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The Juridical Implications of Village Members Changing Religion for Occupancy of Village Residential Land in the Customay Village of Ketewel, Sukawati Sub-district, Gianyar Regency

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Abstract. This thesis research analyzes the Juridical Implication of Village Members Changing Religion for Occupancy of Village Residential Land in the Customary Village of Ketewel, Sukawati Sub-District, Gianyar Regency. The study focuses on the position of customary village members changing their religion to the occupancy of village residential land in the Customary Village of Ketewel, Sukawati Sub-District, Gianyar Regency and the juridical implications for the occupancy of village residential land for the village members changing their religion in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency. The type of research applied is empirical legal research. As an analytical tool, the theory of justice, the theory of legal certainty and the theory of law enforcement are applied. From the results of the analysis, it was found that the position of the customary village members changing their religion to the occupancy of village residential land in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency is that every member of customary village changing his religion or the like is called a tamu (guest). The juridical implications of occupancy on the village residential land for members changing their religion in the Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, include: these members reserve no right to live or occupy the village residential land, can no longer use the customary village facilities such as graves, banjar halls and others. Reserve no right to occupy village residential land, in accordance with awig-awig of Ketewel Customary Village Article 4 Paragraph (1) which reads that: It is meant by krama desa (Village Members) is a family who is adhering Hindu Religion and lives in a village residential land house or rice field and dried land area in Ketewel Customary Village. Thus, indigenous people who are not Hindus have no right to live or occupy the village residential land.

Keywords: Juridical Implications - Changing Religion and Village Residential Land

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Abstract. This thesis research analyzes the Juridical Implication of Village Members Changing Religion for Occupancy of Village Residential Land in the Customary Village of Ketewel, Sukawati Sub-District, Gianyar Regency. The study focuses on the position of customary village members changing their religion to the occupancy of village residential land in the Customary Village of Ketewel, Sukawati Sub-District, Gianyar Regency and the juridical implications for the occupancy of village residential land for the village members changing their religion in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency. The type of research applied is empirical legal research. As an analytical tool, the theory of justice, the theory of legal certainty and the theory of law enforcement are applied. From the results of the analysis, it was found that the position of the customary village members changing their religion to the occupancy of village residential land in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency is that every member of customary village changing his religion or the like is called a tamiu (guest). The juridical implications of occupancy on the village residential land for members changing their religion in the Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, include: these members reserve no right to live or occupy the village residential land, can no longer use the customary village facilities such as graves, banjar halls and others. Reserve no right to occupy village residential land, in accordance with awig-awig of Ketewel Customary Village Article 4 Paragraph (1) which reads that: It is meant by krama desa (Village Members) is a family who is adhering Hindu Religion and lives in a village residential land house or rice field and dried land area in Ketewel Customary Village. Thus, indigenous people who are not Hindus have no right to live or occupy the village residential land.

Keywords: Juridical Implications · Changing Religion and Village Residential Land

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1 Introduction

The advanced development of transportation technology and flows of information has caused the challenges faced by Balinese people to become increasingly diverse, including problems related to religious beliefs. Problems arising include attitude to life, individualism, and consumerism. The problems arising from local wisdom should be addressed appropriately through understanding and deepening. "Deepening the meaning of local wisdom for all Balinese people to maintain the stability of Balinese culture" [1]. In addition, cultural awareness of the community needs to increase; therefore, a love for the culture emerges. An as powerful support of Balinese culture is customary institutions such as: "villages, banjars preserving" [2]. In the regard, I Nyoman Sirtha gives the following understanding of Traditional Villages: Traditional village is a unit of customary law community having a unity of tradition and manners of the social life of Hindu community from generation to generation in Kahyangan Tiga bonds, has a certain area and assets, and has the right to take care of its household [3].

A traditional village is a customary institution with a socio-religious character and has an autonomous government based on its original rights. In other words, in the governmental administration, the typical village may enact self-made rules called awig-awig. The composition of a village, a wig-awig, derives from the philosophy Tri Hita Karana, namely the harmonious relationship between humans and God Almighty, the relationship between humans and fellow humans, and the relationship between humans and nature. In addition to the customary village governmental system, there is an official village government. The two types of villages have different functions and tasks. The traditional village regulates daily and religious affairs, while the official village regulates administrative affairs related to the implementation of village government under the sub-district. In the administration of village governance, traditional villages and official villages can run in harmony, but conflicts may also occur due to differences of interests.

