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Alliances and Contestations in the Legal Production of Space: The Case of Bali

Abstract: The controversy over the provincial spatial planning regulation for Bali Province reflects the dynamic of Balinese society in the era of regional autonomy. The dynamic is polarised between expanding the tourism and real estate industry for economic reasons and constraining such expansion for the sake of protecting Bali's environment and culture. Thus, the law governing space becomes an essential means to intervene in crafting the relations between competing interests over space. The application of the law itself is also complicated by the condition of legal pluralism which provides different and sometimes conflicting sources of legality to be used to justify the interests of legal actors. This article aims at highlighting how space is produced in a pluralistic legal setting and examining whose interests are served by the condition of legal pluralism in contemporary Bali. Employing socio-legal methods with Lefebvre's conception of space and legal pluralism as an integrating analytical framework, the article contributes to the literature on spatial planning law in Indonesia that is dominated by "legal centralism" and a given notion of space.

Keywords: spatial planning, legal pluralism, socio-legal, Bali, tourism

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I. Introduction

In the reform era, Indonesia has experienced a dramatic shift in political structures from centralism to decentralism. Bali, a relatively small island province, is divided into eight districts and one municipality, which now have more power to regulate their territory to pursue economic development in particular. As Bali's economy has been dominated by tourism-related sectors, these sectors are continuing to expand facilitated by district governments. This is because tourism not only provides the main source of revenue for the district budget but also provides opportunity for private "rent-seeking" practices. As the tourism industry becomes more mature, the real estate and property businesses also grow simultaneously.

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Land and water, two important foundations for Balinese culture, have been the most affected by this. Up to 1,000 hectares of agricultural land are converted annually for real estate, commercial sites, tourist accommodation and other related facilities.[1] Moreover, it is predicted that Bali would face a water crisis in 2025,[2] which will affect the tourism industry, the biggest water consumer.

Concerning the impacts of tourism, many policy frameworks have been proposed to constrain district government "arrogance". One important attempt has been the enactment of the *Provincial Spatial Planning Regulation for Bali Province* in 2009 that gives more power to the Provincial Government to intervene in development projects at the district level. Despite being enacted almost four years ago, however, the regulation has never been enforced fully and has continuously been challenged by district governments and, in the case study that is the focus of this study, by the custom village of Pecatu. In the latter, a different kind of legality, namely customary law, has been involved in preventing the application of state law within the Pecatu customary area. Thus, the scope of spatial planning debates has been widened to consider the conditions of legal pluralism by which different normative orders co-exist within Balinese society.

A number of studies have been conducted to examine spatial planning law in Indonesia. They, however, consider the concept of space as given and, in the legal studies context, they fall under the category of "legal centralism",[3] an approach that assumes that legal certainty requires only a single legal framework should apply, state law should be based on its assumed capacity to provide uniformity, and a single formal institution for its administration. Consequently, they exclusively examine state spatial planning law and regulations.[4] None of them attempts to carefully

1 Interview with Ida Bagus Wisnuardhana, the head of agricultural bureau of Bali Province, 8 November 2013; see also Carol Warren, "Off the Market? Elusive Links in Community-based Sustainable Development Initiatives in Bali" in C. Warren & J. McCarthy, eds., *Community, Environment and Local Governance in Indonesia: Locating the Commonweal* (London: Routledge, 2009) at 197–226.

2 Stroma Cole, "A Political Ecology of Water Equity and Tourism: A Case Study from Bali" (2012) 39 Annals of Tourism Research 1221–1241.

3 John Griffiths, "What's Legal Pluralism?" (1986) 24 Journal of Legal Pluralism and Unofficial Law 1–55.

4 See for example the use of *Rechtsstaat* (Rule of Law) Theory as the analytical framework in Moeliono, *Spatial Management in Indonesia: From Planning to Implementation – Cases from West Java and Bandung, A Socio-Legal Study*, (PhD Diss., Leiden University, 2011); a technical carrying capacity approach in S. Henning, J. Anderson & B. Kjaergard, "Carrying Capacity: An Approach to Local Spatial Planning in Indonesia" (2012) 11 The Journal of Transdisciplinary Environmental Studies 27–39; also a legal reform perspective in Lisdiyono, "*Legislasi Penataan Ruang: Studi tentang Pergeseran Kebijakan Hukum Tata Ruang dalam Regulasi Daerah di Kota Semarang*" (PhD Diss., Semarang: Diponegoro University, 2008); or a doctrinal study in Arya

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assess the condition of legal pluralism, although such condition has been characteristic of the Indonesian legal system since the colonial period. Furthermore, in the era of regional autonomy, legal pluralism has become more directly articulated within the state legal system because of the revival of customary and religious law as important sources of legality.[5] Following the observation of von Benda-Beckmann and Griffiths that "[t]he emerging literature about law and space pays relatively little attention to the complexities of the relations between law and space that arise from the coexistence of legal orders",[6] it is timely to consider the interplay between legal pluralism and the production of space through spatial planning.

Thus, this article aims at answering two questions. They are: (1) How is space produced within a pluralistic legal setting? (2) Given the competing interests over space reflected by legal rules, whose interests are served by the conditions of legal pluralism? The answers are pursued by focusing on the controversy of the *2009 Provincial Spatial Planning* regulation in the Custom Village of Pecatu. In terms of methodology, this study is based on a socio-legal approach by which spatial planning law is situated within a wider social, cultural, political, and plural legal context in order to analyse how it is crafted, manipulated, transgressed or resisted in society where different or even competing interests over space come into play. In this regard, semi-structured interviews, document analysis as well as participant observation have been conducted within Pecatu Village and among government agencies and civil society organizations involved in the case. Two frameworks are employed in analysing the spatial planning legislation and its implementation, namely Lefebvre's "production of space" and "legal pluralism" (discussed below). This article would contribute to the literature on spatial planning law in developing countries by problematising the notion of space in legal studies.

It will be shown that spatial planning is not merely a technical task for allocating space for specific purposes, but is an important means for the distribution of power and resources. Spatial planning and regulation in a capitalist system makes people poorer and richer directly or indirectly by influencing the value of

Utama & Sudiarta, "*Kajian Normatif terhadap Efektifitas Perda Bali No. 16 Tahun 2009 tentang Rencana Tata Ruang Wilayah Provinsi Bali Tahun 2009–2029 serta Strategi Implementasinya*" (Paper delivered at the National Seminar on Developing Bali in the Frame of Spatial Planning for Bali, UNUD, 6 May 2011) [unpublished].

5 Franz & Keebet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders" (2006) 53 Journal of Legal Pluralism 1–44; see also J. Davidson & D. Henley, eds., *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism* (Oxon: Routledge Contemporary Southeast Asia Series, 2007).

6 Franz von Benda-Beckmann, Keebet von Benda-Beckmann & Anne Griffiths, eds., *Spatializing Law: An Anthropological Geography of Law in Society* (Surrey: Ashgate, 2009) at 4.

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property, especially land.[7] Furthermore, the way institutions dealing with spatial governance actually work is often contingent on the kinds of social alliances that shape the law, resulting in the privileging of particular kinds of interests and the marginalisation of others. This may be seen in struggles over space that have been taking place in Pecatu Village and how they have impacted the crafting of spatial planning regulations at provincial and district levels. Indeed, the condition of legal pluralism plays an important role in providing legal repertoires and vocabularies for social agents to shape space in accordance with their interests.

