

Legality of Money Grants to Customary Villages According to Law Number 23 Of 2014 Concerning Local Government

I Wayan Suambara¹⁾ dan I Made Arya Utama²⁾

¹⁾Faculty of Law, Universitas Warmadewa, Denpasar, Bali

²⁾Faculty of Law, Universitas Udayana, Denpasar, Bali

ABSTRACT : Law Number 23 of 2014 does not explicitly regulate grants of money to customary community units. Hence the aim of this research is the legality of money grants to traditional villages according to Law Number 23 of 2014 concerning regional government. Using a normative approach method by conducting a review of Law number 23 of 2014, Minister of Home Affairs Regulation Number 14 of 2016, and Bali Province Regional Regulation Number 4 of 2019 concerning the strengthening of Traditional Villages in Bali. The results of the study found grants of money by the Regional Government to Traditional Villages in Bali that have legal certainty are carried out by changing Article 298 paragraph (5) of Law Number 23 of 2014 to "...further regulated by ministerial regulations", and the explanation is formulated as stipulated in Article 6 paragraph (5) letter c of Ministerial Regulation Domestic Affairs Number 14 of 2016. For the provision of equitable monetary grants, Minister of Home Affairs Regulation Number 14 of 2016 added provisions regarding the criteria for granting monetary grants to Traditional Villages such as based on area, number of residents, obligations borne

KEYWORDS: *grants, traditional village, government, legal certainty*

I. INTRODUCTION

According to Minister of Finance Regulation Number: 168/PMK.07/2008, Regional Grants are defined as voluntary gifts that transfer rights to something. According to the Circular Letter of the Minister of Home Affairs Number: 900/2677/SJ dated 8 November 2007, letter h concerning Grants and Regional Assistance, it is determined that grants are a form of assistance instrument for local governments, whether in the form of money, goods, and services that can be provided to government, other regional governments, regional companies, communities, and community organizations. This arrangement is also found in Article 5 of the Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance. They are sourced from the Regional Revenue and Expenditure Budget. These provisions stipulate that grants can be given to the government, other regional governments, regional companies, communities, and organizations. In Article 1 number 14 of the Ministerial Regulation Number 32 of 2011 the meaning of grants is determined, as follows:

Grants are the provision of money/goods or services from the regional government to the government or other regional governments, regional companies, communities, and social organizations, which specifically have been designated, are non-obligatory and non-binding, and are not continuously aimed at supporting the implementation local government affairs.

In line with these various provisions, Article 298 paragraph (5) of Law Number 23 of 2014 concerning Regional Government which replaced Law Number 32 of 2004 concerning Regional Government, stipulates that the Grant Expenditure, as referred to in paragraph (4) can be given to Government Central Government, other Regional Governments, State-Owned Enterprises or Entities, community institutions and organizations with Indonesian legal status. These provisions indicate that grants can also be given to vertical agencies (such as TMMD activities, regional security, and election administration by the KPUD), quasi-governmental organizations (such as PMI, KONI, Scouts, Korpri and PKK), non-governmental organizations (such as mass organizations and NGOs) and society. The description above shows the Regulation of the Minister of Finance Number: 168/PMK. 07/2008, Circular of the Minister of Home Affairs Number: 900/2677/SJ, Minister of Home Affairs Regulation Number 32 of 2011 and Article 298 paragraph (5) of Law Number 23 of 2014 do not explicitly stipulate the existence of customary law community units, and expressly as a group/category that can be given a grant. The formulation of the grant does not provide any certainty for customary law community units (including customary villages) to receive grants.

In its development, the Minister of Home Affairs Regulation Number 32 of 2011 underwent the first amendment with the issuance of the Minister of Home Affairs Regulation Number 39 of 2012 and then underwent a second amendment with the Minister of Home Affairs Regulation Number 14 of 2016. In the Minister of Home Affairs Regulation Number 14 of 2016 concerning Second Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for Giving Grants and Social Assistance Sourced from the Regional Revenue and Expenditure Budget, contains a substance which explicitly states that customary law community units, in this case including Traditional Villages, can be given grants. This meaning is contained in Article 6 paragraph (5) letter c which stipulates that the Agency, the intended institution is:

..... which are non-profit, voluntary and social in the form of community groups/community units of customary law as long as they are still alive and in accordance with community development, and their existence is recognized by the central government and/or regional government through approval or determination from the head of a vertical agency or The Head of the relevant Regional Work Unit in accordance with his authority.

