

Assembly of Desa Pakraman Role as Resolver of Disputes between Desa Pakraman in Bali

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Abstract Bali as one of the world-class tourism destination has a sensitive with issues which may influence tourism development, i.e. terrorism, paradise for narcotic, epidemic of avian flu virus, and even HIV / AIDS. Recently, another issue that worrisome about Bali is a frequent disputes between Balinese villagers or society that threaten the security and peace of tourists who come to Bali. The truth about frequent conflict that happened between Desa Pakraman in Bali, made assembly of Desa Pakraman take a role to solve the problem in order to maintain peace in Bali. The conflict between Desa Pakraman often victimized not guilty person, even sacrificed public facilities. Fundamental issues that raised in this study is what main meaning of assembly of Desa Pakraman and what is the role of assembly of Desa Pakraman in order to resolve the dispute between the villagers that have conflicts in Bali. This research aimed to determine the role of the Assembly Pakraman Bali in resolving disputes between Desa Pakraman in Bali. While the benefits of this research is provide guidance or any ideas to the public and government resolving disputes between desa pakraman in Bali. The conclusion that can be formulated is, Assembly of Desa Pakraman have a very big role in resolving disputes between Desa Pakraman in Bali, because Balinese villagers trusted them for every decision. Official government supported assembly of Desa Pakraman in the form of facilities and fund. Finally submitted recommendations to the government, community leaders, and traditional leaders is if any problems arise in the community it might better settled amicably to reach an agreement by Pancasila as the way of life of Indonesia.

Keywords Assembly of Desa Pakraman, Disputes, Resolver Role

1. Background of the Problem

As one of the world-class tourism destination, Bali is never separated from a variety of negative issues which may damage the image of Bali tourism industries. The impact is particularly significant because tourists visit rate both domestic and foreign tourists could sharply decline. One issue that must be resisted and seated on the actual proportion is the issue of conflict between desa pakraman that always occur in Balinese society. Disputes in the any community is a necessity. In this world, almost no society without dispute either on a small scale in the family, as well as a large scale involving many people, community, nation, or state. Dispute is a phenomenon inherent to the dynamics of human life. Various way to attempts have been made by mankind to prevent and cope all disputes or conflicts. But contrary to that, until today media reported only about conflict for the whole day.

Pancasila as the state, and philosophical nation, really do

not want any conflicts and disputes in the community. Pancasila as an ideology of Indonesia always mandated so people live orderly, harmonious, peaceful, and prosperous. Notes and messages that are given from history very valuable, that any small conflict has proved devastating to the community. Philosophically, Pancasila and the 1945 Constitution should always be used as a reference in resolving disputes in the event in the community.

Speaking about the dispute, community in Bali is not an exception for conflict. Sometimes the intensity and quality of the dispute between Desa Pakraman were very difficult to solve and require assembly of desa pakraman role. For a comparison of how difficult to resolve those disputes was submitted by Joni Sukendri and Naldi Gantika. They wrote about the Centennial of the Boundary Unresolved Conflicts in Nagari Sumpor and Nagari Bungo. That title revealed conflict between community is not easy to resolve. Another illustration gives an overview of how difficult it is to resolve are also delivered by Griadi with title Indigenous Comprehensive Settlement. According to Griadi, sometimes conflict between society is make by society as they willing to. Although peace has been carried out in the presence of official and informal, but not stand too long. In a short time the dispute arises again starting from breach the agreement.

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In the context of this study, efforts to involve Assembly of Desa Pakraman whose existence gained recognition in the community tested as one of the alternative solutions to problems.

About the existence Pakraman in Bali sourced from:

- (1). nature itself (the original autonomy), and
- (2). the legitimacy of state power.

Based on Desa Pakraman autonomy, since the inception or formation desa pakraman already have authority to manage his own household, include making rules that apply to residents in that desa pakraman' area. Second legitimate source of desa pakraman is from the point of state power in the constitutional structure of our country, where desa pakraman juridical recognition by the constitution, namely through Article 18 B (2) of the 1945 Constitution which states:

"The State recognizes and respects units of traditional society with all the traditional rights as long as they still alive and in accordance with the development of society and the principles of the Republic of Indonesia, which is regulated by law".

