

LEGAL PROTECTION OF PAUMAN LAND IN KARANGASEM DISTRICT

I Gusti Putu BUDIADNYANA¹, I Made SUWITRA², I Nyoman SUKANDIA³

^{1,2,3}Master of Law, Warmadewa University, Bali, Indonesia

Corresponding author: I Gusti Putu Budiadnyana

E-mail: lawyerpartner45@gmail.com

Received: 2022-12-25

Revised: 2023-01-15

Accepted: 2022-02-17

Article History:

Volume : 1

Number : 2

Abstract:

This paper examines the legal status and registration of Pauman land in the Karangasem Regency of Bali. The concept of Pauman land is unique to this region and is considered a gift from the King of Karangasem. Recently, there have been disputes over the registration of Pauman land as individual plots through PTSL, leading to questions about its legal status and ownership. The study uses an empirical legal approach, including statute, historical, case, analytical, conceptual, and legal sociology approaches. The research highlights the gap between the predetermined norm and the implementation of Pauman land practices. Pauman cannot be considered a legal entity that can hold land rights under state law, but it can be recognized as a subject of the Temple according to the Decree of the Minister of Home Affairs. The paper recommends issuing a Certificate of Property Rights (SHM) in the name of the Temple to strengthen the position of Pauman land ownership without changing its communal and cultural heritage status. The use of the Temple's subject name is preferable to borrowing the name Klian for registering Pauman land as communal property. The study also predicts potential disputes due to re-recognition by the puri family, which needs to be anticipated by Pauman. Overall, this paper provides insights into the unique legal status and registration of Pauman land in the Karangasem Regency of Bali and offers recommendations to ensure the preservation of its communal and cultural heritage status. The study can be useful for policymakers, practitioners, and scholars interested in land rights, cultural heritage, and legal anthropology.

Keywords: Ayahan, Pauman Land Registration, Pauman Land.

Cite this as: BUDIADNYANA, I. G. P., & SUWITRA, I. M., & SUKANDIA, I. N. (2023). "Legal Protection of Pauman Land in Karangasem District." *Protection: Journal Of Land And Environmental Law*, 1(2), 119 - 132.



Copyright (c) 2022 by I Gusti Putu BUDIADNYANA, I Made SUWITRA, I Nyoman SUKANDIA

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License..

INTRODUCTION

Disputes over the registration of pauman land as individual plots through PTSL have been frequent. The author sees a gap between the predetermined norm and the practice implementation in the awig-awig of Pura Pauman. The issues studied are related to pauman's legal status as a legal subject who can have land rights and the model of registering Pauman's land rights. It is an empirical legal study with a statute, a historical case, an analysis of legal concepts, and a legal sociology approach. Some steps can be taken to ensure that pauman has a strong position of ownership over the land, that is including using the subject of the Temple, which is recognized by Decree of the Minister of Home Affairs Number SK.556/DJA/1986 so



that a Certificate of Property Rights (SHM) can be issued on behalf of the Temple. Pauman cannot be referred to as a legal law that can disenfranchise title to land under state law.

For pauman who wish to register pauman land remains a communal property right, then it would be better to use the subject name of the Temple as opposed to borrowing the name Klian. In addition, the Prediction of dispute will exist because there are indications of re-recognition by the puri family, so this needs to be anticipated by pauman.

Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (herein after written UUPA), which was passed on September 2, 1960, was declared a very important milestone in the history of agrarian/land development in Indonesia, namely as an effort to realize legal unification in the land sector. However, unification can be declared "unique" because it allows customary and religious law to be enacted. The recognition of UUPA in customary law can be seen from the beginning, namely through the Preamble, which states that "*there is a need for a national agrarian law, which is based on customary law on land.*" In addition, Article 5 of the UUPA also states: "*The agrarian law that applies to the earth, water and space is customary law.*"

Customary law is the original law of the Indonesian nation that contains elements of tradition and religion. Customary law that grows and develops in society serves as a regulator and controller of the behavior of citizens. The wisdom of customary law functionaries in carrying out the law is a role model for community members. Therefore, if customary law is implemented wisely and wisely, it will be able to realize the peace and order of the community. Customary law, in the regions, has succeeded in integrating the Indonesian nation into a united nation to fight against the invaders. After Indonesia became independent, customary law became a source of material in forming national law to replace colonial law.

The term indigenous peoples in various kinds of literature is known by various designations, namely, legal communions, such as those used by Soepomo, A. Soehardi, Surojo Wignjodipuro, and Mahadi. These terms are translations of the Dutch term *rechtsgemeenschap* used by Ter Haar and Van Vollenhoven. Then other authors like HR. Otje Salman Soemadiningrat used the term legal society to translate the term *rechtsgemeenschap* used by Van Vollenhoven as his central thought in studying customary law. Meanwhile, indigenous peoples are used as a translation of *adatrechtsgemeenschap* from Ter Haar. Bushar Muhammad also uses the term, indigenous peoples. Other writers, such as Soleman Boasane Taneko, also use indigenous peoples. The indigenous law community in Bali, especially in Karangasem Regency, related to the control of pauman land until now is still kolektif whose control is handed over to the management (prajuru) mainly to the Head (Klian) of Pauman both in pauman who adheres to a permanent and non-permanent membership system.

