



Harmonization of Levy System in Customary Village Referred to Mineral Mining Transporting Activity

Putu Ulandari Sri Lestari^{1*}, I Gusti Ayu Putri Kartika²

^{1,2}Faculty of Law Udayana University, Denpasar, Indonesia.

 : ulandarilestari@gmail.com
Corresponding Author*



Submitted: 2023-03-15

Revised: 2023-03-27

Published: 2023-06-12

Article Info

Keywords:

Mineral Mining
Transportation; Customary
Village; Levy.

Abstract

Introduction: The uncertainty surrounding levies on mineral mining transportation activities requires an observation of the legal concepts that have conceptualized the levies and the system that is being used. Therefore, there is a need for harmonization of the levy concept related to indigenous villages.

Purposes of the Research: This study is aimed to determine the boundaries of authority of the Customary Village towards the implementation of state authority and the levy category for the mineral mining transportation.

Methods of the Research: This study uses a normative research method because the legal issues discussed are related to the implementation of statutory norms, namely the Regional Regulations on Traditional Villages in Bali with higher statutory regulations, through a conceptual approach, as well as the snowball technique used in collecting legal materials with the technique such as descriptions, comparisons, evaluations, and arguments in analyzing legal materials.

Results of the Research: The authority of the indigenous village to regulate the levies collected by the indigenous village as long as they do not conflict with higher regulations is considered valid. The concept of levies regulated in legislation classified as specific levies, as the object is the transportation of mineral mining, is not collected by force but voluntarily regarding the tariff amount, and has been agreed upon in the form of *awig-awig* (a social norm regulation of Balinese society) and can be categorized as a valid levy, as the levies imposed are not separated from the elements of *Tri Hita Karana*.

1. INTRODUCTION

Karangasem Regency is one of the regencies in the Province of Bali, which has the largest non-metal mineral and rock mining in the Province of Bali. The existence of mining in Karangasem Regency, which has been started since the 1990s, is the material result of the eruption of Mount Agung in 1963. As time goes on, human needs continue to increase and natural resource reserves are depleting, with depletion of natural resource reserves, there are social factors. which affect human activities in utilizing natural resources around their territory as optimally as possible and still produce economic value. The KPK in this case found in the field many illegal C quarry mining businesses. This fact can be interpreted that all this time law enforcers, in this case the police and Civil Service Police Units, have turned a blind eye by allowing unlicensed entrepreneurs to pry without action. That is why the

KPK has instructed that even though they are unlicensed and licensed, the government is asked to continue to collect taxes.

The natural resources contained in the territory of Indonesia, including land and water, belongs to the Indonesian nation, none of which is owned by individuals or corporations and is fully controlled by the state for the prosperity of the Indonesian people.¹ Based on the legal provisions in Article 33 in paragraph 3 of the 1945 Constitution of the Republic of Indonesia hereinafter referred to the 1945 Constitution which regulates land, water and resource can be utilized for the prosperity of the people, sand is one of the natural resources contained in the Earth; thus, it can be managed as optimally and efficiently as possible and properly utilized for the welfare of the people in a sustainable manner. Minerals and metals are scattered unevenly in the Earth's crust. Because of the essential contribution of minerals the economic and opportunities created by mining, from a historical perspective mining has been considered as being intrinsically linked to development. Indeed, some countries have managed to capitalize upon mineral wealth to spur business and other economic activities.²

Mining is a partial or total of the stages in the context of research, management and utilization of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities as stipulated in Article 1 Section 1 Law No. 3 of 2020 on Amendments to Law No. 4 of 2019 concerning Mineral and Coal Mining (hereinafter referred to as the Mineral and Coal Mining Law).³ Mining activity is an activity in the context of mineral or coal utilization which includes the stages of general investigation, exploration, feasibility study, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining. Based on the previous statement, mining activity includes the field of transportation. As stated in Article 1 Section 20 of the Mineral and Coal Mining Law, transportation is a mining activity to move minerals and/or coal from the mining area and/or processing and/or refining place to the place of delivery. Article 35 of the Mineral and Coal Mining Law states that mining business is performed based on business permits from the central government. One of the business licenses is the transport and sales permit. Permits regarding the transportation and sales are business permits that are given to companies to buy, transport and sell mineral or coal mining commodities, in accordance with the provisions of Article 1 Section 13c of the Mineral and Coal Mining Law. The increasing need for infrastructure for mining products results in increased retribution for sand transportation.

The activity of transporting mineral mining materials performed in mining businesses based on the definition of minerals regulated in the Mineral and Coal Mining Law in Article 1 Section 2, minerals are inorganic compounds that are formed in nature, which has certain physical and chemical properties as well as regular crystal arrangements or their combinations that form rocks, either in loose or solid form. The results of mining in the

¹ T.I.P. Astiti, G.A.P. Kartika, A.A.I.Ari Atu Dewi, "Implementasi Pasal 33 Ayat 3 UUD 1945 Dalam Berbagai Perundang-Undangan Tentang Sumberdaya Alam", *Udayana Master Law Journal* 4, no.1 (2015). DOI: <https://doi.org/10.24843/JMHU.2015.v04.i01.p05>

² A.E. BastidAa, *Global Energy Law & Policy The Law And Governance Of Mining And Minerals A Global Perspective*. (Bloomsbury Publishing, 2020), p.24.

