The Legal Protection of Turtles in Bali:

Legal, Cultural, and Philosophical Perspectives

by

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For years, Balinese peoples have been continuously condemned by the international community for their massive consumption of turtles. Some International Non Governmental Organizations (INGO) released undercover facts regarding the threat of turtles due to uncontrolled hunting of this ancient animal. Indeed, this encouraged activists to repeatedly campaign the need to restrain the hunting of turtles and also to ensure their life sustainability. Interestingly, some cases showed that Balinese peoples used religion and local tradition to justify the catch of turtles. They were arguing that turtles are needed as a tool for ceremonies. This background leads the researchers to focus on two legal issues. First of all, how is the legal protection of turtles in Bali according to the local, national, and international laws and regulations? And second, what policy should be adopted by local government of Bali in order to ensure that in one side, it would compatible with the existing laws and regulations, and in other side, it still respects the local culture of Balinese peoples. This research is designed as a legal-policy research that combines the analysis on normative aspects of relevant laws and regulations on the issues in concern and also the analysis on policy and administrative aspects of the local government as law-implementing agency at the lowest level.
INTRODUCTION

Natural resources and ecosystems have an important role in Balinese life. Management and sustainable utilization of natural resources are essential for human well-being, both in the present and the future as all of the elements of natural resources and ecosystems influence each other. If destruction and extinction occurs among one of the elements, it can lead to the disruption of the whole ecosystem. Conservation is one of the efforts being made to ensure that the utilization of biological resources is being managed whilst ensuring that natural resources and ecosystems are always maintained. Natural resources are an element of biological nature that consists of vegetable natural resources (plant) and animal natural resources (wildlife). Ecosystem natural resources are a system of mutual relationship, mutual dependence and mutual influence between the elements within the biological resources.

Turtles are an endangered species that is extraordinary, especially in Bali. In the 1970s, Bali was the largest turtle-consuming region in Indonesia. The harvest of turtles during that time, especially the green turtle, reached around 19,000 to 30,000 turtles. This phenomenon resulted in many protests from various parties and Bali was described as the "largest butcher of local turtles in the world". The current consumption of turtles in Bali has been significantly reduced, this is mainly due to the issuance of Law No. 5 of 1990 and Government Regulation No. 7 of 1999, which greatly protect the existence of turtles and prohibit acts that threaten its sustainability. However in Bali, for the purposes of certain religious ceremonies, the consumption of turtles is still allowed. This demonstrates the gap between the existing norms, namely the provisions concerning the prohibition of the capture of turtles. Because they are a part of the endangered

species that is required to be protected, the fact that it still occurs through the capture of turtles for ceremonies proves this gap between the law and reality. Thus, the protection of sea turtles in Bali is still experiencing several issues.

**LEGAL ISSUES**

1. How are the turtle protection regulations in Bali viewed from the International, National, and Local legal perspectives?

2. What policy should the Balinese local governments implement to protect sea turtles?

**ANALYSIS OF LEGAL ISSUE 1**

In international law, there is a legal instrument to protect endangered species, including sea turtles. One of them is the Convention on International Trade in Endangered Species (CITES), which is an international agreement between countries that was signed on March 3, 1973 in Washington, DC. This Convention aims for the regulation of international trade of wild animal and plant species, including part or processed products made from parts of wild animals and plants in order to ensure that it does not threaten its sustainability. One of the protected animals under the CITES agreement is sea turtles\(^2\). The Convention is intended to regulate the international trade of animals and plants, including parts or processed products made from the parts of animals and plants, to ensure that it does not threaten its sustainability. CITES lists within 3 (three) attachments (appendix), namely:

1. Appendix I – Lists the protected species of wild plants and animals that are threatened from all forms of international commercial trade;

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2. Appendix II - Lists species that are not threatened by extinction, but may be if trade continues without any regulation.