The land of Pauman is considered a gift from the King of Karangasem to a group of indigenous villagers with the right to enjoy the fruits of pauman land and at the same time attached obligations (ayahan) in a particular area if the King climbed, when there was a gawe (religious ceremony) held by Puri (palace). In addition, granting pauman land is also a substitute for sangu to the group of servants every time they finish performing their obligations (father). So the servant no longer asks for sangu (work costs) every time he finishes doing obligations but asks for a piece of agricultural land that can be permanently controlled (hereditary) so that it can be managed for his welfare, including his family. Proof of temporary pauman land ownership is based on tax returns.

Some of the existing pauman lands have been converted through conversion to obtain certificates as mandated in the UUPA to provide legal certainty and legal protection for holders of rights to pauman land and, at the same time, preserve cultural values as cultural heritage during the Karangasem kingdom. The conversion of pauman land in several traditional villages



in Karangasem Regency, such as in Sibetan Village, Asak Village, and Subagan Village, has caused horizontal and vertical conflicts, meaning that conflicts occur between krama (members) pauman and between krama pauman with Klian (Head) Pauman.

In Banjar Dinas Dalem, Duda Village, Selat District, Karangasem Regency, there is pauman land; where according to a statement from the chairman of the management of Pauman Gedong Sari Temple I Wayan Parta Dinata, which is told from the history of the formation of Pauman Gedong Sari, that the pauman land is controlled and managed for generations by the Pauman group called "Pauman Gedong Sari" where there is a management system that regulates all activities carried out in the Pauman which refers to there are awig-awig and agreements in Paruman, has a temple called "Pura Gedong sari," where the Temple is only empon (managed) by members of "Pauman Gedong Sari." The land of Pauman Gedong Sari is the land given by the King of Karangasem to a group of enrichers totaling 28 (twenty-eight) people during the Karangasem Kingdom era where the number of pauman members from generation to generation did not change because there was only one person who started from one family whose control was hereditary until now. The area of land cultivated by the 28 (twenty-eight) members is 359,880 m2. The tax arising from the SPPT is the responsibility of 28 (twenty-eight) members of Pauman Gedong Sari, which is paid once a year and collected by the management of Pauman Gedong Sari at the annual meeting. According to the statement of the management and several members of Pauman Gedong sari that the author met at the location, there was a dispute between pauman members, Where one of the pauman members claimed that Pauman's land it is the estate of his family who intended to certify it as private property, but most want the Certificate of Property Rights (SHM) to remain in pauman's name as common property or Communal right corresponding to the twigs of Pauman Gedong Sari Temple.

In some places, such as in Gegelang Village, there is pauman land which residents know as Tanah Pauman Bukit Cemeng, which covers an area of approximately 118 (one hundred and eighteen) hectares. According to a direct narrative from one of Puncak Sari Bukit Cemeng Temple stakeholders, namely Jero Mangku Toya Arnawa, he said that pauman land is still managed traditionally where the pauman land is used as a temple profit. Each member of the pauman is attached with an obligation in the form of a father as a temple collector and is responsible for all costs incurred either for ceremony or maintenance at the Temple. During this time, there has never been any dispute between the pauman or members or with the pauman board. Until now, the land does not have a Certificate as proof of ownership and has not been registered with the Regional Revenue Service for Tax Objects. It will get an Outstanding Tax Return (from now on abbreviated as SPPT).

Based on the background description, the problems that will be further investigated are "What is pauman's legal position as a legal subject who can have land rights? Furthermore, What is the model for registering Pauman's land rights?"

METHODS

The research method used in this thesis is empirical legal research, that is, legal research from an external point of view. The object of research is the attitude towards the law and the behavior of society. Positive legal studies examine the work of law in society and the existence of law in social practice. The object of research deviates from the implementation problem, namely the gap between das-solen (governing norms) and das-sein (practice implementation). The type of research used is empirical research, namely field research, direct observation, and discussion with interested parties and resource persons, in addition to conducting research on laws and regulations, related regulations, and literature. The author does it in a sociological juridical



manner, namely combining the prevailing laws and regulations with the realities that exist in society, the applicable laws and regulations. The location of this study was conducted in two villages in Karangasem district. The first study was in Banjar Dinas Dalem, Duda Village, Selat District, Karangasem Regency, and the second was in Banjar Telengan, Gegelang Village, Manggis District, Karangasem Regency. The author chose this first research location in Banjar Dinas Dalem, Duda Village, Selat District, Karangasem Regency. After all, the author was handling a matter related to the certification of pauman land. The data analysis method used in this study is a legal interpretation and legal construction. Namely, analysis is carried out by systematically understanding and combining the collected data to obtain an overview of the problem or situation under study. After the data is analyzed, a deductive way of thinking is used to conclude, that is, based on things of a general nature or generalizations or conclusions of a unique nature.

RESULT AND DISCUSSION

Pauman's Legal Position in Land Rights Ownership.

Concept of Job Creation Law: Position. Karangasem Regency is one of the nine tier II regions located on the eastern tip of the island of Bali, having the following regional boundaries:

1. North : Java Sea
2. South : Samudera Indonesia
3. West : Klungkung, Bangli, Buleleng Regency
4. East : Lombok Strait

Geographically, Karangasem Regency is located at 8000'00"- 8042'37.8" South Latitude and 115035'9.8"-115054'8.9" Longitude Timur. Administratively, Karangasem Regency (in 2009) consists of 8 (eight) districts, namely:

1. Rendang District, with an area of 10,970 hectares
2. Sidemen District, with an area of 3,515 hectares
3. Manggis District, with an area of 6,983 hectares
4. Karangasem District, with an area of 9,423 hectares
5. Abang District, with an area of 13. 405 Hectares
6. Bebandem District, with an area of 8,151 hectares
7. Kubu District, with an area of 83,954 hectares
8. Selat District, with an area of 8,035 hectares.

