

THE IMPLICATIONS OF ACT NO. 6 YEAR 2014 ON THE VILLAGE EXISTENCE OF ADAT VILLAGE IN BALI¹

I Ketut Sukawati Lanang Putra Perbawa*

Abstract:

Villages, in the first sense, that referred to the national laws, is implementing the various activities of government administration or official that is known as 'Administrative village'. Villages, in the second sense, the traditional village or Pakraman, referring to the traditional groups with a basic customs and is bound by the existence of three major temples (*Kahyangan Tiga*). Village Administration (Village Office) and the Adat Village received the same treatment from the Government and Local Government. Therefore, it is expected in the future, the Village Administration (Village Office) and the Adat Village can change the face of village governance and effective governance, the implementation of the development of efficient, as well as community development and community empowerment in the region.

Therefore, it appears Act, no. 6 year 2014 on village. Thousands of village chiefs throughout Indonesia welcomed with fanfare and filled with joy. However, the provincial Bali experienced pros and cons related with the village official or Adat villages to be registered. The problem that arises is the problem of registration and existence of Adat villages, because the traditional village as a whole customary, cultural and socio-economic based on the philosophy of *Tri Hita Karana* which has been running a harmonious existence with the official village.

Keywords: Adat Village, Administrative Village, Act no.6, year 2014.

¹ Sukawati Lanang P Perbawa, Lecture of University Mahasaraswati Denpasar, 2015

* Lecturer at Law Faculty, The University of Mahasaraswati, Denpasar

I. Introduction

Adat village has identity as a communion elements of customary law community, as well as having some of the characteristics that distinguish them from other social groups. The distinguishing feature among others, one of those is the particular area which has clear boundaries, where most of its citizens live in the region and their sacred building belonging to the Adat Village which forms heaven three or villages celestial.² With the discovery of the inscription of Sukawan AI (882 AD), which is mentioned in the inscription Sukawana AI (8882 AD), which recorded "*bhiksu çiwakangçi*", "*makmit drbya haji*", and the name of a place "Singhamandawa". All of those expressions show that at that time there has been the position of king and Shiva-Bhuda priest in Singhamandawa. Regarding the villagers, it seems referred to as "*krama³ thani*"⁴. In the inscription of Trunyan B (911 AD), recorded words *banua* (*anak banua*), seemed to point to the location of a village level (*banua*), and its citizens (*anak banua*). Eventhough it does not mention the name of king, but called *Datu*, which means king, and a variety of professions such as: goldsmith, blacksmith, *pagending⁵*, flute (flute-whistler), which signaled the types of professions (jobs) in the community, or village. The relation between villagers and the glorified (*bhatara*/lord), can be seen from the expression, "*ateher to banuadi air rawang, manguningin dida bhatara da tonta di rajakaryyanda, mangalap air danu ...*".⁶

In the incription of Batuan (1022 AD), it is mentioned the name of the king, Paduka Haji ÇriDharmmawangawardhanamarakatapangkajasthanotunggadewa, Senapati Kuturan Mapanji Putuputu, and the boundaries of the village (*karaman*), with the term, *parimandala*. Revealed: "*ateher parimandala cinaturdesa thani karaman ing Baturan,...*". It shows that a village already has boundaries that can be distinguished, and therefore have rules that govern the business of its citizens. Here called, Baturan Village had given (*possess*) by Senapati Kuturan Mapanji Putuputu, such as a complex of forest (*alas asukat*) for making rice fields in the region. Apparently, attempts to make rice farmland, showed the will, or the role of the king.⁷

Regarding to Adat village in Bali, Bali Province has issued a Local Regulation Number 6 of 1986 about The Status, Function And Role Of The Adat Village As Unity Of Adat Law Community In Bali Province as the implementation of the Regulation of the Minister of Internal Affairs Number 3 of 1997 about the Empowerment, Preservation, and Development of Customs, Habits of society, and Customary Institution in the Region. Local Regulation Number 6 of 1986 about The Status, Function And Role Of The Adat Village As Unity Of Adat Law Community In

²Dharmayuda, I.M.S.2001, *Desa Adat Kesatuan Masyarakat Hukum Adat di Bali*. Upada Sastra, Denpasar

³Krama in Bali language which means residents

⁴I Gede Parimartha, 2009, *Memahami Desa Adat, Desa Dinas, Dan Desa Pakraman (Suatu Tinjauan Historis-Kritis)*, a critical thinking by Professor of Udayana University on Letter and Culture, Udayana University Press Vol 3, 2nd edition, Denpasar, page 140

⁵a Balinese traditional singer or musician, especially one who sang or recited lyric for religious ceremonies in Bali

⁶Ibid

⁷Ibid

Bali Province is to assert that Adat Village is the unity of indigenous people. However, in addition to traditional law community unit, traditional village at the same time also an indirect administration organization under Head of District. The development of the Adat Village performed by the governor, assisted by the Council of Indigenous Development Institute and the Institute of Indigenous Development Board. Supervision was also carried out by the Bali Provincial Cultural Office as mandated by Regional Regulation of Bali Number 12 of 1988 about the Establishment of the Organization and Work Procedure of the Department of Culture. One development that has been done is the competition of traditional village, customary law is part of the institutional material (institution), because of that, to investigate further about the existence of customary law in the system of village governance, understanding on the institution needs to be done first.

In the Regional Regulation of Bali Number 3 of 2001 about Pakraman Village, the term of Adat Village is called *Pakraman Village*, namely, *Pakraman* is the unity of indigenous people in the Province of Bali which has a unity of tradition and manners socially vibrant communities of Hindus which were hereditary in the bond of heaven three or village celestial which has a specific area and its own wealth and is entitled to manage its own household. And in the *Pakraman Village*, there is *Banjar pakraman* which is groups of people who is part of *Pakraman* as stated in Regional Regulation of Bali Number 3 of 2001 about Pakraman Village article 1 paragraph (5).

