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Debating Spatial Governance in the Pluralistic Institutional and Legal Setting of Bali

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Abstract
This paper analyses controversies over law-making processes on spatial planning in Bali, Indonesia. The rapid development of the tourism industry and concerns over environmental sustainability and commodification of culture gave rise to heated debates over the province’s spatial planning regulation. The analysis focuses on the legally and institutionally plural character of Bali, and thus is not confined to the state legal regime. As in many other developing countries, customary and religious legal regimes co-determine how spatial planning is dealt with legally and institutionally. State law itself may be plural because of different interests represented through it at various levels of governance. Therefore a broader discussion is needed of this complex legal and institutional setting about who plays an essential role in determining which concepts of space and whose interests in space are represented through the various legal repertoires in the process of developing a spatial planning regime.

Keywords: Bali, development, Indonesia, legal pluralism, spatial governance.

Introduction
Debates on spatial planning law in Indonesia are dominated by a state-centric viewpoint. This overriding perspective tends to privilege the state as the most or even only legitimate institution to regulate space through legal instruments, to make planning enforceable in society (Hudallah 2010; Hudallah and Woltjer 2007; Moeliono 2011). The tendency for state dominance in space regulation seems to follow the ‘law and development’ approach, in which spatial planning is treated as an important tool to allocate space for development, and in which state law serves as an essential instrument of ‘social engineering efforts to modernise Indonesian society from a traditional society into a modern industrialised one’ (Moeliono 2011, 20). As a result, the debate on spatial planning law and regulations is confined to normative discourses framed within the state legal regime (see for example Lisdiyono 2008; Arya Utama & Sudiarta 2011).

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Such a state-centric approach does not carefully assess and take into account the complex legal and institutional constellation in Indonesia. In fact, the post-Suharto era has emphasised this as a major feature of social and legal life in Indonesia (F. and K. von Benda-Beckmann 2006; Davidson and Henley 2007). However, by putting the state legal system at the centre of both analysis and policy agendas, state-centric approaches to spatial planning which utilise different legal orders that coexist in society, often fail to understand the dynamics over the use of space. The state’s attempts to standardise and modernise the notion of space in this complex setting through spatial planning law, as discussed below, is possibly challenged by other notions of space, such as those deriving from customary norms and principles of ordering space. In debating spatial planning from a socio-legal perspective, as I will do here, a better understanding of this complex legal and institutional constellation is needed. This is crucial for examining which concepts and normative notions of space, and whose interests, count among a diversity of competing concepts, notions and interests pertaining to space, and what mechanisms are available to pursue interests of various social and political actors.

The concept of legal pluralism, developed primarily in the scientific field of anthropology of law, seems to be the most illuminating approach to understand the socio-legal dimensions of spatial planning controversies in society. The concept is based on a conceptualization and scientific study of law in society that takes as its point of departure ‘the theoretical possibility of more than one legal order or mechanism within one socio-political space, based on different sources of ultimate validity and maintained by forms of organization other than the state’ (F. von Benda-Beckmann 2002: 37). This distinguishes it from mainstream approaches to law that tend to focus exclusively on the state and state law. Compared to the latter approaches, it uses a broader definition of ‘law’, recognizing the existence of a variety of legal phenomena, orders, or systems (see F. von Benda-Beckmann 2002). Legal pluralism itself is referring to a ‘state of affairs’ where several normative orders coexist and are superimposed in a given society (Griffiths 1986; Soussa-Santos 1987; Moore 1973). It also refers to a framework to examine the interactions among those normative orders empirically (F. and K. von Benda-Beckmann 2006; Finchett-Maddock 2011). This paper aims to assess the controversy of spatial planning in Bali by employing legal pluralism to the analysis of the processes leading towards a new standardised spatial planning law.
This standardisation imposed by the state is not unproblematic. Conditions of legal pluralism provide possibilities to challenge the state’s attempt to standardise spatial governance by channelling its argument, among others, through customary discourses available in a given society. In Bali, the most important one is the adage of *desa-kala-patra* (place-time-circumstance), which states that social norms should be derived accordingly to respect the uniqueness of law rooted in the customary village. Legal pluralism is pushed further by James Scott’s notion of ‘seeing like a state’ (1998). Contained in the legal dimension of ‘seeing like a state’ and the ‘state simplifications’ that go with it, is a bias towards the state legal system and an assumption that state law always determines the behavior of people, throughout the territory of the state. Attention to legal pluralism puts into perspective this state bias and neglect of non-state legal and normative systems. Contestation over spatial governance in Bali is not merely about the question of which source of legality should prevail, it also about the standardisation of spatial governance imposed by the state through simplifying complex social dynamics in any given society. In the institutionally complex setting of Indonesia, moreover, state interest is not necessarily monolithic since every tier of government may have different or even competing interests over space.