The administrative center of Karangasem Regency is located in Karangasem District, which is the economic center of non-tourism communities because, in this region, there are various kinds of trade industries, including the Karangasem Public Market located in the Karangasem Traditional Village area, with 78 (seventy-eight) villages/kelurahan (75 definitive villages, 3 kelurahan), 532 Banjar Dinas, 52 Environment. Meanwhile, traditionally, Karangasem Regency consists of 189 traditional villages with 605 traditional banjars. Karangasem Regency has an area of 839.54 km or 14.90% of the area of Bali Province (5,632.85 km). About 7,070 Ha (8.42%) of the area is paddy fields, while non-paddy fields are 76,884 Ha (91.58%). The area of Karangasem Regency has a very varied topography in the form of plains, hills, and mountains (including Mount Agung). Karangasem has a beach length of 87 km, some of which are potential and have been designated as tourist areas.

Among the paddy fields and not paddy fields mentioned above is Pauman land, which is spread in almost every village. Until now, in Karangasem Regency, there is a pauman group that controls the land collectively known as pauman land, where evidence of mastery is in the form of Girik, Petuk D, Tax Payment Letter, even in its development can be a Certificate. Pauman land

is spread in Karangasem Regency, including Sibetan Village, Asak Village, Subagan Village, Tenganan Pegringsingan Village, Bungaya Village, Seraya Village, and Culik Village. Pauman land is in a Muslim environment, especially in the Karangasem neighborhood of Subagan village (Reference to Paper I Made Suwitra et al., 2014, Implications of Pauman Land Tenure Conflict in Villages Sibetan customs, and Subagan). Tanah Pauman is also found in Selat Village, in Gegelang Village, and is spread in almost every village in Karangasem Regency.

In Banjar Dinas Dalem, Duda Village, Selat District, Karangasem Regency, there is pauman land; where according to a statement from the chairman of the management of Pauman Gedong Sari Temple I Wayan Parta Dinata, which is told from the history of the formation of Pauman Gedong Sari, that the pauman land is controlled and managed for generations by the Pauman group called "Pauman Gedong Sari" where there is a management system that regulates all activities carried out in the Pauman which refers to there are awig-awig and agreements in Paruman, has a temple called "Pura Gedong sari," where the Temple is only empon (managed) by members of "Pauman Gedong Sari." The land of Pauman Gedong Sari is the land given by the King of Karangasem to a group of enrichers totaling 28 (twenty-eight) people during the Karangasem Kingdom era where the number of pauman members from generation to generation did not change because there was only one person who started from one family whose control was hereditary until now. When the land was given, it was still overgrown with wild plants such as reeds. Because, over time, the land has yet to be managed optimally, one of the members, as well as the Chairman of the Board, named I Bawa, invited Sekeha (group) enrichment to clear the land so it can produce. Start the managed land-producing bananas, coconuts, tree kettles and others that are used to meet the family's needs.

Based on the results of the election, it was decided to register the land tax by appointing the chairman of the management at that time, named I Bawa as the taxpayer so that the name of the taxpayer listed on the SPPT sheet reads Pauman I Bawa, where I Bawa is the name of the administrator representing the krama (member) of pauman for the payment of taxes on the land owned by Sekeha pauman, and the name "pauman" is added to explain that the land paid for the tax was not the property of I Bawa but belonged to Sekeha (group) Pauman. The area of land cultivated by the 28 (twenty-eight) members is 359,880 m² (according to the area stated in the SPPT in the name of Pauman I Bawa). The tax arising from the SPPT is the responsibility of 28 (twenty-eight) members of Pauman Gedong Sari, which is paid once a year and collected by the management of Pauman Gedong Sari at the annual meeting. Based on the facts, the tax money (tribute) was initially collected by I Bawa as the pauman administrator and was used to pay taxes to the State. Then because I Bawa transmigrated outside Bali, the land of Pauman Gedong Sari is currently managed continuously and for generations by 27 members of Pauman Gedong Sari either directly or indirectly by gardening planting durian, salak, mangosteen, rambutan, nutmeg (jebug arum), cloves, mango, avocado, vanilla, kajimas wood trees, and other plantation crops, furthermore, for the collection and collection of tax money (tribute) entrusted to I Wayan Nuriya for further payment of tax on pauman land.

Then after the death of I Wayan Nuriya (alm), the collection of taxes (tribute) was collected or collected by I Nengah Muliya (son of alm. I Wayan Nuriya). According to the statement of the management and several members of pauman Gedong sari that the author met at that location, there was a conflict until it continued to be a dispute between pauman members, Where one of the pauman members claimed that pauman's land is the estate of his family who intends to certify it as private property. However, most want the Certificate of Property Rights (SHM) to remain in pauman's name as a common or Communal property right corresponding to the awigs of Pauman Gedong Sari Temple in Paos 4 point (2) mentioned: "*sane dados anggota Pura Pauman*

Gedong Sari inggih punika, keturunan saking kewawa mawiwit 28 purusa sane kewakilin siki diri seketurunan krama". (who can be a member of Pura pauman Gedong Sari, the descendants of 28 heir members, of which one member represents one heir family).

