

The application of the principles of the convention on women in awig-awig pakraman village

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ABSTRACT

This research aims to study the task of the village in Bali related pakraman by the ratification of the women's Convention into law Number 7 in 1984 about the passage of the Convention on the Elimination of all forms of discrimination against women. The community's customary law in Pakraman Village Bali is called based on the applicable local Bali province number: 3 years Pakraman Village of 2003. One of the tasks of the village Pakraman is making the rule of law (awig-awig). The enactment of related laws, the legal issues that arise: what are the principles of the Convention established the woman had already formulated in the awig – awig village pakraman? The legal issues observe by using the normative legal method by relying on legal materials and material non-law. Also, problems also assessed by the theory of legal pluralism of Sally Falk Moore, i.e., Semi-autonomous social field theory.

Based on search results and study materials of the law, in this case, some awig-awig Pakraman village, results or findings indicate that women's Convention established the principles namely equality and justice between men and women has not yet been applied awig-awig in the pakraman village. So, based on the theory of legal pluralism is examined from Sally Falk Moore, where local laws (awig-awig) turned out to be stronger regarding State law are dealt face. The things which can know from the provisions of article (pawos) from some awig-awig who examined it turns out women's Convention principles, namely equality and justice between men and women has not yet applied in the awig – awig pakraman village. That means that the discriminative customary law was still so strong so the benchmark in the Association life pakraman. So, in conclusion, the principles of the Convention on women has not been applied in the awig – awig pakraman village, so that still reflect discriminatory against women. This research needs to be continued with empirical legal research to find out why the principles of the Convention on women has not applied to the awig – awig pakraman village..

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I. Introduction

Indonesia as one of the countries that participated signed a Convention woman, later known as the Convention on the Elimination of All Forms of Discrimination Against Women abbreviated of Cedaw. The Government of Indonesia then ratified Cedaw with U no.7 Year 1984 about the endorsement of the Convention on

Removal of all forms of discrimination against women. In more than a quarter century of the applicable legislation or enacted, presumably already understand, adhered to by all our citizens.

Indonesia's pluralism is still valid legal system, i.e. State law, customary law and religious law then the law system of the third alternative implementation is not aligned, although customary law as a law of life in society

must conform to state law. The customary law as the law grow and develop within communities or customary law as the law of life (the living law) should not be contrary to the fundamental legal principles of the State. The realm of customary law into force is on the general customary law or customary law where legal fellowship was alive. Customary law community in Bali known as Indigenous, with the village of Local regulations No. 3 The year 2003 concerning Indigenous Village name Pakraman Village transformed into Village Pakraman. Each village pakraman has its own rules which of course is not the same between pakraman village one of village pakraman more. Rules in the pakraman village are poured in the form of awig-awig village pakraman respectively. Awig-awig then made into guidelines for social life in the continuity of village of pakraman.

Associated with the Cedaw has been ratified with U no.7 Year 1984 which in principle removing all forms of discrimination against women (now women), in regard the enactment of the customary law in Bali that contained in the form of the awig-awig pakraman village still reflect the existence of forms of discrimination based on gender. Related it then becomes important to do the research. As for the problems the law is whether the principles of the Convention on women (Cedaw) has applied in the provisions of the awig – awig (the rule of law) pakraman village?

II. RESEARCH METHODS

Research on the application of the principles of the Convention on women in the awig-awig pakraman village is the normative legal research. This research uses the law of primary and secondary legal materials. The primary legal material is in the form of some awig-awig pakraman village since there are 4000 awig-awig pakraman village and not to mention awig-awig banjar pakraman. The secondary legal material is in the form of other written sources relevant to this research. The collection of legal materials done with recording techniques by using the system card (card system). While his techniques performed with the techniques of

interpretation (interpretation) the juridical, among other grammatical interpretation and systematic interpretation.

