

# *Access to Justice of Balinese: Community Struggle to Refuse Benoa Bay Reclamation Plan*

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**Abstract-** Access to justice for the poor is still a problem, not only because of the limitations in obtaining information caused by the lack of access to people, institutions or service providers that can facilitate the acquisition of justice, but also exacerbated by the legal character built by the state does not support this. At the end of his term as President, Susilo Bambang Yudhoyono issued Presidential Decree No. 51 of 2014 concerning Amendments to Presidential Decree No. 45 of 2011 concerning SARBAGITA Urban Spatial Planning, which basically changes the conservation status of Benoa Bay to a buffer zone or public use area. This change made the Benoa Bay reclamation plan which was considered to cause many problems. The problems examined in this study are the Presidential Decree that transforms conservation areas into non-core zones and how the Balinese people struggle to protect their areas from reclamation plans. The issuance of Presidential Decree concerning SARBAGITA is strongly influenced by economic and political interests through this public policy without regard to the laws anymore others that have clearly regulated the Benoa Bay Area and do not involve local communities or indigenous peoples in making regulations that govern the lives of the wider community and do not pay attention to the consequences that will arise with the issuance of this Presidential Regulation. However, the cohesiveness of indigenous peoples, supported by community organizations, creates a great force to resist. Until now reclamation has not been carried out.

**Keywords-** Access to Justice, Benoa Bay, Reclamation

## I. INTRODUCTION

At the end of his term of office as President, Susilo Bambang Yudhoyono issued Presidential Decree No. 51 of 2014 concerning Amendment to Presidential Decree No. 45 of 2011 concerning the Spatial Planning of the Urban Area of SARBAGITA, which in essence changed the conservation status of the Benoa Bay into a buffer zone or public use area.

The issuance of Presidential Decree No. 51 of 2014 abolished articles stating that Benoa Bay is a conservation area as mentioned in Article 55 paragraph 5 of Presidential Decree No. 45 of 2011 as well as reducing the extent of water conservation areas by adding the phrase "partial" to the conservation area of Serangan Island and Pulau Pudding This causes the conservation area in the SARBAGITA area to decrease in size. Presidential Decree No. 51 of 2014 was born only to accommodate the 700 ha Benoa Bay reclamation plan. This is considered detrimental to the people of Bali and does not provide justice to them.

Access to justice for the poor is still a problem, not only because of the limitations in obtaining information caused by lack of access to people, institutions or service providers that can facilitate the acquisition of justice, but also exacerbated by the legal character built by the state does not support this.

The principle of equality before the law is guaranteed in the Constitution in Article 27 paragraph (1) of the 1945 Constitution, which brings consequences for the state to treat each of its citizens equally without discrimination. this principle becomes a myth, because in reality, it appears that it is inequality or [1]. This is seen in suspects or victims whose status is "the have not" which in the judicial process is always stigmatized, this is different from those who have "the have" status. However, Indonesia is not the only country that often violates the principle of equality before the law, even the United States which is often regarded as the country that upholds most human rights, still often violates this principle [2].

The government is intensifying development and giving support to investors to make investments. Implementation of development often causes casualties to the people, because their livelihoods are evicted or forcibly suppressed [3]. This is called structural violence, violence committed by those who have power. Structural violence is direct or indirect violence that is formed in certain social systems, through stigmatization and other forms of violence [4]. In such incidents, victims often experience intimidation, stigmatization, and restrictions on access to justice which is actually their constitutional right.

Existing constitutions and legislation (Law No. 18 of 2004 concerning Advocates and Law No. 16 of 2011 concerning Legal Aid) have guaranteed legal protection and equal treatment for the poor, but still access to justice remains a problem Especially when dealing with the state/ government or people or corporations that have unlimited resources who commit violence.

Several studies relating to one aspect of access to justice, namely legal assistance have been conducted by several people, such as Adityawarman [5] with a focus on studies on legal aid for the poor; Mulyaningsih [6] with a focus on the study of legal aid for troubled soldiers with the assistance of advocates from the legal section of the Army; Sinaga [7], concerning legal aid in Indonesia in general. The previous studies do not discuss the

realization of access to justice for the poor in the face of structural violence. Therefore, with the increasing number of structural violence occurring in society, especially since the government intensified the expansion of investment and violence committed by officials and people who are politically, economically, and socially capable, then the realization of access to justice needs to be further investigated comprehensively. This research was conducted as a way to uphold the constitutional rights of citizens (especially the poor) so that structural violence against them does not recur.