As customary of law community, then under Article 18B (2) of the 1945 Constitution where desa pakraman along with their traditional rights are recognized and respected by the state, including making rule, to govern themselves, and resolve legal issues that occur territory, either in the form of a dispute or customs violations. All that is part of the implementation of desa pakraman' autonomy.

Windia explained desa pakraman autonomy as follows:

1. Desa Pakraman has power or authority to establish legal rules that apply to them. With this authority, desa pakraman establish its own legal system that covers all aspects of life in the scope of desa pakraman. The rules of this law, commonly called Awig awig Pakraman or pararem, defined by consensus through villagers meetings called Paruman. This power can be identified with the power of law (legislative) within the state.
2. The power or authority to organize the life of the organization. Apart from the diverse variations in the structure of the organization and administration system Desa Pakraman are known in Bali, in general it can be said that the main activity Desa Pakraman is a social religious activity. Embodiment of desa pakraman autonomy in the social relations and the relationship between fellow citizens both in bonding groups and individuals. In the field of religious life, autonomy will be realized in the form of the organization of religious activities by the community as a whole. All this activity was organized in coordination committee or leadership Pakraman called *prajuru*. Power held by Desa Pakraman organizational life is synonymous with the power of government (executive) within nation.

3. The power or authority to resolve the legal issues. Legal issues faced Desa Pakraman may be a violation of law (awig awig, dresta, or other legal rules) and can be disputed. This power can be identified with the judicial power (judicial) in nation.

The term of Desa Pakraman become the official term in Bali after the promulgation of the Bali Provincial Regulation No. 3 of 2001 on Pakraman, as amended by Regulation Bali Provincial No. 3 of 2003 on the Amendment of the Bali Provincial Regulation No. 3 of 2001 on Pakraman. In paragraph 4 of Article 1 of the Bali Provincial Regulation No. 3 of 2001 stated that, Desa Pakraman is the unity of indigenous people in the Province of Bali which has a unity traditions and manners socially Hindu community living for generations in three or celestial bond villages has a certain region and their own property and the right to manage his own household. From the description on the face, there are issues that need to be sharpened and formulated. The problem is as below.

2. Problem Formulation

Based on the rationale and formulation of the problem which has been described previously in background research, it can be stated as follow:

- a) In order to understand the nature of existence assembly of desa pakraman in resolving disputes between desa pakraman in Bali.
- b) To determine the effectiveness of the Assembly's decision in resolving disputes between desa pakraman in Bali.
- c) To determine the role and contribution of local government to the Assembly of Desa Pakraman in resolving disputes between Desa Pakraman in Bali. Besides the above objectives, specifically intended for the development of the science of traditional criminal law, this paper also aims;
 - 1) Develop insights into the study of criminal law through review of customary law in general, and criminal customary in Bali in particular;
 - 2) Develop understanding of criminal law customary pattern that not only is the understanding of ideas, thought patterns and norms substantif for dispute resolution contained in the Code of Criminal Law dogmatically; and
 - 3) Development of criminal law studies insights that lead to academic theoretical proficiency or scientific critical thinking skills. From the research, it is expected the presence of 2 (two) benefits gained, both theoretical and practical benefits.

This research is expected to provide a theoretical benefit to the development of jurisprudence in relation to the search for the primary cause of the event of a dispute in the community between desa pakraman. The benefits of this research include:

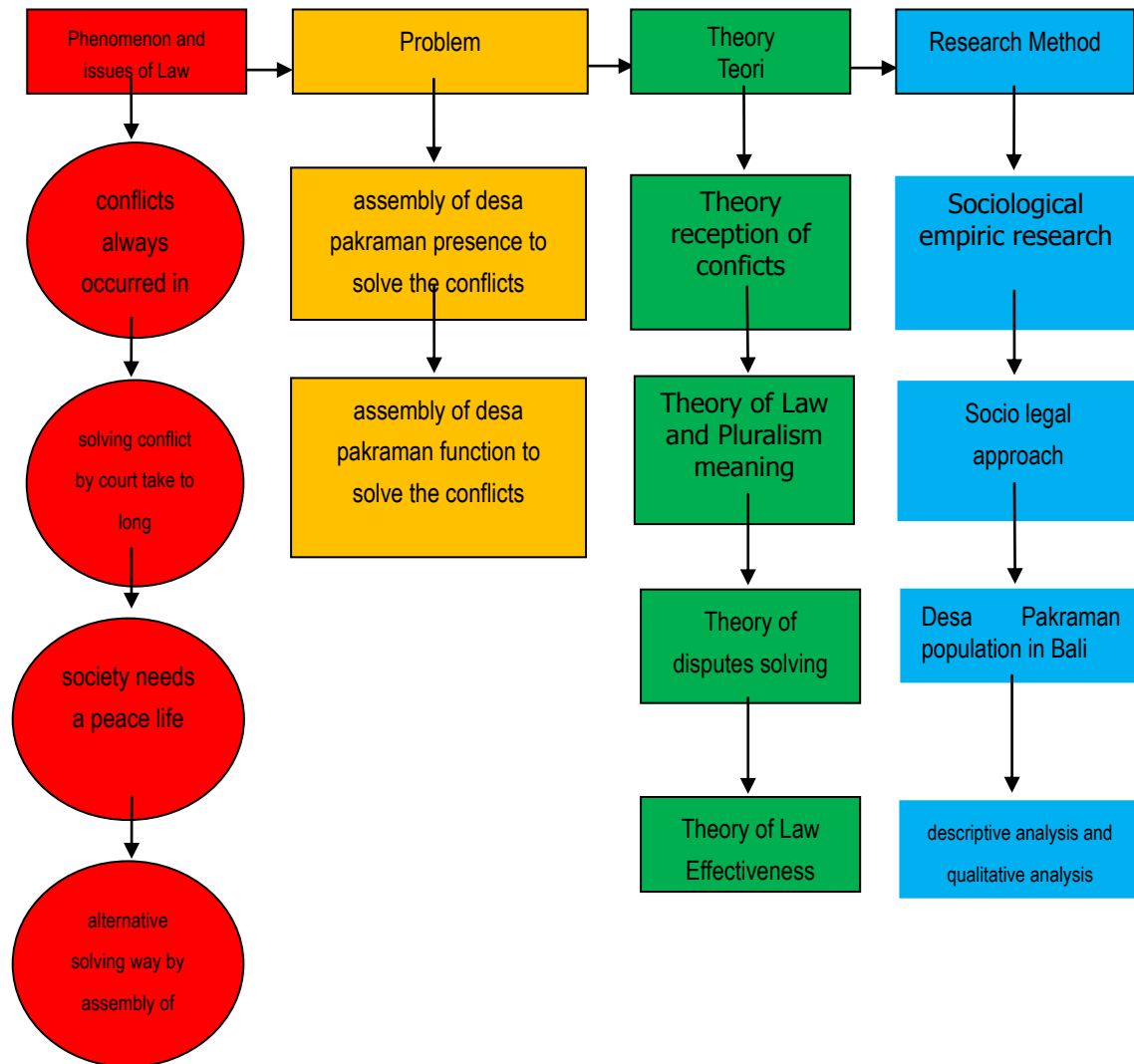


Figure 1. Research scheme

- In order to be used as teaching materials or textbooks on campus so that the academics, especially the more traditional law professors have references about customary law. Thus the literature on customary law more and more, and far-reaching.
- Provide motivation to subsequent researchers to be more diligent research on customary law relating to dispute custom shades.
- For leaders and traditional leaders, the results of this dissertation research is expected to benefit used as a reference or guidance in resolving disputes that occur in the internal and external in its territory.
- Writing this journal will also be useful for the provincial administration and district / city governments in Bali in order to make a statement - related to policy formulation on desa pakraman.

This journal writing is expected later to provide input or benefits to stakeholders in order to solve the dispute or conflicts between Desa Pakraman. To be useful in Bali

Provincial Government to solve thoroughly and minimize the appearance of a new dispute or conflict between Desa Pakraman in Bali. Empowerment of the Assembly of Desa Pakraman always to be optimized in the resolution of a dispute.