³ A.S. Batubara, "Coal Mining Investment Opportunities In Indonesia On Government Regulation Number 3 Of The Year 2020 Concerning Mineral And Coal Mining", *Scientia: Social Sciences & Humanities* 2, no. 1 (2023) DOI: <http://dx.doi.org/10.31000/ijlp.v2i2.5187>

form of sand and rock are one of the mineral groups. The transportation of mining materials is performed by motorized goods transportation, namely trucks. Law No. 22 of 2009 concerning Road Traffic and Transportation, hereinafter referred to as the Road Traffic and Transportation Law, in the provisions of Article 1 Section 1, it has been regulated regarding Road Traffic and Transportation, which is a unified system consisting of Traffic, Road Transportation, Network Road Traffic and Transportation, Road Traffic and Transportation Infrastructure, Vehicles, Drivers, Road Users, and their management.⁴ Sand truck transportation is one type of vehicle that is commonly found in Indonesia. As the name suggests, this truck functions to lift goods and materials, such as sand, and belongs as one of the motorized vehicles of the freight car type, further emphasized through the rules of Article 137 Paragraph (3) which stipulates that the transportation of goods using motorized vehicles must use freight cars.⁵

The issue of uncertain levy for mineral mining transporting activity makes it a more-legal situation for companies that do not have operational permits. Furthermore, most of the roads passed by the sand transport vehicles are provincial roads, which becomes the responsibility of the province to repair them if any damage occurred; thus, it is not the responsibility of the Village.⁶ Uncertainty regarding the levies for service made on sand transport due to long and tiring service procedures is the cause of the increasing number of people who give up when dealing with public services. The concept of levies at a constitutional level can be found in Article 23A of the 1945 Constitution which regulates that taxes and other levies that are coercive for state needs are regulated by law.⁷ The Law on Tax Harmonization has emphasized that every Taxpayer who has fulfilled the subjective and objective requirements in accordance with the provisions of the tax laws and regulations is obliged to register himself/herself at the office of the Directorate General of Taxes whose working area includes the residence or domicile of the Taxpayer and to him is given a Taxpayer Identification Number as conforms to rules of Article 2 Paragraph 1. Emphasis on taxes is also regulated in Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments, hereinafter referred to as Law No. 1/2022. Regarding levy, it is contained in the rules of Article 1 Section 22 which stipulates that regional retribution, hereinafter referred to as retribution, are regional levies as payment for services or granting certain permits specifically provided and/or granted by the regional government for the benefit of individuals or entities. The levies in Law No. 1/2022 are interpreted into various types of levies, but they have not been explicitly conceptualized as to what exactly those levies are. The emphasis is contained in the rules of Article 6 which stipulate that Regional Governments are prohibited from collecting taxes other than the types of taxes stated in the rules of Article 4 Paragraph (1) and Paragraph (2) including taxes collected by provinces and regencies/cities, one of which is the Non-metallic

⁴ Arif Kurniawan, "Faktor Yang Berhubungan Dengan Safety Driving Pada Sopir Truk Pasir Yang Melintasi Jalan Perintis Kemerdekaan Kota Semarang Tahun 2010" (*Thesis Universitas Diponegoro*, 2020).

⁵ Agus Tri Wahyudi, "Penegakan Hukum Atas Pelanggaran Oleh Pengemudi Angkutan Bermuatan Pasir Batu Terhadap Rambu Larangan Masuk Kota Mojokerto" (*Thesis Universitas Muhammadiyah Malang*, 2018)

⁶ Metrobali, "Pemkab Karangasem Harus Tindak Galian C Ilegal", diakses pada Oktober, 2022, Metrobali.com, <https://metrobali.com/pemkab-karangasem-harus-tindak-galian-c-ilegal/>

⁷ Galuh Tresna Murti, et al, "Pengetahuan Tata Cara Perpajakan; Hak dan Kewajiban WP, Pendaftaran dan Penghapusan NPWP, dan Pengukuhan NPPKP", *Jurnal Pendidikan dan Konseling* 5, no. 1 (2023): 343-347 DOI: <https://doi.org/10.31004/jpdk.v5i3> <http://journal.universitaspahlawan.ac.id/index.php/jpdk/article/view/10935>.

Minerals and Rock Minerals tax. Based on Law no. 1/22 regarding the tax that is applied to non-metallic mineral and rock mining, if the area is at the same level as a provincial area that is not divided into autonomous regencies/cities, the Non-metallic Minerals and Rock Minerals tax rate is set at a maximum of 25% (twenty five percent), according to the rules of Article 74. The promulgation of this article intends that each autonomous region determines a tax rate for non-metallic minerals and rocks of 25%; the tax referred to is a levy/retribution collected by the regional government.

The concept of levies is generally the same as the concept of taxes, it must be based on the law, the only difference is the authority and administrative responsibility. The authority to collect taxes lies with the Directorate General of Taxes, whereas, the authority to collect other levies is held by the relevant ministries, as well as related institutions that have been determined by law. The results of the levies are referred to as Non-Tax State Revenues and/or Revenue of the Public Service Agency.⁸ The existence of customary villages whose existence is recognized legally in the constitutional order has actually received recognition, in Article 18B paragraph (2) of the 1945 Constitution which explicitly regulates on recognizing and respecting customary law community and their traditional rights as long as they are still alive. Therefore, constitutionally, this real recognition provides direction, space and independence for the Customary Village. After the promulgation of the Bali Provincial Regulation Number 4 of 2019 on Customary Villages in Bali, hereinafter referred to as the Bali Provincial Regulation No. 4/2019, levies collected by Traditional Villages are still being debated.⁹ There is a need in the community that the local government must be able to guarantee legal actions taken by Customary Villages related to levies. Article 65 Bali Provincial Regulation No. 4/2019 regulates that Customary Village revenue comes from: Original revenue of Customary Village; Result of resource management of Customary Village; Allocation of Provincial Regional Budget; Aid from Regency/City Government; Aid from Central Government; Non-binding third party grants and donations (*dana punia*); and Other legitimate revenue of Customary Village.

Other legitimate revenue that can be implemented in the Customary Village to support activities in the village in the form of levy until now has not found the right formulation, both in terms of regulation and implementation. Confirmed through the rules of Article 65 Paragraph 4 of Bali Provincial Regulation No. 4/2019, that the management of the use of other legitimate revenue for Customary Villages is regulated in the provisions of a Governor Regulation. This has created disparities that have resulted in enforcement conducted by law enforcement officials with the issue that is often debated, namely that customary villages apply unauthorized levy. The customary law community in Bali recognizes the term *dudukan* as a mandatory contribution. The Balinese - Indonesian dictionary compiled by the Bali Provincial Cultural Office in 2017, it is known that the word *dudukan* means levy. Based on the two references, the term *dudukan* seems to be identical with tax. The provisions of Article 1 section 22 of the Governor of Bali Regulation Number 34 of 2019 on Financial Management of Customary Villages in Bali, hereinafter referred to as Bali Governor Regulation 34/19, regulates that *dudukan* are mandatory contributions from *Krama Tamiu*

⁸ Subha K. Resen, "Konsep, Konsepsi, dan Miskonsepsi Makna Pungutan, Pungutan Yang Sah, Dan Pungutan Liar Yang Terjadi Di Desa Pakraman", *Makalah Pada IP Seminar: Seminar Nasional Hakan dan Ilmu Sosial Ke-2*, Denpasar, (2018), p.21.