Adat Village or *Pakraman Village* in Bali has the following tasks:

1. Create an *awig awig*. (traditional law in Bali)
2. Set the village manners.
3. Set the management of assets of the village.
4. Together with the government, carried out development in all fields, especially in the fields of religion, culture, and society.
5. Maintaining and developing cultural values of Bali in order to enrich, preserve and develop national culture in general and regional culture in particular, which is based on "*paras-paros, sagilik-saguluk, salulung sabayantaka*" (deliberation-consensus).
6. Protects village manners.

In addition to the tasks, Adat Village or *Pakraman Village* also has the following authorities:

1. Complete disputes and religious customs in the region while fostering environmental harmony and tolerance between village manners according to *awig awig* and local custom.
2. Participating in determining every decision in the implementation of existing development in the region, especially with regard to the *Tri Hita Karana*.
3. Do legal acts inside and outside the *Pakraman Village*.

One of the tasks that are owned by Adat Village or *Pakraman* Village is set the and protect the *krama* of the village, where the *krama* of village is the residents of the Adat Village in Bali. Said that the word of *krama* actually had been around a long time as found in the inscriptions of Batuan (1022 M), where the term *karaman* is used to term limits of the village, but in the early 11th century, thanks to the role of Senapati Kuturan, the term of *karaman* that interpreted as villagers⁸.

The term *krama* also appeared in Regional Regulation of Bali Number 3 of 2001 about *Pakraman* Village which mentions *krama* Village/ *krama Banjar*⁹ are those who occupy the ground of *Pakraman* Village/ *Banjar pakraman* and or residing in the territory of villages/ *banjar* of *pakraman* or elsewhere who become citizens of *Pakraman/ Banjar Pakraman*. In Village *Krama* in the Adat Village in Bali, there are citizens or *krama* served as custodians, maintenance worker, and executioner of all activities associated with Hindu ceremony in Bali. Those *Krama* or residents are referred to as *krama pengempon/ pengemong* (tutor/ guardian), as mentioned in Article 1 paragraph 7 Regional Regulation of Bali Number 3 Year 2001 about *Pakraman* Village, which states that *krama pengempon/ pengemong* is the *krama* of *Pakraman/ krama banjar pakraman* that have ties outwardly and inwardly toward heaven located in its territory and is responsible for the maintenance, care, and implementation activities of the ceremony in *Khayangan* temple.

Then in addition to *krama* or residents, there is one who called *krama penyungung* which is part of the village residents who served as maintenance, care, and execution worker of ceremony activities in the form of funds collecting or donation, as what is mentioned in Article 1 paragraph 8 Regional Regulation of Bali Number 3 of 2001 about *Pakraman* Village which explains *Krama penyungung* as the *krama* of *Pakraman/ krama* of *banjar pakraman* which has a bond to a heaven or participate in the maintenance, care, and implementation of activities in the form of funds collecting ceremony.

In addition, Adat Village has citizens or called *krama*, Adat Village in Bali also has task of managing the assets of the village, village's assets can be a wealth of material and immaterial properties. Material village's wealth is in form of land, buildings, equipment, and also including the administration, while wealth in term of immaterial properties is a sacred site for example a shrine as a manifestation of *Ida Sang Hyang Widhi Wasa* (God), including "pratima"¹⁰ and so on. The wealth of land owned by the Adat Village is known as the *ayahan* land of the village, where the land of *ayahan Pakraman* village¹¹ is any *ayahan Pakraman* lands located both inside and outside *Pakraman*.

⁸Ibid.

⁹Traditional Hamlet in Bali

¹⁰Pratima is a symbol of the God/ *Bhatara* used as a tool to adore the *Sang Hyang Widhi Wasa*.

¹¹*Ayahan Pakraman* Village or *Ayahan* land villages, the land held by villagers who handed over to the cultivation of his manners which attaches to an obligation in the form of *ayahan* (obligations that must be implemented)

In addition to the wealth and the citizens, Adat Village in Bali has its own power and its own board. Adat Village power lies in *sangkepan* or *Paruman* (deliberation). And if it is described, it can be compared to the Indonesian State which holds sovereignty is the People's Consultative Assembly while the President is as Mandatory of the Assembly, then in the Adat Village, the one who as a president who holds the mandate is *prajuru/ paduluan*, and whose mandates are its citizens/ *krama* through *sangkepan* (deliberation) as well as forming and enforcing rules when the delegated, for example when the "*Kerta Desa*"¹² was not agreed to its *pematut* (solution/answer). As set forth in Regional Regulation of Bali Number 3 of 2011 about Pakraman Village article 1 number 11 which states that the *prajuru* of village *pakraman/ Banjar pakraman* is administrators of *Pakraman/ Banjar pakraman* in Bali. And the authority of *prajuru* is also as well as a place to resolve customary and religious disputes within the region while fostering harmony and tolerance between village residents according to *awig awig* (law) and local custom, then participates in determining every decision in the implementation of existing development in the region, especially with regard to *Tri Hita Karana*, and performs legal acts in and outside the boundaries of *Pakraman Village*.

Then, Adat Village in Bali has its own rule of law, referred to as *awig awig*. *Awig awig* is an existing customary law in Bali, which is the law of life (living law) and growing and are made by the people of Bali. The distinctiveness of *awig awig* in Bali can be seen on the philosophical background based on the teachings of *Tri Hita Karana*, later peculiar views on the principles of law, a system of sanctions which focuses on social sanctions with the aim of restoring the balance of the community, then there is a system of government as described above, and the justice system as there is a Peace Justice of the Village, and ways of dispute settlement, and others. And if it is seen by the view Laurance M. Friedman as saying about the legal system components, which are substances law (legal substance), law enforcement (legal structure), and the legal culture (legal culture). Then if it is seen such as expressed by Lawrence Friedman who stated the components of legal system, which consists of legal material (legal substance), legal supreme (legal structure, and law custom (legal culture), then *awig awig* in Bali has all of it as Friedman says, namely *awig awig* itself as Legal Substance while the components of its legal structure is *Pecalang* (traditional force security), and its legal culture is indigenous community in Bali.