3. Appendix III - Lists species of wild plants and animals that have been protected in a particular country and provides an option for participating States to include the species in CITES Appendix III to Appendix II or I.

Because turtles are listed in the Appendix I of CITES, it means that they are a species that is vastly protected and cannot be used for trade in any form. Indonesia has ratified CITES by Presidential Decree No. 43 of 1978, meaning that the Indonesian government is bound to provide protection to the listed species of turtle. Other international legal instruments that also regulate the protection of animals, is the United Nations Conference on the Human Environment in 1972 (Stockholm Convention). Principle 2 states:

"Natural sources of our earth, including water, water, soil, flora and fauna and representative examples of natural ecosystems, must be saved for the benefit of present and future through careful planning and management."

Then Principle 4 governs that:

"Humans are responsible for the rescue and wise management of the heritage of wildlife and its habitat that is now being threatened by a combination of factors that are contradictory".

The Universal Declaration of the Rights of Animals in 1978 stated:

"All Animals are born with an equal claim on life and have the same rights to existence".

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In Indonesia, the protection of natural resources is regulated in the Act - Law no. 5 of 1990 on Biological Resources and Ecosystem and Government Regulation No. 7 of 1999 on the Preservation of Plants and Animals. Within the regulations, both animals and the environment itself are categorized into either endangered and/or protected. One of the animals that is listed as protected is sea turtles. In the appendix of Government Regulation No. 7 of 1999, there are several species of turtle which are protected, namely the Green turtle (Chelonian Mydas), Hawksbill (Eretmochelys Imbricate), Olive Ridley (Lapidochelys Olivacea), Leatherback (Dermochelys Coriacea), Loggerhead (Caretta-Caretta) and Turtle Flat (Natator Depressa). These laws regulate something that is not permitted, with regard to the protection of endangered species, including sea turtles. The ideology behind the protection status is an intention to ensure the existence of sea turtles and also to preserve them from extinction. Protections that are regulated in Law No. 5 (1990) in the form of prohibitions under Article 21 paragraph (2), states that every person is prohibited to:

a. Capture, injure, kill, keep, possess, maintain, transport, and trade live protected animals.

b. Store, own, maintain, transport, and trade deceased protected animals.

c. Transport protected animals from one place to another place within Indonesia, and also international import and export trade.

d. Trade, store or skin, body parts of protected animals or goods made from the parts of these animals through removal from within Indonesia to another place, or international import and export trade.

e. Taking, damaging, eradicating, trade, store, or possession of eggs and/or nests of protected animals.
Under the attachments in the Government Regulation No. 7 of 1999, a list of highly protected animals is set out, including six (6) species of sea turtles in Indonesia. Prohibited acts that are contradictory to the restrictions of sea turtle trade, is illegal and punishable by criminal sanctions.

The Balinese Provincial Government does not currently have specific regulations on the protection of sea turtles. However, policy instruments are used in order to make steps towards the protection of biological resources and ecosystems, including sea turtles. In Bali, the rules relating to the protection of animals are mainly placed in the hands of the community, allowing for their participation in the protection process whilst also discouraging the prohibited acts against turtles. However, empirical facts in Bali show that there are violations in the form of trade especially regarding green turtles. Based on information from Budi Prasetyo, a member of the Directorate of Water Police Bali Police, in the last 5 years there have been 7 cases of violations. In 2011, there were three cases, in 2012 there was one case, in 2013 there were two cases, in 2014 there were no cases and in 2015 there have been 2 cases so far this year. The number of cases in the last 5 years proves that the quantity is much less now than in comparison to the 1970 massacre where thousands of turtles were harvested for consumption in Bali.