III. RESULTS AND DISCUSSION

A. Overview of customary law Community, Convention of women/girls and Awig-Awig Pakraman Village

The community's customary law or customary law Fellowship, in the area known by the name of a different function in principle but not much different. Customary law society, known as the Bali Desa Adat Pakraman Village later renamed based on local regulations (Perda) No. Three years Pakraman Village of 2003. Customary law society recognized its existence under article 18 paragraph 2 B U N D U R I 1945, which reads as follows: the State recognizes and respects the entities of Community law as well as the traditional all rights is alive and in accordance with the the development of the community and the principle of the unitary State of the Republic of Indonesia. The recognition was also formulated in Tap MPR RI No. III in 2000 about the source of Law and Order legislation.

Observing the provisions of article 18 paragraph 2 B, of the existence of the village of pakraman and traditional rights in this law made (awig-awig) is a very powerful, as long as it doesn't impede the development of the community and the principle of the unitary State of the Republic of Indonesian.

Related to community customary law or Ter Haar pakraman village, as quoted Bushar Muhammad points out that Community law (legal Fellowship) is 1) regular Community unity, 2) living in a certain area, 3) has rulers, 4) has a wealth of tangible or not berwujud, in which the members of the Union of each experience of life in society, as it is reasonable, according to the nature of nature, and no one among the members of that have a thought or trend to dissolve ties that have grown it or leave it, in a sense, to break away from the bonds of it for ever. The Community customs law, Bali Desa Pakraman called regulated in section 1 point 4 Perda No. 3 the Year 2003 as follows; The village is a Community unity Pakraman customary law in Bali which has one unified tradition and decorum guidelines for community life a Hindu hereditary

in the heaven of the gods or three villages which have a specific area and his wealth as well as reserves the right to take care of its bylaws.

Observing the notion above that a customary society law has its territory, has a wealth of its own, has its own rules, grammar and has its own Executive Board. Each village pakraman as customary law community has its own rules and grammar apply only on the territory of the village of pakraman is concerned. The rule of created in the form of awig-awig desa pakraman awig-awig or banjar awig-awig pakraman and from each village pakraman and banjar pakraman or not at one another. Article 1 article number 11 Perda No. 3 the Year 2003 Awig-awig determined that the rule is a rule made by the manners and manners or pakraman village banjar pakraman used as guidelines in the implementation of Tri Hita Karana by dharma and mawacara village religion in pakraman village/banjar pakraman respectively. Awig-awig in regard, Tjok. His wife, mengemukakan Astiti Son that is awig-awig is a benchmark-the benchmark behaviour, both written and unwritten made by the concerned community, based on a sense of Justice and propriety that live in societies in the relationship between manners (Member pakraman village) with God, fellow manners, manners or their surroundings.

Awig-awig pakraman village rules of grammar as in Bali, made by desa pakraman manners. On article 1 point 6 Perda No. 3 the Year 2003 determined that pakraman village and manners or banjar pakraman manners are those who occupy coral reef pakraman village/banjar pakraman and or relic in pakraman village resides/banjar pakraman in place another being villagers pakraman/banjar pakraman. The sense of manners here meant manners lanang custom hooks because in all the decisions dictated by manners lanang manners while the wife implements decisions of krama lanang. A close watch on such conditions, it can be said that there has been discrimination against the wife in pakraman village manners to determine a thing because manners wife not participate paruman (meeting) in taking decisions. Article 1 of ACT No. 7 of the year 1984 set as follows; discrimination against women is any distinction,

exclusion or restriction made on the basis of sex, which has the influence or purpose to reduce or eliminate recognition, experience, or the use of human rights and principal freedoms in the areas of political, economic, social, cultural, civil or any other by women, irrespective of their marital status, on the basis of similarities between men and women.

Observing the provisions of article 1 of ACT No. 7 in 1984 that associated with the provision of awig-awig, which determined that the prajuru (indigenous leader) comes from manners ngarep. In the appointment of prajuru, generally based on manners ngarep/ayahan ngarep awig-awig example, Desa Pakraman Pemogan, in 17 Pawos wiwit 4 reads as beriku: sahananin kelihan fitting mawiwit because of ayahan ngarep manners. That means that each kelihan/indigenous leadership derived from manners ngarep or members who directly carry out the obligations of the village. In this regard it Sudiana said that meant is the krama kanang (husband) as head of the family listed as manners pakraman village. The main Assembly Pakraman Village also says it as follows; Men/manners lanang dominate all indigenous-led (bendesa) in Bali.