⁹ Nyoman Widayani and K. Dewi Susanti, "Revitalisasi Awig-Awig Desa Adat Kerobokan Dalam Menciptakan Ketentraman Dan Keharmonisan", *PARIKSA: Jurnal Hukum Agama Hindu* 6, no. 1 (2022): 94-100 DOI: <https://doi.org/10.55115/pariksa.v6i1.2244>

(Balinese Hindu community listed on Customary Village) and *Tamiu* (Non-Hindu community in Customary Village). In accordance with the rules in Article 4 Paragraph (4) stating that Customary Village Revenue in the form of other legitimate revenue is regulated by the Customary Village *Pararem* (regulation) and facilitated by Regional Apparatuses regarding Customary Villages as well as Article 13 in Bali Governor Regulation 34/19, *dudukan* is legitimate revenue for customary village. *Dudukan* is a source of revenue for the customary village used in the implementation of the village program which includes the fields of *parahyangan* (relationship between humans and God), *pawongan* (relationship between humans), and *palemahan* (relationship between humans and environment). In terms of objective, *dudukan* is more comprehensive than a tax that is coercive.

The *awig-awig* (regulation) of customary villages cannot or is not sufficient to be used as a legal basis to legitimize the meaning of legitimate levies as other revenue for customary villages because *awig-awig* itself cannot clash with religion, Pancasila, the 1945 Constitution and human rights. Customary Villages may not collect levies based solely on *perarem* or *awig-awig*. Levies based on the two regulations are a legal embodiment of the Customary Village which has arranged the levies through the *Paruman* (meeting) and is legal according to Customary law in every Customary Village in Bali.¹⁰ The legal basis for the collection of levies and fees by Customary Villages is based on *pararem*. However, law enforcement officials emphasize that the *perarem* provisions are not considered legitimate and valid, because *perarem* is not authorized law. The emphasis on taxes and other levies must be regulated by law which in accordance with the tax principle that states taxes are collected by law.

Based on the foregoing background, it is necessary to conduct observations regarding legal concepts that have conceptualized levies and systems used to understand a rule of law or a system of legal rules. Therefore, there is a need for harmonization of the concepts of levies, through the study entitled Juridical Review of Levies on Mineral Mining Transporting Activity in Customary Villages which focuses on issues related to the authority of customary villages in collecting levies and aims to determine the boundaries of authority of the Customary Village towards the implementation of state authority.

Literature review for this study to compare and prove that this study discusses a different and new case is seen below. Although this study has been updated and does not include plagiarism cases, the following past studies explores a different topic, namely: The Effect of Establishing a Task Force to Clear Unauthorized Levies, Whistle-Blowing Systems and Hand-Catching Operations on the Practice of Unauthorized Levies is the title of research written by Benny Sujatmiko (Thesis, Faculty of Law, Indonesian Islamic University, 2020). In Benny Sujatmiko's thesis, it discussed more of the practices of unauthorized levies and examines the effects of the formation of task force to clear the unauthorized levies. In contrast with current study, current study discusses the qualifications of levies imposed on the activity of transporting mineral mining materials by looking at the boundaries of the authority of Customary Villages based on local regulations on customary villages in Bali against the implementation of higher regulations. Then, Legal Certainty for Special Mining Business Permits to Realize an Equitable Mineral and Coal Mining Business, research written by Karel Van Houten Baransano (Dissertation of the

¹⁰ Ni Luh Sri Mahendra Dewi, "Penegakan Hukum Tindak Pidana Pungutan Liar Yang Dilakukan Desa Adat Ditinjau Dari Perspektif Hukum Progresif", *Jurnal Kerta Dyatmika* 7, no.1 (2020) DOI : <https://doi.org/10.46650/kd.17.1.812.1-10>

Faculty of Law, Udayana University, 2019). In Karel Van Houten Baransano's dissertation, it discussed more of the regulation regarding mining business permits which relate to work contract from the perspective of justice with a Pancasila philosophy, whereas current study discusses the qualifications of levies imposed on the activity of transporting mineral mining materials by looking at the boundaries of the authority of Customary Villages based on local regulations on customary villages in Bali against the implementation of higher regulations. Considering the literature reviews above, current research takes a perspective that there are different understandings in interpreting the word 'levy'; thus, there is a need for harmonization regarding the regulation of levies in customary village areas related to the transportation of mineral mining materials.

2. METHOD

This study applied normative research method because the legal issues discussed in this study were related to the implementation of statutory norms, which in this case was the Regional Regulations on Custom in Bali with higher statutory regulations. Soerjono Soekanto stated that the approach to normative law is a legal research conducted by examining library materials or secondary data as a basis for research searching regulations and literature related to the problem of the study.¹¹ The parameters used in normative legal research are the nature and scope of the legal discipline.¹² This research applied a statute approach. This approach uses statutory regulations as an analytical tool or is studied from the perspective of statutory regulations. This approach was used because the legal issues that are the subject of the research are related to legislation, in this case, the Constitution of the Republic of Indonesia, Regional Regulation on Customary Villages in Bali, Bali Governor Regulation No. 4/19, and Bali Governor Regulation Number 34 of 2019 on Financial Management of Customary Villages in Bali. Moreover, this study also applied a concept approach. The concept approach is a type of approach that provides a point of view regarding the analysis of problem solving based on the underlying legal concepts. Data and material collection was conducted through Snowball Technique. Comparative technique was also applied in this research which involved various legal comparisons of the problems studied. Evaluation technique was implemented in this study to determine comparative results to answer the research problems. Argumentation technique was applied in this study to provide legal reasoning regarding the focus of the research problems.