Other occurrences in Bali, are that turtles are being used as a means to complement Balinese Hindu religious ceremonies; a practice that is still allowed by the government. Turtles that are used for religious rituals are essentially an act that violates the applicable laws. However, because there is a need for the sake of religious ceremonies for the majority of Balinese Hindu society then a procedure has been created in a way that turtles can be taken only for the benefit of religious rituals. Institutions that are involved in this process are the Parisada Hindu Dharma
Indonesia (PHDI) of Bali, the Natural Resources Conservation Center (BKSDA) and Provinsi Bali. According to the head of the Conservation Breeding and BKSDA, Mr Fatur and Mr Gede Harnawa, the Secretary of the Hindu Association Indonesia Bali Province, the procedures to meet the needs of Pakraman or communities ceremonies involves: a) the requirement from the Hindu people for a turtle for a religious ceremony, b) an application first to the PHDI where they will then assess whether or not the petition submitted, is worthy of the proposed religious ceremonies performance, c) if it is judged as worthy, they will be issued a recommendation to the BKSDA, and if the application is considered feasible then the BKSDA will issue a recommendation to the applicant for the Turtle Conservation and Education Centre.

Recommendations as a juridical instrument are actually identical with the permission under Indonesian administrative law. In the opinion of N.M. Spelt and JBJM Ten Berge in his Ridwan HR, the license is an approval of authorities under the laws or regulations in certain circumstances to deviate from the provisions of prohibition legislation. Permitting a control instrument for the government to businesses in the community, with the permission of the government creates a form of control and establishes maintenance of harmonious community relations with the government.

Consumption of turtle meat in Bali only occurs in certain geographical locations. Before the hunting and trade of sea turtles was prohibited by law in Bali, massive turtle consumption occurred. In the beginning, the consumption of turtle meat was by the people of southern Bali (the city of Denpasar and Badung south) mainly because other meat alternatives were quite difficult to acquire and the high cost associated with it was unobtainable. Therefore, the turtles were an easy food alternative that was readily available and cheap to buy. Not only this, but the region of South Bali, has a long, winding coastline where it is easy to locate turtle habitats.

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5 Ridwan HR. (2013), The State Administration Law, King Grafindo, Jakarta, p. 199.
Because of this habit of eating turtle meat, which is still ongoing, it has become engrained in the culture of the people, and is therefore, quite difficult to eradicate. However, the strong influence of the approval process relating to endangered sea turtles protection through the instruments of Law No. 5 of 1990, the turtle consumption culture is slowly changing into a turtle conservation culture. In the records of the Natural Resources Conservation Center Bali, public awareness of turtle conservation is growing rapidly, marked by many established institutions or community groups, for instance the Turtle Conservation and Education Center (TCEC) in South Denpasar. This institution is a vehicle that was originally established by the conservation community to attack the government of Bali Province. The activities conducted by the TCEC are namely rescue and rehabilitation, but also includes a turtle hatchery. They also provide education about sea turtle conservation to school children 2 times a week and have special events such as their tent event weekend. In addition to the TCEC’s efforts, many other turtle protection groups have been formed around Bali such as the Pelestari Asih group in Turtle Village Perancak Jembrana, Tegal Besar Klungkung, along with several other turtle conservation groups and other task forces on Kuta beach.

The impact of the change in the turtle consumption culture into one of conservation, has been highly effective in Bali. Using turtles for consumption is strictly forbidden by the government, but the exception is the use for ceremonies only when permission has been granted and the strict terms and procedures are followed. The reasoning behind the use of turtles in Hindu ceremonies in Bali is because of their high philosophical value. Turtles in Hindu mythology are the manifestation of God in the form of a turtle that became the basis of the earth in order to maintain balance and harmony of nature. Belief in the Hindu religion that is essentially the use of natural resources in the Hindu religious ceremony is to improve the mental
status of the biological resources in order to achieve a higher level of life in accordance with the concept of reincarnation. The use of endangered species, such as sea turtles, as a means for ceremonies, is also believed to actually have a conservation message. The reason behind this is that the community must ensure that turtles actually remain available for the use of special ceremonies; if turtles are not protected and conserved, they are unable to use them in ceremonies at all.