Pecalang or village police here are the traditional security officers in Balinese society, as stated in article 1 paragraph 17 Regional Regulation of Bali Number 3 of 2001 about Pakraman Village which states *Pacalang* is the traditional task force security of Balinese people who has the authority to maintain security and public order throughout the level of *banjar pakraman* or in *pakraman Village*.

¹² *Kertha Desa* Is means Judicial Institution in Adat Village that have a duty and authority of resolving disputes about indigenous and religion Dispute in Adat Village.

Beside the existence of Adat Village in Bali, it turns out that there is also Official Village, where the Official Village is in charge of village affairs in public administration. In the Dutch colonial era of the 20th century, the village in Bali was under the control of the Dutch government, and make arrangement to the village by utilizing *perbekel* (officers) of the village as part of the official government, and the colonial government gives rewards in the form of money (salary) to the officers.

The purpose of the Dutch government at that time that utilize *perbekel*, in addition to structuring the administration for the benefit of the Dutch government, as well as to the strategy in disconnecting the harmony between the king and the people (village) and try to influence the public that altering public perception of Bali about themselves, and in line with Dutch colonial political strategy at that time (Lieftrinck, 1927).

Official village built by the Dutch colonial government at that time was for administrative purposes or for the benefit of tax collection by the government officials. The word *Dinas* (official) itself comes from the official Dutch word that *Diens* (which means duty), so that the formation of the Dutch village called the Official Village. So since that, in Bali there are two forms of villages, traditional village (Adat Village/*Pakraman*) and official village, and until this time, the official village remained in the life of Balinese who has particularly functioning as the right hand of government or conducting the affairs of government in the governmental system of the Republic of Indonesia, namely to take care public affairs such as population problem, administration and others.

II. Harmonization of Adat Village and Administrative Village

The village form in Bali is mainly based on a unified place. Besides the territorial integrity of a village, it is also a religious unity that is determined by a complex of village temple called Heaven Three, which is composed from *Pura Puseh*¹³, *Pura Bale Agung* or *Pura Desa*¹⁴, and

¹³ *Pura Puseh* or *Puseh* Temple is a place to worship the Visnu as the patron god of the universe, usually the located of the central of the *Puseh* Temple in the center of the village. *Puseh* word is derived from the *Puser* word is meaning Center. Center word here implies a center of Welfare World that brings prosperity and happiness mankind, so that the ceremonies related to fertility world implemented in *Puseh* Temple. <http://www.babadbali.com/pura/pura-kahyangan-tiga-2.htm>

¹⁴ *Pura Bale Agung* or *Pura Desa* (*Bale Agung Temple* or *Village Temple*) is a place to worship the Brahma as the creator of the universe, usually located the *Bale Agung Temple* or *Village Temple* same with *Puseh* Temple ie located in the in the center of the village. See <http://www.babadbali.com/pura/pura-kahyangan-tiga-2.htm>

*Pura Dalem*¹⁵. There are times when *Pura Puseh* and *Pura Bale Agung* were rolled into one and called *Pura Desa*.

With the enactment of Act of the Republic of Indonesia Number 5 of 1979 about Village Governance, in Bali is known that there are two villages understanding. First, the 'village' within the meaning of national law, in accordance with the implicit and explicit limitations in the Act of the Republic of Indonesia Number 5 of 1979 about Village Governance. Villages in this sense carry out various activities or official administration that is known as 'Official Village' or 'Administrative Village'. Villages in the second sense, the traditional village or *Pakraman*, referring to the traditional groups with a basic customs bond and is bound by the existence of three major *Pura*/Temples (The *Kahyangan* Three). The basic formation of Adat Village and Administrative Village (Official Village) has different requirements, so that the region and the number of people supporting the official village are not always congruent with Adat Village.

During the reign of the Dutch East Indies, based on research results by Lieftrinck in North Bali (1886-1887). Lieftrinck stated that the real Balinese village is a small republic that has legal or customary rules, its own traditions. The governmental structure is more democratic, each member has an equal legal rights. The Person appointed to be the leader is the oldest member (elders). In the event of disagreement, it will be decided by a majority vote¹⁶. So the Dutch government applied these two models of the Village, the Adat Village and the Administrative Village (Official Village), because according to the Dutch government, with the existence of these two models of village, it was expected to accommodate all business in developing these rural communities. For the benefit of the colonial government, the new model (format) by the government is expected to accommodate the various interests of the government. Thus, the village with this system runs multiple functions, according to the demands of the times. If the Administrative Village (Official Village) functioning, it roled as the official government representatives (the Netherlands), such as: administration (census) of the population, collect taxes, forced labor. While the Adat Village in the era of the Dutch East Indies functioned as the bearers of tradition, culture, and religious activities, because, politically, the Dutch government has an interest to maintain the tradition, the culture of Balinese by tourist attraction which began to rise.

In the 1920s, a Dutchman, De Fliedhaar tred to pioneer the development of schools that provide education, in accordance with the teaching of the Balinese culture (painting, dancing, writing in Balinese letters, teaching Balinese stories, and others). The movement, later known as "Balinisering" (the movement of Balinese Establishment according to colonial version), which is really motivated so that Bali could be maintained as their original state (static). By doing so, the

¹⁵ Pura Dhalem or Dhalem Tample is a place to worship the Shiva and goddess Durga as a God of return to the macrocosm, usually the located of the *Dhalem* Temple in the beyond cemetery. In a Word *Dhalem* literally meaning distant or inaccessible. See <http://www.babadbali.com/pura/pura-kahyangan-tiga-2.htm>

¹⁶Lieftrinck, F.A., 1927. *Bali en Lombok*. Amsterdam: J.H.Bussy.page.58

entire Bali is expected to become a museum for tourists.¹⁷ The Dutch government during the Dutch colonial presence respects to Adat Village in Bali as an autonomous region, to maintain the tradition, art and culture of Bali even though it is in the business interests of the Dutch government at the time.