The meaning of the provisions of Article 6 paragraph (5) letter c of the Regulation of the Minister of Home Affairs Number 14 of 2016 can be qualified in line with and as an embodiment of the meaning contained in the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Based on article 7 paragraph (1) of Law Number 12 of 2011, ideally, Law Number 23 of 2014 manifests the meaning contained in the 1945 Constitution of the Republic of Indonesia in particular Article 18B and then normalized into Article 298 paragraph (5), so that the legal customary community unit, in this case including the Traditional Village in Bali can definitely be the recipient of a grant from the local government. Law Number 23 of 2014 concerning Regional Government does not regulate (there is a void in norms or blank of the norm) related to grants to customary law community units. The regulation is explicitly found in the Minister of Home Affairs Regulation Number 14 of 2016. However, if we examine the substance of the Minister of Home Affairs Regulation Number 32 of 2011, the regulation of the Minister of Home Affairs Number 39 of 2012 and Minister of Home Affairs Regulation Number 14 of 2016, a further void in norms occurs in the criteria for granting grants to customary law community units. Referring to Article 4 of the Minister of Home Affairs Regulation Number 14 of 2016 which changes the provisions of Article 4 of the Minister of Home Affairs Regulation Number 32 of 2011, it only regulates the provisions for awarding grants by regional governments.

These requirements are still general, so they experience difficulties in their application. Therefore, there is no more concrete explanation regarding the criteria for the principles of fairness, decency, rationality, benefits for the community, and the intended recipient requirements. This shows that there is a void in norms in Law Number 23 of 2014 concerning Regional Government and the Minister of Home Affairs Regulation concerning Guidelines for Granting Grants and Social Assistance Sourced from the Budget Revenue and regional Expenditures. On that basis, it is interesting and actual to carry out further discussions on "The legality of granting money by the Regional Government to Traditional Villages in Bali.

II. RESEARCH METHODS

This research was conducted using legal materials with a doctrinal (normative) legal approach. Primary legal materials include written documents in the form of Law Number 23 of 2014 concerning Regional Government, Regulation of the Minister of Home Affairs Number 14 of 2016 as a product of legality law regarding grants to customary law community units, in this case, Traditional Villages in Bali. Bali Province Regional Regulation Number 4 of 2019 concerning Strengthening Traditional Villages in Bali.

Data analysis used normative analysis by reviewing law number 23 of 2014, minister of home affairs regulation number 14 of 2016, and Bali provincial regional regulation number 4 of 2019 concerning strengthening traditional villages in Bali. To analyse the legality of grants of money to traditional villages according to Law number 23 of 2014 concerning Regional Government

III. RESULTS AND DISCUSSION

LEGALITY OF MONEY GRANTS TO CUSTOM VILLAGES

The word legal means according to the law. An action is legal if it is carried out in accordance with applicable laws or regulations. Legality is compliance with applicable law and demands that authority be exercised in accordance with applicable law.¹ Thus an action is said to be invalid or illegal if it is not in accordance with the law. This understanding shows that the issue of legality is comparing the action with the applicable law. In that context, the law seems to have been placed in a rigid or rigid position, while on the other hand, the purpose of the law is not intended to restrain people's lives. Law is seen as a social phenomenon, namely something that always exists in social life and exists because it is made by the authorities.² Because it was made by the authorities, a statutory regulation as a legal product cannot be separated from political, economic, social, and cultural considerations.³

¹ Franz Magnis Suseno, 2016, *Etika Politik Prinsip Moral Dasar Kenegaraan Modern*, Gramedia, Jakarta, h. 70.

² Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum edisi revisi*, Kencana, Jakarta, h. 87.

³ *Ibid.*, h. 87.

Ruler and power itself are born from a political process which is then embodied in government institutions, in this case, the legislature and executive.