The Constitution of the Republic of Indonesia of 1945 in Article 18B paragraph (2) stipulates that: "The state recognizes and respects customary law community units and their traditional rights providing that they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia governed under the law." It means that the survival of customary law community units must still be recognized and guaranteed in the Unitary State of the Republic of Indonesia. Likewise, Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms that: "Cultural identity and rights of customary communities are respected in line with the times and civilizations."

At the time of the enactment of Law Number 6 of 2014 concerning villages, it turned that official villages have autonomy rights under statutory regulations. At that time, the implementation of development programs deriving from the central government was carried out by official villages, while traditional villages received less attention in the development. Upon the enactment of Law Number 32 of 2004 concerning Regional Government which was later substituted by Law Number 23 of 2014, it was determined that regional regulations must recognize and respect village rights, origins, and customs. What is meant by a village is a legal community unit having the authority to regulate and manage the interests of the local community based on local origins and customs recognized in the National Government system and located in the Regency area. Thus,

the laws and regulations formally recognize the existence of a traditional village as a legal community unit authorized to regulate and manage the interests of the community based on their origins and customs that are recognized and respected in the system of the Government of the Unitary State of the Republic of Indonesia. The enactment of the Regulation of Bali Province Number 4 of 2019 concerning Traditional Villages, in Article 1 Paragraph (8), it is elucidated that: Traditional Village is a unit of customary law community in Bali having a territory, position, original structure, traditional rights, own assets, traditions, manners of community life from generation to generation in the bonds of sacred places (Kahyangan Tiga.

Alternatively, Kahyangan Desa), duties and authorities as well as the right to regulate and manage their affairs.

Law Number 23 of 2014 concerning Regional Government recognizes the existence of traditional villages by local origins and customs, as stipulated in Article 1 paragraph (12), which reads: village or which also called other names, further referred to as the village, is a legal community unit having the authority to regulate and manage the interests of the local community based on local origins and customs recognized in the National Government system and are located in the Regency area.

Law Number 23 of 2014 contains the meaning of reviving the values of the nation's cultural heritage that have grown and developed in the territory of Indonesia for centuries and shaped the personality of the Indonesian nation. For several regions in Indonesia, the regional autonomy era means reorganizing village government by the national personality, which has been buried under Law Number 5 of 1979. For Bali Province itself, the enactment of Law Number 23 of 2014 indicates that traditional villages are in the implementation consolidation in the administration of village governance by the personality of the nation.

The Regional Regulation of Bali Province Number 4 of 2019 concerning Customary Villages ratified on 28 May 2019 and promulgated on 28 May 2019 replaced the Regional Regulation of Bali Province Number 3 of 2003. Principally, this regional regulation still adheres to the philosophy of Tri Hita Karana, which includes the elements parhyangan, pawongan, and palemahan. However, new things are also intended to adapt to the social development in the regional autonomy era.

The developments and changes occurring in Balinese society due to modernization and globalization in the tourism sector have caused customary Balinese lands to experience their status and functions. This is seen in the areas where tourism industries are growing rapidly, such as in Gianyar Regency. The development of the tourism industries, such as building inns, art shops, and other supporting facilities, sometimes uses customary lands. This can lead to the change of status and functions of the customary lands, which can affect land rights.

The status and functions of customary lands make land issues complex, which can be a source of legal and social problems arising in various forms of land disputes. Likewise, the village-owned land (Karang desa) cannot be avoided disputes. There are many factors leading to the occurrence of village residential land disputes.

Village members occupying the village residential land have obligations. For example, the persons concerned must be Banjar members in the Banjar area. The obligations as the Banjar members are tedun/ present. There is a Banjar meeting (paruman), cooperation

(gotong royong), social work (ngayah), and pay for the Banjar dues by the provisions. At the same time, obligations related to the Hindu religion include: making ceremonies, such as mecaru (purification), Mersihan Karang (Compound Cleansing), Mapiodalan (Temple Ceremony), ngelukat Karang (spiritual cleansing of the compound), including the boundary wall (penyengker), or beautiful plants, and especially for village members whose residential house are adjacent to a holy place/temple to provide a boundary wall (penyengker) plus an empty land of approximately 2.5 m or adepa Agung in Balinese terminology.

The village road borders the compound of the house. Therefore, in addition to providing the boundary wall, there should be a slab at least 1.5 m inward of the ditch boundary (drainage). Finally, the obligation of village members occupying the village residential land is not to reduce or widen the land by taking another land around the village residential land.