II. Pecatu Village and the Tourism Industry

Pecatu is a village situated in the southern peninsula of Bali Province. As it is the case throughout post-colonial Bali, the term "village" here represents two overlapping entities, namely the administrative village (*desa dinas*) and custom village (*desa adat* or *desa pekraman*). These overlap but rarely coincide perfectly in territory or membership. The most important difference between the two concerns is the division between state-related and customary authorities, despite difficulty in clearly demarcating many of those tasks on the ground.[8] Pecatu village itself consists of one administrative village (*desa dinas*) with nine administrative hamlets (*banjar dinas*), which overlap with one custom village (*desa adat*) comprising three customary hamlets (*banjar adat*). Located in Southern Kuta Sub-District, the centre of tourism in Bali, Pecatu has been an attractive place for tourist investment. This condition has made Pecatu one of the most crowded tourist sites in Badung District where five out of fourteen tourist sites in Southern Kuta are located.[9] Pecatu is renowned for its beautiful sandy beaches and perfect waves for surfing at Suluban (known as Blue Point), Nyang-Nyang, Padang-Padang, Labuan Sait, and Dreamland (now New Kuta Beach). Its attractions also include the Uluwatu Temple complex and its *Kecak* dance.

Pecatu became a focus of tourism development since the enactment of the *1988 Governor of Bali's Decision No.15* concerning Bali's development plan. Previously, large-scale tourism development was concentrated within an enclave at Nusa Dua in

7 Barrie Needham, *Planning, Law and Economics: An Investigation of the Rules We Make for Using Land* (London: Routledge, 2006) at 3.

8 Several *desa adat* may be combined in an administrative *desa dinas* and vice versa. Also non-Balinese residents are usually members of the *desa dinas*, but not the *desa adat*, now termed "*desa pakraman*". For detail discussion on the administrative village and *adat* village in Bali, see Carol Warren, *Adat and Dinas: Balinese Communities in the Indonesian State* (Kuala Lumpur: Oxford University Press, 1993).

9 BPS, *Badung Dalam Angka 2010* (Badung: Badan Pusat Statistik Kabupaten Badung, 2010).

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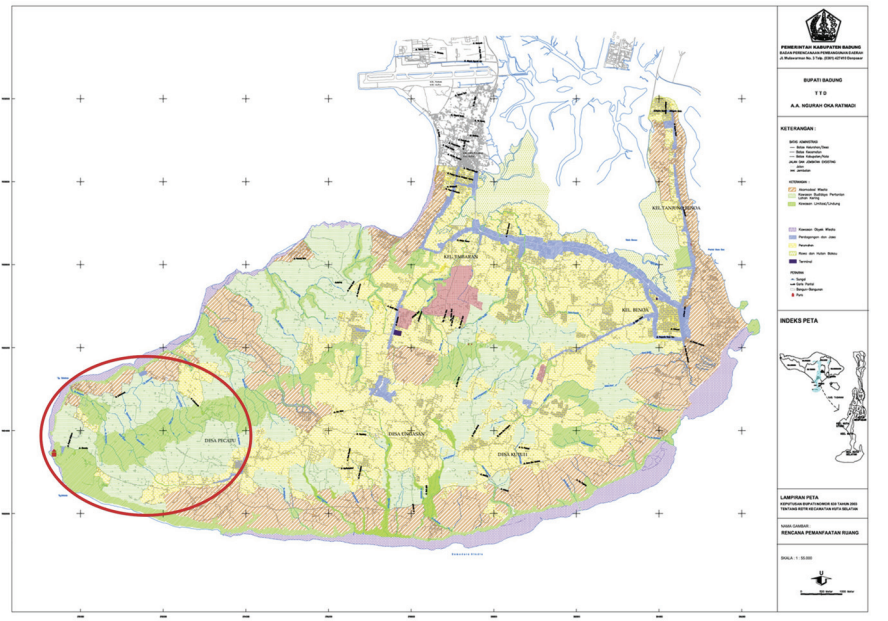

Map 1: Map of Nusa Dua peninsula, including Southern Kuta/Pecatu.
Source: District Head of Badung's Decree No. 693/2003 Concerning Detail Spatial Planning Plan for South Kuta

order to minimise negative impacts of tourism on the lives of local people. The 1988 decision was intended to expand tourism development by establishing 15 tourist sites in Bali; some of them were situated at Pecatu Village, the location of Uluwatu Temple, one of the most important and sacred temples for Balinese Hindus. This decree coincided with the deregulation of the Indonesian bank system triggering a boom in investments in tourist accommodation, golf courses, restaurants, cafes, roads and other public infrastructure, as well as real estate developments that have dramatically changed Bali's economy, culture and environment.[10] Pecatu, a dryland village of 26.41 km^2, with an officially recorded resident population of some 7,000,[11] has since become heavily dependent upon tourism. As a result of the rapid economic growth of tourism, Southern Kuta Selatan, including Pecatu village, attracts a large

10 Carol Warren, "Tanah Lot: The Cultural and Environmental Politics of Resort Development in Bali" in P. Hirsch & Carol Warren, eds., *The Politics of Environment in Southeast Asia* (London: Routledge, 1998).
11 BPS, *Kuta Selatan Dalam Angka 2012* (Badung: BPS Kabupaten Badung, 2012) at 8.

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number of migrants from other parts of Indonesia. It was reported that 1,578 people migrated to the sub-district in 2009 alone.[12]

Predictably the expansion of tourism and real estate industry in Pecatu has brought positive impacts for the villagers. Many benefits are frequently argued, including: providing new opportunities for jobs and income generation in the formal and informal sectors; improving infrastructure and access to public services.[13] Ketut Yasa, a local leader, observes that unemployment rate is very low in Pecatu, because local villagers can increase their economic opportunities, if not directly in the tourism industry, by providing services and accommodation to migrants who seek jobs in their area.[14] The massive growth in tourism is also argued to contribute to art and cultural activities, for example the establishment of *sekaha kecak* (*kecak* dance groups).[15] In addition, standardisation and even glamorisation of rituals and cultural activities has taken place, which is arguably interpreted as evidence of increasing religiosity.[16] On the other hand, there is a longstanding critique that suggests mass tourism has reoriented local perceptions of Balinese culture into a more instrumentally framed "touristic culture".[17]

Infrastructure has been improved making the connections between the village and the capital city, Denpasar, and other economically developed areas easier. Previously, being a "*Nak Bukit*" ("Bukit person", a derogatory term referring to those from hilly southern peninsula of Bali, including Pecatu) implied backwardness[18] due to its remoteness and the poor conditions for agriculture and access to basic needs, especially water. Opening access to the area has also had extreme impacts upon the value of land. Before the tourism boom in Pecatu, land had been used for dry agriculture (*tegalan*) to grow corn, beans, and cassava.[19] Land at that time functioned

12 *Ibid*. at 62.

13 See Made Adhika, "*Dampak Komodifikasi Daya Tarik Wisata di Desa Pecatu, Kuta Selatan, Bali*", in Sudjono *et al*., eds., *Penelitian Masalah Lingkungan di Indonesia 2011* (Jakarta: ITS & IATPI, 2011).

14 "*Masak orang luar saja datang ke sini [Pecatu] untuk cari kerja, sedangkan kita tidak kerja? Pendatang kerja di sini kan juga makan di sini, dan kita bisa menyiapkan makan untuk mereka sehingga masyarakat di sini bisa punya usaha kecil-kecilan, termasuk kos-kosan*." Interview with Ketut Yasa by Carol Warren, 1 August 2012.

15 Adhika, *supra* note 13.

16 *Ibid*. at 213.

17 For discussion on the relationship between "cultural tourism" and "touristic culture" in Bali, see Michel Picard, *Bali: Cultural Tourism and Touristic Culture* (Singapore: Archipelago Press, 1999).