Political, economic, social, cultural, and other considerations are more closely related to the making of laws by the legislature, in this case, the House of Representatives whose members come from various political parties as well as the government, in this case, the President who also comes from political parties winner of the presidential election, while still adhering to the essence or nature of the law as its basis. Law is one of the instruments to achieve state goals, therefore the law must also function and be based on four legal ideals (*rechtsidee*), namely: 1) protecting all elements of the nation (nation) for profit (integration), 2) realizing social justice in the economic and social sector. 4) Realizing people's sovereignty (democracy) and the rule of law (nomocracy), and 5) Creating tolerance based on humanity and civility in religious life.⁴

The meaning of the provisions of Article 18 paragraph (1) and paragraph (2) as described in the Elucidation of the 1945 Constitution of the Republic of Indonesia that the State of Indonesia is an "eenheidstaat", means that Indonesia will not have areas within its environment that are "staat" either. Indonesian regions will be divided into provincial parts, and provincial areas will also be divided into smaller regions whose existence is regulated by law, and these regions are autonomous. The affirmation of this autonomous nature is, of course, a space for regional governments to take care of matters that fall under the authority of the regions, including those relating to the existence of customary law community units in the areas, and this authority is regulated in law. The Unitary State is a state whose power is dispersed to the areas by granting autonomy or authority to the regions to manage and manage their own households through decentralization or deconcentration. This means that the areas receive rights that come from or are granted by the central government based on law.⁵

The most basic function of law is to prevent conflicts of interest from turning into open conflicts, meaning solely on the basis of the strengths and weaknesses of the parties involved. In that connection, the law provides a way of resolving conflicts of interest based on a policy or norm in the administration or management of government and the state.

⁴ Moh Mahfud MD, 2017, *Membangun Politik Hukum, Menegakan Konstitusi*, Rajawali Pers, Jakarta, h. 18.

⁵ *Ibid.*, h. 215.

With the aforementioned policies or norms, the settlement of conflicts of interest is not based on strength but based on norms or rules that are oriented to the interests of the parties. Such an orientation will be able to reflect justice as one of the goals of the law. Peter Mahmud Marzuki argues,⁶It is all executive actions must be based on statutes. In administrative law, it is known that there is a discretionary power, namely an action that is carried out without a written basis but because the aim is for a higher value it must be carried out, even though the action is detrimental to the interests of some people in order to save many people.

From this opinion, discretion is an instrument for the government to issue regulations on matters that are not regulated by law but need to be regulated because of the need for regulation for the benefit of the wider community. This administration is not only within the scope of government but, as a whole, regulates governance and implementation of government, both the internal scope of government and also relations with the people.⁷The use of this discretion certainly cannot be carried out arbitrarily, because officials who can use discretion must be based on the authority they have in their positions. A similar view was also expressed by Aristotle, that the purpose of the law is to achieve a good life and to achieve that good goal requires law. However, a softening called equity is needed when the law is too rigid. Aristotle saw the reality that humans are social beings by nature, so no matter how small a unit of social life is, humans still live in groups. In such a form of life, the problem is not the problem of order in social life but whether the allocation of interests in social life is fair or not. The problem of justice is philosophical.⁸The existence of law must not be bound and must not be limited to formulations that are arid from the values of justice that live and develop amid society.⁹

Hegel sees justice as having a relationship with interdependence and solidarity. That is, justice and solidarity cannot be separated from one another, the presence of one is always there

⁶ Peter Mahmud Marzuki, *op.cit.*, h. 87-88.

⁷ Isdiyanto, Ilham Yuli, 2017, *Rekonstruksi Hukum dan ketatanegaraan Indonesia*, UII Press, Yogyakarta, h. 63.

⁸ Peter Mahmud Marzuki *op.cit.*, h. 96.

⁹ Manan, H. Abdul, 2005, *Aspek-Aspek Pengubah Hukum*, Kencana, Jakarta, h. 6.

already presupposes the presence of another. Justice is the realization of individual freedom, while solidarity is the realization of freedom at the social level.¹⁰

Based on such a frame of mind, in the event that the Regional Government Law does not regulate the granting of grants to customary law community units, then the essence of Law Number 23 of 2014 concerning Regional Government does not yet reflect the ideals of national law as stated above. Even the arrangements in the Regional Government Law have the opportunity to create social jealousy between customary law community units and other institutions and do not rule out the potential for social conflict. The weak and chaotic function and realization of legal objectives are a source of disaster for the social life of the rule of law.¹¹

THE ARRANGEMENTS FOR GRANTS TO CUSTOMARY COMMUNITY UNITS

In this case, the arrangement of giving grants to customary law community units, including Traditional Villages in Bali in the Regulation of the Minister of Home Affairs Number 14 of 2016, is seen as a way out to avoid the occurrence of a regulatory vacuum in the Regional Government Law, even though philosophically in part the considerations are still acceptable for the birth of the relevant Minister of Home Affairs Regulation.