3. RESULTS AND DISCUSSION

3.1 The Authority of the Customary Village towards the Levies Charged to the Transportation of Mining Materials

The existence of a customary village can be acknowledged as long as it is still alive and in accordance with the society development and Indonesian principle regulated in the Indonesian constitution. Based on the perspective of the semi-autonomous social field theory proposed by Sally Falk Moore, a customary village is identified as a semi-autonomous social group. Regarding to the authority of that so called semi-autonomous

¹¹ Soerjono Soekanto and Sri Mamuja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*(Jakarta: Rajawali Press, 2001), p.13-14.

¹² Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. (Yogyakarta: Mirra Buana, 2020), p.96.

social group, Moore states that:¹³ "The semi-autonomous social field has rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes as its own instance."

Based on the construction of Sally Falk Moore's theory, it can be illustrated that a customary village is a semi-autonomous social group that includes into a wide scoped social group which is the state organization namely the Republic of Indonesia. On the other hand, the customary village, as a semi-autonomous customary legal community unit, has a capacity to make its own rule known as *awig-awig* according to the local customs. It also has media to force someone respecting the rules. Simultaneously, the Unitary State of Republic of Indonesia who takes control of the customary village can influence some authorities owned by the customary village. A conditional acknowledgement toward the customary village means that the autonomy of the customary village is unlimitedly absolute. Through the constitution, the country has given some terms and conditions towards the autonomy of the customary village. The customary village autonomy is acknowledged by the country if, in its reality, the authorities ruled in the autonomy of the customary village are genuinely still extant. The implementation must be conducted seriously, as it must be adapted to the development of the society and Indonesian principles. Moreover, those authorities of the customary village autonomy are regulated in the Indonesian law.¹⁴

The acknowledgement and guarantee of the viability of the customary legal society along with their customary rights as a Balinese local wisdom must be strengthened. This is in accordance with Indonesian Law No. 236 (4) on Local Government Article 236 (4) which explains that the local government can have a local content according to the terms and conditions of the legislation. This means that a region, as a unit of legal community who has an autonomy, has a power to regulate and manage its region based on the society's aspirations and needs and not against the national law and public interest. In providing a wider space to all regions to regulate and manage its society, the central government must pay attention to the local wisdom when making a regulation; otherwise, the local government must pay attention to the public interest when making any local regulations. Thus, the balance of the national and local interests will be achieved as there will be a synergistic national interest and the involvement of the local condition, characteristic, and wisdom in governance as a whole. The principle of 'a region having a local regulation and the country also having the national law' is shown in the term of "not against the law of the Republic of Indonesia" above. It means that the autonomy of a customary village in "making" and implementing its customary law must follow the law of the country. Having an autonomy does not mean that a customary village has a sovereignty. The only one sovereignty is only authorized by the country.¹⁵

¹³ A.A.I. Ari Atu Dewi, "Eksistensi Otonomi Desa Adat dalam Perspektif Pluralisme Hukum", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*3, no. 3 (2014) DOI: <https://doi.org/10.24843/JMHU.2014.v03.i03.p13>

¹⁴ Ni Ketut Sari Adnyani, et al, "Four Conditions For Recognition Of Traditional Society In The Constitution And State Revenue Income", *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 307-332. DOI: <https://doi.org/10.15294/jils.v6i2.48044>

¹⁵ Sri Wahyu Kridasakti, et al, "Studi Kasus Pengaturan Hubungan Kelembagaan Pemerintahan Desa-Birokrasi Dengan Desa-Adat Di Wilayah Provinsi Bali" *Jurnal Supremasi* 12, no.1 (2022): 25-43 DOI: <https://doi.org/10.35457/supremasi.v12i1.1825>

The concrete evidence toward the acknowledgement and respect of the country to the unity of the customary legal community as emphasized in the constitution, nowadays, can be found such as by the admission of the legal standing of the unitary customary legal community in the application to assess the law towards the Indonesian Constitution 1945 in the Constitutional Court. It means, if the unitary customary legal community consider that the implementation of a law has brought disadvantages to their constitutional rights, they can propose an application to the Constitutional Court to ask the Constitutional Court to state that the disadvantageous law has been against the Indonesian Constitution 1945 and does not have any binding legal forces.

A country which is established based on a law and able to guarantee the justice of its society is called as a legal country. Moreover, creating the happiness of the society is one of the conditions of the justice that should be achieved by a legal country. One of the essential substances of a legal country is that the implementation of the authority in that country must be on the basis of the applicable law and must not contradict that law. This is according to the theory of legal country proposed by Philipus M. Hadjon stating that the constitution is the most important element that a legal country must have because it is the guarantee of being the media of the fundamental norms as the right protection of the society. Based on the Hierarchy of Legislations in Indonesia according to Indonesian Law No. 12 of 2011 on Legislation Formation Article 7 (1) changed to be Indonesian Law No. 15 of 2019 on the Amendment of Indonesian Law No. 12 of 2011 on Legislation Formation which states that the type and hierarchy of the legislation are as follows: The 1945 Constitution of Republic of Indonesia; Decree of People's Consultative Assembly; Law/Government Regulation in Lieu of a Law; Government Regulation; Presidential Regulation; Provincial Regulation; and Regency or Municipality Regulation.

The legal power of the legislation above depends on the order of the hierarchy and the lower laws and regulations must not contradict the higher laws and regulations. The laws and regulations are established and set by the state institutions or officials according to the laws and regulations. On this stage, the legal norm has become the essence of every movement of the individual, group of society, and country. It means that law has been institutionalized in the life of the society and country; therefore, the legal norm is used as a reference, guidance, and instrument of the way of living of an individual or a group of society. On this stage as well, the aim of law turns into the society's legal culture reflected on the aspects of justice, certainty (as it can make a dynamic social order), and benefit (since it becomes the guidance for the society). A legal country (*Rechtsstat* atau *The Rule of Law*) is a concept of a country which is idealized by the founding fathers of that country who discussed and created the Constitution of Republic of Indonesia 1945, which was later mentioned in the Constitution of Republic of Indonesia 1945 before the amendment. The affirmation of the country to be a legal country is strengthened in the Constitution of the Republic of Indonesia 1945 after amendment Article 1 (3) stating that Indonesia is a country based on Law.