This paper argues that, while the state project to allocate space for development has privileged state law, customary and religious law still play a significant role in Balinese society. These three sources of legality interact in a complex way by informing, advancing or even constraining each other within a specific social, political, and economic context. Where the latter is the case, social actors engaged in a legal controversy such as a land conflict or a conflict about spatial planning, have multiple legal repertoires at their disposal that can be mobilized to influence the outcome of such a conflict. This practice is known as ‘forum shopping’ (K. von Benda-Beckmann 1981). A failure on the part of government agencies or other planners to consider the complex legal constellation of Balinese society, may lead to a lack of understanding of the processes whereby a law is drafted and enacted, and of the causes of ineffective implementation of the state’s spatial planning law. In addition, it might cause the marginalization of specific meanings given to space, interests related to space, and cognitive and normative notions attached to it. This may have important consequences, such as changing forms of access and use of resources.
for specific groups in society, or clashes between conflicting normative notions of planning.

Decentralisation and Tourism Expansion

The fall of the Suharto regime in 1998 brought an era of political reformation. Many governmental structures were decentralised under a wide range of pressures exerted by local elites while the central government retained its authorities in matters of security, religion, fiscal, and international relations. In 1999, the first law on decentralisation was issued (Law No. 22/1999), which transferred several competencies to the district level. Decentralisation to the district (kabupaten) government level rather than the provincial (provinsi) level was chosen, because there was a perception that decentralization under provincial authority might threaten national integrity (McCarthy and Warren 2009, 5). However, transfer of power to the districts also considerably decreased central control. Therefore, under the Megawati presidency, the law was revised and replaced by Law No. 32/2004 on regional governance, in which provincial governments were given a role as supervisors of the district governments in exercising their autonomy.

In Bali, the regional autonomy regime has changed the political structures of the province. Bali’s eight districts and a municipality are now able to exercise strong authority to manage their own territory. This new control structure has led to district arrogance, driven by local elites (so called ‘little kings; raja-rajakecil’), confirming Hadiz’s (2010) observation that decentralisation in Indonesia has been hijacked by elites and their predatory interests. Badung has become the richest district in Bali, in which well-established tourism infrastructure like the Ngurah Rai international airport, Nusa Dua and Kuta are located. Successful economic development through tourism has inspired other districts to pursue a similar development path. For rent-seeking local elites, who serve as government officials or politicians, Badung’s example is attractive as a possible way of making extra income by acting as middle-men or granting permits for future tourism development projects.

Indeed, the tourism sector has had a significant impact on Bali. As Picard (1996) argues, Balinese culture is deeply influenced by tourism. Despite the fact that it is estimated that 85 per cent of the industry is in the hands of non-Balinese (MacRae 2010, 20), the tourism sector provides 481,000 direct jobs or 25 per cent of the work force, and contributes 30 per cent of the Gross Domestic Product of Bali
Province (Coordinating Ministry for Economic Affairs 2011, 142). From a national point of view, Bali is ‘the gateway’ for the tourism economy in Indonesia: around 40 per cent of total tourist visits to Indonesia in 2010 arrived through Bali and stayed in hotels in Bali, which represents 15 per cent of the total hotel capacity in Indonesia (Coordinating Ministry for Economic Affairs 2011, 142). The growth of the tourism industry in Bali has also opened the opportunity for another, related business to expand rapidly: the real estate industry. Many foreigners as well as wealthy Indonesians are interested in having a piece of ‘paradise’ for themselves, causing the price of land to skyrocket.

However, today’s tourism industry in Bali faces many challenges. A recent report by the Coordinating Ministry for Economic Affairs (2011, 143) shows that the average tourist spending per day is lower in Bali than in other tourist destinations such as Thailand and the Maldives. The average length of stay has decreased from seven days in the 1980s to three days in 2012 (Asdhiana 2012). In addition, the industry has reportedly reached saturation, as income from foreign tourists between 2000 and 2006 has dropped continually despite the rapid development of tourism-related infrastructure projects within that same six-year period (Wisnu 2009). Windia, a local university professor, argues that due to traffic congestion and the loss of cultural uniqueness of the island, tourism to Bali will continue to decline (Asdhiana 2012).

Perhaps the most serious impact of the tourism sector and the real estate industry is experienced by Balinese farmers, the subak irrigation systems, and the island’s iconic terraced landscape (see also Lorenzen, this issue). Land and water issues have become central in Bali during the reform era. Since the 1990s productive agricultural land has been converted into tourism infrastructure (resorts, hotels, villas, and golf courses) in favour of a mass tourism-oriented model of development, at a rate of around 1,000 hectares per year (Warren 2009, 198). The expansion of tourism areas has led to an increase of land taxes which are based on the market value instead of the use value of land. The increase in land taxes is unlikely to be afforded by small, often subsistence, farmers who manage less than a third of a hectare of land.