3. Methodology

3.1. Types of Research and Approach

Type of research used in this research is empirical legal research. Type of empirical legal research is also known as sociological law research. According to Soerjono, law research differentiated according to the objective into 2 (two), i.e. normative legal research and empirical legal research.

In approaching the problem under study used juridical sociological approach, which approach the problem with field work to obtain accurate data, especially data on the role of Assembly of Desa Pakraman in order to resolve disputes

between Desa Pakraman. Researchers involved directly participate in resolving some good disputes involving between desa pakraman or internal occurring in the community Pakraman.

3.2. Types and Sources of Data

The type of data used in this writing there are three, i.e.:

1. Primary data, is data that researchers get himself on the ground in the form of various phenomena of conflict and problem solving techniques. Researchers involved participation model, because the researchers themselves often become directly involved in resolving conflicts in society.
2. The secondary data, which is the secondary data in this context is the data that has been found by previous research institute, but is relevant to this study, and used as supporting data so that the validity of research results become more accurate.
3. Data Tertiary. This type of data is data that is generally obtained from the dictionary, especially legal dictionaries, encyclopedias, and journals. Tertiary data is becoming very in order to explain the less obvious to the seconder data.

3.3. Data Collection Technique

The collection of data is recording events, things, information, or characteristics of some or all elements of the population that would support or support research.

This writing uses multiple data collection techniques such as:

1. Technical documentation study / library, which is a series of efforts to obtain data by reading, studying, classify, identify and do an understanding of legal materials in the form of legislation and literature books that are related to the issues discussed in this research. Activities carried out in practice is:
 - a) Collecting information on materials research literature about the law, about the origin - desa pakraman, the role and position within the village development pakraman, and also the presence of Desa Pakraman in dispute resolution, especially with regard to the settlement of inter-desa pakraman. Further examination was made of materials manually associated with a book - a book that will be used as references in support of doing further research. To support this reseach also conducted a search through the internet.
 - b) Once the library materials are found, made an effort to understand it, by reading and making a small summary about the things that are important to researchers.
2. Technical interview planned, i.e. an interview accompanied by a list of questions prepared in advance, and do not rule out additional questions were raised in accordance with the circumstances at the time of the interview. The interview is the means used to obtain

oral statement in order to achieve certain goals. In practice, prior to the field, based on our understanding of library materials prepared list of questions to be used as guidelines in conducting the interview. Interview material is not only about things that are in fact met and performed by informants, but also about the legal materials which may be known by the informant, especially legal materials in the form of statutes. For interviews will be conducted openly. As informants interviewed is Bendesa or Major General Assembly of Desa Pakraman Bali Province, i.e. Jero Gede Putu Sewena Upadesa. Elements of academics is Prof. Dr. Wayan P Windia as Professor of Indigenious at Udayana University. Then the chairman of the Council of Associate Desa Pakraman existing at the level of local governments in bali sampled this dissertation research.

3. Observation Techniques, data were collected through direct observation in the field. Especially concerning the disputes in some Desa Pakraman in Bali. Then pay attention to the efforts made by the Assembly Completion Desa Pakraman. To its location on some city of 8 districts in the province of Bali. So that the data obtained accurately.

3.4. Data Analysis and Presentation Techniques

Data analysis begins with identifying techniques, organize, and outlines the data into patterns, categories, and a basic description of the unit so that it can be found, as the issue of research. The flow of data processing as follows: the data collected then arranged systematically, reduced, presented systematically, and conclusions drawn as the answer to the problem. In this context, analyzing the means to interpret and comment on the data that has been identified. Interpretation and commentary that is associated with qualitative norms or qualifications are very good size, good, and pretty good.

Qualitative analysis technique is different from the quantitative analysis techniques with emphasis on the amount of the size of the figures used as the basis for drawing conclusions. Meanwhile, data presentation techniques using systematic descriptive technique, meaning that the data has been processed or analyzed, presented in a description or explanation for what it is, without the intervention of researchers to influence the results. In presenting this data as it is, of course, arranged systematically based journal writing scientific papers that both academically accountable before the Council of Examiners and the public, can also be morally accountable to God Almighty.

