of enjoyment of tourism economic benefit by government and private sectors who never shared the cost for maintaining the culture in its status as an economic resource of tourism; and *second*, an exploitation against the *adat* community as they have expensed the total cost for the culture maintaining, but they never get return from investment that they have done.

This injustice has never been fixed for 70 years since the independence of the state of Indonesia in 1945 and lately has been tried to be managed by the local government of Bali. The Province Government of Bali have enacted a Province of Bali Act Number 4 of 2019 concerning on *Desa Adat (Adat Village)* where the Province Government inserting

⁹ Christoph Antons and Lisa Rogers, "Cultural and Intellectual Property in Cross-Border Disputes over Intangible Cultural Heritage 1," in *Intellectual Property, Cultural Property and Intangible Cultural Heritage* (Routledge, 2017), 67–88.

¹⁰ Act of the Republic of Indonesia Number 11 of 2010 concerning on Cagar Budaya (Cultural Heritage) has totally adopts the UNESCO's concept on cultural heritage. Article 1 point 1 of the Acts defines cultural heritage as a tangible culture heritage in any of its shapes such building, structure, cultural sites, cultural landscape, etc. None of concepts narrated in Article 1 of this Act mention cultural heritage as a part of a living culture system.

¹¹ Putra, "The Contextual Problem in the Development of Indonesian International Tourism Law."





some rules on recognition and respect to the adat community existence and tasks granted to the *adat* community on development, including the adat community culture. Article 22 of the Act states that the main task of *adat* community is to develop welfare physically and spiritually to their community member. There are some 13 (thirteen) jobs related to culture maintenance and development and one job related to development that might be granted by the Province Government to the *adat* community. The first group of jobs is a set of traditional jobs of the *adat* community where part of it including job of the state mandated by the Constitution to maintain and develop culture and the second jobs is related to development for the better public services to the community member. Article 65 of the Act determines that the *adat* community may earn income from various resources including budget allocated by the central, province, and regency government. This income might form in a budget allocated by the government for those jobs of the government that performed by *adat* community and jobs of the government but to be granted to the *adat* community for its performance.

In fact, this Act has attracted a strong reaction or even opposition from academicians saying that the Act would potentially breach the autonomy of the *adat* community. There is also a fear of possibility for turning the autonomous status of the *adat* community into a political sub-ordination position where the existing political regime in the central, province, or regency government might easily exploit the *adat* community into a political instrument at the time of political election.¹² For preventing such fear, the government of Bali has intentionally developed an administrative law model for preventing such turning where the *adat* community may carry out the culture maintenance with budget supporting from the government without fear that such budget would transform their position from an autonomous or independent entity into sub-ordinate entity.

¹² Ni Putu Whraspati Radha, Muhammad Ali Azhar, and Bandiyah Bandiyah, "Kontestasi Kelian Adat Dalam Pemilukada Serentak Di Kota Denpasar Tahun 2015" (Udayana University, n.d.).





Based on such facts, this article would explore and analyze several contextual legal issues, namely: (a) what would be the nature of injustice and the formulation of the public policy needed for solving the problem of injustice in the maintaining and using the Balinese culture; and (b) what would be the formulation of legal policy and the administrative law model that suitable for solving such injustice and assuring the autonomous position and rights of the *adat* community for enjoying the benefit of the using of the Balinese culture as an economic resource of tourism. The first issue is expected to discover the nature of injustice and the nature of needs of public policy for solving the injustice, and the second issue is wished to draw up legal policy and administrative law scheme for recover injustice into a just relation between adat community with tourism and keeping the autonomous position of the adat community within the living of the state, particularly the local political power of the existing political regime who rule the province local government.

2 METHOD

This research is conducted under the McDougal's policy-oriented approach which is characterized in a more technical approach, the contextual or the constructive approach.¹³ Under such approach, the policy or legal rules shall be analyzed based on the expectation of its context, it is the expectation of the community the target of the policy. In a more technical scheme, the analyzes is performed in an identification, conformation, and consistency analyzes between the substance of the rules and the nature of facts and needs of its context.¹⁴ Based on such approach, this article would perform four analyzes and targets which formulized in two issues and targets of research, covering:

¹³ Myres S McDougal, "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study," *Nat. LF* 1 (1956): 53.