The establishment of the Regional Regulation of Customary Village in Bali provides the basis of the customary village legislation toward the authority limits owned by each customary village which include the authorities based on the origin rights and the local authorities scaled in the customary village level. The authorities based on the origin rights are regulated in Article 24 of the Regional Regulation of the Customary Village in Bali as follows: The establishment of the customary regulation namely *Awig-awig*, *Pararem*, and other customary regulations; The stipulation of the development planning of the Customary

Village; The stipulation of the Income and Expenditure Budget of the Customary Village; The implementation of the government according to the original structure; The development and maintenance of the values of custom, religion, tradition, art and culture, and local wisdom; The management of the territory and land belong to the Customary Village; The management of the Customary Village ownership; The development of the customary legal system based on the principle of 'Bali having a local regulation and the village also having its local law' (*Bali Mawacara dan Desa Mawacara*); The stipulation of the organization system and the customary legal institution; The involvement in making a decision and implementing the development conducted in the territory of the Customary Village; The maintenance of peace and order of the Customary Village society; The accomplishment of a peace trial regarding to the customary case; and The adjudication of the customary case according to the customary law. Authority (*authority gezag*) is a thing that is later called as a formal authority is derived from the power of the laws and regulations. Whereas, competence (*competence bevoegheid*) is only a certain part (*onderdeel*) of the authority. In an authority, there are some competences (*rechtsbevoegdheden*).

The definition of competence in juridical way is a power given by the laws and regulations to cause legal consequences. H.D.Stoud argues that a competence is the whole laws related to the acquisition and use of the governmental power by a public legal subject in a public law. A legal country has a legality principle which becomes the main fundamental of every government and state implementation of a legal country especially for the legal countries and their continental systems. Philipus M Hadjon states that an authority is obtained from three sources namely attribution, delegation, and mandate. Regarding to the concept of attribution, delegation, and mandate, J.G. Brouwer and A.E. Schilder explain that an attribution is an authority given to an administrative authority by an independent legislative institution. That authority is original (*originair*) meaning that the authority is not derived from the previous exist authority. The legislative institution creates a new authority that has never been exist before and assign this power to an authority. The legislature creates powers that did not previously exist and assigns them to an authority. On the other hand, delegation is a transfer of power from an administrative authority to another administrative authority; therefore, the delegates can use the authority under their own name. In contrast, a mandate does not do any transfers of power. However, the mandate instructors (*mandans*) assign the authority to the mandatory institutions to make a decision or take an action under their own name.¹⁶

Regarding to the authority of customary villages, in this way customary villages have limits on authority. The authority of the customary villages is also fundamental to customary village funding and the source of the customary village funding which has been studied through Article 65 of the Regional Regulation on Customary Villages in Bali which is further stipulated through Governor Regulations No. 34/2019. The authority of customary villages to form *awig-awig*, *pararem*, and other customary regulations can be interpreted that customary villages also have the right to make customary regulations that are related to customary village income, because the limits of the authority of customary

¹⁶ Bambang Sugianto, *SELECTED ESSAY Essays on Constitution, Human Rights, Private and Criminal Law Perspectives*. (Palembang: Unsri Press, 2022), p. 15

villages are not only about regulations but also the authority related to funding and the source of the funding.¹⁷

The authority of the customary village in forming other customary regulations related to the problems regarding fees charged for the transportation of mining materials has some means as follows: Customary villages have the authority to form customary regulations regarding the transportation of mining materials across the customary village jurisdictions as long as they do not conflict with religion, Pancasila, the 1945 Constitution and human rights; The authority of customary villages in carrying out the fees is guided by the provisions of the regulations in the hierarchical arrangement of state regulations, namely regional regulations; and Analyzing Article 65 of the Regional Regulation on Customary Villages in Bali regarding income that is a contribution from a third party that is not binding and also other income from customary villages that are considered legitimate. This phrase opens opportunities for income for the customary villages.

3.2 The Levies Charged by the Customary Villages

3.2.1 The Regulation of Levies in Indonesian Laws

Taxes and other fees regulated in Article 23A of the 1945 Constitution on the concept of taxes and other fees, in fact these two concepts have something in common, that is, they are coercive and regulated in the provisions of the 1945 Constitution. The difference lies in authority, responsibility and administration. If this is related to the levies carried out by customary villages, that concept is not included in the levies regulated in the 1945 Constitution Article 23A.¹⁸

Observing Article 18B paragraph 2 of the 1945 Constitution which stipulates that "The state recognizes and respects customary law community units along with their Customary 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 in law". Substantially, the contents of Article 18B paragraph 2 of the 1945 Constitution confirms that the State has recognized and protected the human rights of the community with criteria that must be met according to the state's perspective namely first, still alive, second in accordance with the development of society, third in accordance with the principles of the unitary state of the Republic of Indonesia, the fourth is regulated in the Law.

Levies are taking or collecting a certain amount of money from the public or taxpayers imposed by the regional government based on their authority. The following is a further explanation regarding levies according to Law 1/2022: Regional Tax is a mandatory levy made by the local government on individuals or entities that have income or have tax objects in the territory of the local government and Regional retributions are levies imposed by the regional government for services provided by the regional government to the community or service users. The levies carried out by the local government must meet some conditions, such as: There is a Clear Legal Basis meaning that the levies must be based on clear laws and regulations and do not conflict with higher laws and regulations; There are

¹⁷ A.A.I. Ari Atu Dewi, "Analisis Yuridis Peluang Partisipasi Desa Adat Dalam Pembentukan Hukum", *Lex Journal* 2, no. 1 (2018): 2580-9113 DOI: <https://doi.org/10.25139/lex.v2i1.1019>

¹⁸ I Dewa Herman Yudiawan, "Pendapatan Desa Adat: Kontruksi Hukum Pungutan Untuk Mewujudkan Bebas Pungutan Liar", *Jurnal Magister Hukum Udayana* 8, no. 2 (2020) DOI: <https://doi.org/10.24843/JMHU.2019.v08.i02.p08>

Transparency and Accountability meaning that the levies must be carried out in a transparent and accountable manner, meaning that there must be disclosure of information regarding the use of these levies and must be accounted for legally and financially; There is No Excessive Charges which means that the levies must not be excessive and must be in accordance with the rates set by the local government; and There is Non-discriminatory. It means, the levies may not be discriminatory and must be imposed equally on all people or entities that have the same tax object.