The issuance of the Minister of Home Affairs Regulation is based on the discretionary authority possessed by the Minister of Home Affairs. In law number 30 of 2014 concerning government administration (hereinafter written government administration law), in Article 1 number 9 it is determined that discretion is a decision and/or action determined and/or carried out by government officials to address concrete problems faced in the administration of government in terms of laws and regulations that provide choices, does not regulate, are incomplete or unclear, and/or there is government stagnation. Furthermore, Article 22 paragraph (2) stipulates that any use of discretion by government officials is basically aimed at 1) expediting government administration, 2) filling legal voids, 3) providing legal certainty, and 4) Overcoming government stagnation in certain circumstances for the benefit and public interest.

¹⁰ Firman Freaddy Busroh, *op.cit.*, h. 59.

¹¹ Ida Bagus Wyasa Putra, 2016, *Teori Hukum dengan Orientasi Kebijakan (Policy-Oriented Theory of Law) Pemecahan Problem Kompleks dalam Proses Legislasi Indonesia*, Udayana University Press, Denpasar, h. 77.

Thus, the Regulation of the Minister of Home Affairs Number 14 of 2016 as a legal product has provided legality for the granting of grants to customary law community units that are beneficial for the welfare of customary law community units, in this case, Traditional Villages in Bali.

Regarding the purpose of issuing the Minister of Home Affairs Regulation Number 14 of 2016 in line with the legal objectives of achieving state goals. This is in accordance with the politics of Indonesian national law that the law must pave the way and even guarantee the creation of social justice for all Indonesian people, in the sense that the law must regulate the social and economic differences of citizens in such a way as to provide the greatest benefit to those who are most disadvantaged. Those who least have the opportunity to achieve prospects for welfare, income and authority must be given special protection, not allowed to compete freely with the strong because it is definitely unfair.¹² Thus, it can be interpreted that Indonesia's national legal politics is basically oriented towards the creation of social justice for the welfare of the Indonesian people. As a consequence of the constitutional state as mandated by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the way to realize social justice and welfare must have legality.

Traditional villages in Bali as a customary law community unit, have territory, position, original structure, traditional rights, own assets, traditions, social manners of the social life of the community from generation to generation within the ties of sacred places (*kahyangan tiga* or *kahyanganvillage*), duties and authorities as well as rights to regulate and manage their own household. The definition of Traditional Village is contained in Article 1, number 8 of the Regional Regulation on Traditional Villages in Bali. The stipulation of the Regional Regulation on Traditional Villages in Bali is based on the consideration that the Traditional Village as a unit of the customary law community in Bali needs to be fostered, developed and empowered because it is based on facts from the past until now. based on the philosophy of Tri Hita Karana. The duties and authorities of the Traditional Village are not even limited to matters related to Hindu customs and religion but are also tasked with realizing the success of the Traditional Village, which includes peace, prosperity, happiness and peace of its citizens, as well as carrying out other tasks assigned by the government and the government. Area, as regulated in Article 22 letter o, Regional Regulations on Traditional Villages in Bali.

¹² Moh. Mahfud MD, *op.cit.*, h. 19.

As a consequence of the existence of the Traditional Village as a customary law community entity in Bali, it is

appropriate that the regional government in Bali is obliged to protect and care for its existence through regional governance instruments, in this case relating to funding support through the APBD, especially in the form of cash grants. In Law Number 23 of 2014 concerning Regional Government, there is no regulation regarding the granting of grants to customary law community units through the Regional Budget, so there is a void in norms in the constitution. Facts on the ground show that the regional government has provided grants to traditional villages in Bali using a legal basis in the form of Minister of Home Affairs Regulation Number 14 of 2016, which clearly regulates the granting of grants to customary law community units, in this case including traditional villages in Bali.

The Regional Government Law should reflect the implementation of the meaning contained in the articles in the 1945 Constitution of the Republic of Indonesia. This is in line with Law Number 12 of 2011 Article 10 paragraph (1) letter a, which stipulates that the content material must be regulated by law. The law contains further provisions regarding the provisions of the 1945 Constitution of the Republic of Indonesia. The construction of such arrangements is in line with the *Stufenbau* theory proposed by Hans Kelsen. Hans Kelsen in Maria Farida Indrati argues that legal norms are tiered and layered in a hierarchy (organization), in the sense that a lower norm applies, originates, and is based on a higher norm on. Arrive at a norm that cannot be traced further and is hypothetical and fictitious, namely the basic norm (*grundnorm*).¹³

The 1945 Constitution of the Republic of Indonesia is the state constitution of Indonesia. As the highest source of law, the Constitution serves as a guide in the administration of state government and the life of the nation, as well as guidelines in drafting statutory regulations.¹⁴ The content material of the law is that it contains arrangements to carry out the mandate of the 1945 Constitution.¹⁵ In principle, the laws and regulations that apply in Indonesia are indeed constructed in stages with everything

¹³ Maria Farida Indrati, 2017, *Perundang-Undangan, Jenis, Fungsi Dan Materi Muatan*, PT Kanisius, Jakarta, h. 41.