Tourism in Bali is a water-intensive industry that uses water for pleasure rather than for basic needs. Budarma (2012) calculates that a hotel room in Bali consumes around 400-500 litres water daily. Relying on this modest calculation, since it does not include water consumption for pools and golf courses, tourist accommodation in
Bali with 50,873 rooms in 2013 (BPS 2014), mostly located in South Badung, consumed more than 20 million litres daily. This is why Bali is predicted to face a water crisis by 2025, as water is poorly managed and the population is projected to increase to over four million people by then (Cole 2012, 1225). Of some 400 rivers in Bali, 260 have reportedly run dry, and 65 per cent of the water resources from the agricultural regions of Tabanan have been diverted to the tourism industry (Cole 2012, 1234). This leads to water conflicts, including one which occurred in subak Yeh Gembrong of Penebel, Tabanan against the local water agency (PDAM) that had diverted 65 per cent of the water from their spring to supply tourist sites in South Badung (Kurnianingsih, n.d).

**Complex Legal and Institutional Setting**

Attempts have been made by Balinese both to ‘push upward’ and to ‘push downward’ the regional autonomy granted officially by the national law (Ramstedt 2013, 116). Pushing upward has been undertaken by proposing reconstruction of regional autonomy at the provincial level rather than at the district level. Important and widely discussed, is the Special Autonomy for Bali proposal submitted to the national government. In the proposal, it is asserted that regional autonomy based on district governments is unsuitable for Bali, since it is a small-island province, and district governments tend to exploit their resources by disregarding the impacts beyond their borders or even across the islands (Pansus Otsus Bali 2007). It is suggested that Bali follow the concept of ‘one island, one management’, with the provincial government as the central institution. Such a proposal has been treated with suspicion by district and municipal governments, for which the changes would mean reduced control over their territory. This has led to uneasy relationships within the formal governmental structure, between the provincial and district governments.

Regional autonomy has been ‘pushed downward’ by advancing village autonomy through formal law (Ramstedt 2013). The single most important law in this regard has been Provincial Regulation No. 3/2001 concerning the customary village (desa pakraman) in which the government recognises the existence of desa pakraman and its autonomy, including its customary laws (awig-awig) generated to regulate internal affairs. This recognition originates in part in the ‘Balisering’ project promoted by the Colonial Dutch (see Burns 1999; Vickers 2012) which aimed to preserve Bali’s distinct cultures and institutions, including adat law rooted in the
customary village. A dualistic system of village governance based on the division of labour between the administrative village (desa dinas) and customary village (desa adat) was introduced. While the administrative village focused on colonial administrative duties, the customary village — with an acknowledgement of its cultural ‘autonomy’— focused on cultural duties; aspects of Balinese life that are difficult to distinguish as separate domains. Although the Dutch eventually left the island, the dualistic village system has remained in place up to the present day.

With the implementation of regional autonomy, the customary village (desa pakraman) has an increasingly important role in decision-making on local development (Warren 2007). Whether a development plan can be implemented, or not, now partly depends on approval by the affected customary village. Customary rules (awig-awig) which are based on the principle of desa-kala-patra (in accordance with place, time and circumstance) may be used by customary leaders to advance or even to constrain capital investment or state intervention within the customary territory.

In addition to the revitalisation of customary law, the regional autonomy regime has also provided an opportunity for the revival of religion-inspired local regulations. Following the incorporation of Islamic Law by many regional governments across Indonesia, the regional government of Bali, rooted in Balinese-Hindu identity, has also regarded religious rulings as an important source for regional policy-making. In the context of spatial governance, an exemplary case is provided by Bhisama, a religious ruling based on Hindu manuscripts concerning the sphere of temple sanctity. It was issued by the officially recognised Indonesian Hindu Organisation (Parisadha Hindu Dharma Indonesia; PHDI) in its 1994 Mahasabha (General Assembly) in response to a controversial project near the Tanah Lot temple, one of the holiest temples in Bali. The project was developed by Bali Nirvana Resort (BNR), a company owned by Aburizal Bakrie, a national conglomerate close to President Soeharto (Warren 1998). Although it failed to prevent the project, the Bhisama has remained the source of claims utilised by NGO activists, academics, as well as customary villages in rejecting project development within sacred areas.