The obligations that must be obeyed by each village member occupying the village residential land have been explicitly regulated, and both are contained in the customary village awig-awig and perarem. Normatively, the village residential land is part of the customary land regulated by the traditional village. However, sometimes individual actions involving village residential land disturb the tranquility of the ancestral village.

For example, in the case of Banjar Tengah, Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, a member of the village abandoned the village residential land, where originally the person concerned occupied the village residential land since he did not carry out his duties as a customary village member in common (swadharma) attached to the land, because the person concerns in question have changed his religion, in the end, the use of the village residential land was transferred from I Putu Gede Yuliana to I Made Suasdika.

The customary village rules contained in the awig-awig and perarem have firmly regulated the rights and obligations of village members occupying the village residential land, as in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, which has been regulated in Pawos 4 and Pawos 5 of Awig-Awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, namely:

Pawos 4

- 7 (1) *Sane kabawos Krama Desa inggih punika kulawarga sane maAgama Hindu tur jenek mepaumahan saha ngamong karang desa utawi carik ring wewidangan Desa Adat Ketewel utawi karang gunakaya manut pararem.*
- (2) *Sajaba punika abaos Krama Tamiu lan Tamiu.*
- (3) *Sane kabaos Krama Tamiu inggih punika warga sane maagama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*
- (4) *Sane kabaos tamiu inggih punika warga sane tan maAgama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*

The translation of Pawos 4

- (1) The so-called krama desa (village members) are those people who are Hindu and occupying the village residential land or rice fields in Ketewel Customary Village area or their own land according to the perarem.

- (2) Also called Guest Members and Guests.
- (3) The so-called Guest Members are Hindu residents coming from outside Ketewel Customary Village.
- (4) The so-called Guests are non-Hindu residents coming from outside Ketewel Customary Village and live in Ketewel Customary Village area.

Pawos 5

Krama Desa Pakraman Ketewel wenten 4 (petang) pawos luwire:

- (1) *Krama ngarep, kulawarga sane ngamong karang desa utawi karang gunakaya, tegal utawi carik.*
- (2) *Krama Penampul, kulawarga sane tanpa karang tegal utawi carik sakewanten sampun mawiwaha.*
- (3) *Krama Tapukan, kulawarga manut angka (1) ring ajeng sakewanten durung antes ngayah manut pararem.*
- (4) *Krama balu, kulawarga sane katinggal seda olih lanang utawi istrinyane utawi sangkaning nyapihan.*

The translation of Pawos 5

There are 4 (four) types of Ketewel Customary Village residents, such as:

- (1) Krama ngarep (main members), namely families occupying village residential land or own land, either dry land or rice fields.
- (2) Krama penampul/pengempi are families who do not occupy village residential land, neither dry land nor rice fields, but are married or have a family.
- (3) Karama tapukan is the same as those families occupying village residential land but have not been grown up or are not yet adults.
- (4) Krama balu is a family left by a husband or wife or because of divorce.

The difference in interests between the disputing parties over the village residential land makes settling disputes over the land difficult to resolve. In this regard, I Ketut Sudantra said as follows: Discourses or legal problems occurring in Banjar or traditional villages can be in the form of disputes or conflicts (*merebat, mecongkrah*) and can also be a violation of the law. Although both are problems that must get a solution because they both disturb the peace of the community, the discourses in the form of disputes and violations of law are important to distinguish because the procedures for handling them are different. There are two opposing parties in a dispute because of differences of opinion or interests. At the same time, in violation of law, there is only one party whose actions are against the law, both violations of state law and customary law (*sima, dresta, awig-awig, perarem*). Judging from the root of the problem, a dispute or violation of the law can be in the form of a pure customary case, a non-customary case, or a mixed case (customary + non-customary cases). Included in the group of pure customary cases are disputes whose objects are routine³⁵ matters or violations according to local *dresta* (law) is a disgraceful acts. However, it is not regulated in state laws and regulations, for example, disputes/violations related to social works (customary obligations), prohibition

of burying corpses in the graveyard (setra), cases of kasepekang, lokika sanggraha, salah timpal, and so forth [4].

The typical case described by Ir. I Ketut Sudantra above, a typical case occurred in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, is a purely typical case that has not been regulated in state legislation, namely village members who change religion, rights, and obligation to occupy village residential lands revoked, replaced by another adjacent resident based on the decision of meeting (Paruman) of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency on 27 November 2008, which took place at Balai Banjar. Therefore, research is important to conduct.