¹⁴ Ahmad Redi, 2018, *Hukum Pembentukan Peraturan Perundang-Undangan*, Sinar Grafika, Jakarta, h. 72.

¹⁵ *Ibid.*, h. 94.

legal consequences.¹⁶ The 1945 Constitution of the Republic of Indonesia from the perspective of Norm Alignment Theory is known to be included in the group of norms of state basic rules or basic state rules. As a norm in this group, it functions as a source and basis for the preparation of legal norms in the group of formal legal norms and implementing regulations/autonomous rules.¹⁷

In the formation of laws and regulations in Indonesia, the grouping pattern based on Hans Nawiasky's opinion can be seen in Article 2 and Article 3 of Law Number 12 of 2011 concerning the Formation of Legislation. According to Article 2, "Pancasila is the source of all sources of law". Article 3 stipulates "The 1945 Constitution of the Republic of Indonesia is the basic law in statutory regulations", which shows that Pancasila is a *grundnorm* or basic norm or fundamental state norm (*Staatsfundamentalnorm*).

Staatsfundamentalnorm is a norm which is the basis for forming a constitution or constitution (*Staatsverfassung*) of a country.¹⁸ The provisions of Article 3 imply that the 1945 Constitution of the Republic of Indonesia is the highest source of law in the hierarchy of laws and regulations in Indonesia. With regard to the hierarchy of laws and regulations in Indonesia, Article 7 paragraph (1) of Law Number 12 of 2011 contains the types and hierarchy of laws and regulations consisting of the 1945 Constitution of the Republic of Indonesia, Stipulations of the People's Consultative Assembly, Government Laws/Regulations in Lieu of Laws, Regional Regulations, Presidential Regulations, Provincial Regional Regulations; and Regency/City Regional Regulations.

As for the purpose of the hierarchy of laws and regulations in Law Number 12 of 2011, explained in the Explanation of Article 7 paragraph (2), the extension of each type of lower legislation may not conflict with higher laws and regulations.¹⁹

Starting from the views and theories above, each law is enacted, it is obligatory to strengthen the meaning of the Preamble and the articles of the 1945 Constitution of the Republic of Indonesia. Therefore,

¹⁶ KingFaisalSulaiman, 2017, *Teori Peraturan Perundang-Undangan dan Aspek Pengujiannya*, Thafa Media, Yogyakarta, h.11.

¹⁷ Ahmad Redi, *op.cit.*, h. 100.

¹⁸ *Ibid.*, h. 41.

¹⁹ Taib, Mukhlis, 2017, *Dinamika Perundang-Undangan di Indonesia*, Refika Aditama, Bandung, h. 83.

The Regional Government Law must make the 1945 Constitution of the Republic of Indonesia a source of norms for regulated matters.

The Regional Government Law is a legal instrument in the administration of regional government so that regional governments can carry out their functions in a manner that is legal, just and beneficial to all communities in the regions, including for customary law community units in the regions. Article 18B paragraph (2) determined by the state to recognize and respect customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. The provision of Article 18 paragraph (2) implies that every law that is formed that relates to the existence of customary law community units in the regions must contain rules that recognize and respect the existence of customary law community units, including those that protect and strengthen their existence. one form of protecting and strengthening the existence of customary law community units is by establishing them as legal subjects in relation to financial sources or funding support regulated in law, but currently not regulated in Regional Government Laws.