18 Interview with Ketut Yasa by Carol Warren, 1 August 2012. He mentioned that the image of "*nak bukit*" recently has been improved due to the development of the tourism industry and argued that the status of Pecatu should be considered as a "city" (urban) area.

19 Interview with Ibu Mardi by Carol Warren, 1 August 2012.

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largely in terms of immediate use value. Rapid commodification accompanied the dramatic rise in the price of land as the large-scale resort and residential developments drove up the market value and the associated tax burden on land in the Pecatu tourism zone.[20] Pecatu farmers have experienced increases of up to 400% in land taxes during 2011–2012. A 0.05-hectare plot of dryland, for example, in 2011 was taxed at IDR 237,000 (US$23.7) per year but in 2012, more than doubled to IDR 640.000 (USD 64).[21] Renaya, for instance, a farmer from Banjar Suluban, Pecatu, explained that the tax of his 0.46-hectare plot of land was raised to IDR 27.8 million (USD 2,780) in 2012.[22] The land tax is hardly affordable for small peasants, and at some point it becomes more economic to sell or to lease the land for commercial purposes given the dramatic increase in land price.

In fact, the years of 2007–2010 had become crucial for Pecatu Village. They were speaking up against negative mass media coverage on uncontrollable tourist and real estate development taking place in the village. It was reported that seven tourist accommodation facilities, especially villas located in Pecatu, had violated the *2005 Spatial Planning Regulation for Bali Province*, especially provisions on commercial developments in sacred space. Protests against the violations were conducted by NGO activists, academics, politicians as well as religious organisations and demanded demolition of the buildings in enforcing the regulation.[23] In contrast, the Custom Village of Pecatu supported by the District Government of Badung countered these protests by resisting the application of provincial regulations, which would restrict tourist investment in the Pecatu area. As tourism has become the main source of income for the villagers, restricting tourist investment would have a significant impact on the local economy. Even after a new spatial planning regulation for Bali in 2009 was enacted, the Custom Village of Pecatu has been the only custom village in Bali to oppose openly the application of the new regulation. Thus, a close look is needed to understand the local dynamic informing this controversial stance.

20 The market value (NJOP/*nilai jual obyek pajak*) is the basis of land tax under current tax law (Article 6 paragraph (1) of the *1994 No. 12 Land and Building Tax Law*). The NJOP itself is calculated according to the location or condition (including the use and accessibility) of the land.
21 "*Keluhan Kenaikan PBB Meluas*" *Nusa Bali* (22 May 2012).
22 "*Warga Pecatu Desak Perda RTRW Bali Dibekukan*" *Antara News* (4 April 2011), online: Bali Antara <http://bali.antaranews.com> (last accessed 19 August 2013).
23 "*Eksekutif Diminta Bongkar Villa Suluban*" *Bali Post* (8 May 2008).

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III. Analytical frameworks

A. The Production of Space

In his seminal work, *The Production of Space*, Henry Lefebvre argues that "space" is not an empty container but is produced through a spatial triad – the "representation of space" (conceived space), "spatial practices" (perceived space), and the "space of representation" (lived space).[24] Conceived space is produced by authorities, planning experts, or law-makers; perceived space is the physical categorisation of space in the forms of landscape, infrastructure, architecture and so forth; and, lived space is how space is experienced by the people on daily basis.[25] Thus, space is a "product of interrelation", "multiplicity" and "always under construction".[26] In the context of Pecatu, conceived space refers to state law and regulations concerning spatial planning as well as the customary rules governing the use of space based on the sacred and profane binary. Perceived space is the landscape of Pecatu Village, including the Temple of Uluwatu, its surrounding beaches, and infrastructures that attract tourist visits and investment within the village. The lived space is the daily use of space including how this shapes and is shaped by law, either state or customary, physical development as well as social relations.

Built upon Lefebvre's conception of space, this article takes a specific aspect involved in the production of space that is the law. In this regard, space production is examined in terms of how the conceived, perceived, and lived spaces are produced and negotiated through law. In other words, the legal production of space refers to how space is designated, manipulated, transgressed or resisted by employing legal means available in a given society. Given that Lefebvre's work is framed around Western perspectives in which the legal system is relatively unified and centred on state authority, analysis of the legal production of space in this article requires us to problematise "the law" by considering the implications of pluralistic legal orders. Law in this regard is not considered as a "natural expression and codification of society's values", but is a product of social conflicts,[27] that is "constantly constructed" through contestations over "norms generating communities".[28] In many developing countries, including Indonesia, these communities may possess more or

24 Henry Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991) at 33.
25 *Ibid*.
26 Doreen Massey, *For Space* (London, Sage, 2005) at 9.
27 Javeer Trevino, *The Sociology of Law: Classical and Contemporary Perspective* (New York: St. Martin's Press, 1996) at 353.
28 Paul Berman, "Global Legal Pluralism" (2007) 80 S. Cal. L. Rev. 1158.

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less autonomy to regulate their territory through customary rules. This is where legal pluralism comes into play.

B. Legal Pluralism

Legal pluralism refers both to a condition in which several normative orders coexist and are superimposed upon legal transactions in a given social field[29] and to an analytical framework for empirically examining the interactions between legal orders and social actions within such a social field.[30] In Indonesia, the conditions of legal pluralism are a matter of fact. The introduction of state law through Dutch colonial and successor independent States has not made the existence of pre-colonial legal orders, be it customary law as well as religious law, disappear from the normative life of Indonesian society. In many respects, the relationship between state law, customary law and religious law is mutually constitutive. Thus, socio-legal studies in Indonesia face a complex legal constellation informing people's legal culture in deciding which legal rules are considered legitimate and which forum they use to solve their disputes. This is what von Benda-Beckmann terms as "forum shopping" by which disputants may chose their preferable forum among other forums available.[31]

Bali is not an exception in this regard. Following the ethical policy and political strategies to prevent the wave of nationalism spreading from Java, Colonial authorities promoted a "*Baliseering*" project to preserve Bali's distinct cultures and institutions, including its customary law.[32] The village (*desa*), based on the concept of the "village republic",[33] was considered vital for the success of this project because customary law and local practices were rooted at the village level; thus, the village was restructured by introducing a dualistic structure of village governance based on a division between the administrative

29 Griffiths, *supra* note 3; Merry, "Legal Pluralism" (1988) 22(5) Law and Society 869–896; Soussa-Santos, "Law: A Map of Misreading. Toward a Postmodern Conception of Law" (1987) 14(3) J.L. & Soc'y 279–302.

30 Franz & Keebet von Benda-Beckmann, *supra* note 5; Lucy Finchett-Maddock, "Critical Legal Pluralism and the Law of the Ulayat: Resistant Legalities in a Plural Legal Reality" (2011) Report ICRAF Fellowship.

31 Keebet von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatera" (1981) 19 J. Legal Pluralism 117–159.

32 See Adrian Vickers, *Bali: A Paradise Created*, 2nd ed. (Singapore: Tuttle Publishing, 2012); See also Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Jakarta: PT Pradnya Paramita, 1999).

33 See, for example, V.E. Korn, "The Village Republic of Tenganan Pegeringsingan", in J.L. Swellengrebel *et al.*, *Bali: Studies in Life Thought and Ritual* (Dordrecht: Foris, 1984 [1933]).

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village and custom village.[34] Theoretically, they were "kept distinct": the administrative village was focused on the colonial administrative duty while the custom village, with an acknowledgement of its cultural "autonomy", regulated ritual and customary social affairs.[35] In the decentralisation era, the role of the custom village in local development has been increasingly essential.[36] This has brought Balinese custom villages to the fore as important actors in contestations over village space.