The incorporation of the Bhisama in the formal legal system is seen as a politics toward ‘sacralisation’ of Bali. Ramstedt (2013, 118) observes that Provincial Regulation No. 16/2009 on Spatial Planning for Bali is the first regulation to incorporate the Bhisama. In fact, some features of the Bhisama had already been
incorporated in Bali’s regional regulations since the 1980s. As a unified ruling on sacred space around Hindu temples, the *Bhisama* itself was included in the state legal system through Provincial Regulation No. 3/2005 on Spatial Planning for Bali, the predecessor of Provincial Regulation No. 16/2009. The letter has continuously incorporated the ruling due to public pressure concerning the ‘unintended consequences’ of tourism and real estate expansion on the environment, culture, religion, as well as local economy (see Warren 2012). Hence, sacralisation, as a means of controlling such expansion under the banner of ‘cultural tourism’, characterised spatial policies in the province well before the current decentralised era.

The *Bhisama* is derived from traditional concepts of the sacred sphere of temples. The concepts are *apeneleng* (sacred spheres ranging from the temple’s centre to the point not to be seen by the naked-eye); *apenimpug* (sacred spheres ranging from the temple’s centre to the point that cannot 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 wall). Those concepts are relatively ambiguous but for the sake of legal certainty they were standardised and quantified in the *Bhisama* as follows: *apeneleng* is subdivided into *apeneleng agung* equal to five kilometres, and *apeneleng alit* equal to two kilometers of sacred radius; and *apenimpug* is quantified as 25 meters (Wardana 2014). These classifications correspond with hierarchical categories of Balinese temples: Sad Kahyangan\(^4\) (highest temples of island-wide importance), *Dang Kahyangan* (temples of regional importance), and *Kahyangan Tiga* (three temples at the village level). Designation of a space as sacred affects the use of land, namely, what kind of activities can be undertaken or are prohibited within it to avoid ‘pollution’ of sacredness. In fact, commercial or tourism related activities are permitted within the sacred space if they are associated with the temple, such as pilgrims or ‘spiritual tourism’.

**Spatial Planning Controversies**

Controversies over spatial planning in Bali can be divided into two time periods: before and after the enactment of Provincial Regulation No. 16/2009 on Spatial Planning for Bali. For each period, the actors and agencies involved were strategically utilising a range of legal and extra-legal repertoires to pursue their interests. They actively engaged in ‘forum shopping’ and ‘idiom shopping’ within a complex legal setting (K. von Benda-Beckmann 1981; Spiertz 1991).
Before the Enactment of the New Planning Regime

In 2007, a new national law concerning spatial planning (Law No. 26/2007) was enacted. The law adopts the style of the North American planning system by utilising rigid zoning and building codes for management of growth and development (Hudallah 2010). The law has also mandated provincial governments and district governments to formulate their spatial planning regulations within two years and three years respectively after enactment of the law. By 2009 all provincial governments should have enacted a new regulation concerning spatial planning.

In fact, during the 2007-2009 period, the Provincial Government of Bali came under serious public scrutiny for failing to enforce the existing Provincial Regulation No. 3/2005 on Spatial Planning for Bali against violations at district levels. These violations mainly related to tourism and real estate development projects that were inconsistent with the provisions on coastal set-back, high-rise buildings, protected areas, and the Bhisama. In response to the ineffectiveness of Provincial Regulation No. 3/2005 which was legally required by Law No. 26/2007 concerning Spatial Planning, the Provincial Government of Bali under the newly elected Governor Made Mangku Pastika started to formulate a new spatial planning regulation. Pastika announced that the new regulation would be more stringent, and would include sanctions against government officials who issued permits for developments that violated the regulation.

The mass media has played an important role in the intensification of controversies over spatial planning. As noted by Warren (1998; 2012) since the case of BNR Tanah Lot in 1993, local media in Bali provide an important source of information that NGO activists or other concerned groups respond to. In the context of spatial planning controversies, however, mass media coverage of spatial planning violations across the island has effectively informed public opinion concerning the future of Bali under regional autonomy. Learning from the experience of the BNR case, the media often used religious idioms like the Bhisama concerning the sanctity of the temple sphere, to influence public opinion and build mass support. Thus, the Bhisama has become popularised as an idiom to express public concern about cultural, environmental and religious integrity.

Responding to media coverage, public protests against these violations were held by NGO activists demanding the government enforce the Provincial Regulation
No. 3/2005. Aware of the loopholes of the regulation, they changed their strategy by supporting the Governor of Bali to enact a new regulation as mandated by the National Law No. 26/2007. The Provincial Government hired a consultant to draft a new regulation, and then invited stakeholders to conduct two public consultations at which the initial and then revised drafts were presented. A number of civil society groups, especially NGO activists, expressed disappointment with the second draft and demanded further revision. Their objections related to legal loopholes which favoured investors, and the academic study—the basis of the drafted regulation—which lacked coherence and was deemed to be outdated with respect to the current conditions of Bali Province. The Government then established a special team comprising NGO representatives, business enterprises, and religious and customary leaders, to review the academic studies and formulate the new draft regulation.