Thus it can be said that the constitutional guarantee in the 1945 Constitution of the Republic of Indonesia for customary law community units is not effective. This is proven because the Regional Government Law which is a legal instrument for the administration of regional government where there are customary law community units, does not provide certainty about the status of customary law community units as legal subjects that can receive grants from the regional government. The modern constitution that was formed at the time of independence was only temporary, and did not support the glorification of the rights of indigenous peoples and the spirit of local wisdom.²⁰ The customary law community unit in Bali is called the Traditional Village. As a form of recognition and respect for the existence of Traditional Villages, the Provincial Government of Bali has promulgated the Regional Regulation of the Province of Bali Number 4 of 2019 concerning Traditional Villages in Bali. The stipulation of the Regional Regulation on Traditional Villages is a reflection and strengthening of the meaning contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia should also be the spirit of the Regional Government Law.

²⁰ Suteki dan Galang Taufani, *op.cit.*, h. 25.

Strengthening Traditional Villages in Bali in the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali includes recognition and respect for the position and role of Traditional Villages that already existed with their diversity before and after the formation of the Unitary State of the Republic of Indonesia. Traditional Villages domiciled in the Province of Bali now have the status of legal subjects in the government system of the Province of Bali. The regional regulation also makes the Traditional Village an institutionalization in the implementation of the Balinese people's life order in accordance with Sad Kerthi's local wisdom.²¹ In fact, as a concrete form of caring for the existence of traditional villages in Bali, the Provincial Government of Bali has established the Office for the Promotion of Indigenous Peoples of the Province of Bali, which is regulated in the Regional Regulation of the Province of Bali Number 7 of 2019 concerning Amendments to the Regional Regulation of the Province of Bali Number 10 of 2016 concerning the Formation and Composition of Instruments Area.

These provisions indicate that not all government affairs can be carried out by regional governments in the context of regional autonomy. Several matters that fall under the authority of the central government as absolute government affairs are regulated in Article 10 paragraph (1) which covers 6 (six) matters, namely: foreign policy, land, security, justice, national monetary and fiscal; religion.

Affairs related to the existence of customary law community units, in this case, the Traditional Village in Bali are regional affairs and authorities based on the principle of regional autonomy so that the provincial and district/city regional governments have responsibility for the existence and existence of the Traditional Village in Bali. The elucidation of Law Number 23 of 2014 concerning Regional Government states that granting the broadest possible autonomy to the regions is directed at accelerating the realization of social welfare through improving services, empowerment, and community participation. In addition, through broad regional autonomy, it is hoped that it will be able to increase competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificities, as well as regional potential and diversity within the system of the Unitary State of the Republic of Indonesia. Regional autonomy is essentially given to the people as a legal community unit that is given the authority to regulate and manage their government affairs granted by

²¹ I Wayan Koster, 19 September 2019, "Jangkep" Sudah Kebijakan Penguatan Desa Adat di Bali, Bali Post, h. 1

The central government to the Regions and its implementation is carried out by the Head of the Region and the DPRD with the assistance of Regional Apparatuses.

The Regional Regulation on Traditional Villages in Bali defines a Traditional Village as a unit of customary law communities in Bali that has territory, position, original composition, traditional rights, own assets, traditions, and social manners for the social life of the community from generation to generation within the bonds of sacred places (*kahyangan tiga* or *kahyangan* village), duties, and authority as well as rights to regulate and manage their own household. In fact, Article 5 of the Regional Regulation on Traditional Villages in Bali stipulates that Traditional Villages have the status of a legal subject in the government system of the Province of Bali. This Customary Village Regulation's establishment can be seen as an extension of the mandate of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) stipulates that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

The traditional village as a customary law community unit based on the philosophy of Tri Hita Karana which is imbued with Hindu religious teachings and Balinese cultural values has shown a very large role in development including the success of various national programs in Bali, so it needs to be nurtured, protected, fostered and strengthened existence. As a consequence of the recognition by the 1945 Constitution of the Republic of Indonesia, Regional Regulations concerning Traditional Villages in Bali, and facts in the life of the Balinese people, it is the responsibility of the local government to maintain the existence of Traditional Villages in Bali. One way to preserve the presence of the Traditional Village is to provide funding support through the Regional Revenue, and Expenditure Budget with a cash grant pattern that can be used to carry out various matters related to efforts to care for and preserve the existence of the Traditional Village which is integrated with Hindu religious life in Bali. . The Regional Revenue and Expenditure Budget is the regional annual financial plan stipulated by Regional regulation and is an instrument in the implementation of regional government functions.