¹⁴ Lung-chu Chen identifies that research steps under such approach would at least cover: (1) the establishment of observation standpoint; (2) the formulation of problems; (3) the delimitation of the focus of inquiry; (4) the explicit postulation of public order goals; (5) the performance of intellectual task. The fifth step would cover at least five task: (a) the clarification goals; (b) the description of past trend decision; (c) the analysis of factors affecting decision; (d) the projection of future trends; and the invention and evaluation of policy alternatives. Lung-chu Chen, *An Introduction to Contemporary International Law: A Policy-Oriented Perspective* (Oxford University Press, 2014).





- (a) the nature of injustice in the maintenance of traditional culture in Bali and the nature of needs for solving such injustice;
- (b) the formulation of legal policy and the administrative law model that suitable for solving such injustice and keeping the autonomous position of the *adat* community.

3 ANALYSIS OR DISCUSSION

This research is based on three basic theories, namely: the Pancasila theory of justice, the McDougal's Policy-oriented theory, and the Hans Kelsen's pure theory of law. The first theory is used to provide epistemological basis for reviewing the just and unjust situation created by law and regulation on managing the state obligation mandated by the Constitution. This theory would also be supported by theory of Cost-Benefit Analyses (CBA) of law.¹⁵ The second theory is employed for analyzing issues (a), (b), and (c). And, the second theory is use to analyze the issue (d).

Soekarno formulized the justice of Pancasila under four sub-formulation: (a) anyone shall give others anything deserved to be their rights, or anything that they ought to be accepted as part or their rights, so each of the parties shall has their opportunity to perform their rights and obligation without hesitation (justice of inter-human beings relationship); (b) in human individual relationship, to deliver to the other anything deserve to be rights of others or anything deserved to accepted by others, so there is a situation of giving and accepting each other (justice of interchanging/trading); (c) in the relationship of individual and community, di give and to commence anything affecting public wellness and welfare (social justice); (d) in the sense of relationship between community and its member, the community by using their institutions to distribute satisfaction and burden in equal means to all of their community member in accordance to the harmony of nature and physical and moral capacity hence there is a realization of feeling the same and feeling equal between the community member (justice in distributing). The realization of

¹⁵ David M Driesen, "Cost-Benefit Analysis and the Precautionary Principle: Can They Be Reconciled," *Mich. St. L. Rev.*, 2013, 771; David S Clark, *Encyclopedia of Law and Society: American and Global Perspectives* (Sage publications, 2007).





these three of justice shall be commenced in the sense of asymmetrical where the weaker shall be the parameter of all.¹⁶

In accordance to McDougal, law is a continuing process of authoritative decision for clarifying and securing common interest of community members. Under this theory, law is a part of continuing process of authoritative decision. Therefore, law does not be separated from the whole process of authoritative decision and its context.¹⁷ The decision makers continually formulate policy projecting desired consequences into living context. It relates law to the living context where function and context, goals and expectation, trend, condition, projection, and alternatives are properly valued under its concern and enquiry.¹⁸ Law serves two functions, *first*, to limit of an effective power and *secondly*, a creative instrument in promoting both order and other values. It is a contextual, problem-solving, and multi-method in nature.¹⁹ This theory would properly explain two things: *first*, the reason of why the *adat* community shall be supported with state budget; and *second*, how such supporting budget limits the province government authority from intervening the internal affair of the *adat* community, hence they would not damaging the autonomy status or autonomous position of the *adat* community in the living of state.