**Australian Comparison**

**Introduction**

Sea turtles are one of the oldest surviving species in Australia, having lived in the ocean for over 100 million years. They are an important part of the traditional culture of the coastal Aboriginal people of Northern Australia that have inhabited these areas for almost 50,000 years. They lived for a couple of thousand generations in peaceful, small communities, living a simple hunter/gather existence. That was, until James Cook landed in Australia on the 29th of April, 1770; the following two centuries were a nightmare for Aboriginal people with massacres, disease, alcoholism, forced integration and separation, and surrender. Today, Aboriginal people only comprise of only 3% of the Australian population and the traditional way of life is slowly becoming extinct, except in some small communities in Northern Australia. Hunting sea turtles in these areas still remains an important part in maintaining family relations, social structure and possibly most importantly, ceremonial purposes. Several of the Australian marine turtle species

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are affected by the Aboriginal harvest, similar to those used in Bali, including: all green turtle populations, Hawksbill turtles from north eastern Australia and the Great Barrier Reef, Olive Ridley turtles from the Northern Territory, Flatback turtles from the Gulf of Carpentaria and North West Shelf, and loggerhead turtles from the North West Shelf.\(^8\)

Turtles are of enormous cultural, spiritual and economic importance to Aboriginal people. Through a long association with turtles, indigenous people have developed a thorough base of traditional ecological knowledge that includes information on the natural history and ecology of turtles. Turtles also have spiritual significance, which can be found in the traditional stories and accounts of the past in many coastal Aboriginal communities. Turtles also have strong economic value because they provide sustenance, especially for those living in isolated communities where a diet that is nourishing is imperative but often can be extremely difficult to obtain because of isolation and expensiveness of store bought food. Furthermore, turtles play a large role in reinforcing the culture and demonstrating a connection with tradition. For ceremonies, turtles can play several different roles for the coastal Aboriginal people of Australia. In some communities, the turtle forms part of creation stories and can be found in all aspects of spirituality, art and life. The significance of the hunting and eating of the turtle is also conveyed through the social activity of sharing of the animal as food according to traditional kinship protocols.\(^9\) Indigenous hunting of turtles has traditionally been managed through customary law but due to recent improvements in technology and the disruption of traditional Aboriginal culture, this management has been affected. In some areas customary law can be used to manage the harvest, utilizing protocols such as:

- Who can catch and prepare the turtles

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\(^8\) Ibid.
\(^9\) Ibid.
- Not allowing the removal of nesting turtles
- Restrictions on the removal of eggs
- Seasonal closures of beaches and popular hunting areas
- Allowing the traditional owners of the land to regulate hunting in their traditional areas

To make sure that the recovery of turtle populations is possible, then customary harvest must be managed in a way that is culturally sensitive but also ecologically sustainable\textsuperscript{10}.

The fact that this relationship with turtles is so engrained into everyday practices, proves a new requirement for conservation and management strategies that also require the involvement and cooperation of the Aboriginal people. The relationship is interwoven into the fabric of everyday cultural, spiritual, social and economic practices; so much so that conservation and management strategies require the involvement and cooperation of Aboriginal people. In Australia, there has been a narrow interpretation of the customary rights that are continuing, for example the recognition of native title rights to hunt, fish and gather food resources for subsistence\textsuperscript{11}. This management plan has identified the requirement for agreements to be negotiated between Aboriginal communities and land management agencies that not only acknowledge customary (and statutory) law but that also promote the recovery of the sea turtle species. A combination of customary and State/Territory and/or Commonwealth law will be the best combination to achieve the objective of a customary harvest that also ensures the long-term survival and recovery of sea turtles in the wild.