This paradigmatic framework of political arrangements by the Dutch colonial are followed by Act of the Republic of Indonesia Number 5 of 1979 about Village Governance. Which can be viewed on two levels. First, forwarding political dualism on the interpretation of village where the political arrangements that built the State keeps the dualism understanding on Balinese villages in the Administrative Village (Official Village) (anything on official affairs) and traditional village/ Adat Village (*Pakraman*). The village used as the official village became the lowest in the administration structure and directly under the supervision of the District Head. While *Pakraman* still gaining recognition through article 18 of the Constitution of the Republic of Indonesia of 1945.

The passing of the regional autonomy era causing a paradigm shift in looking at the Adat Villages. The shift was seen in some cases:

- 1) The issuance Regional Regulation of Bali Number 3 of 2001 about Pakraman Village in 2001 that seemed more aspirational, strengthen and respect the existence of indigenous villages in Bali, in charge of Local Regulation Number 6 year 1986 about The Status, Function And Role Of The Adat Village As Unity Of Adat Law Community In Bali Province which were previously set on traditional village;
- 2) The existence of a number of economic concessions given by provincial and regional governments to indigenous villages, such as the provincial government gave the *Bendesa Adat* (cultural person) a motorcycle, and such as the Government of Tabanan that included the Adat Village of Beraban in managing tourist attraction in Tanah Lot, and give a 35% share to the Adat Village of Beraban;
- 3) Adat village was included in the policy-making process and the daily governance at the village level, for example investment permit must obtain the approval of Adat villages, and every newcomer must get a recommendation from both official village and adat villages.

However, there are some fundamental problems faced by Adat Villages in Bali, such as the issue of autonomy and democratization of adat village customs. Relating to the autonomy of adat villages, the problems faced are: (1) Dualism in village administration, (2) Unclear system of relationships between the District and the Adat Village, (3) Duality of the law with the recognition of adat villages as legal entities, (4) The emergence of conflict between adat villages concerning borders and lands, in which government inaccurate intervention leads to the escalation of conflicts, (4) Uniformity *awig awig* (laws or customs regulations), facilitated by the

¹⁷Jef Last, 1955. *Bali in de Kentering*. Amsterdam: De Bezige Bij, page. 48-49

government with a standard format turn the villages in Bali became homogeneous, and (5) The use of *pecalang* (customary spontaneous force security officer) for economic and political interests, such as being sellers or security services for political purposes (Party's Task Force).

Noting the problems faced by adat village as described above, then some things can be done to overcome the problems and empower Adat Village by strengthening the autonomy of adat village through: (a) Reconceptualize the relationship of adat villages and official village, (b) reconceptualize the relationship of adat village with the district, (c) Recognizing Customary Law and Court, (d) Create a mechanism of conflict resolution on disputes between Adat Villages by forming supra-institution of Adat Village, (e) Create a Political culture that respects the uniqueness of each Adat Villages (villages by way), but remains some arranged in mutual concept to ensure certainty for example for immigrant problem, and (f) Reformulate and reconceptualize the concept of *Pecalang*.

The empowerment of Adat Village through: (a) Increasing the institutional capacity of Adat Village, (b) Democratization of Adat Village, (c) The spirit of pluralism in Adat Village which is reflected in *awig awig*, (d) Application of good governance in Adat Villages, and (e) Humanist conflict resolution mechanism. Lessons from Bali from institutional study of Balinese village above, some lessons can be drawn, namely:

- 1) Balinese society is strongly maintains and run their custom animated by the teachings of Hinduism, and this is one of the strong social capital to build a sustainable village.
- 2) The Institution of Adat Village survived on government intervention by arranging compromises and adjustments, although there is a dualism between adat village and official village, but in terms of attachment to the community, the Adat Village has more emotional attachment to its citizens than the Administrative Village (Official Village) that run only administrative functions.

When viewed from the juridical angle, it will be related to the institutional structure, functions, authority and accountability, between Adat Village and Administrative Village (Official Village). Then, when viewed from the corner of the structure which has been running, then the parallel and coordinative is the most ideal. Because Adat Village is an autonomous self government community, while the Administrative Village (Official Village) is a vertical self-government agencies, under the local government and districts, it means that there are vertical tasks assigned both by the local or the central government. So it is highly unlikely that these two institutions merged in terms of structure as well as its duties and functions.

In terms of functionality we all know that Administrative Village (Official Village) runs public administration, and execute the functions of government at the village level, whereas adat village with regard to customs and culture. So also for the authority of the Administrative Village (Official Village) during this run that authorized by law or regulation to govern, while the Adat Village is based on *awig awig*. So the accountability is also automatically different, the official

to the community and the government above the village, while the adat village to its *krama*, primarily to *Ida Sang Hyang Widi Wasa* (GOD) or the lord in each of the *Kahyangan* Three Temple.