In the Awig-Awig, it is also mentioned related to the assets of the land belonging to the Temple, namely in Paos 4 Indik due Pura (about belonging to the Temple), it is stated: "*Due pura punika tanah Pura Pauman Gedong Sari kirang langkung 35 hektar*". (the owner of the Temple is the land of Pura pauman Gedong Sari, with an area of about 35 hectares). Primary Data obtained from Respondents and Informants on the land of Pauman Gedong Sari Temple in the form of historical chronology of the origin of Pauman Gedong Sari Temple, Statement of Evidence of Pauman Land Cultivators in a hereditary way, SPPT with the subject of pauman written tax I Bawa, Decree on Sususnan Management of Pauman Gedong Sari Temple, Land Plot Map from the Karangasem ATR/BPN office, Awig-awig Pura Pauman Gedong Sari, Minutes of Meeting of Pauman Gedong Sari Temple, Letter of Recognition of Physical Mastery (Sporadic), Management of Subak Abian Pauman Gedong Sari.

Another case is with Tanah Pauman, located in Gegelang Village, Manggis District, which residents know as Tanah Pauman Bukit Cemeng. According to a direct narrative from one of the stakeholders of Puncak Sari Bukit Cemeng Temple, namely Jero Mangku Toya Arnawa, he said that Pauman Bukit Cemeng Land is the profit land of the Temple, namely Puncak Sari Bukit Cemeng Temple, which is the land of pauman. The area is approximately 118 (one hundred and eighteen) hectares managed by four subak namely Subak Pudah, Subak Asah Seme, Subak Batur Lawang, and Subak Bias Membah. Where in each Subak, there is also a temple that each subak member manages. Subak Pudah is responsible for Beji Tirta Aji Temple, Subak Asah Seme and Subak Batur Lawang are responsible for Batur Lawang Temple, and Subak Bias Membah is responsible for Bias Membah Temple. He continued to say that the Land of Pauman Bukit Cemeng has been managed for generations and continuing until now by Pasek Telengan so that it gets the title Amengku Pucak Sari Bukit Cemeng (the main person in charge of the Temple Puncak Sari Bukit Cemeng). Pauman land generation, which until now is still managed traditionally, where the pauman land is used for the profit of Pucak Sari Bukit Cemeng temple. Each member of the pauman is attached to an obligation in the form of a father as a temple collector and is responsible for all costs incurred either for piodalan ceremonies or maintenance at the Temple. In the course of this time, there has never been a conflict until the dispute either between the pauman (members) or with the pauman administrators. Until now, the land does not have a Certificate as proof of ownership and has not been registered with the Regional Opinion Office as a Taxpayer.

Ownership of Land Rights for Pauman. Pauman will not be separated from the Communal religious concept, which emphasizes the right of joint management, including the right of common property to a piece of land that is part of the pauman that has been worked on jointly. There are already some pauman lands that are converted by the conversion process but use the name of the head of the pauman board (klian), which is trusted as in the name in the certificate, to obtain certificates as mandated in the UUPA to be able to provide guarantees of legal certainty. Some pauman lands have also been divided or in kaplings and converted in the names of individual pauman (members).

Land disputes with pauman land objects, especially in Karangasem Regency, are still occurring. From the observation results, it can be stated that there was a dispute due to the registration of pauman lands into individual kapling lands. For example, what happened to the registration of pauman land in several traditional villages in Karangasem Regency, has caused horizontal conflicts and vertical conflicts, such as in Sibetan Village, Asak Village, Seraya Village,



and Subagan Village, where Conflicts occurred between Pauman members and between Pauman members with Pauman Klian. pauman land, which was converted through conversion using the name of the head of the management (klian) pauman, which is believed to be in the name in the certificate but instead becomes the whole individual land of the head of the management (klian) pauman, on the one hand, Krama (member) of pauman wants pauman land to remain common (communal) property.

Refers to the purpose of land law, namely the purpose of positive and negative land laws. The purpose of positive land law is to regulate the relationship between humans and the land to meet the needs of life, namely, on the one hand, for housing needs (social ethics) and vice versa, for production factors (socio-economic). Therefore, the relationship between man and land viewed from the point of view of land objects must have the nature of the unity of individuality and collectivity. The purpose of land law negative is to avoid the disappointment that may arise from the individual relationship between man and the land, and to avoid the individual relationship between man and the land, disappointment in the relationship. With the dispute arising over the certification of pauman land, there has been a deviation from the purpose of the agrarian law, for which it is necessary to seek The best menu in determining the choice of the proper legal subject to use in the registration of pauman land so that it can be achieved following the objectives of agrarian law said.

In terms of Legal Protection According to the theory proposed by Philipus M.Hadjon, according to Philipus M. Hadjon's theory Preventive Legal Protection Facilities are needed to prevent disputes from occurring. In order to prevent disputes from occurring in the future, it is necessary to consider carefully from the beginning to determine the name of the Rights Holder of pauman land. In the event of a dispute, the subject of the law in dispute is allowed to raise his objection or opinion, namely: 1) Whether the subject in dispute will still register the pauman land in the name of the Individual Property by dividing the pauman land; 2) It remains a Communal Proprietary.

Some of the considerations are: If pauman land is registered in the name of individual property rights by dividing the pauman land when viewed from the aspect of legal certainty it is beneficial but pauman land will easily be transferred ownership to other people either by sale or other means so that by transferring ownership rights to the pauman land, resulting in abolishing "ayahan" which is a sign of bond of obligation to the Temple and risks being easily claimed by others so that from the aspect of legal protection has not been realized.