In Bali, research is focused on the case of the Bena Bay reclamation plan. Since 2013 until now, Balinese residents have continued to struggle to reject the Reclamation plan. The case of the Bena Bay reclamation plan as it has been slightly deciphered above has received attention from various parts of the world. Given that the island of Bali is one of the favorite destinations of foreign tourists when coming to Indonesia. Therefore, research is needed to parse the problem and find a solution. This research aims to help solve one of the problems of the nation, especially citizens of Bali, namely to uphold the constitutional rights of citizens (especially the poor) in obtaining justice both through the judicial process/litigation (due process/justice) and in outside the court/non litigation. Structural violence that does not go away with the poor as victims requires appropriate treatment, and the weakness of the poor is the acquisition of justice/obstruction of access to justice. Through this research, it is expected to find patterns or forms of granting access to justice for poor people in the face of structural violence.

The results of the study are expected to be applied to related parties or involved in solving structural violence cases. This research can be applied to perpetrators of violence (state, government, or "the have"), in order to avoid the use of violence in achieving goals; for victims (especially the poor or "the have not", or who do not have access to justice), this research is useful as a guide in dealing with structural violence, so that the acquisition of access to justice is not hampered.

## II. RESEARCH METHOD

The research method used in this study is empirical legal studies. This study use interview and observation based on purposive and snowball sampling principle. The specification of this research is descriptive research. The data obtained were analyzed using qualitative analysis.

## III. FINDINGS AND DISCUSSION

### 1. *Access to Justice and Structural Violence Studies*

The concept of access to justice has been expanded to include other forms of justice and alternative mechanisms for resolving disputes / cases outside the country's official judiciary to obtain justice. This view was initiated by

Cappelatti and Garth by drawing more broadly to the functioning of the legal system than access to justice [8]. According to him, the legal system must be accessible equally to everyone and the legal system must lead to fair results, both for individuals and society [9]. This development caused the definition of access to justice which initially focused on the role of the state's formal justice institutions to change. UNDP provides a definition of access to justice as the ability of a person (or community) to find and obtain solutions through formal or informal justice institutions, and in harmony with human rights values [10].

The American Bar Association, which has conducted research on access to justice, collaborates with the Makassar Legal Aid Foundation (YLBHM) to formulate several elements of access to justice, which include the legal framework, legal knowledge, legal advice and representation, access to judicial institutions, fair procedures, and enforceable decisions [11].

Access to justice in the context of Indonesianism, is defined as the conditions and processes in which the state guarantees the fulfillment of basic rights based on the 1945 Constitution and universal principles of human rights, and guarantees access for every citizen so that he can have the ability to know, understand, realize and realize use these basic rights through formal and informal institutions, supported by good and responsive public complaints mechanisms, in order to obtain optimal benefits and improve the quality of their own lives [12]. Efforts to realize access to justice in its implementation include three things. First, the right to benefit from and use of justice institutions; secondly, there is guaranteed availability of means to fulfill the rights of the poor to achieve justice; and third, effective methods and procedures to expand community access to justice [13].

While, the study of structural violence was initially carried out by Johan Galtung. Galtung defines cultural violence as a cultural aspect, namely the symbolic space of human existence such as religion and ideology, language and art, empirical science and formal science (logic, mathematics) [14], which can be used to justify or legitimize direct violence or structural violence [15].

Galtung in his theory of structural violence tried to combine actor-oriented analysis with structure-oriented analysis. Between actors and structures there must be a balanced interaction. Galtung also distinguishes personal and structural violence. The nature of structural violence is dynamic, easily observed, showing severe fluctuations that can cause change. As for structural violence, it is static, showing certain stability and not being seen. In a static society, personal violence will be considered, while structural violence is considered normal. But in a dynamic society, personal violence can be seen as something dangerous and wrong, while structural violence is increasingly self-evident [15].

Galtung [14] then gave rise to his theory of the triangle of violence, namely direct violence, structural violence, and cultural violence as an image. Direct violence is an event; structural violence is a process that fluctuates; cultural violence is invariant, permanent, basically remains the same for a long time, due to slow basic cultural transformation [16], [17].