As an analytical framework, legal pluralism is employed to examine the interaction between different legal orders in a given society. In Bali, this would mean to examine the interactions between state law, customary law and religious law dealing with similar matters. In the context of this article, legal pluralism is employed to examine not only how different legal orders governing space coexist and superimpose but also how this complex legal constellation informs people's legal culture. The kind of legal justification to support the interests of each competing agencies may be varied as the consequences of legal pluralism. To a large extent, an approval justified by the local customary rules from a custom village where a development project is located would determine failure or success of the projects, although the sale of certified land and the issuance of many permits including building permits do not officially require such approval. Thus, customary law becomes another source of legality to support or restrain a development project within a custom village.

IV. Spatial Planning in a Complex setting

In both the late New Order and Reform periods of Indonesia, attempts to provide legal certainty and calculability for the benefit of economic actors were geared toward securing space for economic expansion. For this reason, spatial management – involving the regulation of access to land, maintaining tenure security, and balancing a wide range of sometimes competing interests in land use – is "an important instrument to secure certain development goals or other particular national or regional interest".[37] It is also critical to pursue social, economic, and environmental benefits through the creation of "more stable and predictable

34 *Inlandsche Gemeente Ordonnantie Buitengewesten* 1938.

35 Warren, *supra* note 8 at 297.

36 For a discussion of these shifting power relations, including examples of extreme cases of "*adat* militancy", see Carol Warren, "Adat in Balinese Discourse and Practice: Locating Citizenship and the Commonweal" in J. Davidson, and D. Henley, *supra* note 5 at 170–202.

37 Moeliono, *supra* note 4 at 27.

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conditions for investment and development" and the promotion of "prudent use of land and natural resources for development".[38] This section highlights the conceived space as articulated in the spatial planning law and regulations and its interactions with Balinese conception of space based on customary rules and religious rulings.

A. State Spatial Plan System

With respect to the importance of spatial planning in the decentralised context of reform era Indonesia, it was widely argued that the former *1992 Spatial Planning Law No. 24* was no longer appropriate.[39] Following two years of drafting and debate from 2005 to 2007, the national government finally enacted a new law governing spatial planning, the *2007 Spatial Planning Law No. 26*. The law adopts the style of the North American planning system by utilising rigid zoning and building codes for management of growth and development.[40] This western-transplanted spatial planning law follows the enactment of other "modernised" laws governing land registration, mining, oil and gas, agro-industries, and investments, as a package of structural adjustment toward economic liberalisation.[41] Without a law concerning spatial planning to meet investment needs, such business-related laws would have been difficult to implement. Therefore, the law governing spatial planning was considered important to provide legal certainty and economic calculability for investors to utilise space under the new regional autonomy regime.

Despite the transfer of more roles to regional government, however, the main feature of Indonesian spatial planning law remains centralised. The principle of hierarchy in spatial planning is maintained with national government providing the overarching spatial plan and guidance for spatial planning matters at lower levels. Through the new law governing spatial planning, the national government attempts to encourage "universal, top-down planning

38 Economic Commission for Europe, *Spatial Planning: Key Instrument and Effective Governance with Special Reference to Countries in Transition* (New York and Geneva: United Nations, 2008) at 1.

39 Delik Hudalah, *Peri-Urban Planning in Indonesia: Context, Approaches and Institutional Capacity* (PhD Diss, University of Groningen, 2010) at 45.

40 *Ibid*. at 47.

41 For a further discussion on the connection between the spatial planning system and neoliberalism in Indonesia see Delik Hudalah & Johan Woltjer, "Spatial Planning System in Transitional Indonesia" (2007) 12 International Planning Studies 291–303.

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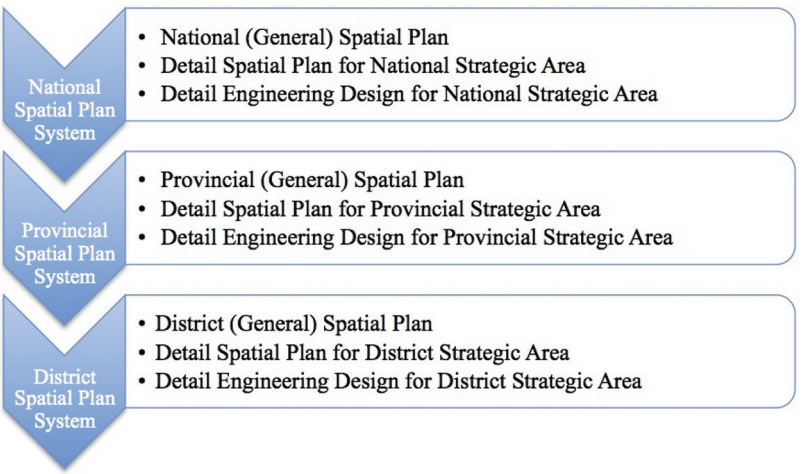
approaches and standards".[42] After enactment of the national spatial plan provincial governments and district governments across Indonesia should have enacted their regional spatial planning regulations complementing the national one within two years (for provincial governments) and three years (for district governments) for the determination of land use and spatial management in the regions.[43] No regional regulations should conflict with the national law on this matter, and they are required to adopt the same approaches, standards and areas of national interest designated by the national government.



Graph 1: Hierarchy of Indonesian spatial planning system
Source: Hudalah, 2010

One of the notable features introduced by the national *2007 Spatial Planning Law No. 26* is the introduction of "strategic areas". A designation of strategic areas is done considering their vital functional purposes in terms of national sovereignty, economy, defence and security, society and culture, as well as environmental protection. In the explanatory note of Article 5 paragraph (5), an area is given "strategic" status because it may potentially have significant economic, social, and cultural impacts from activities taking place within the area. The status and functions of a strategic area are designated by three tiers of government, namely national, provincial and district. The national government has authority to designate national strategic areas in terms of sovereignty,

42 Hudalah, *supra* note 39 at 50.
43 *2007 Spatial Planning Law No. 26* (Government of Indonesia), Article 78.

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defence and security, economy, social and cultural matters, environment, and world heritage. Meanwhile provincial and district governments only have authority to designate three types of strategic areas in terms of economy, society and culture, and environmental protection, as stipulated by Article 1 paragraphs (28), (29), and (30), as follows:

Table 1: Scales and functions of strategic areas

Scales	Prioritised for functional purposes				
	Sovereignty, defence and security	Economy	Society and culture	Environment	World heritage
National	√	√	√	√	√
Provincial		√	√	√	
District		√	√	√	

Source: 2007 Spatial Planning Law No. 26

In Bali, the notion of spatial planning is relatively new. It was first introduced in 1965, followed by a series of studies conducted by national and provincial governments and the result was enacted as a spatial planning regulation for Bali Province in 1969.[44] Since then, the spatial planning regulation in Bali has been revised and replaced in accordance with the national legislation and the development priorities of the regional government. According to Suarca, there are two critical moments in the development of the spatial planning in Bali. The first one is the 1992–1998 period in which he considers as "the moment of perish" for spatial planning in Bali due to massive investments that were very often closely linked to President Soeharto.[45] The second one is the regional autonomy period in which he also observes that violations of the spatial planning regulations are facilitated by the district governments due to unsynchronised planning regulations from national, provincial to district levels, and a new set of vested interests arising from regional autonomy and the operations of the political party system.[46] During this period, the existing spatial plan regulation, the *2005 Provincial Spatial Planning Regulation for Bali No. 3*, was considered ineffective to prevent and to enforce sanctions against violations taking place at district levels.