Suppose pauman land remains a communal property right. In that case, it is necessary to make the right decision to determine the name of the holder of the rights to pauman land to avoid disputes in the future to provide comfort and security and to avoid unilateral claims or lawsuits from individuals who want to control pauman land individually which can harm pauman krama (members) Other. With preventive measures, it is hoped that in the future, there will be no more conflicts that lead to disputes over the control of pauman land so that there is no need for repressive legal remedies through the channels of the General Court and the Administrative Court.

Until now, pauman's name has not been found as a legal subject in pauman land registration, so it is necessary to review and analyze regulations that can provide legal protection and can maintain the preservation of pauman land and accommodate pauman as a legal subject who can have rights to pauman land. Using pauman's name as the title holder will be more appropriate to avoid disputes, lawsuits, and unilateral claims. However, it is necessary to study normatively whether Pauman's name can be proposed as a legal subject with land rights. For this reason, reviewing several regulations on registering pauman land is necessary.

In terms of the aspect of Legal Protection according to the UUPA, so that pauman and pauman assets in the form of pauman land obtain legal protection and legal certainty, one of them can be done, namely by registering land as regulated in Article 19 UUPA, junto PP 10/1961 which was later amended by PP 24/1997. Proof of ownership of rights in the form of a certificate is considered the most powerful proof of ownership, which can provide legal protection and certainty for the owner, although it is not absolute. In Article 21, paragraph (2) of the UUPA states that: *"By the government are established legal entities that can have property rights and conditions."*

In this case, it has not been explained what legal entities are referred to or whether Pauman is recognized as a legal entity following Article 21, paragraph (2) of the UUPA. Then in its implementing regulations which are regulated in Government Regulation Number 38 of 1963 concerning the Appointment of Legal Entities That Can Have Property Rights to Land. (from now on referred to as PP 38/1963), which contains legal entities that can have property rights to land, Article 1 explains as follows:

The legal entities referred to below may have title to land, each with the restrictions referred to in Articles 2, 3 and 4 of these regulations:

- a. Banks established by the State (from now on referred to as State Banks);
- b. Farm Cooperative Associations established under Law No. 79 of 1958 (Statute Book of 1958 No. 139);
- c. Religious bodies appointed by the Minister of Agriculture/Agrarian Affairs have heard the Minister of Religious Affairs;
- d. Social bodies appointed by the Minister of Agriculture/Agrarian Affairs after hearing from the Minister of Social Welfare.

In PP 38/1963, there is no specific mention of pauman's name as a legal entity that can have property rights to land. In this case, if pauman is registered as a legal entity of Agricultural Cooperative Associations, then according to Article 3 PP 38/1963 can have property rights to agricultural land whose area is not more than the maximum limit, the maximum limit as stipulated in Article 1 paragraph (1) of Government Regulation in Lieu of Law No. 56 of 1960 concerning Determination of Agricultural Land Area (Perppu 56/1960), that in possession of agricultural land either own or belonging to others or controlled in its entirety there shall be no more than 20 acres either in the form of paddy fields or dry land.

Alternatively, if pauman is registered as a religious and social body following Article 4 PP 38/1963 can have property rights to land that is used for purposes directly related to religious and social enterprises but must be appointed by the minister of agriculture / Agrarian Affairs. However, it is necessary to pay attention to the provisions in Article 6 PP 38/1963, which reads:

The Minister of Agriculture/Agrarian Affairs has the authority to request these legal entities in Article 1 to transfer the lands owned by them at the time of the entry into force of this regulation to other parties who can have property rights or ask for them to be converted into building use rights, business use rights or use rights if the owner is contrary to the provisions of Articles 2, 3 and 4. In this regard, it is necessary to consider the area of land owned by pauman and whether it exceeds the maximum provisions. If it exceeds the maximum limit of 20 hectares, the remaining excess land cannot be registered as property rights but as business use or use rights.

When referring to the Decree of the Minister of ATR / BPN Number 575 of 2019 concerning the Designation of Pekraman Village as a Subject of Joint Ownership Rights (communal), the decision is strengthened in Article 10 paragraph (2) of the Customary Village Regional Regulation which confirms that druwe land and rich use land is communal or individual. In this

case, because Pauman Land is not village druwe land nor is it part of the richness of the Customary Village, this decree cannot be used as a reference for registering Pauman's land or the designation of Pauman as a Subject of rights. After reviewing the UUPA and its organic rules, no specific regulations mention pauman as legal entities that can have land rights. In registering Pauman land according to the UUPA and its organic rules, it is impossible to have pauman as a legal entity as a subject of rights at as name sekeha or pauman group.

Registration of Land Rights in UUPA. In order to provide legal discretion to the holder of rights to a piece of land and to easily prove himself as the holder of the fitting concerned, it is necessary to register the land and be given a Certificate of Rights to the land. If referring to the 1945 Constitution of the Republic of Indonesia (henceforth written the 1945 Constitution) in Porigin 33, paragraph (3) explains that "*The earth and water and the natural wealth contained in it are controlled by the state and used for the greatest prosperity of the people*".