## 2. *Benoa Bay Reclamation and Balinese Struggling for Justice*

### *History of Teluk Benoa Reclamation Plan*

Reclamation based on the Benoa Bay revitalization, Bali is known to have pros and cons. Supporting parties have argued that the reclamation, due to conditions in the territorial waters, one of which is the existence of Pudut Island has been very threatened due to global climate change. The purpose of utilizing the Benoa Bay region, among others, is to reduce the impact of natural disasters and global climate impacts, as well as to deal with damage to the coast. The policy of the Benoa Bay development plan is to increase competitiveness in the field of tourist destinations by creating a new tourism icon by applying the concept of green development, as an effort to mitigate disasters, especially tsunami hazards [18].

December 26, 2012 The Governor of Bali granted a reclamation permit to PT. Tirta Wahana Bali Internasional (PT TWBI) in the Benoa Bay area of Badung Regency covering 838 hectares through Decree Number 2138/02-C / HK / 2012 concerning the Utilization and Development Plan for the Benoa Bay Waters Area. August 16, 2013, Decree Number 2138/02-C / HK / 2012 was revoked through the issuance of the Bali Governor's Decree number 1727/01-B / HK / 2013 concerning Permit for Feasibility Study on the Utilization, Development and Management of the Benoa Bay Waters Area of Bali Province. 1727/01-B / HK / 2013 mentioned above still does not cover the polemic of the reclamation plan, because basically the decree is merely a revision of the first decree and remains in the level of granting rights to PT. TWBI to carry out reclamation activities in the form of feasibility studies in Benoa Bay, Bali.

Apart from the process of issuing permits secretly and manipulatively, the issuance of the permit also contradicts the legislation above, namely Presidential Decree No 45 of 2011 concerning the spatial layout of the Sarbagita urban area, where the Benoa Bay area is a conservation area; and Presidential Decree No. 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands which prohibits reclamation in conservation areas.

At the end of his term as President, SBY issued Presidential Decree No. 51 of 2014 concerning Amendments to Presidential Decree No. 45 of 2011 concerning the Spatial Planning of the SARBAGITA Urban Area, which in essence changed the conservation

status of the Bay of Benoa into a buffer zone or public use area. The issuance of Presidential Decree No. 51 of 2014 abolished articles stating that Benoa Bay is a conservation area as mentioned in article 55 paragraph 5 of Presidential Decree No. 45 of 2011 as well as reducing the area of water conservation areas by adding the phrase "partial" to the conservation area of Serangan Island and Pulau Pudding. This causes the conservation area in the SARBAGITA area to decrease in size. Presidential Decree No. 51 of 2014 was born only to accommodate the Benoa Bay reclamation plan covering an area of 700 ha. After the issuance of Presidential Decree 51 of 2014, PT. Tirta Wahana Bali Internasional (PT. TWBI) also licensed the reclamation location number 445 / MEN-KP / VIII / 2014 from the Minister of Maritime Affairs and Fisheries in the Benoa Bay waters which covers Badung Regency and Denpasar City, Bali Province covering an area of 700 hectares.

For the sake of the Benoa Bay reclamation plan, the Government and investors have always been promoting siltation and sedimentation in Benoa Bay. However, the solution offered by investors is actually contradictory, if the Benoa Bay occurs siltation then what needs to be done is dredging not reclaiming the Benoa Bay by creating new islands covering 700 hectares. The reclamation is planned to bring 40 million cubic meters of new material from outside the Benoa Bay which would cause permanent silting in the Benoa Bay.

Udayana University (UNUD) has given official information through the mass media that the results of a feasibility study on the Benoa Bay reclamation plan by PT. TWBI was declared unfeasible. The ineligibility is based on research and studies from 4 aspects, namely: technical aspects, environmental aspects, social cultural aspects and financial economic aspects.

### *The lack of public participation in the issuance of Presidential Decree 51 of 2014*

Since the beginning of the forced effort to amend Presidential Decree No. 45 of 2011 concerning the Spatial Planning of the Urban Area of SARBAGITA, it had been predicted. Since President Susilo Bambang Yudhoyono specifically called on Yusril Ihza Mahendra, practically since then the government has been aggressive in making efforts to revise the Presidential Decree. Various meetings were held which were initiated by the central government, ranging from hearings with non-Udayana University academics, to the implementation of public consultations carried out in a clandestine manner. The whole process only involves pro-reclamation groups while components of society that reject reclamation are marginalized. Our last note is on Monday, April 14, 2014 at 14.30 pm located in the Cempaka Meeting Room of the Bappeda Office of the Province of Bali, the National Spatial Planning Coordinating Board (BKPRN) together with the Provincial Government of Bali held a Public Consultation on the planned changes to article 55 paragraph (5) of the

Presidential Decree No. 45 of 2011, in particular, which stated that Benoa Bay was a water conservation area to be converted into a public use area. In this public consultation none of the parties who rejected the Benoa Bay reclamation plan was involved.