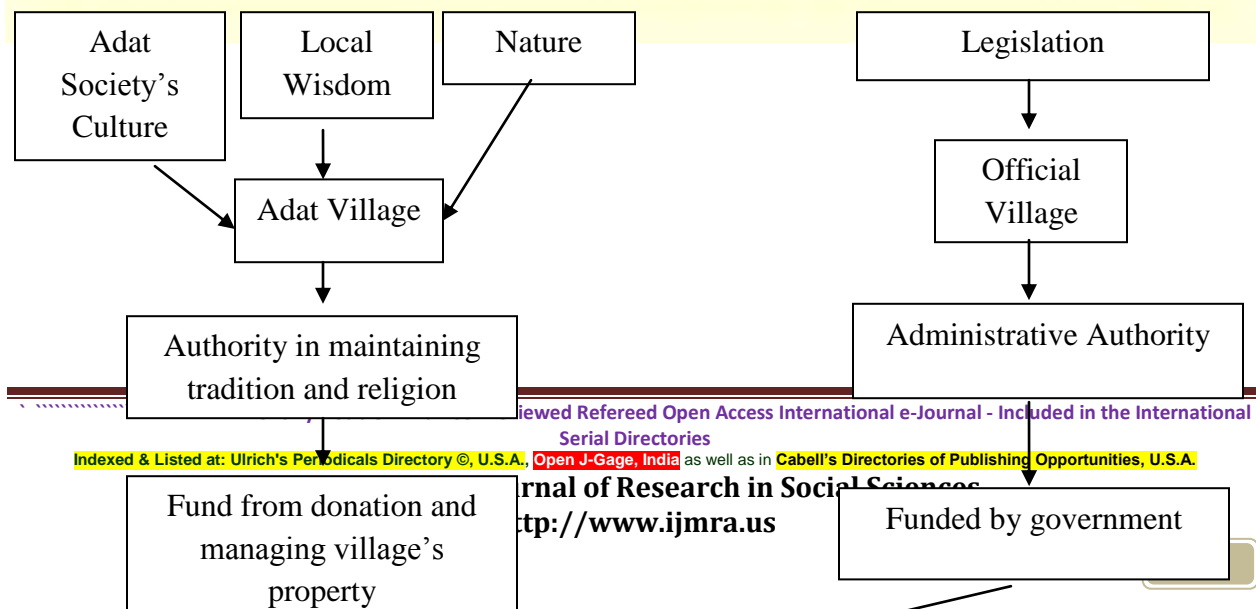
When examined closely in the harmony between Adat Village and Administrative Village (Official Village), it will be found that there is no conflict or dispute against the dualism in the Balinese Village, because, though Adat Village and Administrative Village (Official Village) have different functions, yet they serve the same community.

If the chief of Administrative Village (Official Village) get a salary from the Indonesian government, it is reasonable because the village head office is the right hand or a subordinate of the Indonesian government, while the head of Adat Village is the head of an autonomous regions, earning through the donation of the community, as well as profit from the use of properties belonging to the village.

The next problem is if the official village receives funds from the Indonesian government for the welfare of its people, then the benefit is also comes to Adat Villagers, because Adat Village and Administrative Village (Official Village) in Bali is the same society. So development and improvement for Administrative Village (Official Village) is also the development and improvement of Adat Village.

The importance of maintaining the existence of Adat village and Administrative Village (Official Village) is to synergize and harmonize the existence of these institutions. Adat Village rather than as nurturing tradition and religion that exist in Bali, also serves as the guardian of Balinese culture, as well as the behavior of Balinese from the changes of globalization. Without a traditional village, this unique Balinese culture will become extinct and disappear. While the function of the official village apart as the administration unit, as well as a mouthpiece for the government to the lower layers of society, so as to create harmony between government's policy and the wishes of the community.

Then the harmonization between adat villages and official village can be seen through the table below:



III. Implication of the Act Number 6 Year 2014

The Act of the Republic of Indonesia Number 6 of 2014 about Village is a law that has been eagerly anticipated by all of villagers, not to mention the village officials for 7 years. Yet, after being legalized, precisely on Wednesday 18 December, 2013, the Plan of the Act on Village passed into law. Then on 15 January 2014, President Republic of Indonesia Susilo Bambang Yudhoyono (SBY) signed an order to ratify the law, which starts many polemics related to the implementation of the Act of the Republic of Indonesia Number 6 of 2014 about Village. Actually, the purpose of passing the Act of the Republic of Indonesia Number 6 of 2014 about Village, among others:

1. Provide recognition and respect for the existing villages along with the custom before and after the formation of the Republic of Indonesia;
2. Provide clarity and legal certainty on the status of the village in the constitutional system of the Republic of Indonesia for the sake of justice for all people;
3. Preserve, develop, and promote the customs, traditions, and culture of rural communities;
4. Encourage initiatives, movements, and participation of rural communities for the development of rural assets and potentions for common good;
5. Establish a professional, efficient, effective, open, and accountable village administration;
6. Improve public services for the residents of rural communities in order to accelerate the embodiment of the general welfare;
7. Improve the social and cultural resilience of rural communities in order to realize the villagers awareness to maintain social cohesion as part of national security;
8. Promote the economy of rural communities and overcome the gap of national development; and
9. Strengthening rural communities as subjects of development.¹⁸

¹⁸ General Explanation of Act of the Republic of Indonesia Number 6 of 2014 about Village

While the principle of regulation in the Act of the Republic of Indonesia Number 6 of 2014 about Village are:

1. The recognition, namely the recognition on the rights of origin;
2. subsidiarity, namely the establishment of large-scale local authorities and local decision-making for the benefit of rural communities;
3. diversity, namely recognition and respect for the system of values prevailing in rural communities, but with still heed the common value system in the life of the nation;
4. togetherness, the spirit to play an active role and work closely with the principle of mutual respect between the institutions of the village and community elements in building rural villages;
5. mutual cooperation, namely the custom of mutual assistance to each other in building the village;
6. Kinship, which is the habit of the residents of rural communities as part of one big family as the village community;
7. deliberation, the decision-making process concerning the interests of rural communities through discussions with various interested parties;
8. democracy, the system of organizing villagers in a system of government by villagers or with the consent of the villagers as well as the nobility of human dignity as a creature of god almighty one, which recognized, organized and guaranteed;
9. independence, a process performed by the village government and villagers to perform an activity in order to meet their needs on their own;¹⁹