Article 33 paragraph (3) of the 1945 Constitution is the basic law in drafting the UUPA, as well as being a source of law (material) in considering the preparation of national agrarian laws that will provide prosperity, welfare, happiness, justice and legal certainty for the Nation and State. In terms of legal certainty, it is necessary to have a legal substance raised as a form of guarantee. The existence of Article 19 of the UUPA states: "*To ensure legal certainty organized by the government in the procurement of land registration in all regions of the Republic of Indonesia based on the provisions stipulated in the Government Regulation, including Land measurement, mapping and bookkeeping, Registration of land rights and transfer of such rights, and Provision of letters of proof of rights, which acts as a solid evidentiary tool (UUPA).*"

The purpose and purpose of issuing a certificate in land registration activities is as evidence of ownership of rights and issued for the benefit of the right holder following physical data and juridical data that have been registered in the land book. Regarding evidence of ownership of rights as stated in Article 20, paragraphs (1) and (2) of the UUPA, namely:

1. Property rights are hereditary, the strongest and fullest rights a person can have over land, considering the provisions in Article 6.
2. Property rights can be transferred and transferred to other parties.

Regarding legal entities that can have land rights, it is stated in Article 21 paragraph (2) of the UUPA, which states: "*By The government is designated legal entities that can have property rights and condition*". So that not only natural persons can be Subjects of land rights, but legal entities can also be Subjects of land rights but with certain conditions. It allows communally owned lands to be filed as Legal subjects in land registration.

Registration of Land Rights in PP 24/1997. When reviewed in the implementing rules of the UUPA, namely contained in PP 24/1997 on Porigin 2, it reads, "*Land registration is carried out based on simple, safe, affordable, up-to-date and open principles.*" With simple, safe, affordable, up-to-date and open principles, people will flock to register their land to recognize rights and get proof of ownership and community. Refrain from feeling doubtful and worried about the claims of the other party. The provisions regarding the purpose for which the land registration is carried out in Article 3 stated:

Land registration aims to:

- a. To provide legal certainty and legal protection to the holder of rights to a plot of land, units of flats and other registered rights in order to easily prove himself as the holder of the right concerned,
- b. To provide information to interested parties, including the government, so that they can quickly obtain the data needed to carry out legal actions regarding land plots and units of flats that have been registered,

c. For the orderly implementation of land administration.

Related to the granting of land rights certificates and for the sake of public information disclosure related to physical data and juridical data and to achieve administrative order is contained in the provisions of Article 4, which states that:

1. To provide certainty and legal protection, as referred to in Porigin 3, letter the holder of the right concerned is granted a Certificate of Rights to the land.
2. To carry out the function of information as referred to in Porigin 3 letter b physical and juridical data of land plots and units of flats that have been registered open to the public,
3. In order to achieve administrative order as referred to in Porigin 3 letter c, each plot of land and unit of flats, including the transfer, encumbrance, and abolition of rights to land plots and property rights to units of flats, must be listed.

Land registration for the first time is carried out through systematic and sporadic land registration. Land registration activities for the first time are carried out on land registration objects that have not been registered based on PP 24/1997. The activities carried out for land registration following PP 24/1997 are collecting and Processing Physical Data, including Measurement and Mapping. The measurement and mapping activities in question include:

- a. Creation of a registration base map;
- b. Establishment of boundaries of land plots;
- c. Measurement and mapping of land plots and creation of registration maps;
- d. Creation of a land register;
- e. Creation of measuring letters;

The letters that must be taken care of to be attached are:

- a. Certificate of Non-Dispute signed by the local village head or village head and attended by witnesses;
- b. Land History Certificate that tells the history of land tenure from the early days to the present;
- c. Certificate of Sporadic Land Tenure (land registration activities for the first time regarding one or several registration objects).

If the data is complete, the next step is to submit a file application at the reception counter by attaching documents in the form of:

- a. Photocopy of letter C,
- b. Asli of the three letters are: Certificate of Non-Dispute, Certificate of Land History, and Certificate of Sporadic Land Tenure,
- c. Photocopy of KTP (Identity Card) and KK (Family Card),
- d. Photocopy of SPPT PBB (Tax Return Payable Land and Building Tax) for the current year with proof of payment included,
- e. Power of Attorney if indeed the management of the certificate is authorized,
- f. The Affidavit has put up a boundary sign,
- g. Other documents as per the requirements of the Act.

Furthermore, the officer will prove the rights and books, then issue a certificate according to the type of rights submitted, whether Property Rights, Building Use Rights, Use Rights, or Business Use Rights, according to the UUPA.

Pauman Land Registration. Claims to a piece of pauman land and disputes over the right of control over pauman land are implications for its registration according to State law (UUPA and its organic rules), which increases the right to control over pauman land, namely from the right of possession (communal) to ownership by conversion through the National Program



(PRONA) which is currently known as PTSL. UUPA, with its organic rules, carries "legal certainty" and has a registration mission to administer all land plots in Indonesia. The menu provided is "Conversion," which is registered for the first time sporadically or systematically, especially for lands that have been controlled individually for more than 20 consecutive years by not sorting between whole individual land and non-full individual land, such as PKD land, AYDS.

The dispute that often occurs until now regarding the ownership of pauman land is because there has not been a proper or "appropriate" model in determining the name of pauman as a Subject. The registration of Pauman land, according to the UUPA, will refer to the individualization of ownership of land rights and has not allowed the existence of a subject of rights as the name of a pauman or group (according to the results of the study in CHAPTER IV of this thesis) to eliminate Historical over the land of pauman. This law can have title to pauman's land.

With the Decree of the Minister of Home Affairs Nomor 556/DJA/1986 concerning the Appointment of a Temple as a legal entity that can have property rights to land (SK.556/DJA/1986), then the registration of Pauman land by choosing Pauman Temple as the Subject of Rights can be made a menu of temporary options while waiting for regulations establishing pauman as a legal subject who can have rights to pauman land. Maintaining family ties in the commonality of the Pauman krama (members) and preserving fatherhood as a krama obligation in temple ties as a unifying (religious communal) symbol is beneficial.