#### *Potentially Impact of Teluk Benoa Reclamation*

Administratively, Benoa Bay is located in cross-regency / city waters namely Denpasar City and Badung Regency, included in three sub-districts namely South Denpasar, Kuta and South Kuta. The waters of the Gulf are surrounded by 12 villages / kelurahan, each with 6 villages/kelurahan in Denpasar City and Badung Regency.

Benoa Bay is a tidal-waters, located in the southern hemisphere of Bali Island. Benoa Bay after the reclamation of Serangan Island is a typology of a semi-closed bay because the bay mouth is narrowed to 75%. Theoretically, the area of Benoa Bay waters measured on the outer edge of the coastline is 1,988.1 ha, can be divided into 3 zones, namely zone 1 (zone with bay mouth line drawn from the harbor of Benoa Harbor and Tanjung Benoa) covering 1,668.3 ha, zone 2 (zone between Benoa Harbor and Serangan Island) with an area of 231.3 ha, and zone 3 (zone between Suwung Kangin and Serangan Island) with an area of 88.5 ha.

If the reclamation in the Benoa Bay waters is forced then the reclamation will potentially cause new problems as follows:

1. Reclamation will damage the function and conservation value of the area and Benoa Bay waters
2. Reclamation causes a reduction in the function of the Benoa Bay as a reservoir of 5 sub watersheds
3. Reclamation by creating new islands will create vulnerability to disasters
4. Increased suspended density and sedimentation in coral reef habitats can kill coral polyps and damage surrounding coral reefs
5. Reclamation changes water conditions, such as limited salinity, temperature and nutrients from outside the bay
6. Reclamation threatens and exacerbates coastal abrasion
7. Retrieval of reclamation material has an impact on the decline in biodiversity
8. Cheap land for investors who harm the community
9. The regulations issued only take sides and prioritize the interests of investors
10. Development is not balanced
11. Promises that potentially unrealized governments have
12. Breaking the Coral Triangle Initiative's commitments
13. Bankruptcy Natural tourism.

The peak of resistance accompanied by non-governmental organizations occurred on February 28,

2016. The 700 hectare reclamation plan in Benoa Bay by PT. TWBI received a rejection from the Customary Villages in Bali. Officially, there have been 13 Adat Villages in Badung Regency and there are 6 Adat Villages in Denpasar City expressly rejected the reclamation plan and on Sunday (28/2), they simultaneously held actions in the waters and land around Benoa Bay.

In the demonstration led by Bendesa Adat, it was held at 4 points simultaneously at 14.00. The first point was on Jalan Pesanggaran, Denpasar, which was followed by around 3000 people from Sesetan Adat Village, Pedungan Adat Village, Kepaon Adat Village, Sidakarya Jalak, Nusa Lembongan, Sanur Adat Village and the surrounding areas. While giving speeches, the mob moved from the entrance of Serangan into the Bali Mandara Toll Road. At the intersection of budgeting, a billboard was installed to reject the reclamation of Benoa Bay as a symbol of the rejection of the reclamation of Benoa Bay by the Customary Village.

When analyzed from the theory of justice and legal politics, then happened polarization occurred in response to the Benoa Bay reclamation plan carried out by the Bumi Bali Bagus Foundation, which firmly supported this plan and ForBALI, which consistently continued to oppose. This difference in outlook is based on the Foundation's optimistic attitude towards the benefits that will be offered by the realization of the reclamation. On the other hand, the pessimistic attitude was actually shown by looking back at the reclamation of Serangan Island which failed and did not produce optimal results in the community. Various arguments have been given by both parties to convince the public and influence the government. This was stated in large part because it was related to environmental, economic and socio-cultural issues and the impacts that would result if the project was realized.