The results of levies made by the local government must be used to finance governance, development, and community empowerment in the area of the regional government. The use of levy must be carried out effectively, efficiently and transparently. The central government and the public have an important role to play in supervising local government levies. The central government has the authority to supervise and evaluate the implementation of levies by regional governments. Regional governments must also submit reports on levies made annually to the central government. Meanwhile, the public has the right to provide input or complaints regarding the implementation of levies by the regional government which are considered not in accordance with the applicable regulations. The regional government must also provide access to the public to obtain information regarding levies made by the regional government.

Non-metallic and Rock Mineral Tax is a tax charged on the activity of extracting non-metallic minerals and rock minerals from natural sources inside and/or on the earth's surface to be utilized. Non-metallic and Rock Minerals, hereinafter abbreviated as NMRM, are non-metallic minerals and rocks as referred to the laws and regulations related to minerals and coal. The provisions of this Law have stipulated that the NMRM Tax Rate is set at a maximum of 20% (twenty percent). Whereas specifically for regions that are at the same level as provincial regions which are not divided into autonomous districts/cities, the NMRM tax rate is set at a maximum of 25% (twenty five percent).

3.2.2 The Regulation of Levies/Dues in the Context of Customary Law

The debate that occurred related to perceptions between “dues” being equated with levies and perceptions that differentiated the concept of levies and dues was answered by the promulgation of Governor Regulation No. 34 of 2019 concerning Customary Village Financial Management. Governor Regulation No. 34 of 2019 concerning Customary Village Financial Management is a technical regulation to provide guidelines and procedures for the Customary Villages in managing their finances. The consideration for the promulgation of this governor's regulation is in the context of increasing the efficiency and effectiveness of the implementation of the customary villages, so as to achieve transparent and accountable implementation of the customary village financial management.

According to the Article 1 (22), the term “dues” is defined as “a mandatory contribution from the immigrants (*Krama Tamiu*) and guests (*Tamiu*).” If the elements of this legal concept are explained further, they are as follows: A mandatory contribution (there is no further explanation regarding to this in the Governor Regulation); Incomers (*Krama Tamiu*) are “Balinese citizens who are Hindu that are not active doing some mandatory customary activities but recorded as the part of Customary Villages; Migrants (*Tamiu*) are other people outside the citizens (*Krama*) and incomers (*Krama Tamiu*) in the Customary Village jurisdictions who temporarily stay or live and are recorded as a part of the Customary Village.

It can be understood that these dues are obligatory for the incomers (*krama tamiu*) and migrants (*tamiu*) to pay some money to the Customary Village, if not paid, of course there will be some certain consequences. The amount and form of the mandatory contributions have not been explicitly explained in the Governor Regulation. Even though there have been arrangements related to the dues, it still needs to be emphasized regarding several concepts such as the mandatory contributions, as well as harmonization with the concept of levies which so far are still used by the law enforcement officials. It seems that clarity is needed regarding to the use of a concept; thus the unification of concepts with certain behaviors can be harmonized with national law. It takes a responsive attitude from legislators to see the phenomena that exist in customary villages; therefore, the dues are not perceived as illegal levies, because in fact some special arrangements have been made regarding this matter.

After the promulgation of Regional Regulation Number 4 of 2019 concerning Customary Villages, the levies carried out by the Customary Villages are still being debated, there is a need in the community that the local governments must be able to guarantee any legal actions taken by the Customary Villages related to the dues. Moreover, the local governments should take some steps to harmonize both in terms of substance and national legal structure. Even though the Regional Regulation on Customary Villages has been promulgated, the community still feels doubts, because the Regional Regulation which is claimed to strengthen the Customary Village only still regulates very generally related to other legitimate incomes, especially regarding levies in Customary Villages. This is an example of the fact that there is no clear concept between levies, dues, and illegal fees.

3.2.3 The Category of Levies on the Transportation of the Mining Materials in Customary Village Jurisdictions

A Customary village certainly has the duty and authority to carry out the life of indigenous people, as has been described in Article 24 of the Bali Province Regional Regulation on Customary Villages in Bali and in Article 103 of the Village Law. The authority of a Customary village does not only determine one authority but also establishes several authorities such as regulating and implementing government based on the original composition, managing areas that are under customary authority. The levies are made by the central government, regional governments as well as customary villages. Since there is a misinterpretation of the concepts regarding levies, the description of the levies based on the rules in the 1945 Constitution of the Republic of Indonesia and the concept of levies from various elaborations on the law and the emergence of local wisdom concept levels can help clarify this matter.

Questioning about levies, through an analysis of Article 23A of the 1945 Constitution of the Republic of Indonesia, the meaning of the words taxes and other levies is that levies and taxes are coercive because, if they are not complied with, they can be subject to sanctions in accordance with laws and regulations. The only differences are in: Authority in the collection; Accountability; and Administration Actually, the concept of levies is the same as the concept of taxes because everything is based on law. Therefore, the levies carried out by customary villages are not included in the concept of levies regulated in the rules of Article 23A of the 1945 Constitution.

Customary villages have been recognized, even their existence goes far beyond or before the existence of the state and guarantees the existence of customary law communities according to Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia. The establishment of the Bali Province Regional Regulation on Customary Village Article

65 regulates that the income carried out by the customary village is protected by the Regional Regulation of the Province of Bali concerning Customary Villages. In this way, the Customary Village has the power to carry out levies. The elaboration of the concept of the legal levies in customary villages and the levies carried out by customary villages are not included in the concept of levies that have been promulgated in the law. It is because, if we examine the authority in the levy collection, the customary village collects the fees based on an assignment letter that has been agreed upon in the meeting (*Paruman*) and on the basis of the knowledge of the Customary Village Council. Furthermore, regarding the accountability, the levies carried out by customary villages will be accounted in the customary village meeting (*paruman*). The administration of the levies carried out by the customary villages is as follows: The subject of the levies is clearly based on the assignment letter shown and based on the letter from the Customary Village itself; The object of the levies, in collecting the object of levies, must be clear. Regarding the levies charged by the transportation of mining materials, the objects collected are mining materials; and The amount of levies, in the collection that is imposed by the customary village based on the customary village's meeting agreement which clearly relates to Balinese wisdom concept of *Parahyangan* (building a relationship with God), *Pawongan* (relationship among human beings), and *Palemahan* (relationship between human and natural sphere). This is due to maintaining the balance and harmony of the cultural and natural surroundings.