The media continued to provide information to the public throughout the process mentioned above. As a result, the issues surrounding spatial planning began to trigger intense public debate, including the release of a joint statement by all district and municipal heads in Bali. This statement objected to the adoption of the draft regulation, and demanded further revision to remove or constrain province-wide application of the Bhisama, setback rules (for coast lines, lakes, rivers, and hills), provincial strategic areas, and the maximum height of buildings. These provisions mentioned above were considered to constrain investment at district levels, which in turn would affect district revenues. The Governor responded that the final draft had already been submitted to the Provincial Representative Council for Bali and had been assessed by the Minister of Home Affairs, following procedural regulations (Arya Utama & Sudiarta 2011). The National Law No. 26/2007 also stipulates that spatial planning laws and regulations may only be reviewed five years after having been enacted, except in severe and emergency conditions like a natural disaster.

The Bhisama concerning the sanctity of the temple sphere was the subject of widespread debate. While many intellectuals, NGO activists, and religious leaders at the provincial level demanded the adoption of Bhisama and stringent sanctions. Significantly, incorporation of the Bhisama in the provincial regulation was opposed by Pecatu Customary Village, located in South Badung (Suarna 2008). Sixty per cent of the Pecatu village area falls within a 5-kilometer sacred space of Uluwatu Temple. The restriction against tourism and other commercial development within the sacred space stipulated by the Bhisama was considered to negatively affect the local
Opposition by Pecatu customary villagers resulted in an adjustment being incorporated into the draft regulation related to the *Bhisama*. The sphere of sanctity was thus further subdivided into three zones: *utama karang kekeran* (core zone), *madya karang kekeran* (buffer zone), and *nista karang kekeran* (utilization zone), permitting a wider range of uses within the contentious *apenelang* zones. Technically, such adjustment constitutes an ‘amendment’ of the original text of the *Bhisama* undertaken by state institutions rather than by the religious organisation itself.

**Table 1: Classification of Temple’s Sacred Sphere**

<table>
<thead>
<tr>
<th>No</th>
<th>Hierarchy of Temple</th>
<th>Traditional Concept</th>
<th>Quantification</th>
<th>Zoning System</th>
<th>Note</th>
</tr>
</thead>
</table>
| 1  | Sad Kahyangan       | *Apeneleng Agung*   | 5,000 meters   | 1. Core Zone  | 1. Core zone  
|    |                     |                     |                | 2. Buffer Zone | Used as protected forest, or  
|    |                     |                     |                | 3. Utilization Zone | for agriculture, religious  
|    |                     |                     |                |               | activities, and green space  
|    |                     |                     |                |               | *(ruang terbuka hijau)*      |
|    |                     |                     |                |               | 2. Buffer zone  
|    |                     |                     |                |               | Used as forest buffer, green  
|    |                     |                     |                |               | space, for agriculture and  
|    |                     |                     |                |               | facilities to support religious  
|    |                     |                     |                |               | activities                              |
|    |                     |                     |                |               | 3. Utilization zone  
|    |                     |                     |                |               | Used for agriculture,  
|    |                     |                     |                |               | cultivation, local settlement  
|    |                     |                     |                |               | and non-commercial public  
|    |                     |                     |                |               | facilities for the locals  
|    |                     |                     |                |               | These zones are designated based  
|    |                     |                     |                |               | on physical borders or  
|    |                     |                     |                |               | geographical conditions with an  
|    |                     |                     |                |               | equal metric distance.       |
| 2  | Dang Kahyangan      | *Apeneleng Alit*    | 2,000 meters   | 1. Core Zone  | 1. Core zone  
|    |                     |                     |                | 2. Buffer Zone | Used as protected forest, or  
|    |                     |                     |                | 3. Utilization Zone | for agriculture, religious  
|    |                     |                     |                |               | activities, and green space  
|    |                     |                     |                |               | *(ruang terbuka hijau)*      |
|    |                     |                     |                |               | 2. Buffer zone  
|    |                     |                     |                |               | Used as forest buffer, green  
|    |                     |                     |                |               | space, for agriculture and  
|    |                     |                     |                |               | facilities to support religious  
|    |                     |                     |                |               | activities                              |
|    |                     |                     |                |               | 3. Utilization zone  
|    |                     |                     |                |               | Used for agriculture,  
|    |                     |                     |                |               | cultivation, local settlement  
|    |                     |                     |                |               | and non-commercial public  
|    |                     |                     |                |               | facilities for the locals  
| 3  | Kahyangan Tiga      | *Apenimpug*         | 5 – 25 meters  | Not classified |                                |

Source: Article 108 (2) of Provincial Regulation No. 16/2009 on Spatial Planning for Bali