2 Method

The type of research in this thesis is empirical legal research. The type of approach applied in this study is a story approach, conceptual approach, case approach, and sociological approach [5]. The data sources used in this study consisted of primary and secondary data. The data were collected using Interview Techniques (Interview), Observation Techniques, and Document Study Techniques. After the data were collected, they were analyzed using the techniques of interpretation, description, argumentation, evaluation, and systematization.

3 Result and Discussion

3.1 The Position of Customary Village Members Changing Religion to the Occupancy of Village Residential Land in Customary Village of Ketewel, Sukawati Sub-district, Gianyar Regency

The members of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency has different position according to the circumstances of village members in terms of village residential land. This can be seen from the affirmation on awig-awig tityas Sargah Sukerta Tata Pakraman pallet I indik krama, pawos 4.

- (1) *Sane kabawos Krama Desa inggih punika kulawarga sane maAgama Hindu tur jenek mepaumahan saha ngamong karang desa utawi carik ring wewidangan Desa Adat Ketewel utawi karang gunakaya manut pararem.*
- (2) *Sajaba punika kabaos Krama Tamiu lan Tamiu.*
- (3) *Sane kabaos Krama Tamiu inggih punika warga sane maagama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*
- (4) *Sane kabaos tamiu inggih punika warga sane tan maAgama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*

The translation of Pawos 4

- (1) The so-called krama desa (village members) are those people who are Hindu and occupying the village residential land or rice fields in Ketewel Customary Village area or their own land according to the perarem.

- (2) Also called Guest Members and Guests.
- (3) The so-called Guest Members are Hindu residents coming from outside Ketewel Customary Village.
- (4) The so-called Guests are non-Hindu residents coming from outside Ketewel Customary Village and live in Ketewel Customary Village area.

Furthermore, viewed from the distribution of customary village members, it can be divided into 4 parts, which can be seen from pawos 5.

Krama Desa Pakraman Ketewel wenten 4 (petang) pawos luwire:

- (1) *Krama ngarep, kulawarga sane ngamong karang desa utawi karang gunakaya, tegal utawi carik.*
- (2) *Krama Penampul, kulawarga sane tanpa karang tegal utawi carik sakewanten sampun mawiwaha.*
- (3) *Krama Tapukan, kulawarga manut angka (1) ring ajeng sakewanten durung antes ngayah manut pararem.*
- (4) *Krama balu, kulawarga sane katinggal seda olih lanang utawi istrinyane utawi sangkaning nyapihan.*

The translation of Pawos 5

There are 4 (four) types of Ketewel Customary Village residents, such as:

- (1) Krama ngarep (main members), namely families occupying village residential land or own land, either dry land or rice fields.
- (2) Krama penampul/pengempi are families who do not occupy village residential land, neither dry land nor rice fields, but are married or have a family.
- (3) Karama tapukan is the same as those families occupying village residential land but have not been grown up or are not yet adults.
- (4) Krama balu is a family left by a husband or wife or because of divorce.

By referring to awig-awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, it can be said that the main member (Krama Pengarep) of customary village members only has a position against village residential land. The lands belonging to the traditional village give the traditional village the power to regulate and utilize the land by awig-awig or perarem made. As proposed by Wayan P. Windia, he said that customary village lands include: "Village Residential Land (VRL) is village land belonging to a customary village which is given to village members to be used as a place of residence" [6].

So, the position of the members of the traditional village changing their religion over the occupancy of village residential land in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency is associated with the theory of justice, which is fair enough, because the theory of justice emphasizes that the enforcement of justice with a populist dimension must pay attention to two principles of justice, namely, first, to provide equal rights and opportunities for the broadest basic freedoms as broad as the same freedoms for everyone. Second, reorganizing the arising socio-economic gaps can provide mutual benefits (reciprocal benefits) for everyone, whether they are from lucky

or unlucky groups. The⁴, the principle of different demands as the basic structure of society is regulated so that the gap in prospects of obtaining the main things of welfare, income, and authority is for the benefit of the most disadvantaged. This means that social justice must be fought for two things: First, correcting and improving the condition of inequality experienced by the weak by presenting and empowering social, economic, and political institutions. Second, each regulation must position itself as a guide for developing policies to correct the injustice experienced by the weak.