\textsuperscript{11} Ibid.
Legal Response to the Issues

*Environment Protection and Biodiversity Conservation Act (1999) (Cth)*

In Australia, all species of marine turtles that live in our waters are protected under the Australian Government’s *Environment Protection and Biodiversity Conservation Act (1999)* (EPBC Act) and also under several State/Territory legislation. Specifically, the Leatherback, Loggerhead and Olive Ridley turtles are all listed as endangered under the EPBC Act which essentially means that these species may become extinct if the threats to their survival continue. The Green, Hawksbill and Flatback turtles are all listed as vulnerable and could potentially become endangered if threats continue.

*Native Title Act (1993) (Cth)*

There are, however, exceptions to the protection of turtles under the EPBC Act, one of those being that turtles can be legally hunted by Aboriginal and Torres Strait people under s 211 of the *Native Title Act (1993)* for personal, domestic or non-commercial communal needs and/or in exercise or enjoyment of their native title rights and interests. In conjunction with this, the Australian government have been working together with Aboriginal communities and scientists to develop and implement a form of community based management for sustainable hunting of marine turtles. This collaboration is mainly supported through the Australian Government’s Caring for Our Country and Working on Country programs.

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12 *Native Title Act 1993 (Cth).*

Despite the varying statuses between different species in their respective countries, the global decline of marine turtles has been recognized by the World Conservation Union (IUCN) in the year 2000, the Convention for the Conservation of Migratory Species of Wild Animals (CMS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The CMS listing means that marine turtles are protected by nations that are parties to the conventions while CITES controls the international trade of the listed species. In conjunction with these international agreements and the EPBC Act, a need for a recovery plan was identified. This plan was to include the content and methods to ensure the recovery of all of the species of sea turtles in Australia. Therefore, the National Recovery Plan for Marine Turtles in Australia was created and adopted in July 2003. The Plan provides for research and management options that are imperative to cease the decline and support the recovery of marine turtles. This will also ensure that their chances of long-term survival are maximized.

Sustainable Harvest of Marine Turtles and Dugongs in Australia – A National Partnership Approach (2005)

With particular focus on Aboriginal harvest of marine turtles in Australia the Natural Resource Management Ministerial Council (NRMMC) endorsed the Sustainable Harvest of Marine Turtles and Dugongs in Australia program in 2005 at its October meeting. In 2003, concern was expressed for the long term sustainability of turtles and dugongs in northern Australia by the NRMMC because of excessive harvest by Aboriginal people. It acknowledged the requirement for a nationally coordinated approach to sustainable levels of Aboriginal harvest of turtles and dugongs and a taskforce was set up in order to establish the Sustainable Harvest
program. There are 5 goals of this approach that are supported by a number of objectives and possible activities that could be used to implement it.

The goals are:

1. Improve the information base available to Indigenous communities for managing the sustainable harvest of turtles and dugongs;
2. Respect for Indigenous and non-Indigenous knowledge and management;
3. Improve education and awareness;
4. Identify the economic, social and cultural factors that may contribute to unsustainable harvest levels and identify implement measures to address them;
5. Protecting sea country resources.\(^{13}\)

The NRMMC also agreed to the following text being incorporated in its Communiqué:

'The Approach provides a basis for further work to ensure that harvest of turtles and dugongs is sustainable by outlining how governments and Indigenous communities can work more closely together to increase the effectiveness of the protection and conservation of dugongs and turtles. The Approach is also intended to contribute to the conservation of turtles and dugong and ensure the important economic, spiritual and cultural relationships Indigenous people have with these animals are maintained for future generations.\(^{14}\)


Public Awareness and Education Programs

Aus Turtle

A great example of a successful turtle public awareness and education program in Northern Australia is Aus Turtle. Aus Turtle was established in 2004 to promote marine turtle conservation and research in Northern Australia. This establishment is a direct response from the induction of the EPBC Act in 1999. The aims of the organization are:

- To support sea turtle research and conservation
- To support the objectives of the National Sea Turtle Recovery Plan through Research, Threat Abatement and Education
- To support the preservation of sea turtle habitat and their associated biota
- To engage in sea turtles education
- To engage in fundraising to support the above aims
- To support the continuations of a long term research project in the NT
- To collaborate and form partnerships with other organisations and institutions to apply for funds to support the above aims
- To participate in discussions regarding sea turtle management, conservation and research at all levels including local, regional, national and international.

