

## Penggunaan Wewenang Paksaan Pemerintahan Dalam Penyelenggaraan Pemerintahan Di Propinsi Bali

### I Wayan Suandi

#### Ringkasan

Penelitian ini mengkaji "Penggunaan Wewenang Paksaan Pemerintahan Dalam Penyelenggaraan Pemerintahan di Propinsi Bali" dengan permasalahan meliputi : pertama, penggunaan wewenang paksaan pemerintahan tidak sesuai dengan karakter hukum publik, reparatoir dan wewenang diskresi, kedua, prosedur penggunaan wewenang paksaan pemerintahan berlebihan sehingga tidak sesuai dengan peraturan dasarnya dan ketiga, partisipasi Desa Pakraman dalam penggunaan wewenang paksaan pemerintahan dan dalam partisipasi ini diterapkan norma-norma hukum adat dalam tindakan-tindakan hukum publik yang berkaitan dengan penggunaan wewenang paksaan pemerintahan.

Penelitian ini termasuk ke dalam kategori penelitian hukum normatif yang menggunakan pendekatan undang-undang dan pendekatan kasus. Bahan hukum yang digunakan adalah bahan hukum primer dan sekunder yang kemudian dianalisis menurut langkah-langkah deskripsi, sistematisasi dan eksplanasi. Pada tahap deskripsi dipaparkan tentang bahan-bahan hukum dan dilakukan penafsiran terhadap norma-norma hukum yang kabur secara gramatikal, otentik dan sejarah hukum. Pada tahap sistematisasi dipaparkan dan dianalisis mengenai makna dan struktur aturan-aturan hukum. Di samping itu, pada tahap ini juga dianalisis tentang koherensi aturan-aturan hukum yang berkaitan dengan isu-isu hukum dalam penelitian ini. Pada tahap eksplanasi dianalisis mengenai makna dari aturan-aturan hukum sehingga keseluruhannya membentuk satu kesatuan yang saling berhubungan secara logis.

Hasil penelitian menunjukkan bahwa penggunaan wewenang paksaan pemerintahan tidak sesuai dengan karakter hukum publik, reparatoir dan wewenang diskresi. Ketidaksesuaian dengan karakter hukum publik karena adanya pembuatan keputusan tata usaha negara tanpa dasar hukum yang sah sehingga keputusan demikian ini bertentangan dengan peraturan dasarnya. Ketidaksesuaian dengan karakter reparatoir karena biaya dari tindakan-tindakan nyata yang dilakukan oleh Pemerintah Daerah untuk memulihkan keadaan semula tidak dapat dibebankan kepada pelanggar. Pembebanan biaya ini tidak dapat dilakukan karena belum ada Peraturan Daerah yang mengaturnya. Ketidaksesuaian dengan wewenang diskresi karena terjadi ketidakkonsistenan dalam penggunaan wewenang interpretasi terhadap norma-norma hukum yang kabur sehingga dapat merugikan warga masyarakat.

Kesalahan penafsiran terhadap mandat menjadi kekuasaan delegasi mengakibatkan suatu keputusan tata usaha negara yang dibuat tanpa wewenang. Karena terjadi penggolongan yang tidak benar dalam mana norma-norma hukum administrasi diklasifikasikan menjadi tindak pidana mengakibatkan adanya prosedur berlebihan dan tidak konsisten dengan peraturan dasarnya. Akibatnya, wewenang paksaan pemerintahan digunakan dan didasarkan pada putusan Peradilan umum.

Partisipasi Desa Pakraman dalam penggunaan wewenang paksaan pemerintahan meliputi kerjasama yang aktif dalam pembuatan keputusan dan aktif dalam pelaksanaannya. Partisipasi didasarkan pada Tri Hita Karana atau tiga penyebab kesejahteraan meliputi keharmonisan hubungan antara warga Desa dengan Tuhan Maha Pencipta, keharmonisan hubungan antar-warga Desa dan antara warga Desa dengan Aparat Pemerintah Daerah dan keharmonisan hubungan antara warga Desa dengan lingkungannya.