There is a need for a decree in carrying out levies carried out by customary villages to eliminate perceptions of illegal levies, the issues that are often debated by the community. The debate about levies made by customary villages is often linked to the illegal levies. Article 8 of Presidential Regulation No. 87 of 2016 stipulates that ministries or agencies and local governments carry out eradication in their respective work environments. Responding to other further matters, Instruction of the Minister of Home Affairs Number 180/3935/SJ on the Supervision of Illegal Levies in the Implementation of Regional Government instructs Governors and Regents/Mayors who are under the governance structure of the Republic of Indonesia to eradicate any illegal levy practices and their targets for state civil servants.¹⁹ Through this context, it can be said that the levies carried out by customary villages are legal and the eradication officer of the illegal levies does not have an authority to enter the realm of customary villages. John Griffit through the concept of legal pluralism theory refers to a social system in which many legal frameworks coexist. Legal pluralism is very helpful in providing an explanation of the fact that there is a legal order in a country. Legal pluralism is a law that actually applies in society in the form of state law, religious law and customary law.²⁰

The existence of the original law that belongs to the customary village makes a strong guide in making levies, this is through the customary village regulations. The levies made by the customary villages related to the transportation of mineral mining materials have rules that must be based on the applicable *awig-awig* provisions. The mandate of Article 65 Paragraph 3 of the Regional Regulations on Customary Villages in Bali emphasizes that the governance of the use of customary village income is regulated in the meeting of customary

¹⁹ Jonatan J. Rampengan, et al "Tinjauan Hukum Mengenai Pungutan Liar Oleh Aparat Pemerintah Yang Terjadi Di Masyarakat", *LEX PRIVATUM* 11, no. 1 (2023) <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/45872>

²⁰ Putu Ari Permadi, et al, "Pelaksanaan Kewenangan Unit Pemberantasan Pungutan Liar (UPP) Daerah Kota Denpasar Dalam Penertiban Parkir Yang Diselenggarakan Desa Adat", *Kertha Negara: Journal Ilmu Hukum* 6, no.4 (2018): 1-15 <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/41675>

village (*paruman*). Nonetheless, Soerjono Soekanto argues to answer legal antimony or legal conflicts through the principle of *lex superior derogat legi inferiori* stating that lower regulations may not conflict with higher regulations. Therefore, the *awig-awig* which regulates levies occurred in customary villages is not necessarily considered valid because *awig-awig* cannot conflict with religion, Pancasila, the 1945 Constitution and human rights.²¹ Hence, the levies that have been regulated by the customary village in the form of *awig-awig* which was agreed upon at the time of the customary village's meeting (*paruman*) cannot conflict with positive law, as well as the determination of the tariff charged so as not to deviate from the principles of human rights and justice.

Referring to the fees charged for the transportation of mining materials across customary village areas in accordance with the principle of *lex superior derogat legi inferiori*, the *awig-awig* made by customary villages may not conflict with the positive law. Questioning in the context of the levies made by the customary village on the transportation of mineral mining materials that cross each area of the customary village, it can be emphasized that the subject, object and amount of the tariff are clear and this has been agreed upon in the form of *awig-awig* and can be categorized as a legal levy if we refer to the guidelines of Article 23A of the 1945 Constitution, Presidential Regulation Number 87 of 2016, Instruction of the Ministry of Home Affairs Number 180/3935/SJ, Article 65 of the Regional Regulation on Customary Villages in Bali and Bali Governor Regulation Number 34 of 2019. Based on Article 23A of the 1945 Constitution, the levy carried out by customary villages is not included in the concept of levies regulated in article 23A because the specific levies referred to the object of transporting the mineral mining materials is not coercive but voluntary; however, in article 23A of the 1945 Constitution taxes and other levies are coercive. Furthermore, referring to Presidential Regulation Number 87 of 2016 and Instruction of the Minister of Home Affairs Number 180/3935/SJ, it can be concluded that the eradication officer of the illegal levies does not have the authority to enter the realm of Customary Villages while the promulgation of Regional Regulations on Customary Villages in Bali and Bali Governor Regulation Number 34 of 2019 makes the legal umbrella for levies carried out by Customary Villages, as levies carried out by the customary villages cannot be separated from the elements of *Tri Hita Karana* which aims to balance the universe.

4. CONCLUSION

Finding out the limits of the authority of the Traditional Village towards the implementation of state authority and the categories of levies for the transportation of mineral mining materials. The activity of transporting mineral mining materials carried out in the mining business, the transportation of mining materials is carried out by motorized transportation of the type of goods transportation, namely trucks, so there is a need for harmonization of the concepts of levies. Traditional villages have the authority to regulate levies made by traditional villages as long as they do not conflict with higher regulations, as well as other customary village income that is considered valid. The concept of levies regulated in the laws and regulations because the special levies which refer to the object is the transportation of mineral mining materials is not coercive in nature but voluntary in the amount of the tariff and has been agreed in the form of *awig-awig* and can be categorized as

²¹ Nilam Kurnia and Arif Wibowo, "Penyelesaian Sengketa Informasi Publik Perspektif Di Peradilan Tata Usaha Negara Di Indonesia" *Jurnal Penelitian Multidisplin* 2, no.1 (2023): 34-39 DOI: <https://doi.org/10.58705/jpm.v2i1.96>

a legal levy, as levies what traditional villages does inseparable from its purpose, namely the balance of nature which originates from the elements of *Tri Hita Karana*.