44 I Nengah Suarca, "*Tata Ruang di Propinsi Bali*", in Hardjatno & Febi Harta, eds., *Beberapa Ungkapan Sejarah Penataan Ruang Indonesia 1948–2000* (Jakarta: Departemen Permukiman dan Prasarana Wilayah, 2003) at 401–420.
45 *Ibid*. at 407.
46 *Ibid*. at 409.

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As legally mandated by the new *2007 Spatial Planning Law No. 26* and as a response to the public demands toward a fresh spatial planning regulation at the provincial level, the Governor of Bali, Made Mangku Pastika, announced that a new spatial planning regulation would be enacted by incorporating more stringent sanctions both to the violators and government officials who issue permits for unlawful developments.[47] The first and second drafts of these new regulations had been formulated and socialised through public consultations; however, a number of civil society groups were not happy with the weak provisions of the draft and called for revisions.[48]

Having been rejected twice, the Governor expanded public participation involving NGO representatives, business enterprises, and religious/customary leaders. A team for reviewing academic studies and formulating the new draft regulation was established.[49] After several months of debate and reformulation, a new academic study and a new draft regulation were finally crafted by the team and were duly submitted to the Bali Regional Assembly (DPRD) for adoption. The draft was widely publicised, triggering intense public debate. Protests were officially raised by all district heads in Bali through a joint statement objecting to the draft being adopted as a provincial regulation.[50] They demanded the draft to be revised by removing provisions that may restrict tourist investment flows to the districts. Their demands, however, could not be fulfilled because the draft had reached the final procedural step toward adoption, which was an assessment by the Minister of Home Affairs.[51]

The draft was finally adopted by DPRD Bali as the *2009 Provincial Spatial Planning Regulation No. 16*, replacing the *2005 Provincial Regulation No. 3*, in December 2009. However, the controversy over spatial planning was far from

47 "*Eksekutif Diminta Bongkar Villa Suluban*" *Bali Post* (8 May 2008); see also "*Kehancuran Bali Berawal dari Pembiaran Pelanggaran Perda Tata Ruang*" *Bali Post* (15 August 2008).

48 Their objections were related to legal loopholes in the draft favouring investors, and the lack of coherence in the academic study which was the reference for these drafts and out of date with respect to the real conditions of Bali Province.

49 Members of the team were 22 persons representing different interest groups over the use of space, which were: five from Forum Peduli Gumi Bali (NGO activists), five government officials, three spatial planning experts, three from religious and adat organisation, three academics, three from the business community. Only three women served as members of the team who were all from Forum Peduli Gumi Bali. See "*Pemprov Bentuk Tim Evaluasi: Rombak Kajian Akademis dan RTRWP*" *Bali Post* (15 May 2009).

50 Arya Utama & Sudiarta, "*Kajian Normatif terhadap Efektifitas Perda Bali No. 16 Tahun 2009 tentang Rencana Tata Ruang Wilayah Provinsi Bali Tahun 2009–2029 serta Strategi Implementasinya*" (Paper delivered at the National Seminar on Developing Bali in the Frame of Spatial Planning for Bali, UNUD, 6 May 2011) [unpublished] at 1.

51 *Ibid*., at 2.

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ended. The district heads and the Denpasar mayor vehemently opposed the new 2009 provincial regulation. This reveals the intensity of the competition between the provincial government and previously subsidiary district and municipal governments in the spatial distribution of political and economic power. District and municipal governments frequently argued that they should be prioritised as the main actors in spatial governance in the era of decentralisation.[52] The provincial planning regulations were clearly a threat to their political and economic interests and represented an attempt by provincial government to take over their most "profitable" income sources by transforming them into provincial strategic areas. This controversy reflects Hadiz' argument that Indonesia's decentralism in general has lead to the contestation of local elites over power and resources.[53]

B. Customary and Religious Rules Governing Space

The controversies over spatial planning did not only manifest among state elites, but was also transformed into contestations between formal state institutions and customary community. The latter draws from different sources of legality available in society, from state, religious and customary law. With regard to customary law, there is no unified customary legal regime dealing with spatial planning in Bali in spite of sharing common "sensibilities". These sensibilities are related to cultural concepts of space, such as *uluteben* (sacred-profane) and *kaja-kelod* (north-south) for buildings and ritual orientation. In practice, customary rules to govern space are decided collectively by the assembly (*sangkep*) of village members.[54] It should also be noted that the custom village in Bali itself is a "field of power"[55]; thus application of customary rules should not be considered uniform because they are decided in accordance with the adage *desa-kala-patra* (according to place-time-situation) which provides an arena for competing interpretations and power play

52 "*Kabupaten Tolak RTRW Provinsi: Beberapa Bupati Sudah Teken Surat Keberatan*" *Radar Bali* (31 October 2009), online: Jawa Post Group <http://www.jawapos.com> (last accessed 18 August 2013). However, it has also been strongly argued that decentralisation to district level worked against coherent environmental and cultural integrity in the case of Bali.

53 Vedi Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Redwood City, CA: Stanford University Press, 2010).

54 Nirarta Samadhi, *Perilaku dan Pola Ruang: Kajian Aspek Perancangan Kota di Kawasan Perkotaan Bali* (Malang: LPPM Institute Teknologi Malang, 2004) at 52.

55 See Ari Dwipayana, *Desa Mawa Cara: Problematika Desa Adat di Bali* (Yogyakarta: IRE, 2005).

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among actors from local to global in efforts to influence the outcomes. As a result, the customary spatial governance in some custom villages may be used to support state or capital interests. Meanwhile, in other villages, it may be used to resist those interests by deploying different interpretations of the common good.

Besides customary law, religious rulings have been an important legal source for Balinese Hindus. Although in the context of spatial governance, both legal orders may be derived from similar conceptions of space, their source of legitimacy and compliance mechanisms are different. On the one hand, religious rulings are enacted by the state-sponsored Hindu organisation, the Indonesia Hindu Dharma Organisation (PHDI/*Parisada Hindu Dharma Indonesia*), as official interpreter of religious texts. There is no specific structure administering the enforcement of such rulings but its non-compliance is considered akin to a religious wrong doing punished in accordance with *karma phala* (spiritually enforced consequences of one's of actions). On the other hand, customary rules are enacted based on consensus of custom village's members. Non-compliance to customary rules would be heard during a members' assembly under threat of a range of sanctions, such as fines, conducting specific rituals, or expulsion from the village depending upon the degree of wrongdoing.

Specifically on the religious ruling governing sacred space, the single most important ruling is the *Bhisama* on the sphere of temple sanctity (thereafter the *Bhisama*). Historically, the *Bhisama* was issued at the PHDI's General Assembly in 1994 as an attempt to prevent the controversial Bali Nirwana Resort (BNR) development, owned by a national conglomerate close to Soeharto, and located facing the Tanah Lot Temple, one of the major temples for Balinese Hindus.[56] The ruling derives its provision from traditional concepts of the sacred sphere around temples depending on the temples' hierarchy,[57] which are: *apeneleng* (sacred spheres from the temple's centre to the point that unable to be seen by the naked eye); *apenimpug* (sacred spheres ranging from the temple's centre to the point that unable to be reached by a stone's throw); and *apenyengker* (sacred spheres ranging from the temple's centre to a physical border such as an outside

56 For detailed discussion on the case of BNR, see Warren, *supra* note 10.

57 The hierarchy of temples in Bali is categorised into (1) *Sad Kahyangan* (highest temples of island wide importance), such as Besakih, Batur, Uluwatu, Batukaru, Lempuyang, Andakasa, Goa Lawah, Puncak Mangu, Pusering Jagat, Kentel Bumi; (2) *Dang Kahyangan* (temples of regional importance), with more than 100 temples across Bali, including Tanah Lot, Sakenan, Perancak, Pulaki. See Gusti Gde Ardana, *Pura Kahyangan Tiga* (Denpasar: Pemerintah Provinsi Bali, 1999); and (3) *Kahyangan Tiga* (three temples at the village level).

