

Kekuatan Hukum Sertipikat Tanah Ulayat Milik Masyarakat Adat yang Diklaim Penguasaannya oleh Subjek Hukum Perorangan di Desa Timpag, Kabupaten Tabanan Bali = Legal Strength of Communal Land Certificate Owned by Indigenous Communities that Claimed by Individual Legal Subject in Timpag Village, Tabanan Regency, Bali

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Abstrak

Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional Nomor 18 tahun 2019 tentang Tata Cara Penatausahaan Tanah Ulayat Kesatuan Masyarakat Hukum mengakui eksistensi hak ulayat masyarakat hukum adat sebagaimana termaktub dalam ketentuan Pasal 3 Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria. Hal tersebut diatur dengan tujuan agar masyarakat hukum adat mendapatkan pengakuan dan kepastian hukum atas tanah ulayatnya dengan didaftarkan sebagai objek hak atas tanah. Penelitian ini membahas mengenai: (i) kekuatan hukum sertipikat hak atas tanah ulayat masyarakat adat di Desa Timpag, Kabupaten Tabanan Bali; dan (ii) kedudukan subjek hukum perseorangan dalam penguasaan tanah ulayat milik masyarakat adat di Desa Timpag, Kabupaten Tabanan Bali. Penelitian ini merupakan penelitian normatif empiris dengan menggunakan data primer dan sekunder disertai tipologi penelitian eksplanatoris. Hasil penelitian ini yaitu: (i) tanah desa dapat dijadikan sebagai objek hak milik atas tanah dengan desa pekraman atau desa adat sebagai subjek hukum penguasanya berdasarkan Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional Nomor 18 tahun 2019 dan Kepmen ATR/Ka. BPN No 276/KEP-19.2/X/2017; ii) subjek hukum perorangan terhadap tanah ulayat dikuasai dengan hak milik tidak penuh, di mana desa pakraman sebagai lembaga adat tetap terlibat dalam pengelolaan dan penguasaannya sehingga tidak menghilangkan sifat dan karakter komunal dari sebuah tanah adat.

.....Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 18 of 2019 concerning Procedures for Administration of Ulayat Land of Legal Community Units recognizes the existence of customary rights of customary law communities as enshrined in the provisions of Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. This is regulated with the aim that customary law communities get legal recognition and certainty over their ulayat lands by being registered as objects of land rights. This study discusses: (i) the legal strength of certificates of rights to customary lands of indigenous peoples in Timpag Village, Tabanan Regency, Bali; and (ii) the position of individual legal subjects in the control of customary land owned by indigenous peoples in Timpag Village, Tabanan Regency, Bali. This research is an empirical normative research using primary and secondary data accompanied by a typology of explanatory research. The results of this study are: (i) village land can be used as an object of land ownership with Pekraman village or customary village as the legal subject of its ruler based on the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 18 of 2019 and Kepmen ATR/Ka. BPN No 276/KEP-19.2/X/2017; ii) individual legal subjects on ulayat land are controlled with incomplete property rights, where the village of Pakraman as a customary institution is still involved in its management and control so as not to eliminate the communal nature and character of a customary land.