The registration of pauman land on conversion using the name of Pauman Temple can be carried out following the provisions in the UUPA and organic regulations based on SK.556/DJA/1986, which designates the Temple as a Legal Subject who can have rights to the land so that may be issued a Certificate of Property Rights (SHM) in the name of Pura pauman. Of course, the Temple used is the pauman Temple which is only empon by the pauman member concerned, and there is no other party outside the pauman member. Thus, it will not have an impact on changing the status of ownership, that is, it does not eliminate the "religious communal" nature, which is the soul of the owner who will always maintain togetherness in the community and the value of devotion which is sincere to Ida Sanghyang Widhi (his Lord), also implications for the guaranteed exercise rights, relatively safe from the claims and suits of the other party. Paiman members will not be concerned about personal claims because of the Certificate of Property Rights in the name of Pauman Temple as joint property of pauman (members).

With the successful registration of Pauman Land following the UUPA and its organic rules, namely PP 24/1997 and based on SK.556/DJA/1986 by appointing Pauman Temple as the subject of rights so that pauman land remains the communal property and not privately owned land, with the hope that From this process they can enjoy the benefits, benefits, happiness, and enjoyment and well-being of the pauman members, can provide a sense of security from the interference of others, can provide legal certainty and legal protection of pauman land and pauman members as holders of rights to a plot of land and other registered rights, As well as Agar, can easily prove itself as the holder of the rights in question. It is a reflection of the aspect of legal certainty expressed by Gustav Radbruch, namely that legal certainty can only be answered normatively, not sociologically, and is also following the Utilitarian Theory or expediency of Jeremy Bhentam where the purpose of the law is to provide as many benefits as possible. "The aim of the law is The Greatest Happiness for the greatest number."

Land Registration of Pauman Gedong Sari and Pauman Bukit Cemeng. In determining the Subject of Pauman's land rights, Pauman can use several considerations to maintain the



preservation of Pauman's land and ensure its choice will not have an impact on changing the status of ownership, as well as to ensure the implementation of n rights, relatively safe from the other party's claims and lawsuits.

If pauman registered as religious and social bodies following Article 4 PP 38/1963 can have title to land used for purposes directly related to religious and social enterprises and must be appointed by the Minister of Agriculture / Agrarian Affairs. However, until now, Pauman has not been appointed and designated as Religious and Social Bodies.

If Pauman certifies his land through the Agricultural Cooperative Legal Entity based on Article 1 letter b, as well as Article 3 PP 38/1963, which states that the Agricultural Cooperative can have property rights to agricultural land; however, its area is not more than the maximum limit, the maximum limit as stipulated in Article 1 paragraph (1) of Perppu 56/1960 in the control of agricultural land either owned by oneself or belonging to others or controlled entirely must not exceed 20 hectares either in the form of rice fields or dry land.

The Land of Pauman Gedong Sari has an area of approximately 35 (thirty-five) hectares, and the land of pauman Bukit Cemeng has an area of approximately 118 (one hundred and eight-twelve) hectares. Based on the facts at the research location, there is a temple where the Temple is only empon by pauman members, and no other party manages Pura according to Awig-awig Pauman Gedong Sari Temple. Even in Awig-awig, it is also explained as related to the distribution of crops from pauman land with the distribution of percentages to cultivators and to Pauman Gedong Sari Temple every year where the proceeds of the distribution for the Temple will be used as ceremonial costs and repairs to the Temple as well as for the operation of the Temple. Based on this, pauman land should be registered using the name of pauman Temple as the subject of rights according to SK.556 / DJA / 1986 so that the entire area of pauman land may be registered under the title right of ownership.

So based the Minutes of the Meeting held on Wednesday, November 10, 2021, which was attended by all management and 27 members of Pauman Gedong Sari, resulted in an agreement to register pauman Gedong Sari land in the name of "Pura Pauman Gedong Sari." Registration is carried out according to the provisions of the UUPA and its organic regulations, namely following the provisions of PP 24/1997, namely conversion through PTSL, and based on SK.556 / DJA / 1986.

Some physical data and Juridical Data in pauman Gedong Sari land registration are Physical Data related to Land Location, Land Area, and Land Boundaries that have been installed stakes. Juridical data, namely the existence of a Letter of Recognition of Physical Mastery of land for generations and continuously in good faith, as well as the payment of taxes to the State in the form of proof of payment SPPT.

As information material that during the process of doing this thesis, pauman Gedong Sari's land was successfully registered through the PTSL program based on Conversion of Rights Recognition, and a Certificate of Rights has been issued Owned Property (SHM) with the Name of the Rights Holder, namely "Pura Pauman Gedong Sari" issued a Certificate dated January 21, 2022.

CONCLUSION

From the discussion that has been presented in the previous Chapters, the conclusions resulting from this study can be conveyed as follows:

- (1) The preaching in the context of State law has not been established as a subject of law but in its management pauman is formed by a group that is known as sekeha, in reality in Bali in the indigenous law community sekeha-sekeha is highly valued its existence which is known



to be able to preserve the land of Pauman, where this sekeha can be a legal entity if it is registered as a legal entity but because it is not registered so that this sekeha or group of pauman in the legal context of the State cannot be called a legal subject who can have land rights. To prevent disputes from occurring, preventive legal protection facilities are needed so that from the beginning, it is necessary to consider carefully to determine the name of the Rights Holder of pauman land. If pauman land is registered in the name of individual property rights by dividing the pauman land, judging from the aspect of legal certainty, it is indeed beneficial. However, pauman land will easily be transferable ownership to another person either by sale or other means, so by transferring ownership rights to the land pauman it will be able to abolish "Ayahan" as a sign of bond of obligation to pura pauman and risk will be easily claimed by other parties so that from the aspect of legal protection has not been realized. It is necessary to have a regulation or Ministerial Decree to appoint Pauman as a Legal Subject who can have land rights to provide legal protection and preserve the Pauman Land.