In order to analyze the problems are formulated, then there are several theories that are used to perform the analysis and discussion. The theories are: Reception Theory in complexu, Legal Pluralism Theory, Theory of Law Effectiveness (legal system), Role Theory, Theory of Dispute Resolution and Conflict Theory.

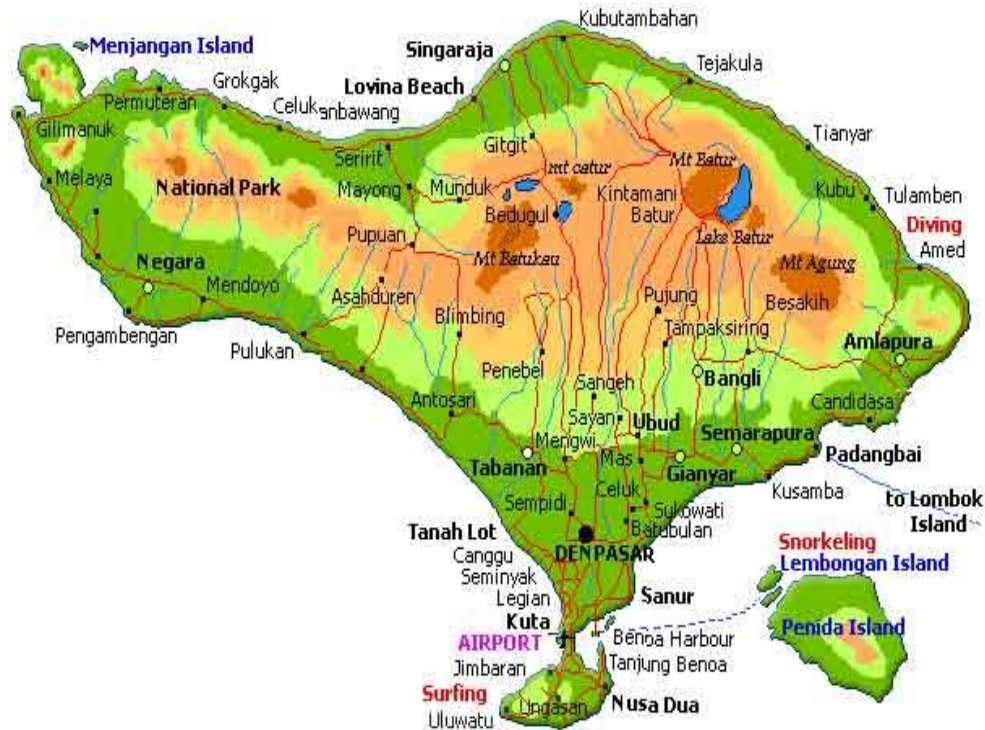


Figure 2. Bali Island Map

4. Analysis

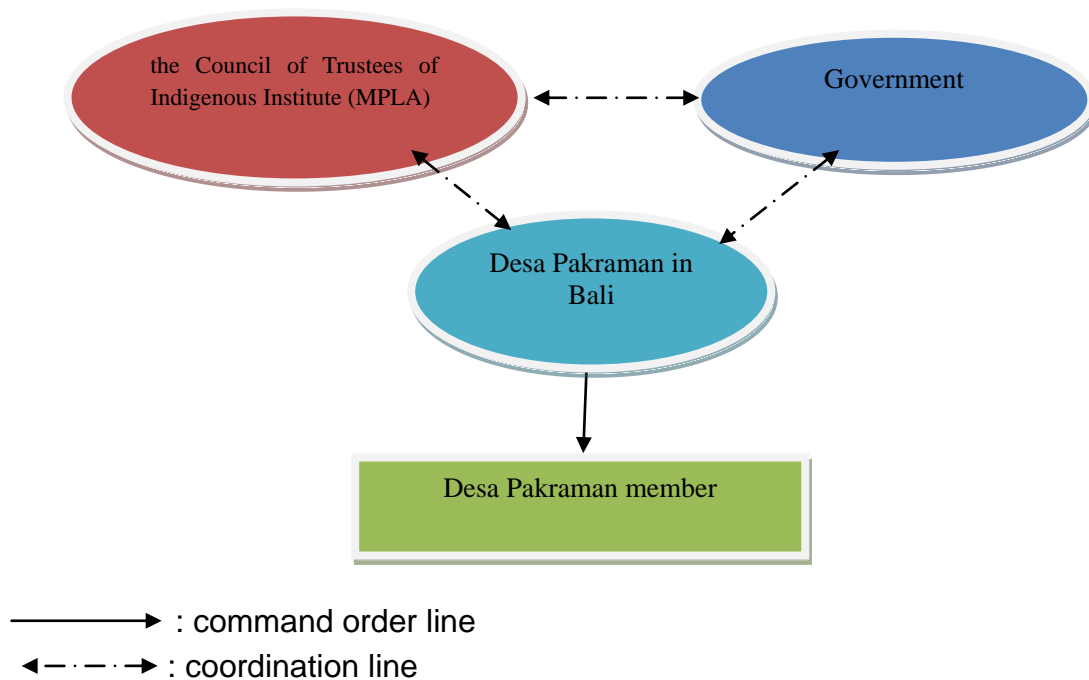
Talking about nature in the context of the role of the Assembly of Desa Pakraman when resolving disputes between Desa Pakraman in Bali, then there are some things that are essential to be understood, i.e.:

- 1) Assembly of Desa Pakraman is a social character of a religious institution which has the function of magical and very strategic position in responding to the challenges of the era in the present and in the future. With a slogan or motto: "Towards a Single Umbrella Blue Sky", Assembly of Desa Pakraman have great mission in order to provide shade, comfort, and well-being for the people who live in Bali. Bali must be managed with a dynamic management based *mawacara* village, not Bali *mawacara*.
- 2) Specialized in resolving disputes between Desa Pakraman in Bali, Assembly of Desa Pakraman dross respected, very adhered to all decisions made by the community agreement in dispute.
- 3) Assembly Pakraman in order to the mission that he has, directly involved in creating the character of the nation's children through early childhood education, is also involved in the framework of prevention and mitigation of harmful effects of drug crime, prevent the spread of HIV / AIDS are deadly, and participate in waste reduction is always a problem in society.

Formation assembly of desa pakraman as an institution resolving indigenous case in Bali, the decision is final. And indigenous case resolved by assembly of Desa Pakraman is "pure indigenous case" ', or "speech". In order to provide