Looking closely at the above mentioned things where women as citizens in a formal juridical already received protection in the field of law. It can be from a large number of regulations made by the Government. Detail set about women is the women's Convention (now women). The women's Convention, better known as the "Convention on the Elimination of All Forms of Discrimination Against Women shortened to CEDAW. The Government of Indonesia then ratified CEDAW with U U no.7 Year 1984 about the endorsement of the Convention on Penghapusan of all forms of discrimination against women.

The Act expressly prohibits all forms of discrimination against women treatment. As set forth in article 1 which reads as follows: for the purposes of the Convention, the term "diskriminansi against women" means any distinction, exclusion or restriction made on the basis of gender, that influence or purpose to reduce or mengapuskan recognition, the

experience or the use of human rights and freedoms subject matter in the field of politics, economics, soasial, cultural, civil or any other by women, regardless of marital status they, on the basis of the similarities between men and women.

Observing the provisions of article 1 May is very clear that in any form of women should be treated equally in all areas of life. That means, women as citizens at its core have the opportunity and the equal opportunity in various areas of life. At the core of Cedaw menekankan on equality and justice between men and women (equality and justice) that equal rights and opportunities and treatment in all areas and activities.

Related to this, Ariani expressed as follows; that Cedaw recognises that is :

- a. the existence is not supernatural or biological differences between men and women;
- b. the existence of a difference in treatment of women based on gender that results in harm to women:
- c. the difference of conditions and position between men and women, because women exist in the conditions and a weaker position because of experiencing discrimination or suffer the discriminatory treatment experienced previously or because of the environment, family and the public does not support the independence of women.

The Convention essentially emphasize women's equality and justice between men and women in all aspects of life or other words a ban on the existence of the treatment of discrimination against women in any form. On sampung Konvesi women dirafikasi with U U no.7 year 1984 as already expressed above, will also be addressed at a glance awig-awig pakraman village.

Awig-awig both written and unwritten is an order made by a krama (citizens) as a guideline in the Association life pakraman village and has the force of law is limited only on the citizens and on the territory of the village of pakraman concerned. Awig-awig

related with the discharge of Perda No. 3 the Year 2003 is set firmly in it. Article 1 point 11 contains awig-awig is that rules made by krama pakraman village and banjar pakraman manners or used as a guide in the implementation of Tri Hita Karana concept by the village of mawacara and dharma religion in pakraman village/banjar pakraman each.

Observe the ketetntua Article 1 point 11; it is clear that the villagers made the awig - awig as a guide in the association concerned villagers lives, but villagers who can be assumed meant male citizens.

B. The application of the principles of the Convention on women in Awig-Awig Pakraman Village

The article 1 point 4 Perda No. 3 Year 2003 Pakraman Village about formulating pakraman village that is the unity of Community law in the province of Bali have one unified tradition and decorum guidelines for community life a Hindu hereditary in the bond of Heaven or Heaven three villages which have a specific area and own wealth as well as reserves the right to take care of its bylaws.

Observing the provisions of article 1 the number 4, which is a society pakraman customary village law in Bali which has its own rules, certain regions and their wealth and take care of the household himself. As a customary law society village, pakraman have rules formulated lingua franca of their citizens living in the form of an awig-awig pakraman village. Each village has awig-awig pakraman which awig-awig village between pakraman who one another are not uniform.

Awig-awig as rules (customary law) made by villagers pakraman has yet to reflect the principles of cedaw or the principles of cedaw have yet to apply in the awi-awig pakraman village. It is is known from several awig-awig pakraman villages here.