- (2) Because pauman in the context of State law cannot be referred to as a legal subject who can have land rights, the pauman land registration model is carried out as stipulated in Article 19 of the UUPA junto PP 24/1997 by conversion through the PTSL National Program or sporadically by appointing a temple as a legal subject following the Decree of the Minister of Home Affairs Number SK.556 / DJA / 1986 can be used as a temporary menu of choice while waiting for regulations that stipulate pauman as a legal subject who can have land rights. Of course, the Temple used is the pauman Temple which is only empon by the pauman member concerned, and there is no other party outside the pauman member. It will be beneficial for maintaining family ties in the group or Sekeha Pauman. It can also preserve Ayahan as a member's obligation in temple ties as a unifying symbol (religious communal) so that pauman land remains the communal property and not privately owned land, in the hope that from the process, they can enjoy the benefits, happiness, common welfare of pauman members, provide a sense of security from the interference of others, and can provide legal certainty and legal protection of the land pauman.

Based on the description above, the author suggests the following:

- (3) To the government as a state agency that has the authority to make and implement regulations or rules of law so that the regulation of the right of control and ownership of pauman land is emphasized in such a way, meaning that regulatory renewal is not only intended to create new norms but also able to explore living norms in the soul of Krama (member) Pauman so that property rights to Pauman's land remain community/communal based. The existence of regulations that accommodate and favor the Pauman group will have a positive impact; the existence of Pauman lands in each customary village throughout Karangasem Regency can be preserved as a distinctive identity for Karangasem Regency and the local customary law community as a cultural value heritage. So that state recognition of the existence of the right of control and ownership of Pauman's lands does not run away, the government, through the Head of BPN, should immediately appoint Pauman as a legal entity that can have property rights to the land because Pauman can be categorized as a religious and social legal entity because in pauman there are organized socio-religious activities.
- (4) For pauman who wishes to register the right to his land into the property of pauman, it would be better to use the name of the subject of the Temple instead of borrowing the name of the Temple. In addition, the Prediction of conflict will exist because there are indications of re-recognition by the puri family, so this needs to be anticipated by the pauman in



anticipation of a claim back from the puri family, Pauman should immediately certify his land so that the pauman is strong, and pauman must strengthen himself that his activities still exist by maximizing the potential that exists. Pauman is also expected to have a bargain with the Puri family that Pauman still recognizes the history related to the granting of the land from the King even though things have changed because now it is no longer the time of the kingdom but the period of the Unitary State Government so that the entire earth of water and space including the natural wealth contained therein is at the highest level controlled by the State, as the organization of the power of the whole people.

REFERENCES

- Awig-awig of Pauman Gedong Sari Temple, Duda Village, Selat District, Karangasem Regency. Central Statistics Agency of Karangasem Regency. (2022). Location and area. Karangasem: <https://Karangasemkab.bps.go.id>, accessed August 11, 2022
- Constitution of the Republic of Indonesia of 1945.
- Decree of the Minister Agraria and Tata Rmoney/Head of the National Land Agency. (2019). Designation of Pekraman Village as a Subject of Joint Ownership Rights (Communal) (Decree No. 575 of 2019).
- Decree of the Minister of Home Affairs Number 556/DJA/1986 concerning the Appointment of Temples as Legal Entities That Can Have Land Rights.
- Government Regulation in Lieu of Law Number 56 of 1960 concerning Determination of Agricultural Land Area.
- Government Regulation No. 24 of 1997 concerning Land Registration.
- Government Regulation of the Republic of Indonesia Number 38 of 1963 concerning the Appointment of Legal Entities That Can Have Property Rights to Land.
- Law Number 5 of 1960 concerning Regulation of Dasar Agrarian Principles.
- Regulation of the Minister of State for Agrarian Affairs and Spatial Planning / Head of the National Land Agency. (2018). Complete Systematic Land Registration (Regulation No. 6 of 2018).
- Sirtha, I. N. (2008). *Legal Aspects of Customary Conflict in Bali*. Udayana University Press, Denpasar.
- Suwitra, I. M. (2020). *Land Registration Model as a Form of Customary Land Administration in Bali, Digital Book "Land, People and Investment After the Job Creation Law (1)"*. CV Media Sains Indonesia, Bandung.
- Suwitra, I. M. (2021). *The Existence of Ownership and Ownership Rights over Customary Land in Bali*. Pustaka Larasan, Denpasar.
- Suwitra, I. M. (2010). The Concept of Religious Communal as the Main Material in the Formation of UUPA and Its Impact on Customary Land Tenure in Bali. *Journal of Perspectives*, 15(2). <https://doi.org/10.30742/perspektif.v15i2.51>
- Suwitra, I., Widyantara, I, M, M., & Sujana, I. N. (2016). Pauman Land Tenure Model in Karangasem Regency. *Journal of Law and Development*, 46(4). <https://doi.org/10.21143/jhp.vol46.no4.79>