In regard to the structure and organization of Local Government, after the change of the Constitution of the Republic of Indonesia of 1945, village's regulation, or referred to by other names, in terms of administration refers to the provisions of Article 18 paragraph (7) of the Constitution of the Republic of Indonesia of 1945 which states that "The composition and procedures of the regional administration regulated by law". This means that Article 18 paragraph (7) of the Constitution of the Republic of Indonesia of 1945 opened the possibility of the administration structure in the Indonesian Government system.²⁰

Through changes in the Constitution of the Republic of Indonesia of 1945, recognition of customary law community unit was reinforced through the provision in Article 18B paragraph (2) of the Constitution of the Republic of Indonesia of 1945 which reads "The State recognizes and respects units of customary law communities along with their traditional rights throughout alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which is regulated by law".

¹⁹Ibid

²⁰Constitution of the Republic of Indonesia Year 1945

In the history of village's regulation, there has been set several regulations on the village, namely Act of the Republic of Indonesia Number 22 of 1948 about Determination Of Principal Rules On Own Government Regions The Entitled To Arrange And Manage Their Own Household, Act of the Republic of Indonesia Number 1 of 1957 about Principles of Local Government, Act of the Republic of Indonesia Number 18 of 1965 about Principles of Local Government, Act of the Republic of Indonesia Number 19 of 1965 about Praja Village²¹ As A Form Transition To Accelerate Realization Of Iii Level Region In The Whole Territory Of The Republic Of Indonesia, Act of the Republic of Indonesia Number 5 of 1974 about Principles of Government In The Region, Act of the Republic of Indonesia Number 5 of 1979 about Village Governance, Act of the Republic of Indonesia Number 22 of 1999 about Regional Government, and lastly by Act of the Republic of Indonesia Number 32 of 2004 about Regional Government.

In the implementation of the all the laws and regulation on village in above has not been able to accommodate all the interests and needs of the village community, which until now numbered about 73,000 (seventy three thousand) villages and around 8,000 (eight thousand) wards. In addition, the implementation of current regulation during this effect is no longer appropriate to the times, especially among others regarding the status of customary law communities, democratization, diversity, community participation, as well as progress and equitable development, causing the discrepancy between regions, poverty, and social and cultural issues which can disrupt the integrity of the Unitary Republic of Indonesia.

Act of the Republic of Indonesia Number 6 of 2014 about Village is organized in the spirit of the implementation of the constitutional mandate, the regulation on adat community in accordance with the provisions of article 18B paragraph (2) of the Constitution of the Republic of Indonesia of 1945 to be set in the government structure in accordance with the provisions of article 18 paragraph (7) of the Constitution of the Republic of Indonesia of 1945. Nevertheless, the authority of customary law community unit on customary rights arrangements refer to the provisions of the sectoral legislation relating as it does in the Basic Agrarian Law governing customary rights.

With construction combines the functions of a self-governing community with local self-government, it is expected to customary law community unit which has been part of the village, laid out in such a way into the Village and the Adat Village. Administrative Village (Official Village) and the Adat Village basically perform similar tasks. While the difference is only in the exercise of the rights of origin, especially concerning social preservation of the Adat Village, regulation and management of indigenous territories, traditional peace assembly, maintenance of peace and order for the community customary law, as well as ruling the exercise of government based on the original composition.

²¹ Praja Village according to Indonesian Dictionary (KBBI) is the unity of legal community who have a certain area boundaries entitled to manage their own households, choose a leader, and has its own Property, see <http://kamuslengkap.com/kamus/kbbi/arti-kata/desa+praja>

Adat Village has the function of governance, village finance, village development, as well as facilitation and support received from the government of the Regency/City as stipulated in Regional Regulation of Bali Number 3 of 2001 about Pakraman Village²². In this position, the Administrative Village (Official Village) and the Adat Village received the same treatment from the Government and Local Government. Therefore, in the future of the Administrative Village (Official Village) and the Adat Village can change the face of village governance and effective governance, the implementation of the development of efficient, and also community development and community empowerment in the region.

In Act of the Republic of Indonesia Number 6 of 2014 about Village, there is point that had been launched for 7 years long. That is the existence of a rule that addresses the related budget allocations for the village. In the elucidation of Act of the Republic of Indonesia Number 6 of 2014 about Village article 72 Paragraph (2) of village finances. The amount of budget allocations directly to the village is set at 10 percent from and in the transfer funds from outside the region by considering population, poverty, area, and geographic difficulties. With the allocation of funds from the State Budget (*APBN*²³), the expected course of development in the village is getting better and is able to improve the life of rural communities with the maximum utilization of funds allocation. If able to manage well and wisely, it is not impossible if the village poverty can be reduced and may even be able to compete with other villages or even global society in general.

The village's stakeholder, such as the village chief, was also not missed from the discussion in the Act of the Republic of Indonesia Number 6 of 2014 about Village. Village chief, according to the article 26, paragraph (1) Act of the Republic of Indonesia Number 6 of 2014 about Village, in charge of organizing the village administration, village community development and empowerment of rural communities. In Act article 26 paragraph (3) letter c Act of the Republic of Indonesia Number 6 of 2014 about Village, explained that the head of the village receives an exact income monthly, allowances, and other legal acceptance, as well as health insurance. In addition, all matters relating to the village head, either the duty, authority, prohibition, until the term of office of a head of the village, also contained in the Act of the Republic of Indonesia Number 6 of 2014 about Village. In the ranks of the other villages, such as the Village Consultative Body (VCB²⁴) is also provided explanations to VCB functions, duties, powers, liabilities, up to the prohibitions should not be done by VCB.