20 It is said to be fair because inside the awig-awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency Pawos 5, and it is clearly stated that:

Pawos 5

Krama Desa Pakraman Ketewel wenten 4 (petang) pawos luwire:

- (1) *Krama ngarep, kulawarga sane ngamong karang desa utawi karang gunakaya, tegal utawi carik.*
- (2) *Krama Penampul, kulawarga sane tanpa karang tegal utawi carik sakewanten sampun mawiwaha.*
- (3) *Krama Tapukan, kulawarga manut angka (1) ring ajeng sakewanten durung antes ngayah manut pararem.*
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- (3) Karama tapukan is the same as those families occupying village residential land but have not been grown up or are not yet adults.
- (4) Krama balu is a family left by a husband or wife or because of divorce.

Related to a village member who is no longer Hindu religion in Ketewel Customary Village, Gianyar Sub-District, Gianyar Regency, I Wayan Beratha, S.Pd, the Head Customary Village (Bendesa) of Ketewel, Gianyar Sub-District, Gianyar Regency, said that: Relevant to the existence of people who change their religion, the community of Ketewel Customary Village, Gianyar Sub-District, Gianyar Regency, especially the Prajuru (Organizers) of Customary Village and community are guided by Awig-Awig of Ketewel Customary Village, Gianyar Sub-District, Gianyar Regency Pawos 5 number (1), that is, KKrama ngarep, kulawarga sane ngamong Karang Desa utawi Karang gunakaya, Tegal utawi carik. (main members) are families occupying village residential or own land, dry land, or rice fields. Therefore, based on the preceding, all customary village rights must be handed back to the traditional village, including village residential land occupied by residents who are no longer Hindu, so that the community no longer has the customary rights of Ketewel Customary Village, Gianyar Sub-District, Gianyar

Regency, including the traditional graveyard which is one of the lands belonging to the ancestral village.

If it is seen deep in the Awig-Awig of Ketewel Customary Village, Gianyar Sub-District, Gianyar Regency regarding the rules of village members are regulated in the Sukerta Tata Pakraman Palet 1 indik krama, Pawos 4.

Pawos 4

- (1) *Sane kabawos Krama Desa inggih punika kulawarga sane maAgama Hindu tur jenek mepaumahan saha ngamong karang desa utawi carik ring wewidangan Desa Adat Ketewel utawi karang gunakaya manut pararem.*
- (2) *Sajaba punika kabaos Krama Tamiu lan Tamiu.*
- (3) *Sane kabaos Krama Tamiu inggih punika warga sane maagama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*
- (4) *Sane kabaos tamiu inggih punika warga sane tan maAgama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*

The translation of Pawos 4

- (1) The so-called krama desa (village members) are those people who are Hindu and occupying the village residential land or rice fields in Ketewel Customary Village area or their own land according to the perarem.
- (2) Also called Guest Members and Guests.
- (3) The so-called Guest Members are Hindu residents coming from outside Ketewel Customary Village.
- (4) The so-called Guests are non-Hindu residents coming from outside Ketewel Customary Village and live in Ketewel Customary Village area.

Upon the existence of awig-awig, the residents who used to be members of Ketewel Customary Village, Gianyar Sub-District, and Gianyar Regency are no longer residents of the Ketewel Customary Village, Gianyar Sub-District, Gianyar Regency. Therefore their rights to the traditional village are revoked. However, the approach was carried out up to 3 (three) times by the traditional village so that the person concerned returned to Hindu, but the person concerned still had the intention that he would still change to Christian.

3.2 The Juridical Implications of Occupancy of Village Residential Land for Members Changing Religion in Ketewel Customary Village, Sukawati Sub-district, Gianyar Regency

Every action or event always has an impact or has implications. "Implication means effect" [7]. If it is related to the context of legal language, for example juridical implications, it means that the legal consequences will occur based on a legal event. Based on the results of the Meeting of Banjar Adat tengah, Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency regarding the change of religion from Hindu to Christian on behalf of I Putu Gede Yuliana as described above.

Regarding the occupancy of village residential land of Customary Village, it has been clearly regulated both through the Bali Provincial Regulation, as well as in the Awig-Awig and Pararem of each customary village. In the Regulation of Bali Province Number 4 of 2019 concerning Customary Villages in Bali, in Chapter III the Basic Elements of Customary Villages, Part One General, Article 6, it is expressly stated as follows: "The main elements of a Customary Village consist of: Parahyangan, Pawongan, and Palemahan which is the embodiment of philosophy Tri Hita Karana".