Law in accordance to Hans Kelsen is a set of norms which is derived from another norm.²⁰ A norm is a rule stating that an individual ought to behave in a certain way. It is an ought category and a hierarchical system where the lower norm (sub-norms) sources in the higher level of norm (norms) which is in the top is the ground norm. The validity of norm is measured under the following conditions:

¹⁶ Departemen Penerangan RI, *Buku Ringkasan Pembangunan Semesta* (Jakarta, 1961); Ida Bagus Wyasa Putra, *Analisis Konteks Dalam Epistemologi Ilmu Hukum*, Universitas Udayana (Jimbaran: Udayana University Press, 2020).

¹⁷ William J Chambliss and Marjorie Sue Zatz, *Making Law: The State, the Law, and Structural Contradictions*, vol. 834 (Indiana University Press, 1993); Ann Seidman, Robert B Seidman, and Nalin Abeyesekere, *Legislative Drafting for Democratic Social Change* (Kluwer Law International BV, 2001).

¹⁸ Chambliss and Zatz, *Making Law: The State, the Law, and Structural Contradictions*; Seidman, Seidman, and Abeyesekere, *Legislative Drafting for Democratic Social Change*.

¹⁹ It is contextual in the sense of viewing the role of law in society dynamically, by relating it to relevant social, community, and decisional variable and problem solving in sense of recognizing the intrinsic function of law as an instrument of policy for promoting a preferred social order and providing an effective tool to optimize the function of law on achieving its goal. Ibid. See also: Ida Bagus Wyasa Putra, *Filsafat Ilmu: Filsafat Ilmu Hukum*, Second Edi (Jakarta: Udayana University Press, 2021).

²⁰ L.B. Curzon, *Jurisprudence* (Aylesbury: M&E Handbooks, 1979); Hari Chand, *Modern Jurisprudence* (Kuala Lumpur: Turbo, 1994).





- (a) a norm must be part of a system of norms;
- (b) the system must be efficacious.²¹

This theory is suitable to justify the binding force of Acts enacted by the Province Government in Indonesia, including the Act of the Province of Bali on the *Adat* Community, where the Act would valid or binding upon its conformity to the Act enacted by the central government and the Constitution.²²

3.1 THE NATURE OF INJUSTICE IN MAINTAINING THE BALINESE CULTURE AND THE NEEDS FOR SOLVING THE PROBLEM

The *adat* community is the actual inheritance of the Balinese traditional culture that is passed down from generation to generation.²³ They own and maintain the culture. There are some 1.500 entities of *adat* community in Bali. They have their own territories, members, original structure, and self-governing authority. The Constitution poses them in a particular status with their traditional and historical rights, and treats them as a particular legal entity in the living of state by means of recognition, respect, and assurance to freely enjoy of their rights. The only limitation set by the Constitution, they shall not act like a state within the state and go beyond their cultural and historical limit. Their rights are recognized and respected as long as they are reminded existed.²⁴ Since the independence of the state in 1945, they have covered the whole cost for the culture maintenance. Each of *adat* community has their own self-governing territories including a defined territory, permanent members, institutions, government, cultural heritages, traditions, and culture. All components of *adat* community are a set of *adat* community cultural system. Each of

²¹ Curzon, *Jurisprudence*; Chand, *Modern Jurisprudence*.

²² This theory has been adopted by the Indonesian Act Number 12 of 2011 concerning on The Formation of Act and Regulation. Article 7 paragraph (1) of the Act stated that the kind of and hierarchy of the Indonesian Act and Regulation shall consist of: the Constitution of the Republic of Indonesia 1945; the Decree of People Assembly; Act/Government Regulation in lieu of Act; Government Regulation; President Regulation; Province Government Act; and Regency Government Act/City Act. Paragraph (2) stated that the binding power of each law and regulation shall rely on the hierarchy of the Act and Regulation stated in paragraph (1).

²³ Cokorda Pramatha and Joseph G Davis, "Digital Preservation of Cultural Heritage: Balinese Kukul Artefact and Practices," in *Euro-Mediterranean Conference* (Springer, 2016), 491–500.