REFERENCES

Journal Article

- Andyani, Ni Ketut Sari, Atmaja, Gede Marhaendra Wija, and Sudantra, I Ketut, "Four Conditions For Recognition Of Traditional Society In The Constitution And State Revenue Income", *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 307-332. DOI: <https://doi.org/10.15294/jils.v6i2.48044>
- Astiti, T.I.P, Kartika, G.A.P., and Dewi, A.A.I.A.A. "Implementasi Pasal 33 Ayat 3 Uud 1945 Dalam Berbagai Perundang-Undangan Tentang Sumberdaya Alam", *Udayana Master Law Journal* 4, no 1 (2015). DOI: <https://doi.org/10.24843/JMHU.2015.v04.i01.p05>
- Batubara, A.S., "Coal Mining Investment Opportunities In Indonesia On Government Regulation Number 3 Of The Year 2020 Concerning Mineral And Coal Mining", *Scientia: Social Sciences & Humanities* 2, no.1 (2023). DOI: <http://dx.doi.org/10.31000/ijlp.v2i2.5187>
- Dewi, A. A. I. A. A., "Eksistensi Otonomi Desa Adat dalam Perspektif Pluralisme Hukum", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 3, no. 3 (2014) DOI: <https://doi.org/10.24843/JMHU.2014.v03.i03.p13>
- Dewi, A. A. I. A. A., "Analisis Yuridis Peluang Partisipasi Desa Adat Dalam Pembentukan Hukum", *Lex Journal* 2, no. 1, (2018): 2580-9113 DOI: <https://doi.org/10.25139/lex.v2i1.1019>
- Dewi, Ni Luh Sri Mahendra, "Penegakan Hukum Tindak Pidana Pungutan Liar Yang Dilakukan Desa Adat Ditinjau Dari Perspektif Hukum Progresif", *Jurnal Kerta Dyatmika* 7, no.1 (2020). DOI : <https://doi.org/10.46650/kd.17.1.812.1-10>
- Kridasakti, Sri Wahyu, Yuningsih, Henny, Fadli, Moh., Majid, Abd., and Jayasenastri, Ni Made, "Studi Kasus Pengaturan Hubungan Kelembagaan Pemerintahan Desa-Birokrasi Dengan Desa-Adat Di Wilayah Provinsi Bali" *Jurnal Supremasi* 12, no.1 (2022): 25-43 DOI: <https://doi.org/10.35457/supremasi.v12i1.1825>
- Kurnia, Nilam and Wibowo, Arif, "Penyelesaian Sengketa Informasi Publik Perspektif Di Peradilan Tata Usaha Negara Di Indonesia" *Jurnal Penelitian Multidisplin* 2, no.1 (2023): 34-39 DOI: <https://doi.org/10.58705/jpm.v2i1.96>
- Murti, Galuh Tresna, Aini, Arika Sri, Candraningtiyas, Ananda Syahda, Kayladifah, Salma Ayu, and Puji, Nabila Clarisa Putri, "Pengetahuan Tata Cara Perpajakan; Hak dan Kewajiban WP, Pendaftaran dan Penghapusan NPWP, dan Pengukuhan NPPKP", *Jurnal Pendidikan dan Konseling* 5, no. 1 (2023): 343-347 DOI: <https://doi.org/10.31004/jpdk.v5i3>
<http://journal.universitaspahlawan.ac.id/index.php/jpdk/article/view/10935>.
- Permadi, Putu Ari, I. Made Arya Utama, and I. Ketut Suardita, "Pelaksanaan Kewenangan Unit Pemberantasan Pungutan Liar (UPP) Daerah Kota Denpasar Dalam Penertiban Parkir Yang Diselenggarakan Desa Adat", *Kertha Negara: Journal Ilmu Hukum* 6, no.4 (2018): 1-15. <<https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/41675>>.
- Rampengan, Jonatan J., Anis, Friend, and Marnan A.T. Mokorimban, "Tinjauan Hukum Mengenai Pungutan Liar Oleh Aparat Pemerintah Yang Terjadi Di Masyarakat", *LEX*

Widyani, Nyoman and Susanti, K. Dewi, "Revitalisasi Awig-Awig Desa Adat Kerobokan Dalam Menciptakan Ketentraman Dan Keharmonisan", *PARIKSA: Jurnal Hukum Agama Hindu* 6, no. 1 (2022): 94-100 DOI: <https://doi.org/10.55115/pariksa.v6i1.2244>

Yudiawan, I Dewa Herman, "Pendapatan Desa Adat: Kontruksi Hukum Pungutan Untuk Mewujudkan Bebas Pungutan Liar", *Jurnal Magister Hukum Udayana*, 8(2), (2020). DOI: <https://doi.org/10.24843/JMHU.2019.v08.i02.p08>

Book

Bastida, A.E., "Global Energy Law & Policy The Law And Governance Of Mining And Minerals A Global Perspective". *Bloomsbury Publishing*, 2020.

Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2020.

Soekanto, Soerjono dan Mamuja, Sri, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Press, 2001.

Sugianto, Bambang, *SELECTED ESSAY Essays on Constitution, Human Rights, Private and Criminal Law Perspectives*. Palembang: Unsri Press, 2022

Thesis, Web Page, and Others

Kurniawan, Arif, "Faktor Yang Berhubungan Dengan Safety Driving Pada Sopir Truk Pasir Yang Melintasi Jalan Perintis Kemerdekaan Kota Semarang Tahun 2010". *Thesis Universitas Diponegoro*, 2020.

Metrobali, "Pembahasan Karangasem Harus Tindak Galian C Ilegal". Diakses pada Oktober 2022 Metrobali.com, <https://metroballi.com/pembahasan-karangasem-harus-tindak-galian-c-ilegal/>

Resen, Subha K., "Konsep, Konsepsi, dan Miskonsepsi Makna Pungutan, Pungutan Yang Sah, Dan Pungutan Liar Yang Terjadi Di Desa Pakramen" *Makalah Pada IP Seminar: Seminar Nasional Hakan dan Ilmu Sosial Ke-2*, Denpasar, 2018.

Wahyudi, Agus Tri, "Penegakan Hukum Atas Pelanggaran Oleh Pengemudi Angkutan Bermuatan Pasir Batu Terhadap Rambu Larangan Masuk Kota Mojokerto". *Thesis Universitas Muhammadiyah Malang*, 2018.