Upon closer assessment of the *Bhisama* controversy it seems that the traditional concept of the sacred sphere of temples was not rejected in principle. Nor was there opposition to incorporating this traditional concept in state regulations, although customary villages assert their authority to interpret the traditional concepts that underpin the *Bhisama*. They specifically rejected the way the concept became simplified and standardised through exact quantification in the *Bhisama*. Ketut Yasa, a customary leader in Pecatu, claimed that members (*krama*) of Pecatu Customary
Village in a local assembly (sangkep) agreed that apeneleng should be equivalent to one kilometer instead of five kilometers specified in the Bhisama (and the provincial regulation. Instead of arguing about the use of apeneleng as an ambiguous traditional idiom providing room for local interpretation, the Customary Village of Pecatu followed the way the idiom had been standardised by similarly proposing an exact measurement unit to the government and PHDI. This strategy of a counter-proposal revealed that the Pecatu krama were not actually opposing the commonly shared Balinese vocabularies but rather, seeking to negotiate its scale within a modern framework.

This contestation of state attempts to control space reflects James Scott’s notion of ‘seeing like a state’. While Scott (1998) tells us that the state sees space as a blank slate to gain political control and implement its economic development agendas, the case of spatial planning controversies in Bali demonstrates that the state itself is not monolithic. The state consists of different institutional structures with different priorities. An example is the competition between the provincial government with its ‘one island one management approach’ and the exercise of authority by district governments in the era of decentralisation. In the context of spatial planning policies, the differing interpretation of a local measurement unit implies some concessions to the state’s logic of ‘legibility’, standardisation and simplification (Scott 1998, 11). Spatial planning law and regulation is standardised based on a uniform spatial matrix which ignores traditional conceptions of space rooted in at least three distinct features, namely ‘human in scale’, ‘relational’ or ‘commensurable’, and ‘tied practically to particular activities’ (Scott 1998, 25-27).

These features are also relevant in Bali. One prominent priest argued in the press that use of ‘meter’ is alien to Balinese traditional concepts of space measurement (Ananda 2011) which is rather references human facility, for example: apenimbug (stone’s throw) and apeneleng (human vision) for distance or atindakan (one-step) for length. As noted by Scott (1998, 26), these customary characteristics for measurement are ‘situationally, temporally, and geographically bound’. In the context of Bali, these are referred to by the adage desa-kala-patra (according to place, time and circumstance). Ananda (2011) also notes that the legitimacy of the metric quantification of the sacred sphere of temples in the Bhisama by PHDI came to be challenged because it was deemed inconsistent by with the local authority of adat institutions in accordance with desa-kala-patra. The reassertion of customary law that
potentially provides different interpretations of space and jurisdiction has unquestionably made the conditions of legal pluralism within Balinese society more complex in the post-Suharto era.

Besides the Bhisama, the notion of ‘provincial strategic areas’ a feature introduced by Law No. 26/2007 on Spatial Planning—was another contentious issue raised by the alliance of district heads. A strategic area is defined as an area whose spatial management is prioritised due to its importance in terms of national sovereignty, defense and security, economy, society and culture, environmental protection, and world heritage values. There are three scales of strategic areas: national, provincial, and district. Their functional priorities are defined by these tiers of government respectively. In the draft provincial regulation, the provincial government of Bali had designated ‘provincial strategic areas’ located in the districts. This designation was considered by the district governments as a provincial government strategy to manage their most ‘profitable’ areas and as a step toward ‘one island one management’, including the granting of permits for development within those designated areas.

In the end of 2009, the final draft was eventually adopted by the Provincial Representative Council for Bali as Provincial Regulation No. 16/2009 on Spatial Planning for Bali, replacing the Provincial Regulation No. 3/2005. However, this enactment did not mean the end of the debate on spatial planning controversy since the new regulation had continually been questioned. The alliance of eight district heads and the Denpasar mayor vehemently opposed the newly enacted regulation, especially the provisions on the Bhisama, the strategic areas, 100-meter coastal setback, and the maximum building height. It was considered that these provisions might compromise rent-seeking practices. In public, however, the alliance rationalised their opposition by arguing that the provincial regulation would undermine regional autonomy centered at the district level.

After the Enactment of the New Planning Regime
Defining, organising and regulating space within a complex legal-institutional setting is far from straightforward policy-making. In fact, it leaves a grey area of legal uncertainty that is potentially used by the powerful elites to cherry-pick provisions that support their interests and to mobilize one legal system at the expense of other regimes through practices of forum-shopping. The elites are in a better position than
other groups to engage in legal forum-shopping and mobilize the legal idioms available in society (K. von Benda-Beckmann 1981). However, the interests of those elites do not always prevail, due to unstable power relations and a high level of public engagement on the issues concerned. Thus, after the enactment of the Provincial Regulation No. 16/2009, opponents turned to customary law to express their dissatisfaction with the application of the regulation.