With regard to regional finance, Chapter XI of the Regional Government Law regulates grant spending. Article 298, paragraph (4) stipulates that spending on grants and social assistance is budgeted in the APBD in accordance with the regional financial capacity after prioritizing the fulfilment of spending on mandatory government affairs and optional government affairs unless otherwise specified in the provisions of laws and regulations. The sentence ".....unless specified other provisions in laws and regulations", implies that it is possible to have other laws and regulations that regulate the budgeting of grants and social assistance expenditures without considering the priority of spending on mandatory government affairs and spending on optional government affairs. Even in a broader interpretation, it is also possible that there are other laws and regulations besides the law that regulate in more detail the allocation of grants and social assistance budgets in the APBD. Besides that, it also implies that the law does not determine a certain percentage of the amount of budgeting for grants and social assistance, including the amount of budgeting for mandatory and optional government affairs, apart from the education and health sectors, each of which is regulated in law.

Furthermore, Article 42 paragraph (1) stipulates that Grant Expenditures are used to budget grants in the form of money, goods and/or services to the government or other regional governments and community groups/individuals whose allocation has been specifically determined. The provisions above show that customary law community units (Customary Villages) are not included in the target grant recipients.

Based on the above views and descriptions of the legality of grants to Traditional Villages according to the Regional Government Law, it appears that there is a denial of the meaning of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia in Law Number 23 of 2014 concerning Regional Government, and has not fully reflected the meaning and Indonesian national legal political orientation. Apart from that, the Law on Regional Government also restrains the implementation of the true meaning of regional autonomy, because the regional government encounters normative obstacles in carrying out the affairs under its authority regarding the existence of customary law community units, whose funding also comes from the APBD, especially in the form of grants. Funding for the implementation of government affairs in the regions can be seen in the provisions of Article 282 of Law Number 23 of 2014, which basically stipulates that the implementation of government affairs, which is the authority of the regions, is funded from and at the expense of the Regional Budget.²²In the perspective of a democratic legal state, the APBD belongs to the people, was not

²² Hendra Karianga, 2017, *Carut-Marut Pengelolaan Keuangan Daerah di Era Otonomi Daerah Perspektif Hukum dan Politik*, Kencana, Depok, h. 1.

owned by the local government. The regional government's authority is to manage the APBD properly and channel it into developing the social and economic life of the people.²³

One of the preconditions that must be met in implementing regional autonomy is the existence of a definite source of funds to finance various government affairs, development, and community services according to the

needs and characteristics of the region. 24 One of the main pillars of regional autonomy is the regional authority to manage regional finances independently. 25 Therefore, in the context of giving grants to Traditional Villages in Bali, it is best to leave the arrangements to the local government, after the budget allocation for mandatory expenditures required by law has been fulfilled, including the education budget.

IV. CONCLUSION

The provision of cash grants by the Regional Government to Traditional Villages in Bali which have legal certainty is carried out by amending Article 298 paragraph (5) of Law Number 23 of 2014 to "...further regulated by ministerial regulations", and the explanation is formulated as stipulated in Article 6 paragraph (5) letter c Regulation of the Minister of Home Affairs Number 14 of 2016. For the provision of equitable monetary grants, Regulation of the Minister of Home Affairs Number 14 of 2016 added provisions regarding the criteria for granting monetary grants to Traditional Villages, such as based on area, number of residents, and obligations carried.