#### IV. CONCLUSION

The issuance of Presidential Decree No. 51 of 2014 concerning Amendments to Presidential Decree No. 45 of 2011 concerning Spatial Planning for Urban Areas of Denpasar, Badung, Gianyar, and Tabanan (SARBAGITA) is strongly influenced by economic and political interests through this public policy without regard to the laws anymore others that have clearly regulated the Benoa Bay Area and do not involve local communities or indigenous peoples in making regulations that govern the lives of the wider community and do not pay attention to the consequences that will arise with the issuance of this Presidential Regulation. Whereas Presidential Decree No. 51 of 2014 is in conflict with various laws namely Law No. 1 of 2014, Law No. 16 of 2009, and Badung Regency Regional Regulation No. 26 of 2013. Stating that the Benoa Bay Area is a Conservation Area and also according to Law Number 1 of 2014 concerning the Spatial Planning for the Province of Bali in 2009-2029 the Benoa Bay Area is a Sacred Area that is used to carry out

traditional Hindus ceremonies in Bali which may not be built or used and utilized for the benefit of business or Reclamation activities.

The cohesiveness of indigenous peoples, supported by community organizations, creates a great force to resist. The existence of a supporting organization is very important in the realization of access to justice for Balinese.

#### REFERENCES

- [1] A. Raharjo & R. W. Bintoro. "Discriminatory Policy of the Indonesian Government Toward Advocate and Poor People, Funding Solution for Legal Aid". *Jurnal Hukum Internasional* Vol. 13 No. 3, April 2016;
- [2] Deborah L. *Access to Justice*, New York: Oxford University Press, 2004.
- [3] T. Lambang. "Refleksi tentang Kekerasan Pembangunan: Menuju Pembangunan Perspektif HAM". *Jurnal Ilmu Sosial dan Ilmu Politik*, Vol. 2 No. 3, Maret 1999
- [4] J.E. Sahetapy, Pisau Analia Kriminologi. Bandung: Citra Aditya Bakti, 2005.
- [5] Adityawarman. *Peran Bantuan Hukum terhadap Perlindungan Hak-hak Tersangka dalam Proses Penyidikan Tindak Pidana Umum (Studi Kasus pada Pos Bantuan Hukum DKI Jakarta)*. Tesis. Jakarta: Program Pascasarjana FH UI, 2006.
- [6] S. Mulyaningsih, *Bantuan Hukum Bagi Prajurit TNI dan Keluarganya (Kajian tentang Bantuan Hukum yang Dilaksanakan oleh Dinas Hukum TNI Angkatan Darat)*. Tesis. Jakarta: Program Pascasarjana FH UI, 2007.
- [7] W. Sinaga, Pertanggungjawaban Hukum Advokat terhadap Klien Ditinjau dari UU No. 18 Tahun 2003 (Tentang Advokat) di Kota Medan. Tesis. Medan: Program Pascasarjana USU, 2005.
- [8] Cappelletti, M. and B. Garth (eds.), *Access to Justice*, Volume 1. Milan: Dott A. Giuffre' Editore
- [9] S. Irianto, dkk (eds). *Kajian Socio-Legal*. Denpasar: Pustaka Larasan; Jakarta: UI, Universitas Leiden, Universitas Groningen, 2012.
- [10] UNDP. 2005. *Programming for Justice: Access for All*. Bangkok: United Nations Development Programme
- [11] American Bar Association. *Penilaian Akses terhadap Kadilan untuk Indonesia Propinsi Sulawesi Selatan*. Washington DC: American Bar Association, 2012.
- [12] Bappenas. *Strategi Nasional Akses terhadap Keadilan*. Bappenas, Jakarta, 2009.
- [13] W. Wahyu. *Access to Justice for the Poor: The Badilag Experience*. Makalah pada IACA Asia-Pacific Conference in Bogor, Maret 2011
- [14] T. Santoso, *Kekerasan Politik-Agama: Suatu Studi Kasus Konstruksi Sosial tentang Perusakan Gereja di Situbondo*, 1996. Disertasi. Surabaya: Program Pascasarjana, Universitas Airlangga
- [15] I.G. Suryawan, *Genealogi Kekerasan dan Pergolakan Subaltern, Bara di Bali Utara*. Jakarta: Prenada, 2010.
- [16] C. Lay, C "Kekerasan Atas Nama Agama: Perspektif Politik". *Jurnal Ilmu Sosial dan Ilmu Politik*, Vol. 13 No. 1, Juli 2009;
- [17] R. Auliya. "Sistem Prevensi School Violence di Madura Berbasis Galtung Conflict Triangle". *Jurnal ISLAMICA*, Vol. 3 No. 2, Maret 2009