In general, this act has systematically lays and able to provide rights to every village in Indonesia to develop the potentials that exist in the village. With this law, every village can improve the life of the people according to the initiative in each village. The existence of this law is also a

²² *Pakraman* Village a term for traditional village in Bali

²³ financial plan The annual state government approved by Parliament, see Act of the Republic of Indonesia Number 27 of 2014 about State Budget of 2015 article 1 Paragraph (1)

²⁴ In Indonesian Village Consultative Body (VCB) is Called Badan Permusyawaratan Desa (BPD)

legal basis which is very meaningful for every village, because this law may be used as the foundation in carrying out developments in the village. Thus, the advantages of the Act of the Republic of Indonesia Number 6 of 2014 about Village which has been the most visible is a clear legal basis for every village in Indonesia.

In addition there are some problems in terms of substance and in terms of its application. Relating to the definition of traditional village, before the publication of this Act, each region has different sense of traditional village. For example, in Bali. Definition of traditional village is the place of religion in the spirit of piety, ethics, and ceremonies related to *pawongan*/personal region (citizens/village manners), *palemahan*/ground (rural areas), and *parahyangan*/heavenlies (religious beliefs) and based on *Tri Hita Karana*²⁵. Meanwhile, according to Act of the Republic of Indonesia Number 6 of 2014 about Village, Adat village is legal community unit which has borders with the authority to regulate and administer governmental affairs, the interests of local communities based on community initiatives. So there has been no significant difference between the understanding of Adat Village and Administrative Village (Official Village) in this Village Act.

Still in term of the substance of the Act of the Republic of Indonesia Number 6 of 2014 about Village, said that each village will get the funds allocated from the State Budget (APBN) at least 10 percent annually. Thus, it can be estimated that each village will receive funding of about 1.2 to 1.4 billion rupiah²⁶ annually. Based on the calculations in the elucidation of the Act of the Republic of Indonesia Number 6 of 2014 about Village, namely, 10 percent of the state budget from and regional transfer according to the State Budget for village's stakeholder is 59, 2 trillion rupiah, coupled with funds from the budget by 10 percent around 45.4 trillion rupiah. Total funding for the village is 104, 6 trillion rupiah, which will be divided into 72 thousand villages in Indonesia. With a total of that amount, it is impossible not to be diverted by irresponsible village's officials. It is thus important monitoring, in that it is the task of VCB and the local government, which was done regularly to each village in order to targeted rural development better. Other issues will also be caused, is that the different state or condition of villages in

25 Cosmological concept of *Tri Hita Karana* (*Tri* = three, *Hita* = prosperity, *Karana* = the cause) is a philosophy emphasizing three human relationships in this life. In the Bhagavad-Gita III.10 which is an element of *Tri Hita Karana* mention that *Sahayajnah prajah sristwa pura waca prajapatih anena prasawisya dhiwan esa wo'stiwistah kamadhuk*, which means it is In ancient times *Prajapati* (God) created humans with *yadnya* (etymologically the word *Yadnya* from the Sanskrit word which is 'yaj' means to worship, offering or synonymous with sacrifice, of the word 'yaj' arises word 'Yajna' and 'yajamana'. *Yajna* means to worship or offerings, meaning that people who carry out *yajamana yadnya*. So *yadnya* is sincere unwilling sacrifice selflessly for the benefit of themselves and the people. In terms of form *yadnya*, not only shaped material or offerings but also in other forms such as; advice, helps guide the teaching blessing prayer to people who need *yadnya* us) and said: you will develop and will be *kamadhuk* (symbol of the universe) of desire. In essence, the concept of *Tri Hita Karana* implies three the cause welfare it was originates in the harmonious relationship between, ie: the relationship humans with God (*Parhyangan*); humans relationships with the environment or nature (*Palemahan*); the relationship between humans (*Pawongan*) See Yayasan Bali Galang, 2000, *TAFSIR AGAMA HINDU*, <http://www.babadbali.com/canangsari/trihitakarana.htm>.

²⁶ The rupiah (Rp) is the currency of the Republic of Indonesia. see, <http://kbbi.web.id/rupiah>.

Indonesia. There are villages that are already independent and has been able to improve the life of citizens in many ways prior to the birth of the Act of the Republic of Indonesia Number 6 of 2014 about Village. However, some villages were left behind and still have not been able to improve the welfare of its people. If the allocation of funds will be disbursed by the villagers feared to be superfluous for the developed and will continue to feel shortage for the underdeveloped villages. Again, the supervisory role greatly expected to oversee the use of funds allocated so that the targeted allocation of funds according to the needs and requirements of each village.

Term of office of the village head also might be an issue. Act of the Republic of Indonesia Number 6 of 2014 about Village, described that tenure village head is 6 years and may be re-elected in the third period, may be consecutive or not. The term of office is considered as too long, feared would create "little kings" in the village. Moreover, with the authority granted to the head of each village is quite free and the benefits that can be achieved by village head will tempts each person, allowing a person by all means in order to occupy the post of village head. To that end, the villagers have to be smart to choose the head of the village who are competent in tackling the problems that exist in the village. By using the direct election, villagers are expected to match the best people in the village at any position in the village, especially in the position of village head. Levels of awareness of rural communities in a democracy, indirectly, also will affect the developments in the region. Saving the right and good person which able to overcome problem in the village as the village head, would have a positive impact in the changes that occur in the future. Conversely, if one chooses wrong, rather than solve the problems but will create new problems that may be greater.

Still associated with rural communities understanding on the importance of democracy, then the villagers have no other choice rather than having an understanding of democracy itself. One way is by education. With a good and right education, it will produce literate villagers on democration and can also contribute to the developments in the village. There are much to do with the Human Resources (HR) differences that exist in each village. The role of government, both central and local governments, should also be able to intervene in these rural communities to develop human resources. Regarding to human resources, is also closely related to the governance HR that will be employed by village. Therefore, with increasing human resources in a village, it will also impact both on village governance.