Among 1,482 customary villages across Bali (Masuki 2011), the only outspoken opponent of the Bhisama in Provincial Regulation No. 16/2009 was the Customary Village of Pecatu. This village is located in southern Kuta, Badung District, the centre of mass tourism. With tourism booming in these areas, the development of golf courses, hotels, luxury resorts and villa complexes has changed the value of land (see Wardana 2014). Pecatu, a dryland village of 26.41 square kilometers with an officially recorded resident population of some 7,000 (BPS 2012, 8), has become heavily dependent upon tourism. Local customary leaders supported by Sudikerta, a politician from the village who served as the vice-district head of Badung, rejected the application of the Provincial Regulation No. 16/2009 within their customary areas. They argued that adat village rights and autonomy were negated by the regulation’s interpretation of the Bhisama decree.

The Customary Village of Pecatu used a ‘forum shopping’ and ‘idiom shopping’ strategy. While using customary law to justify local control over the customary areas based on the adage of desa-kala-patra and the autonomy of customary village, it also utilised the state law mechanism. In the latter, it filed a judicial review to the Supreme Court to demand that the court revoke the 2009 Provincial Regulation (Arya Utama & Sudiarta 2011). In addition to the local institution, six village members who owned land within the sacred temple sphere also submitted an individual request to the court. Basically, they shared similar legal grounds concerning the inscription of the Bhisama in the regulation. They claimed that the Bhisama was not recognised by the state legal system and was not mandated by Law No. 26/2007 on Spatial Planning; hence, there was no legal justification to incorporate it in the Provincial Regulation. It was argued that vast areas of Pecatu area fall within the five-kilometer sanctity temple’s sphere of Uluwatu Temple (Made Deg v Gubernur Bali 2010, 40). This would prevent the landowners from utilising their land for building tourism accommodation, and in turn, would decrease land values and affect the local economy.
In defending the regulation, the legal attorneys of Bali’s provincial government claimed that incorporating the Bhisama accommodates the characteristics and uniqueness of Bali guaranteed by the regional autonomy regime (I Wayan Puja v Gubernur Bali 2010, 42). While the national legislation has no reference to the Bhisama, the recognition of local culture and local wisdom in a provincial regulation is considered to complement rather than violate national legislation. Through the regulation, the provincial government intended to clarify which areas could be developed and which could not, in the name of preservation of Balinese culture. Such regulation would, according to the province, not dramatically affect the economic value of land in these restricted categories. The land may still be utilised for agricultural and religious activities, and an incentive for landowners would be provided in the form of concessions such as tax reduction and compensation. Finally, the Supreme Court supported those arguments in which the protection of sacred areas is considered protection of the uniqueness of Bali. The branding of ‘cultural tourism’ is a legitimate rationale for the government of Bali Province to undertake spatial management to protect the cultural assets of the province. Thus, all the plaintiff’s requests were dismissed by stating that there was no violation of any national law in the Provincial Regulation No. 16/2009 on Spatial Planning for Bali.

While the court recognized the legal standing of a customary community to bring a case based on their customary law, the court did not decide which legal system prevails among different and competing legal systems regulating similar matters. In the Pecatu case, the court did not decide which legal regime, the Provincial Regulation (state law) or the awig-awig of Pecatu (customary law), is the most legitimate spatial management regime to be applied to the village. It also does not clarify to what extent the application of state law may intervene in customary village autonomy in Bali. This implies that the court does not concern itself with the form of law, whether state or customary, rather, it focuses on the question of which legal substance better serves the public interest. In fact, in a legally and institutionally plural setting, who decides and what constitutes a public interest is not uncontested. In this context, it seems that the court also defines what the public interest in spatial planning for Bali is according to the best reasoning of the parties involved. In this case, the court was basically just echoing the best legally sound arguments of the parties in question, in this case, the Governor of Bali.
An opportunity to further challenge the Provincial Regulation No. 16/2009 emerged following the 2009 general election when several incoming members of Provincial Representative Council of Bali became opponents of the regulation. They invited the representative of Pecatu Village, among others the chief of customary village (bendesa), the head of village (perbekel) and members of village council, and other communities with similar interests to a public hearing. Following intensive lobbying to Provincial Representative Council for Bali, a special committee called the Ad Hoc Committee on the Refinement of the Provincial Regulation on Spatial Planning for Bali was formed. Disel Astawa, a council member for South Kuta, served as its chairman.