²⁴ Wardana A, *The Politics of Development in Bali. In Contemporary Bali* (Singapore: Palgrave Macmillan, 2019).





them has their own cultural site, social system, value system, institutional system, legal system, cultural heritages, and living and tradition system. Each of the *adat* community and each family of the member performs their own responsibility, in a certain level of responsibility, on maintaining culture at least in the form of daily, monthly, six-monthly, and yearly religion rituals. They have to spent at least 7 (seven) trillion IDR per year for religion rituals excluded cultural heritages maintenance and development.²⁵

Balinese culture is an economic resource for the Bali's tourism.²⁶ It develops identity and attraction to the Bali's tourism. However, when the culture produces tourism and tourism produces benefit, none of the benefit directly flows to the *adat* community. Most of them flows to the government, in the form of tax and foreign exchange, and the private sectors in the form of return, profit, and income. This misconnection between the position of the *adat* community and the benefit of tourism has caused in injustice or exploitation to the *adat* community and their culture. It has threatened not only the sustainability of the *adat* community and their culture, but also the sustainability of tourism. This problem firmly expresses needs for recovering the capacity for expensing of the *adat* community on maintaining and developing the culture which in the same time a capacity for maintaining the sustainability of culture as an economic resource of the Bali's tourism. These facts producing two needs: *firstly*, in accordance to the Constitution, the need for keeping and assuring the autonomous position of the *adat* community; and *secondly*, in the shake of sustainable position and function of culture as an economic resource and the sustainability of tourism, the needs for increasing the capacity of the *adat* community for maintaining and developing the culture.

3.2 THE ADMINISTRATIVE LAW POLICY SCHEME AND RULES FORMULATION MODEL FOR SOLVING INJUSTICE AND KEEPING THE AUTONOMOUS POSITION OF THE ADAT COMMUNITY

²⁵ Putra, "The Contextual Problem in the Development of Indonesian International Tourism Law."

²⁶ Yetta Gurtner, "Returning to Paradise: Investigating Issues of Tourism Crisis and Disaster Recovery on the Island of Bali," *Journal of Hospitality and Tourism Management* 28 (2016): 11–19.





The Bali Province Government has tried to set up a legal policy schemes based on such needs: *firstly*, a legal policy scheme by means of providing legal basis or rules for strengthening the autonomous position of *adat* community; and *secondly*, rules for channeling the *adat* community with benefit of tourism in order to increase their capacity on expensing the maintenance and development of the Balinese culture. However, such policy still arises questions on the possibility of intervention by the Province Government against the autonomous position of the *adat* community which in the worst case might turn into a sub-ordinate political entity which, in the legal sense, would equal to the issue of breaching the Constitution.²⁷ The Bali Province Government, to cover such case, has developed an administrative legal schemes: *first*, providing rules for strengthening the autonomous position of the *adat* community; and *secondly*, providing an administrative law model which in one side increasing the ability of the *adat* community to expense the culture maintenance and in another side would prevent the government from intervening the internal affair of the *adat* community.

Both legal policy schemes have been transformed into The Bali Province Act Number 4 of 2020 concerning *Desa Adat* (The *Adat* Village, hereinafter BPA) and The Bali Province Regulation Number 4 of 2020 concerning Regulation for Commencing Bali Province Act Number 4 of 2020 concerning *Desa Adat* (hereinafter, BPR). The BPA has transformed the legal policy scheme for preserving the autonomous position of the *adat* community into a set of rules for providing legal basis and strengthening the position of *adat* community as an autonomous legal entity. This legal policy has been governed under Chapter I, concerning on the concept, principles of regulation, and purpose of the regulation of *adat* community. This chapter clarifying the concept of *adat* community as an autonomous legal entity, providing principles which relaying on the principles of *adat* legal entity, empowering, self-reliance, and sustainability. The purposes of this Act are:

²⁷ Indonesia is a country strongly influence by Kelsen's structural theory of law, where the lower regulation shall certainly be rooted in the higher regulation or law. Any contrary of the lower regulation against the higher regulation shall be considered breaching the higher law which at the end could be the constitution. This influence is explicitly adopted by the Indonesian Act Number 12 of 2011 concerning The Making of Legislation and Regulations. Article 7 of the Act stipulates that kind and structure of law and regulation shall consist of: Constitution, People Consultative Assembly Decree, Act/legislation, Government Regulation, President Decree, Province Local Act, and Regency and City Local Act. Article 8 paragraph 2 determines that the binding force of each legal instrument shall depend on its conformity with its resources.





recognizing and respecting *adat* community, clarifying status and providing legal certainty, and empowering *adat* community including the capacity of its human resource as an agent of development. The content of this chapter has been regulated under Chapter II, position and status of *adat* community. Chapter III, the main components of *adat* community. Chapter IV, *adat* law. Chapter V, jobs and authority of *adat* community. Chapter VI, the governmental system of *adat* community. Chapter VII, *adat* community's institutions. Chapter VIII, the ancient *adat* community. Chapter IX, the property and the business of the *adat* community.

The second legal policy has been governed under Chapter X, income and expense budget of *adat* community. Under this chapter, there are 5 (five) sources of the income of *adat* community, namely: the original income of *adat* community, income earned from the managing of the *adat* community's assets, income earned from the allocation of state budget including budget sharing of the central, province, and regency government, non-binding contribution from third parties, and other income from legal source. Income earned from the government is regulated in a more detail rules under the BPR. The main purpose of such regulation is to prevent intervention to the internal affair of the *adat* community or for keeping the autonomous status of the *adat* community. This purpose is transformed into two sets of legal rules: *first*, rules regarding procedures of *adat* community relation (Chapter VI); and *second*, rules for planning of *adat* community development (Chapter VII, Chapter VIII). Article 28 paragraph (1) of the BPR determines that the governmental relation among *adat* community or with the administrative village, the *adat* community relation may take forms in an authoritative, coordinative, and consultative nature. In case of authoritative relation, the *adat* community may give guidance or direction in accordance to the *adat* law. They may also perform a verification, validation, and give an acceptance or refusal against a proposal for relation.

Adat community development plan is set by and for the *adat* community (Article 32 to Article 37). *Adat* community development may be self-funding or funded by the central, province, and regency government. In case of the fund provided by the government, the procedure for proposing, using and reporting shall follow the state budgeting procedure. Under such schemes, the Bali Province would expect that the administrative law model would suitable for both assuring the autonomous status of the *adat* community and





increasing the capacity of the *adat* community on expensing the maintenance and development of the culture including all of its components.

4 CONCLUSION

This research is departed from two facts and issues: *firstly*, the injustice in the maintaining the Balinese traditional culture as an economic resource of tourism caused by disconnection between the position of the *adat* community as an owner and maintainer of the Balinese culture with the benefit of tourism. The maintaining dan development of culture as are expensed by the *adat* community while the benefit of tourism is enjoyed by the government and the private sector; and *secondly*, the budget supported by the government for empowering and increasing the capacity of the *adat* community on maintaining and developing the culture might turn the autonomous status of the *adat* community into government sub-ordinate political entity which under legal sense would equal to the breach of the Constitution which furthermore would creating dispute between the *adat* community and the government.

Such facts in conclusion 1 produce two needs: *firstly*, in accordance to the Constitution, the need for keeping and assuring the autonomous position of the *adat* community; and *secondly*, in the shake of the sustainable position and function of culture as an economic resource and the sustainability of tourism, the needs for increasing the capacity of the *adat* community for expensing the maintenance and development of the culture.

The Bali Province Government has set up a legal policy schemes based on such needs: *firstly*, a legal policy scheme by means of providing legal basis or rules for strengthening the autonomous position of *adat* community; and *secondly*, rules for channeling the *adat* community with benefit of tourism in order to increase their capacity on expensing the maintenance and development of the Balinese culture.