In the part four, Palemahan Article 10 of the Customary Village is also emphasized: "Palemahan is a system of harmonious relations between members and the environment in the Area (wewidangan) of Traditional Village. Furthermore, Article 10 paragraph (2) affirmed: "Palemahan of Customary Villages include land belonging to customary villages and communal or individual used-land. Paragraph (3), namely "customary village land has customary, religious, traditional, cultural and economic functions".

Likewise in Awig-Awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, Pawos 6, it is stated as follows:

Pawos 6

Ngataru dados Krama Desa:

- (1) *Ngataru ngamong karang, tegal utawi carik.*
- (2) *Krama Tamiu sane mapangarsa dados Krama Desa manut pararem kadulurin antuk pinunas ring Prajuru Desa lan pamutus Paruman Desa. Sangkaning Krama Tamiyu jenek ring Desa Adat ketewel patut kedadarin antuk ilikita pastika manut pararem.*

The translation of Pawos 6

To be a member of Ketewel Customary Village may:

- (1) Occupy the village residential land, dry land or rice fields.
- (2) Guest members (residents) who wish to become customary villagers according to the pararem, can ask for permission/report to Head (Kelian) of Banjar, Head of Customary Village, and it is decided by the Customary Village, guest members who live in Ketewel Customary Village should be in compliance with the provisions stated in awig-awig and pararem.

If it is observed from the provisions mentioned above, since the customary village has the right to occupy the village residential land/ Karang Ayahan Desa is very strict, it must comply with the Regional Regulations, awig-awig and pararem of the respective Customary Villages.

As an example of the case experienced by I Putu Gede Yuliana, because of his religious conversion, the village residential land he had been occupying so far was transferred to I Made Suasdika according to the Banjar Decision, with the chronology of the case as follows: The act of abandoning the village residential land, meaning that the person who originally had the rights to the village residential land then left it, so that swadharma (obligations) attached to the land, cannot be done. As happened in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, the use of the village residence was transferred from I Putu Gede Yuliana to I Made Suasdika. I Putu

Gede Yuliana initially occupied the village residential land/Karang Ayahan Desa with his family, which began in 2008 in September, I Putu Gede Yuliana did not perform his obligations as the member of Banjar Tengah Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, he did not make Penjor during Galungan Holiday, even put a cross in the yard of his house. As many community members asked about this, a banjar meeting was convened.

In the meeting I Putu Gede Yuliana admitted that he had changed his religion and he felt more comfortable being Christian. Therefore, Banjar made an approach so that I Putu Gede Yuliana returned to Hindu and remained with the status of Banjar Tengah Member, Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, but this effort failed, a family approach was also carried out, where the family warned in order that he (I Putu Gede Yuliana) wanted to return to Hindu, but the efforts made by the Banjar in this case, both Head of Banjar Adat, families and community leaders did not bear any result and failed again.

Since I Putu Gede Yuliana had already acted with determination and an opinion and request had been made for I Putu Gede Yuliana to return with the third Paruman by signing of the Resolution of Banjar Meeting, Banjar finally took over the village residential land of I Putu Gede Yuliana handed over to I Made Suasdika, who still has a family relationship with I Putu Gede Yuliana to fill or carry out the obligations of the village members, starting on 28 November 2008 or submitted and subject no more sue. (Resolution of Paruman Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, on Thursday 27 November 2008).

Village members occupying the village residential land have an obligation (swadharma) towards the village. Swadharma includes obligations, namely, ngayahang banjar, mutual cooperation to pay tuition contributions (urunan). Not all village members have such rights and obligations. In order to avoid disputes ¹² terms of village residential land, everything is regulated in awig-awig and perarem. In ²¹ the settlement of disputes over the land of the village residential land, ²¹ head official and customary village play a very important role. It is very natural for the head of official village and traditional customary village as peacemakers to act as a peacemaker, and it is still within the limits of their duties to make their villagers live in peace and tranquility.