The Utilization of the Executive Coercion Competence  
In the Administration of Government  
In Bali Province

I Wayan Suandi

Summary

This research studies the Executive Coercion Competence In the Administration of Government In Bali Province with three legal issues. First, the utilization of the executive coercion competence is not in line with the characteristics of public law, reparatory and discretionary power. Second, the executive coercion procedures are not in accordance with its basic rule. Third, the traditional village organs (Desa Pakraman) apply adat legal norms in public law activities concerning the utilization of the executive coercion competence.

This research is classified into a normative legal research that uses the statute and the case approaches. Legal materials that are used in this research include the secondary and primary legal materials and furthermore are analysed by three steps namely description, systematization and explanation. At the step of description is described about legal materials and is done the interpretation toward the vague legal norms grammatically, officially and legal historically. At the step of systematization is described and analysed about the meaning and the structure of legal norms. Besides that, at this step is also analysed about the coherence of it that are connecting with legal issues in this research. At the step of explanation is analysed about the significance of legal norms so that all of it form an unit that are connecting each other in a logical manner.

The research indicates that the utilization of the executive coercion competence is not in accordance with the characteristics of public law, reparatory and discretionary power. The unconformity with the characteristic of public law because there is a making decision without valid basic rule so that this decision is in contradiction with its basic rule. The unconformity with the characteristic of reparatory is caused by the cost of real actions that are done by Local Government for the reparation of an illegal situation can't be loaded to the violator. It is caused by there is not Local Regulation that regulates it, yet. The unconformity with the discretionary power because there is an inconsistency in the utilization of interpretation

competence of vague legal norms so that it can damage the members of the Society.

The misinterpretation of mandat to be delegation power, results in an incompetent state administrative decision. Due to incorrect classification, by which administrative legal norms are classified to be criminal acts causes that the procedures are superfluous and are inconsistent with its basic rule. As a result, the executive coercion competence is utilized and based on ordinary court decision.

The participation of the traditional village organs (Desa Pakraman) in the utilization of the executive coercion competence includes active cooperation in decision making and active in its implementation. It is based on the Tri Hita Karana or a fundamental concept of life of Balinese namely three causes of prosperity include the harmonious relation between the members of the village and the God Almighty, the harmonious relation among the members of the village or between the members and the apparatus of Local Government and the harmonious relation between the members of the village and their environment.



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**Abstract**

This research deals with three legal issues. First, the utilization of the executive coercion competence is not in line with the characteristics of public law, reparatory and discretionary power. Second, the executive coercion procedures are not in accordance with its basic rule. Third, the traditional village organs (Desa Pakraman) apply adat legal norms in public law activities concerning the utilization of the executive coercion competence.

These legal issues are approached by the statute and the case approaches and are studied in three steps include : description, systematization, and explanation. The first step describes about legal materials and interprets vague legal norms grammatically, officially and legal historically. The second step analyses the meaning and the structure of legal norms and the coherence of it. The last step explains the significance of legal norms so that all of it form an unit that are connecting each other in a logical manner.

The research indicates that the utilization of the executive coercion competence is not in accordance with the characteristics of public law, reparatory and discretionary power. The mandat which is misinterpreted to be delegation power, results in an incompetent state administrative decision. Due to incorrect classification by which administrative legal norms are classified to be criminal acts causes that the procedures are superfluous and are inconsistent with its basic rule. As a result, the executive coercion competence is utilized and based on ordinary court decision.

The participation of traditional village organs (Desa Pakraman) in the utilization of the executive coercion competence includes active cooperation in decision making and active in its implementation. It is based on the Tri Hita Karana, a fundamental concept of life of Balinese.

**Key words :** utilization of the executive coercion competence, characteristic of the executive coercion, procedure, participation of traditional village organs.