In addition, thousands of heads of villages across Indonesia welcomed with great fanfare and filled with joy, the provincial Bali experienced pros and cons related to the official village or Adat villages to be registered. The problem that arises is the problem of registration and existence of Adat villages, because the traditional village as a whole customary, cultural and socio-economic based on the philosophy of *Tri Hita Karana* which has been running a harmonious existence with the official village.

Pros and cons after the adoption of the Act of the Republic of Indonesia Number 6 of 2014 about Village continues to happen, because there are several interpretations. Especially with regard to the registration of the village, whether that will be registered is the official village or Adat village/*Pakraman*, in addition to the registration of Adat village how will be the structure, functions and tasks regarding to the coordination between adat villages and official village. For example, a discussion of the Act of the Republic of Indonesia Number 6 of 2014 about Village in Wiswa Sabha Building held at the Office of the Governor of Bali, on Thursday October 16, 2014, the pros and cons also took place. Attending the discussion, Director General of Rural Community Empowerment (RCE) Ministry of Internal Affairs named Tarmizi Karim, member of Parliament of Indonesia named Wayan Koster, 4 senators from Bali, Regional Secretary of Bali Cok Ngurah Pемыayun, Chairman and board Pakraman Main Assembly (PMA), the Regents and Deputy of Regent in Bali, academics, traditional leaders and community leaders, politicians and the mass media. The discussion was a follow-up of the pros and cons of the Act of the Republic of Indonesia Number 6 of 2014 about Village and its implications for the structure of society in Bali, because in Bali province is composed of official villages and Adat Villages/ *Pakraman*.

Participants in the discussion said that discussions about the Act of the Republic of Indonesia Number 6 of 2014 about Village in Bali during this time is like a game of football without a referee so that no reprimand in case of violation. "We consider today the Director General of RCE as a referee because as long as (this time) we play without the referee," said one participant. In this discussion happened a fierce debate because there are two options that should be registered as mandated by the Act of the Republic of Indonesia Number 6 of 2014 about Village. Whether the registered is the official or Adat villages. Most participants wanted the registered one is the official village, while others are Adat village. Of course, with each rationally, logically and systematically reason taking into account the impact that would be caused in the future.

In the debate, the Director General of RCE can only listen to various existing entries. Senator from Bali named Ngurah Arya Wedha Karna accuse the Governor of Bali, Made Mangku Pastika, and his deputies are not neutral and even siding in one of the camps in the discussion of the application of the Act of the Republic of Indonesia Number 6 of 2014 about Village in Bali. He said that "The Governor of Bali must not make a political suicide by favoring certain parties. Local government better should be neutral,". He explained, politically, there are six regencies in Bali agreed to register the Adat villages. In addition, the support of Rectors in Bali also said that the one that must be registered is Adat villages²⁷.

But the accusation immediately denied by the Regional Secretary of Bali, Cok Ngurah Pемыayun. He defended if the government in the province of Bali just gives a chamber for discussions, mediation and facilitation. "We never side with anyone in the discussion of the Act of the Republic of Indonesia Number 6 of 2014 about Village in Bali," he said. Furthermore, please

²⁷Some printed mass media dated october 16, 2014 (Nusa, Radar Bali, Bali Tribun)

formulate what is best for Bali. While, Wayan Koster member of Parliament of Indonesia said, all citizens of Bali must understand regarding Act of the Republic of Indonesia Number 6 of 2014 about Village. "It should be read thoroughly, read only one time was dangerous. Read 3 times was still confused. Do not understand the law literally and interpret wrongly," he said. All the elements that exist in the Act of the Republic of Indonesia Number 6 of 2014 is already thoughtfully formatted, already tested by sociological, anthropological, legal and various other disciplines. So everything can be accounted for truth. Whether the official village or Adat village is registered, all have consequences. However, as a form of protection against the customs and culture, of course, Adat village is the one that must be registered. Worries that Adat villages are registered, then the state will intervene against Balinese culture, is certainly not true, the state is aiming to protect indigenous cultural of Bali and not vice versa.²⁸

Until now, debated in Bali is still running as different understandings are still exist, and somewhat forced, resulting in Bali delaying its implementation. If true this law has been based on sociological, anthropological, juridical, and philosophical studies, then definitely pros and cons did not happen today. The authors believe that the formation process of legislation, especially for Bali, is not based on philosophical, juridical and sociological. Especially with regard to the existence of traditional village and official village institutions.

Conclusion

From what is described above can be drawn some conclusions. First, during nowadays, village in Indonesia are divided into two, so-called administrative village and Adat village. Both types of these villages could be on the same area, but has a different task. Administrative village associated with Liabilities of the village administration, government administration, which is official. While the traditional (Adat) village associated with the implementation of cultural activities, religious ritual, and the like. Administrative village and adat village are usually located on the same territory and person. What distinguishes of the two is simply a matter of their activities.

Second, during this time the relationship between the administrative village and traditional village in Bali is very harmonious, mutually support one another. They are complementary to one another. Only recently, because the development of the tourism sector, some adat peoples began to fuss village boundary issues. This is certainly related to the problem of income, because some places is now a tourist attraction that promises a lot of material gain. But almost all of these problems can be solved.

Third, in order to support and strengthen the position of indigenous peoples, the government then passed an act no.6 year 2014 about village. In Bali, it raises polemic that due to a variety of interpretations. Some are rejected and some others support for the existence of these act. For

²⁸Ibid.

those who reject the act assume that, if the legislation is enacted, it is possible that the government will intervene in the sovereign existence of customary law. If this happens, then the traditional activities will be under government pressure. While the people who support of this legislation saw the opportunity that the government's participation in the traditional agency, this is predicted to be more advanced, because they will receive the facility from the government.