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wall). Although these relatively ambiguous concepts have maintained their original meaning in customary law, in the *Bhisama*, however, the concepts are converted into a definite measurement unit. *Apeneleng* is subdivided into *apeneleng agung* and *apeneleng alit* which are quantified as 5 km and 2 km respectively, and *apenimpug* otherwise is quantified as 25 m.

Concerned with the lack of compliance to the *Bhisama* and the absence of institutional arrangements for its enforcement, the Government of Bali Province decided to integrate the *Bhisama* into the state legal system. The *Bhisama*, as a unified religious ruling on the sanctity of space around Hindu temples, otherwise was first incorporated into provincial regulations in the *2005 Provincial Spatial Planning Regulation No. 3* (*Perda 3/2005*). Ever since, the *Bhisama* has become a "formal" source of law governing space in Bali, including in the *2009 Provincial Spatial Planning Regulation No. 16* (*Perda 16/2009*), the successor of the 2005 regulation. This inscription of the *Bhisama* into the 2009 regulation has been one of the most contentious issues of the spatial planning controversy in Bali due to the objection of its province-wide application by district heads and the Custom Village of Pecatu.

V. Contested Space of Pecatu

The spatial planning controversy is to a large extent related to the struggle over land. This struggle in particular, as Ubink argued, is "never merely a question of land, but also a question of property, and... property is not about things, but [it is] about social and political relationships between and among persons with regard to things."[58] Indeed, the issues of access to land and land tenure in Indonesia, historically, "embody powerful tensions between elites and popular forces, between regional interests and central government, and between Indonesian national and transnational capital."[59] In particular, customary authority over land tenure and use has been in direct conflict with the appropriation of authority over land transactions by the state since the colonial period and intensified under New Order developmentalist policies. Thus, considering such tensions and the unequal distribution of power and resources, the question of the implications of legal pluralism for land use management should be examined through an empirical study in order to spell out the production of space through legal means and whose interests are served best by such production.

58 Janine Ubink, *In the Land of the Chief: Customary Law, Land Conflict, and the Role of the State in Peri-Urban Ghana* (Leiden: Leiden University Press, 2008) at 29.

59 Anton Lucas & Carol Warren, *Land for the People: The State and Agrarian Conflict in Indonesia* (Athens, OH: Ohio University Press, 2013) at 2.

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A. The Legal Production of Space in Pecatu

Since massive development of tourism and the real estate industry took place within the Village of Pecatu, space as a social product has become contested. During the New Order, the "conceived space" of Pecatu Village rooted in the customary conception of space has been challenged by the national construction of space as a medium for economic development through the tourism industry. The most notable project imposed by the state has been PT. Bali Pecatu Graha (BPG), a company owned by a son of Soeharto, Tommy Soeharto, in 1995. The company displaced local peasants from a 950-hectare area in order to build a luxury resort complex. Many of the villagers who resisted displacement were put in custody and intimidated by military forces.[60] After being postponed due to the economic crisis and the fall of Soeharto in 1998, the project still remains in Soeharto family hands. Subsequently, this development has been followed by the construction of many other resorts, villas, real estate, as well as commercial buildings, and by an improvement of infrastructure, such as roads, telecommunication, electricity, even water supply from outside the village. Thus, the "perceived space", the landscape of the village, has been changing dramatically. As the "perceived space" is closely connected to the "lived space", the latter has also been implicated.

Contestations over space especially land have been the "unintended consequences" of tourism and real estate expansion. These contestations have not only occurred among the elite guardians of Uluwatu Temple in accessing the economic and cultural "resource" of the temple but also among ordinary villagers of Pecatu. Responsibility for Uluwatu Temple lies with two noble families as its traditional guardians, namely Jero Kuta and Puri Celagi Gendong, assisted by the Custom Village of Pecatu. In 1992, Jero Kuta established the Yayasan Uluwatu (Uluwatu Foundation) to undertake inventory, registration and certification of all temple assets, particularly the temple-owned land, in the name of the foundation. These attempts, however, have several times brought the foundation before the civil or administrative courts in relation to conflicting claims of Puri Celagi Gendong.

During 2007–2010 there were at least three cases filed by the foundation. The first case, heard before the Civil Court of Denpasar, concerned unlawful certification undertaken by Puri Celagi Gendong over a piece of land claimed supposedly to be under foundation's custodian. In fact, Puri Celagi Gendong had also leased the land in questioned to two companies, PT. Nanno Bali and PT. Dreamland Bali, for commercial accommodation development. However,

60 Interview with Ketut Yasa and Ibu Mardi by Carol Warren, 1 August 2012.

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due to inaccuracy in describing the object of dispute, the plaintiffs' claim was dismissed. Unsatisfied by this verdict, the foundation took another legal avenue by suing Puri Celagi Gendong together with the National Land Agency (BPN/ *Badan Pertahanan Nasional*) before the Administrative Court of Denpasar on similar matters to the above. This case was also subsequently dismissed.

In 2007, the foundation undertook legal action before the Administrative Court of Denpasar against the District Head of Badung for hindering the foundation's efforts to obtain approval for temple's land certification. It wanted to certify a piece of land claimed as an asset of Uluwatu Temple; in order to proceed, a statement letter (SK) from the Village Head of Pecatu where the land was located was required. However, the village head refused to provide the letter saying that, according to the *awig-awig* (customary law) of Pecatu, the land wanted to be certified should be managed cooperatively between Jro Kuta, Puri Celagi Gendong and the Custom Village of Pecatu; thus, it should not be privately owned. The foundation turned to the District Head demanding the letter, but he instead issued a letter of refusal stating that the SK could not be issued since it would violate the customary law of Pecatu. The letter of refusal was filed before the administrative court to decide whether or not the letter was a legitimate object of administrative court. The Administrative Court of Denpasar accepted the letter as an object of administrative court's jurisdiction and accepted the claim of the plaintiff by ordering the district head to revoke the letter and to issue the SK required for certification. The Court of Appeal and the Supreme Court reversed this verdict stating that the letter of refusal was only a correspondence and should not be considered as an official administrative decision of the district head; therefore, the plaintiff's claims had to be dismissed. The relationship between the two noble families, thus, became more complicated.

In Pecatu, as elsewhere, public space is contested space due to attempts at appropriation by many social forces. Within that complex legal setting, however, the bases for legal claims are often conflicting. In 2009, a group of 37 food stalls (*warung*) at Dreamland Beach in Pecatu was displaced and relocated elsewhere due to the revival of the PT. Bali Pecatu Graha (BPG) for aesthetic reasons. During the period 1998–2006 following the fall of Soeharto, the front beach areas were occupied by local people from Pecatu to operate food stalls permitted by the custom village. Made Jenar, coordinator of food stallholders, was disappointed with the relocation arguing that the stallholders would lose their customers with relocation away from the areas most visited by tourists.[61] Many

61 Claudia Sardi, "Big Project Erases 'Dream' from Dreamland" *The Jakarta Post* (10 February 2009), online: The Jakarta Post <http://www.thejakartapost.com> (last accessed 19 August 2013).