The Bali Province Government, to cover such needs, has developed an administrative legal schemes: *first*, providing rules for strengthening the autonomous position of the *adat* community; and *secondly*, providing an administrative law model which in one side increasing the ability of the *adat* community to expense the culture





maintenance and in another side would prevent the government from intervening the internal affair of the *adat* community. These administrative legal schemes have been regulated under the Bali Province Act Number 4 of 2020 concerning Desa Adat (The *Adat* Village) and the Bali Province Regulation Number 4 of 2020 concerning Regulation for Commencing Bali Province Act Number 4 of 2020 concerning *Desa Adat* (the *Adat* Village). The administrative legal scheme for preserving the autonomous position of the *adat* community has been governed under a set of rules for providing legal basis and strengthening the position of *adat* community as an autonomous legal entity. The administrative legal scheme for preventing the intervention of government to the autonomous status of *adat* community has been set under rules concerning income and expense of *adat* community, procedures of *adat* community relation, and rules for planning of *adat* community development including rules for its supervision and reports.

REFERENCES

- A, Wardana. *The Politics of Development in Bali. In Contemporary Bali*. Singapore: Palgrave Macmillan, 2019.
- Antons, Christoph, and Lisa Rogers. "Cultural and Intellectual Property in Cross-Border Disputes over Intangible Cultural Heritage 1." In *Intellectual Property, Cultural Property and Intangible Cultural Heritage*, 67–88. Routledge, 2017.
- Chambliss, William J, and Marjorie Sue Zatz. *Making Law: The State, the Law, and Structural Contradictions*. Vol. 834. Indiana University Press, 1993.
- Chand, Hari. *Modern Jurisprudence*. Kuala Lumpur: Turbo, 1994.
- Chen, Lung-chu. *An Introduction to Contemporary International Law: A Policy-Oriented Perspective*. Oxford University Press, 2014.
- Clark, David S. *Encyclopedia of Law and Society: American and Global Perspectives*. Sage publications, 2007.
- Curzon, L.B. *Jurisprudence*. Aylesbury: M&E Handbooks, 1979.
- Departemen Penerangan RI. *Buku Ringkasan Pembangunan Semesta*. Jakarta, 1961.
- Driesen, David M. "Cost-Benefit Analysis and the Precautionary Principle: Can They Be Reconciled." *Mich. St. L. Rev.*, 2013, 771.





Gurtner, Yetta. "Returning to Paradise: Investigating Issues of Tourism Crisis and Disaster Recovery on the Island of Bali." *Journal of Hospitality and Tourism Management* 28 (2016): 11–19.

McDougal, Myres S. "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study." *Nat. LF* 1 (1956): 53.

Prajnawrdhi, Tri Anggraini, Sadasivam Karuppanan, and Alpana Sivam. "Preserving Cultural Heritage of Denpasar: Local Community Perspectives." *Procedia Environmental Sciences* 28 (2015): 557–66.

Pramartha, Cokorda, and Joseph G Davis. "Digital Preservation of Cultural Heritage: Balinese Kulkul Artefact and Practices." In *Euro-Mediterranean Conference*, 491–500. Springer, 2016.

Putra, Ida Bagus Wyasa. *Analisis Konteks Dalam Epistemologi Ilmu Hukum*. Universitas Udayana. Jimbaran: Udayana University Press, 2020.

———. *Filsafat Ilmu: Filsafat Ilmu Hukum*. Second Edi. Jakarta: Udayana University Press, 2021.

———. "The Contextual Problem in the Development of Indonesian International Tourism Law." In *International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)*, 153–56. Atlantis Press, 2018.

Radha, Ni Putu Whraspati, Muhammad Ali Azhar, and Bandiyah Bandiyah. "Kontestasi Kelian Adat Dalam Pemilukada Serentak Di Kota Denpasar Tahun 2015." Udayana University, n.d.

Seidman, Ann, Robert B Seidman, and Nalin Abeyesekere. *Legislative Drafting for Democratic Social Change*. Kluwer Law International BV, 2001.

the Republic of Indonesia, Ministry of Education and Culture. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 1988.