The customary village rules contained in the awig-awig and perarem have firmly regulated regarding the rights and obligations of village members occupying the village residential land, as in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency which has been regulated in Pawos 4 and Pawos 5 of Awig-Awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, namely:

Pawos 4

- ⁷ (1) *Sane kabawos Krama Desa inggih punika kulawarga sane maAgama Hindu tur jenek mepaumahan saha ngamong karang desa utawi carik ring wewidangan Desa Adat Ketewel utawi karang gunakaya manut pararem.*
- (2) *Sajaba punika kabaos Krama Tamiu lan Tamiu.*
- (3) *Sane kabaos Krama Tamiu inggih punika warga sane maagama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*
- (4) *Sane kabaos tamiu inggih punika warga sane tan maAgama Hindu mataru saking dura desa jumenek ring Desa Adat Ketewel.*

The translation of Pawos 4

- (1) The so-called krama desa (village members) are those people who are Hindu and occupying the village residential land or rice fields in Ketewel Customary Village area or their own land according to the perarem.
- (2) Also called Guest Members and Guests.
- (3) The so-called Guest Members are Hindu residents coming from outside Ketewel Customary Village.
- (4) The so-called Guests are non-Hindu residents coming from outside Ketewel Customary Village and live in Ketewel Customary Village area.

Pawos 5

Krama Desa Pakraman Ketewel wenten 4 (petang) pawos luwire:

- (1) *Krama ngarep, kulawarga sane ngamong karang desa utawi karang gunakaya, tegal utawi carik.*
- (2) *Krama Penampul, kulawarga sane tanpa karang tegal utawi carik sakewanten sampun mawiwaha.*
- (3) *Krama Tapukan, kulawarga manut angka (1) ring ajeng sakewanten durung antes ngayah manut pararem.*
- (4) *Krama balu, kulawarga sane katinggal seda olih lanang utawi istrinyane utawi sangkaning nyapihan.*

The translation of Pawos 5.

There are 4 (four) types of Ketewel Customary Village residents, such as:

- (1) Krama ngarep (main members), namely families occupying village residential land or own land, either dry land or rice fields.
- (2) Krama penampul/pengempi are families who do not occupy village residential land, neither dry land nor rice fields, but are married or have a family.
- (3) Karama tapukan is the same as those families occupying village residential land but have not been grown up or are not yet adults.
- (4) Krama balu is a family left by a husband or wife or because of divorce.

Thus, the juridical implications of the occupancy of village residential land for village member changing religion in Customary Villages, including in Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, among others: must be the members of customary villages who are Hindus, with the burden of obligations in accordance with the awig-awig and pararem of the customary village. So the consequence or the juridical implication for the members of the customary village changing their religion is that they have to leave the village residential land, in accordance with the case occurred in Banjar Tengah, Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, in the case on behalf of I Putu Gede Yuliana, who changed his religion from Hindu to Christian, in accordance with the Letter of Kemah Injil Indonesian Church Number: 37/BPJ/GKII-Dps/IX/2008, regarding new church membership.

The legal implications received by the customary village members changing their religion from Hindu to Christian as taken by the member of Ketewel Customary Village on behalf of I Putu Gede Yuliana, among others, had to leave the village residential land that was previously occupied, even though ¹⁴ house was already standing as the land for family and the children. If it is related to the theory of legal certainty and the theory of law enforcement, it has been appropriate, this can be seen from the application of awig-awig of Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency Pawos 4 and Pawos 5 as described above.

4 Conclusion

The position of the Ketewel Traditional Village Krama who converts to the control of the village coral land has not been explicitly regulated in the awig-awig, but it is only regulated that the krama who have the right to occupy the village coral land are his Hindu family, otherwise it is considered krama tamiu. It is called krama tamiu, because the krama tamiu is not entitled to occupy the village coral land and has no obligations like the Hindu krama.

The juridical implications of occupancy on the village residential land for members changing their religion in the Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, include: these members reserve no right to live or occupy the village residential land, can no longer use the customary village facilities such as graves, banjar halls and others. Reserve no right to occupy village residential land, in accordance with awig-awig of Ketewel Customary Village Article 4 Paragraph (1) which reads that: It is meant by krama desa (Village Members) is a family who is adhering Hindu Religion and lives in a village residential land house or rice field and dried land area in Ketewel Customary Village. Thus, indigenous people who are not Hindus have no right to live or occupy the village residential land.

Legislation

Constitution OF 1945 of the Republic of Indonesia.

Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles.

Regional Regulation of Bali Province Number 4 of 2019 concerning Customary Villages in Bali.

Awig-Awig of Koripan Tengah Customary Village, Banjarangkan Sub-District, Klungkung Regency.

Resolution of Paruman Ketewel Customary Village, Sukawati Sub-District, Gianyar Regency, on Thursday 27 November 2008.

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