guidance for the community to customary law or Desa Pakraman in Bali. Assembly of Desa Pakraman in Bali Province made a decision that contains the procedures and technical guidance in completing custom case (speech) Number: 002 / Skep / MDP Bali / IX / 2011. The issuance of the decision, as explained Jro Gede Putu Suwena Upadeca expected customary court settlement procedures to guide all parties in order to understand in detail, full, and complete, so it can be known, understood, implemented, and followed by the customary law community or Desa Pakraman in Bali. So that the lives of indigenous peoples Bali become more orderly, organized, and peace.

Of the provisions governing the role of the Assembly of Desa Pakraman in Bali, when pure indigenous settlement (speech) can not be resolved at the village level Desa Pakraman by *prajuru* (board) *Pakraman* concerned, the solution is then assigned or delegated to the completion *rumawos* (authorities). Bendesa Pakraman General Assembly, further stated that, since the Assembly of *Desa Pakraman* Bali stood at Shukra (day; Wednesday) Wage Klurut, dated February 27, 2004, then the *rumawos* is meant Assembly of Desa Pakraman in Bali, as container at the same single "Umbrella The Blue Sky", Desa Pakraman in Bali. Before the formation of the Assembly of Desa Pakraman, agencies directly involved in the care of village life, in the village because of the problems facing increasingly complex. Desa Pakraman one of which is the Council of Trustees of Indigenous Institute (MPLA). Furthermore Wayan P. Windia, illustrates the existence of the village before the formation of the Assembly of Desa Pakraman, looks like the diagram below:



From the illustration above, can be seen simple model of development of traditional village in Bali before 2003. Although simple, indigenous villagers while always goes well, instead of quantity and quality of the dispute is relatively low. The existence of traditional village which is now referred to as Desa Pakraman after Indonesian independence divided into couple period. Each period brings its own influence on the Desa Pakraman, i.e.:

- (1) the initial period of independence (1945) until 1965,
- (2) the period 1965 to 1998, and
- (3) the period from 1998 till now.