REFERENCES

- [1]. Franz Magnis Suseno, 2016, *Etika Politik Prinsip Moral Dasar Kenegaraan Modern*, Gramedia, Jakarta, h. 70.
 - [2]. Isdiyanto, Ilham Yuli, 2017, *Rekonstruksi Hukum dan ketatanegaraan Indonesia*, UII Press, Yogyakarta, h. 63.
 - [3]. Indrati, Maria Farida 2017, *Perundang-Undangan, Jenis, Fungsi Dan Materi Muatan*, PT Kanisius, Jakarta, h. 41.
 - [4]. Karianga Hendra, 2017, *Carut-Marut Pengelolaan Keuangan Daerah di Era Otonomi Daerah Perspektif Hukum dan Politik*, Kencana, Depok, h. 1
-
- ²³*Ibid.*, h. 109.
- ²⁴HAW Widjaya, 2017, *Penyelenggaraan Otonomi Di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2017, h. 10.
- ²⁵W. Riawan Tjandra, 2014, *Hukum Keuangan Negara*, Grasindo, Jakarta, h. 176.
- [5]. Koster, I Wayan; 2019. "Jangkep" Sudah Kebijakan Penguatan Desa Adat di Bali. Bali Post, Tgl. 19 September, Halaman 1, Kolom1
 - [6]. Manan, H. Abdul, 2005, *Aspek-Aspek Pengubah Hukum*, Kencan, Jakarta
 - [7]. Mahfud, MD, 2006, *Membangun Politik Hukum, Menegakan Konstitusi, LP3ES*, Jakart
 - [8]. Mahfud MD, 2017, *Membangun Politik Hukum, Menegakan Konstitusi*, Rajawali Pers, Jakarta, h. 18.
 - [9]. Marzuki, Peter Mahmud, 2008, *Pengantar Ilmu Hukum edisi revisi*, Kencana, Jakarta, h. 87. Peraturan Pemerintah Nomor 58 Tahun 2005 tentang Pengelolaan Keuangan Daerah.
 - [10]. Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintahan Daerah Provinsi dan Pemerintahan Daerah Kabupaten/Kota.
 - [11]. Peraturan Pemerintah Nomor 2 Tahun 2012 tentang Hibah Daerah.
 - [12]. Peraturan Pemerintah Nomor 12 Tahun 2019 tentang Pengelolaan Keuangan Daerah.
 - [13]. Peraturan Menteri Dalam Negeri Nomor 13 Tahun 2006 tentang Pedoman Pengelolaan Keuangan Daerah.
 - [14]. Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 32 Tahun 2011 tentang Pedoman Pemberian Hibah dan Bantuan Sosial Yang Bersumber Dari Anggaran Pendapatan dan Belanja Daerah.
 - [15]. Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 39 Tahun 2012 tentang Perubahan atas Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 32 Tahun 2011 tentang Pedoman Pemberian Hibah dan Bantuan Sosial Yang Bersumber Dari Anggaran Pendapatan dan Belanja Daerah.
 - [16]. Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 14 Tahun 2016 tentang Perubahan Kedua atas Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 32 Tahun 2011 tentang Pedoman Pemberian Hibah dan Bantuan Sosial Yang Bersumber Dari Anggaran Pendapatan dan Belanja Daerah.
 - [17]. Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 tentang Desa Adat Di Bali. (Lembaran Daerah Provinsi Bali Tahun 2019 Nomor 4, Tambahan Lembaran Daerah Provinsi Bali Nomor 4).
 - [18]. Peraturan Gubernur Bali Nomor 34 Tahun 2019 tentang Pengelolaan Keuangan Desa Adat di Bali
Peraturan Bupati Badung Nomor 4 Tahun 2012 tentang Bagi Hasil Dana Pajak dan Retribusi Daerah kepada Desa di Kabupaten Badung Tahun Anggaran 2012.

- [20]. Peraturan Bupati Badung Nomor 47 Tahun 2016 tentang Pedoman Pemberian Hibah.
- [21]. Peraturan Bupati Badung Nomor 9 Tahun 2019 tentang Perubahan atas Peraturan Bupati Badung Nomor 43 Tahun 2018 tentang Pedoman Pemberian Hibah.
- [22]. Redi Ahmad. 2018, *Hukum Pembentukan Peraturan Perundang-Undangan*, Sinar Grafika, Jakarta, h. 72.
- [23]. Sulaiman, King Faisal, 2017, *Teori Peraturan Perundang-Undangan dan Aspek Pengujiannya*, Thafa Media, Yogyakarta, h. 11.
- [24]. Tjandra, W. Riawan 2014, *Hukum Keuangan Negara*, Grasindo, Jakarta, h. 176
- [25]. Taib, Mukhlis, 2017, *Dinamika Perundang-Undangan di Indonesia*, Refika Aditama, Bandung
- [26]. Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara, (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 42, Tambahan Lembaran Negara Republik Indonesia Nomor 4286).
- [27]. Undang-Undang No.39 Tahun 2008 tentang Kementerian Negara, (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 166, Tambahan Lembaran Negara Republik Indonesia Nomor 4916).
- [28]. Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234).
- [29]. Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244 Tambahan Lembaran Negara Republik Indonesia Nomor 5587).
- [30]. Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292, Tambahan Lembaran Negara Republik Indonesia Nomor 5601).
- [31]. Widjaya HAW, 2017, *Penyelenggaraan Otonomi Di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2017, h. 10.
- [32]. Wyasa Putra Ida Bagus, 2016, *Teori Hukum dengan Orientasi Kebijakan (Policy-Oriented Theory of Law) Pemecahan Problem Kompleks dalam Proses Legislasi Indonesia*, Udayana University Press, Denpasar, h. 77.