Awig-awig in desa pakraman Denpasar formulated in the article (Pawos) 8 wiwit Prajuru 4 luwirniya Denpasar: Custom Village ha. Bendesa, na. Petajuh village, Penyarikan village, ca. ra. Petengen Village, ka. Kasinoman Village. That position is everything is ruled by men

though not mentioned male, but can interpret is male, because it is in the village of pakrman has always been the position held by men. That reflects that regarding the appointments is still the existence of discrimination against omen. Likewise, Pawos 13 wiwit two which reads as follows: sebabagi sangkepan abusana detention rikala residency, awastra, akampuh, adestar manut dresta. The tan mangana kadanda gung artha 125 keteng. That means that if the meeting should wear the full outfit, fabric, film, udeng, otherwise wear Fined 125 money bolong. Against this section of this article may be ditafsikan that the berpakaian like it is just another man. Likewise specified in the Pawos 36 reads as follows: a legacy worth a kapurusa chess ring manut dresta sane kemanggehang. Atrinya inheritance should be kapurusa (men) by prevailing customs.

On other awig-awig awig-awig, i.e. pakraman village Tonja also found things that were. The thing in question formulated in a 10 Pawos wiwit 2 reads as follows: Maya inucap Parajuru ring worth: ha. Mawiwit with krama ngarep. That means that the administrators in the future derived from the primary manners citizens (citizens) who directly undertake the obligation of the village. The main citizens here meant is the krama lanang (husband), because manners lanang recorded as the pakraman village of manners, as though in marriage nyeburin. In the marriage of nyeburin, where the man or husband is courting the legal status of women, but in regard ngayah (carry out obligations) to the banjar or village pakraman, the men still carry out ayahan boys and recorded as head of the family. If the beneficiary is also mentioned on the Pawos 52 reads as follows: luire heirs: ha. Purusha, na pratisentana. Pratisentana (sentana rajeg), ca. peperasan Sentana lanag/wadon. That means that the beneficiary was a boy, rajrg sentana and adopted the son of male/female.

Mecermati some pawos (article) mentioned above can be said that the principles of the Convention which ratified Woman with U U no. 4 the Year 1984 emphasized kesetaraan and justice between men and women it turns out yet applied regarding the awig-awig pakraman village. That means the provisions awig-awig

pakraman village still reflects discriminatory against women.

Awig-awig is a rule that made the villagers pakraman used as guidelines in the Association of community living. Awig-awig already exists since long ago, but its form is still not written. Though not yet written, awig-awig still has the force of law the citizens. Awig-awig is created based on the level of understanding of its citizens at the time the awig – awig made.

Since 1986, awig-awig made in written form but before awig-awig everything yet. It set in a region of level I Perda Bali No. 06 the Year 1986 regarding the position, function, and role of Village Customs as the unity of Community Law within the province level I Areas of Bali. Expressly about awig-awig written formulated on article 7. As for article 7 reads as follows: each village to have custom awig-awig writing.

Observing the provisions of article 7, that is to say where each indigenous village/desa pakraman awig-awig to have written. Awig-awig made in written form can be dikatakan almost simultaneously with the Convention diratifikasinya Women/Women with U U no.7 Year 1984, however, faktualnya from some awig-awig who examined it turns out no one has applied about equality and justice between men and perempuan. Awig-awig construction who have yet to apply the principles of the Convention relevant women examined based on the theory of Legal Pluralism Palk from Sally Moore. Based on the theory that where the existence of the docking between between State law with local law, where in construction awig-awig, stronger local laws, where State law positioned. Diapliklasinya the principles of Kovensi women in the awig-awig pakraman village is influenced by several factors. These factors can only know through field research by digging directly pakraman village community opinion.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The basis of exposure discussion above it can conclude that some provisions of the awig – awig desa pakraman examined, it turns out that the findings indicate where the principles of Kovensi Women (now women) namely, equality and justice between men and women not yet

applied in terms of awig-awig-awig so awig pakraman village which exists still reflect discrimination terhadap women.

B. Recommendations

Based on the results of the analysis and summary of the above, it should be recommended a few things as follows :

- a. To realize the awig – awig pakraman village reflecting the equality and justice between men and women should awig-awig existing reconstructed by applying the principles of the Convention on women.
- b. Awig-awig formulation pakraman village should give chances and opportunities to the manners of the wife (women citizens) to participate actively so that later gave birth to the awig – awig which emansipatif.

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