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decided to resist and continue opening their *warung* at the beachfront. Access to beaches also became a source of income for local people. Pak Sontar claims that when a project to open access to Suluban Beach by constructing a new road was proposed, he and several other landowners gave up a small part of their land voluntarily, expecting that the value of their remaining land would increase from such construction. Subsequently, conditions changed due to rapid tourist and villa development along the road. After their remaining land was exhausted, they then sought an income share from the road that used to be their land by establishing a group to charge road access and parking fees from passing visitors.[62]

The contestations described above indicate how the contemporary space of Pecatu is being socially produced. Law has played an important role in this regard by providing a means for the formal construction of space as well as a range of forums to contest it. The construction of space in Pecatu as reflected in spatial planning regulations has been changing over time in accordance to changes in state authority's trajectories and the local imaginary. At first, space in Pecatu was designated as a dry agricultural area; in order to facilitate tourism development, the area was redirected to become a tourism zone. After Pecatu was to a large extent integrated into the tourism and real estate economy, this has become the structure that informs the social production of values and meanings. For example, the value of land, the basic form of physical space, has been converted from predominantly immediate agricultural use value into a commodity form to support the economy; thus, this has implicated land taxation. Furthermore, rules governing space that do not reflect the values and meanings of space in reality are likely to be challenged, adjusted or manipulated in their application. This can be seen from the controversy over the spatial planning regulation for Bali Province discussed below.

The challenge of the Custom Village of Pecatu against the *2009 Provincial Regulation on Spatial Planning* (*Perda16/2009*) concerned two issues. The first is the adoption of the *Bhisama* concerning temple's sphere of sanctity into the regulation and the provisions on ravine set-back (*sempadan jurang*). Both provisions are designed to support preservation agendas either ecologically or culturally as demanded by NGO activists, religious organisations, and academics supported by mass media. The provisions became a source of controversy in Pecatu Village because 60% of Pecatu village territory falls within the 5-km temple sanctity sphere of Uluwatu Temple[63] and 6% of Pecatu falls under the ravine set-back rules.[64] A significant area of the village is designated as

62 Adhika, *supra* note 13 at 217.

63 *Made Deg v. Gubernur Bali* [2010] Supreme Court of Indonesia, No. 30 P/HUM/2010, at 40.

64 *I Wayan Puja v. Gubernur Bali* [2010] Supreme Court of Indonesia, No. 32 P/HUM/2010, at 16.

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protected by the provincial spatial planning regulation, meaning that such areas are strictly prohibited from building commercial constructions. Thus, it is predicted that this would have a severe impact for landowning villagers and on the village economy.

Failing to intervene in the drafting process of the provincial spatial planning regulation, the Custom Village of Pecatu turned to customary law as a legal resort for challenging the application of the regulation within the village. The traditional concepts of the temple's sphere of sanctity are interpreted differently from the provincial regulation by the Custom Village of Pecatu. The village rejected the way the concept is quantified in the *Bhisama* then incorporated by the regulation. The Uluwatu Temple in Pecatu had been using the same traditional classification of sacred space but had never converted it into modern, fixed measurement units. Traditionally, Balinese measurements, among others, include *atengen* (one-hand), *ajari* (one-finger), *asiku* (one-elbow) for length, or *apenimpug* (stone's throw) for distances.[65] Because "a stone's throw may not be uniform from person to person", Balinese measurement units are "situationally, temporally, and geographically bound".[66] The custom has autonomy to interpret them in accordance with the customary principle of adaptability based on time-place-circumstances (*desa-kala-patra*).

For the Custom Village of Pecatu, the sanctity of Uluwatu Temple's sphere should be left to its interpretation and application based on the village decisions instead of being standardised by the state law on spatial planning. Ketut Yasa, the head of a traditional dryland farmers association (*subak abian*) and also a member of the Custom Village of Pecatu, states that during the general assembly, members of the Custom Village of Pecat agreed to quantify *apeneleng* (sacred space range from the temple's centre to the point where it cannot be seen by naked eyes) as equivalent to 1 km instead of 5 km as specified in the *Bhisama* and the provincial regulation.[67] This contestation to govern space through differing interpretations of a local measurement unit implies some concessions to the State's rationalising logic of "legibility", standardisation and simplification.[68] The cases described above show how the local conception of space is continually reconstructed through accommodation, contestation and

65 "*Menyoroti Perda RTRW Bali tentang Kawasan Suci*", online: Mpu Jaya Prema Ananda <http://mpuprema.blogspot.com.au/2011/03/menyoroti-perda-rtrw-bali-tentang.html> (last accessed 16 February 2013).

66 James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New York: Yale University, 1998) at 26.

67 Interview with Ketut Yasa by Carol Warren, 1 August 2012.

68 See Scott, *supra* note 66.

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negotiation with the external forces, enabling the expansion of tourism and real estate industry.

B. Competing Interests in Pecatu

Not long after the adoption of the *2009 Provincial Spatial Planning Regulation No. 16*, public attention was drawn to the Village of Pecatu. On the one hand, NGO activists, academics, religious organisations at the provincial level supported by the mass media continued to demand that the provincial government enforce of the regulation against violations in Pecatu as it promised. On the other hand, the Custom Village of Pecatu took legal actions against the application of the regulation. Officially, the Custom Village and *Badan Permusyawaratan Desa* (Village Consultative Assembly) of Pecatu filed a judicial review against the 2009 Provincial Spatial Planning Regulation before the Supreme Court.[69] Six individual cases were also submitted by the landowners within the 5-km temple sphere of sanctity, represented by Jakarta-based law firms. Two of these landholders were I Made Deg from Karang Bomo Hamlet and I Wayan Puja from Tengah Hamlet, Pecatu Village, Southern Badung.

The legal grounds claimed concerned the addition of new categories protected areas in the *2009 Provincial Spatial Planning Regulation* for Bali. Those categories are ravine set-back (*sempadan jurang*) zones and the temple's sphere of sanctity (*radius kesucian pura*) as specified in the *Bhisama* (Article 44 of the 2009 Regulation). According to the *2007 Spatial Planning Law No. 26*, the plaintiffs argued, there were no such categories as "*sempadan jurang*" and "*radius kesucian pura*" specified in the national legislation; therefore, there was no legal ground to regulate space by incorporating these categories in the regulation. Moreover, they argue that the *Bhisama* is not officially recognised as a source of law by the state legal system, although, in fact, there are provisions for cultural considerations in many local regulations. Their primary concern was actually the anticipated consequences of the protected area designation over their land. Physical and commercial developments within these designated areas would be restricted, depriving local interests of the economic advantages from such developments. The landowners are prevented from utilising their land for building tourism accommodation, decreasing the value of this land on the market.

After hearing both plaintiffs and defendants' claims, the Supreme Court finally dismissed the case stating that the *2009 Provincial Spatial Planning*

69 Registered as Case No. 34 P/HUM/2010 and Case No. 35 P/HUM/2010. See Utama & Sudiarta, *supra* note 50.

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Regulation is legitimate and does not violate any national law on these matters. The court considered that the protection of sacred areas is an attempt to preserve the uniqueness of Balinese culture and environment as the foundation of "cultural tourism", guaranteed under the Indonesian Constitution and the regional autonomy regime. The stipulation of the sacred sphere of temples should not be interpreted as neglecting the rights of landowners to utilise their land, but as an attempt to regulate kinds of activities allowed or disallowed within that sphere based on its zones (core, buffer and utilisation). On the issue of property rights, the Supreme Court states that the regulation should not be interpreted as denying the right of local people to become involved in tourism because the land may still be utilised for agricultural and religious activities to support tourism, and that the government, in fact, could provide an incentive for the landowners in the form of, among other things, tax reduction and compensation.[70] The court concluded by dismissing all of the plaintiffs' claims.