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ANALYSIS OF LEGAL ISSUE 2

Recommendations

Traditional Hindu communities in Bali have expressed their interest in having more control over their use of resources; this could potentially and this may prove to be more effective for the conservation of marine turtles rather than using a strict law enforcement approach. Local traditional communities should be engaged in cooperative relationships for enforcement and monitoring rather than increasing government regulatory structures. This approach is very similar to what has occurred in Australia with the Aboriginal people, and so far, this approach has been harmonious and successful.

It is clear that any activity including religious harvest of turtles should not be done in a way that violates the law. This is a point that needs to be conveyed to the entire Hindu community. Sea turtles are endangered species included on the list of several international conventions. An interesting proposal that has been considered by the Hindu Association Central Indonesian through Bhisama Word Pandita 2005, is that the use of biological resources of rare and endangered species such as turtles, tigers, eagles essentially endangered others and needs to be protected by legislation. Not only this, but these animals could potentially be replaced by other animals; a solution worth considering by the Hindu community.

The change of Balinese culture from one of consumption of turtles into turtle conservation, absolutely needs to be supported by the government with the development activities of the turtle protection groups in both the management and financial sectors. In relation to the philosophical value of turtles, turtle breeding that needs to be disseminated in religious ceremonies should not be at the expense of sustainability.
The description of the turtle trade and use of turtles for Hindu religious ceremonies in Bali, show that the implementation of the provisions of international and local law have not been effective. Legal theory that could explain the effectiveness of law, is the legal system stated under Friedman's theory, namely that a legal system covered by the three elements of structure, substance and legal culture is one that will be the most effective. More essential and common, is that the essential function of an effective legal system, lies in the quality and professionalism of human supporters (structure) and thereby, shortcuts to overcome the weaknesses of each component of the system is a step towards improving the quality of its resources\textsuperscript{17}. The substance of the legal system (legal substance) contains a variety of formal rules, the rules of life in society and the products arising from application of the law. Legal culture (legal culture) is the relation of attitudes towards the law. This attitude is related to cultural attitudes in general, because it involves belief, value, goals, and expectations. If considering the views of Friedman on the theory of an effective legal system, it would appear that the enforceability of the law would be effective in 3 ways; firstly, from the institution constituent and whether it meets the conditions, a formulation of the law that involves the elements of the government and parliament. Secondly, the interests of the people must be taken into consideration and incorporated into the substance of the legislation. Lastly, cultural elements need to be taken into account when determining the material elements of the legislation, in order to value the expectations of the public. In conclusion, the legislation, between the structure, substance and culture, should be interconnected so that the implementation of a law will be one that is effective.

\textsuperscript{17} Arief Sidhartha, 2008, the Law of Indonesia, p. 147.
Conclusion

It is important that any agreement that might be implemented in Bali is jointly developed between the Hindu community, the conservation office, turtle protection groups and the people themselves, as all groups can ensure that sustainability is achieved along with the wishes of the community. The agreements also need to be based on sound science and also local, traditional knowledge. Not only this, but such agreements need to be initiated, monitored and implemented by the communities themselves whilst also supporting humane methods of killing. This type of community based management with support from the Indonesian government is a legitimate and potentially highly effective management mechanism; however it is imperative that the government does remain committed, involved and ensures the enforcement of the regulations\footnote{Department of Environment and Heritage, \textit{Sustainable harvest of marine turtles and dugongs in Australia – A National Partnership Approach} <https://www.environment.gov.au/resource/sustainable-harvest-marine-turtles-and-dugongs-australia>}. 
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