The establishment of this committee divided Balinese between those in favour of, and those against, the ‘refinement’ of the Provincial Regulation No. 16/2009. On the one hand, activists of non-governmental organizations supported by AAA (Akademisi, Agama and Adat; academics, religious and customary leaders at the provincial level) raised their concern that the ad hoc committee might be the entry point for more radical revision to the existing provisions, which were regarded as fairly effective for protecting Balinese culture. On the other hand, the alliance of district heads and Pecatu Village, supported by politicians and other vested interests, argued that there was an urgent need to revise the regulation in view of its implications for future tourism development and the difficulties associated with implementation. In fact, the AAA seemed to follow a dual strategy in which while rejecting the agenda to revise or improve the existing regulation, its representatives joined the ad hoc committee to directly intervene the process. The NGO activists that are not part of the AAA, however, retained their extra-parliamentary strategies of campaigning and influencing public opinion, in alliance with the media. Due to massive protests demanding the Provincial Representative Council to revoke its ‘refinement’ agenda, the ad hoc committee was finally abolished.

The next battle has been taking place at the provincial and district levels of government. The new Vice Governor of Bali, Sudikerta, initiated the formulation of a new zoning directive regulation (perda arahan zonasi) to act as a legal reference for issuing permits for development stipulated by the Provincial Regulation No. 16/2009. At the district level, the Provincial Regulation might be subverted through two district regulations related to detailed spatial planning (rencana detail tata ruang) and engineering design (rencana tata ruang kawasan). In fact, Badung District has
maintained its oppositional stance toward the Provincial Regulation No. 16/2009 by postponing the formulation and enactment of district regulations on spatial planning for Badung, in violation of the requirements of the National Law No.26/2007.

Conclusion
In this paper I have discussed recent controversies over the development and adaptation of Balinese provincial spatial planning regulations, using a framework that takes into account the existence of plural legal-institutional regimes and repertoires. The paper shows how a situation where different normative orders interact in a given society provides possibilities for ‘forum shopping’ and ‘idiom shopping’. This can be seen, for example, in how the idiom *apeneleng* (sacred spheres ranging from the temple’s centre to the point not to be seen by the naked-eye) is debated, advanced or challenged by employing different sources of legality. The standardisation of this idiom in the *Bhisama* and incorporation into provincial regulation, created a hybrid regime on spatial governance, and controversy over sacred space that involved the provincial government, district government and Pecatu villagers. A pluralistic and institutional setting complicates the idea of ‘seeing like a state’ since the state itself is constituted by different tiers of governments where different interests over space are articulated, partly informed by the interests of local elites. In this context, religious and cultural aspects have a significant role to play in determining which interests are socially and culturally acceptable.

By employing legal pluralism as an analytical framework, associated sensitivity toward religious and cultural aspects is causing the debate on spatial governance to be widened. Thus, controversies are far from straightforward as might be assumed in the situation of legal centralism where norms and rules for defining, organising and regulating space derive from and are imposed exclusively by the state. Rather, norms, rules and forms of legal regulation are produced, maintained, contested and negotiated within the complex legal and institutional setting. An analysis that takes into account this legal plurality provides us with a better framework for understanding the processes and controversies related to governing space in a pluralistic society. Such analysis brings into focus the perspective of various (state and non-state) legal regimes and institutions, and how they are utilised, resisted, manipulated and negotiated by social actors to pursue their different or even competing interests over the use of space.
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MacRae, Graeme. 2010. “If Indonesia is Too Hard to Understand, Let’s Start with Bali.” *Journal of Indonesia Social Sciences and Humanities* 3: 11-36.


Newspapers and Periodicals


Laws, Regulations, and Court Decisions

1999 National Law No. 22 on Regional Government
2004 National Law No. 32 on Regional Government
2007 National Law No. 26 on Spatial Planning
2014 National Law No. 6 on Village
2001 Provincial Regulation No. 3 on Customary Village
2005 Provincial Regulation No. 3 on Spatial Planning for Bali
2009 Provincial Regulation No. 16 on Spatial Planning for Bali


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1 This expression refers to the arrogance of the heads of district government empowered by decentralisation policies. Those critical of the political developments used the phrase to express their fear that decentralisation would amount to a re-empowerment of regional elites claiming power and authority on the basis of ethnicity, indigeneity, the history of local polities like kingdoms, etc. See for example Schulte Nordholt and van Klinken (2007).

2 For further discussion see Warren (1993).

3 At the time of writing, the national government had issued a new law regarding village, Law No. 6/2014 on Village, stipulating that within a year the regional government had to choose single village governance.

4 Such as: Besakih, Batur, Uluwatu, Batukaru, Lempuyang, Andakasa, Goa Lawah, Puncak Mangu, Pusering Jagat, Kentel Bumi.

5 For a detailed discussion on the Pecatu Case see Wardana (2014).
The word ‘refinement’ was used instead of ‘revision’ because of the legal
technicality that 'revision' could only be considered five years after implementation,
according to Spatial Planning Law 2007 No.16, Article 23 paragraph (4).