This decision reveals formal state recognition of the religious ruling (*Bhisama*) at national level under the provincial government's authority to protect the cultural uniqueness of the region. However, the Supreme Court appears to avoid the slippery question of the complex legal constellation in contemporary Bali. These complex legal and institutional structures in Bali have made it possible for legal actors to undertake "forum shopping" by which they may choose among the legal repertoire available in society in order to advance their interests, either state law, customary law, or an alternation between them, and select from among specific vocabularies to defend their stance. In the case of Pecatu, the actors have used both state and customary legal frameworks. Although their interests have been crafted in customary law, they do not appear confident to rely solely on the customary system as the source of legality. Thus, they wanted also to have state law to back up their interests by undertaking the state court procedure to change the regulation. This affirms the common practice in the Indonesian legal culture to consider customary law as subordinate to state law. The extent to which the autonomy of customary community is recognised by the state would depend on the extent to which its customary law is consistent with state law and regulations. It assumes that the existence of unofficial or non-state law should be regulated by the state legal system; put differently, "state law is rightfully the dominant set of rules."[71] Thus, intervening with the state

70 *Ibid*. This is based on *2009 Spatial Planning Regulation (Provincial Government of Bali) No. 16*, Articles 96, 127, 128.

71 Wibo van Rossum & Sanne Taekema, "Introduction to Law as Plural Phenomenon: Confrontations of Legal Pluralism" (2013) 3 Erasmus Law Review 157.

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legal system is still considered the most important way to pursue-specific interests.

The Pecatu case reflects the interaction between external and internal forces where different or even competing interests over space are embedded. Externally, the regional tiers of government responded differently to the flows of capital, labour and tourists to the village. This led to contestation between provincial government and district government in designating Pecatu and the Uluwatu Temple. In this regard, the provincial government through its spatial planning has designated the temple complex as the provincial strategic area; meanwhile, the district government of Badung sees this designation as an attempt to "take over" the area that makes significant contribution to district revenues. Ketut Sudikerta, a Pecatu-born Golkar politician and well-known project broker for the Suharto family, was one of the powerful elites behind the controversy by using his position strategically as the Vice-District Head of Badung and a respected figure within the Custom Village of Pecatu. As a hotel and property business entrepreneur, he appears to anticipate the impacts of the regulation on his businesses. In 2013, he was elected as the Vice Governor of Bali with a pledge for his village to "secure" tourist and real estate development within his village and district from the application of the provincial regulation.

When a customary community demands recognition or respect for its customary law, it is also partly a political demand and a reflection of the "power struggles" within the community for establishing a "distinct identity".[72] In Bali, as observed by Warren, customary institutions are "negotiating grounds" for the contestations between village and State, and of a struggle to balance collective and individual interests.[73] In the context of the spatial planning controversy in Pecatu Village, how to interpret village or collective interests, however, very often depends upon how the local power holders are able to rationalise and articulate their individual interests by capturing local institutions. Powerful elites either at the village or district level are often in a better position to define what forums or vocabularies are available for defending or negotiating "local interests", since they have better access to resources and wider alliances. It appears that the local dynamic has been dominated by the interests of local elites who are benefitting most from tourism and real estate development from issuing permits or approvals or acting directly as middlemen (brokers).

72 *Ibid*. at 155–157.

73 Warren, *supra* note 8 at 290.

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However, the local community members' perceptions of threats and opportunities posed by tourist and real estate development in their local areas are highly ambivalent. Despite depending on tourism, like most Balinese who have been polled on the subject, Ibu Mardi, a local Pecatu masseuse at Dreamland Beach, for instance, believes that spatial planning regulations should be more stringent and that buildings that violate the regulations should be demolished. She is also opposed to the high level of land transfers from locals to outsiders, and the uncontrollable development in her area that has had negative impacts on her livelihood.[74] As a woman, Ibu Mardi is excluded from a direct decision-making role in the spatial planning controversy, because both local customary institutions and official village councils are dominated by men.[75] However, she managed to keep her husband from selling the inherited land in the face of intense pressure from middlemen (*calo*) in her village. Meanwhile, Ketut Yasa agrees that the sacred sphere around temples should be protected and that agricultural land should be preserved, but he is not prepared to give up his rights over his own land through designation as protected areas and rather prefers other landowners do so.[76] The differences in their views undoubtedly reflect a widespread tension between private self-interest over property rights and income generation, and collective interest in the protection of the "commonweal"[77] in a contemporary Balinese example of the "Tragedy of the Commons".[78]

VI. Conclusion

The expansion of the tourism and real estate industry in the era of regional autonomy has led to public concerns about the integrity of Bali's environment and culture. In this regard, a legal framework to constrain such expansion has

74 Interview with Ibu Mardi by Carol Warren, 1 August 2012.

75 Representation within *banjar* (hamlet) and *desa adat* (custom village) is customarily by male heads of household; elected and appointed representative village councils are also disproportionately male.

76 Interview with Ketut Yasa by Carol Warren, 1 August 2012.

77 Commonweal' refers to "the general welfare of the public, as well as institutional, political, cultural and material domains through which that common welfare is pursued." See John McCarthy & Carol Warren, "Communities, Environments and Local Governance in Reform Era Indonesia" in Carol Warren & John McCarthy, *supra* note 1.

78 See Garrett Hardin, "The Tragedy of the Commons" (1968) 162 Science 1243–1248.

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been introduced and formally enacted through a provincial regulation concerning spatial planning for Bali. The two most contentious provisions in the regulations are the inscription of the religious rulings (*Bhisama*) to protect the sacred space around temples and the introduction of ravine set-back rules to prevent tourist development on these vulnerable areas. However, the regulation has been challenged by those whose economic and political interests are affected by the regulation, namely district governments, investors and Pecatu Village. In challenging the regulation, those opponents have used strategically any legal or non-legal means available to advance their interests. In the local context, Pecatu Village has been the site of this power struggle between two opposing forces: between those who demand the enforcement of the regulation consistently, represented by mass media, academics, NGO activists and religious leaders at the provincial level, and those who are against its application, represented by head of districts and the local elites of Pecatu Custom Village.

Furthermore, the condition of legal pluralism has widened the room for manoeuvres and negotiations open to all social forces provided that they have knowledge and power to use them in pursuing specific interests over space. In the context of Pecatu case, it appears that the opponents of the provincial regulation have been more prepared to use strategically any means available. At first, they were advocating to put their interests on state law. However, due to massive public scrutiny on the law making process of the provincial spatial planning regulation, their interests were less accommodated and even constrained by the regulation. They then found another avenue of resort to challenge the regulation, based on customary law in which they argue that sacred space should be governed according to the custom village's rules instead of state regulation. Their interests still did not prevail partly because the proponents of the regulation, with mass media support, scrutinised, shaped, and channelled public opinion against them.

Finally, the framework in this article may be useful to empirical analyses of spatial planning within complex institutional and legal settings beyond Bali. The spatial planning controversy in Bali reveals how space, in terms of conceived, perceived and lived spaces, is produced within a pluralistic legal setting and whose interests are served best by this setting. Using the production of space and legal pluralism lens, it appears that local conception of space and spatial practices in Pecatu to a large extent is informed by the changes in the village landscape caused by the operations of the tourism and real estate industry within the village. In this regard, law, either state and/or customary rules, may facilitate or even frustrate these operations. Space is no longer considered based on traditional polarisation between sacred and profane but it is now more complex interplay between cultural, social, and most importantly

economic forces. Spatial planning involves a never-ending process of contestation over power and resources in which law plays a significant although not necessarily decisive role.

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