5. Conclusions

This research concluded that assembly of desa pakraman essence in resolving disputes between desa pakraman is, an institution that has a very strategic position, set up under public aspirations legitimated by Bali Provincial Government through the Regional Regulation No. 3 of 2002 about desa pakraman. The main task of the Assembly of desa pakraman in order to prevent, resolve disputes between Pakraman is mediation, sought deliberation to reach consensus among the villagers to the dispute, oversee the implementation of the agreements that have been set forth in the form of decisions, and evaluate. Institutions decision desa pakraman effective because:

- a) the decision was indeed derived from the decision together with the community itself, or aspiration from below. Aspiration of this was confirmed by the Assembly under desa pakraman member and gain legitimacy of the government. So the decision is not modified by authorized officials.
- b) Resolution of the assembly of desa pakraman was "derivation", or binding on all parties to the dispute,

although not final. In many cases, the decision of the Assembly Pakraman which is always used as the basis for reference by the court when the judge in the dispute to court.

- c) Provincial Government of Bali participate intervention by delaying the provision of assistance to institutions that are still in dispute desa pakraman both among Desa Pakraman or internal in desa pakraman community itself.
- d) By the Assembly of Desa Pakraman exclusion of law enforcement officials such as police, prosecutors, and the courts if there is an indication of a criminal offense in any case custom shades.
- e) The community itself felt as a result of a dispute custom shades, because it has proven to be highly detrimental to both sides that is priceless as loss of life, property, and sacred objects in vain.
- f) People are eager to live in harmony, calm, peace in accordance with the purpose of establishing Desa Pakraman which is based on the teachings of the Vedas as the scriptures of Hinduism.

In resolving disputes between Pakraman, Assembly Pakraman get support from the government, among others, in the form of:

- 1) The provincial government, districts / cities in Bali increasingly play a role in mediation in any dispute arising in Desa Pakraman. Discussion both at the district / city and province were present at all meetings held to seek a solution of dispute resolution between dsa pakraman in Bali.
- 2) Provide assistance and financial facilities for adequate mobilization to the Assembly of Desa Pakraman at all levels, making it easier and quicker to react to handle disputes between Desa Pakraman.

- 3) Provide assistance team of experts drawn from customary law expert local college. Thus the study of issues in dispute resolve deeper, comprehensive, and can be accepted by all parties to the dispute.
- 4) Through the law firm with the local government in collaboration with a team of legal experts from the local campus, always to disseminate to the public about the good life berdampingan peacefully, and as a result of the dispute which resulted in loss of life and property in vain.

6. Recommendations

There are some suggestions that can be recommended both to the government, Assembly of Desa Pakraman at all levels, as well as to the public. Suggestions and recommendations are intended to:

- 1) The Provincial Government of Bali, and also the Government of the District, and the City in Bali should increasingly support the Assembly of Desa Pakraman facilities at all levels to the level of sensitivity, concentration, and mobility board assemblies.
- 2) To the government, in this case the law enforcement officers should always improve the functioning of the intelligence agencies and prevention through community guidance in Tertiary bottom, so that all kinds of disputes faster symptoms can be detected and denied through persuasion, fair, transparent, and not siding.
- 3) To society manners in Desa Pakraman, it was time to end the conflict, disputes, and another "stab" his fellow. All issues should be settled amicably to reach consensus. Balinese themselves should start aware that conflict will be destroyed and extinct in four decades to come (linguists prediction), not by people from outside Bali, but by the Balinese themselves that are not aware of the challenges and opportunities that exist.

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