Strategies in water rights disputes.

The resolution of water rights conflicts in the legal plural context of the Balinese paddy cultivation

Background

The Graduate School Society and Culture in Motion of Martin-Luther-University Halle-Wittenberg kindly supported my twelve-month fieldwork as the empirical basis for my dissertation project in Social Anthropology between March 2009 and March 2010 in Bali (Indonesia).

The project deals with water rights disputes, which arise in connection with the intensive and ongoing mass tourism development in Bali, especially since the late 1980s - with its 5620 km² rather small but economically very important among the over 13 000 islands of the Indonesian archipelago. In the year of 2008 almost 4,5 Mio foreign and domestic tourists visited the tropical „holiday paradise“ with its 3,5 Mio inhabitants (Badan Pusat Statistik Propinsi 2010).
In a multi-sited ethnographic fieldwork I examined a variety of disputes over water resources in which among others Balinese irrigation communities, private households, transnational private water companies, state-owned water providers and tourism facilities were involved as actors. I especially focused on two so-called „sustainable“ tourism projects in the planning. The prospected sites are situated at the banks of two volcanic twin lakes in the mountains of the North Balinese district of Buleleng. As a response to the global trend of „nature and ecotourism“ and “spiritual tourism” currently the „natural“ areas of Bali, which have not yet been reached by the mass tourism development of the small island, like lakes, rivers and forests are very much sought after by tourism investors. The plans for the commercialization of the lake area for so-called „eco-cultural holiday“ or „spiritual tourism“, however, are met by a strong resistance from vast parts of the Balinese population, especially out of reasons of religion and adat (customary law). Adat is a term derived from Arabic and used to subsume customary law and tradition in separation from the administrative structure of the villages installed by Dutch colonial rule (dinas), but in the years before and after the downfall of the New Order Regime 1998 has been associated with resistance against the centralized government (Davidson/Henley 2007: 1). In Bali this development was visible in major adat protests directed against mega tourism projects controlled by the central government (Warren 1998, Picard 1993, 1997). Adat and the environmental discourse were since then central for questions of Balinese identity (Ramstedt 2000, Warren 1998).

This project combines the theoretical engagement with debates on the current sustainability trend in the tourism business and increasing disputes over water resources with the topic of various parallel, interwoven and sometimes conflicting legal orders or legal spheres (mainly the adat sphere) in the negotiation of the dispute over tourism development. Of special importance was the question, which arguments and strategies were applied by different persons and groups involved in the conflict and which access they had to different legal spheres.

The region Buyan-Tamblingan as an important water catchment area
The twin lakes as two of the overall four fresh water lakes of the island are an essential water catchment area of central supra-regional importance for the water provision in agriculture, industry and households. Rain and humidity are collected by the forest and the lakes and carried downstream to the irrigated rice fields of the districts in the North and the South. Not only conservation reasons, but mainly the weak economy of the Northern district of Buleleng is the cause for the fact that the lakes up to now have been mainly preserved for agriculture, fishing and as water sources for households. The information of projected tourism development of the two lakes caused a province-wide protest and raised the question of potential negative impacts on the hydrology of the island and especially of the irrigation agriculture of the peasant communities in North and South Bali who are depending on the lakes. Public protests with entrenched positions took place. In the centre of my research since then was the analysis of resistance against the large-scale tourism projects in the region. I analyzed, in which arenas the tourism development was debated or negotiated by proponents and opponents, and which strategic use was made of arguments from the spheres of religion, adat, environmentalism, economy, history, politics, among others, by the different actors and groups. The analysis of the data will focus on the interconnection of legal spheres in Indonesia under the conditions of decentralization.

Fieldwork findings:
Religion, Adat and ecology
The research basis was located right in between the two lakes of Buyan and Tamblingan and focused on the two villages directly situated at the banks of the lakes Pancasari (Buyan) and Munduk (Tamblingan). Just as important for the research were, however, visits in the district capital of Singaraja, the province capital Denpasar, the customary union of villages, including Munduk, that see their origin in the precolonial kingdom at Tamblingan, as well as tourism sites in the South, that are also centres for organizations involved in the conflict such as NGOs, political parties, tourism agencies and others.

The lakes, natural wells and several temples connected with them located in the forest make it an important pilgrimage site for Hindus from all over Bali, especially for irrigation communities (subak). Subak communities from many districts of Bali take part in regular ceremonies in order to preserve or restore the water supply of the lakes and the fertility of their fields. Besides this, the lakes have a general importance for all Balinese Hindus, because water is a purifying element and life-giving force in Balinese Hinduism. Further, the temples at the lakes are considered to be part of a pre-colonial Balinese kingdom. The royal ancestors of the current adat ruler are worshipped here and a commercial use by external investors on large-scale is considered inappropriate from the point of view of followers of the adat order of the local community at Tamblingan.
Upacara Pekelem, climax of a two-year ceremonial cycle of the adat-union of four villages (Catur Desa) at Lake Tamblingan, in the course of which three young buffalos were sacrificed by drowning them in the lake. October 2009. Photo: Sophie Strauß.

Adat and Religion were the legal spheres most often applied from the perspective of tourism critics and the protesting part of the local communities in the dispute over the lakes, backed up with arguments from the official legal sphere by experts in questions of law and environment with scientific background (university lecturers, speakers of NGOs, politicians). Similar to former cases of protests against tourism projects in the South (Warren 1993), a strong interconnectedness of religion, adat, environmental law and space development could be observed in the argumentation against the projects.

Legal framework – The Law RTRWP
Besides the local case study, during the first half of my fieldwork I focused of the several months ongoing debate on the draft of Governmental Regulation No. 16/2009 on the space development of the Province of Bali 2009-2029 (Perda No. 16/2009 tentang Rencana Tata Ruang Wilayah Propinsi Bali Thn. 2009-2029), a regional version of the national national law UU RI No. 26/2007 on space development on the level of the province of Bali. By this province version the framework for space use and tourism development including the resources of land and water in Bali should be defined in accordance with the Balinese concepts of space. The negotiations and the public debate on this law, which were taken up every day in local media like BaliPost, Jawa Post, Radar Bali and Bali TV, showed problems in the decentralization process in the field of natural resources, above all land and water. They were again and again focused on the question of a special „Balinese“ version of the legal framework, in which elements of Balinese Hinduism and adat law with specific Balinese space concepts were integrated. The main points discussed were building prohibition in a certain radius around temples of a wider than only local importance or at lakes, rivers, springs, mountains and other elements of nature with ecological or spiritual value. This legislation is the legal consequence of the Balinese (and other provinces’) experience of former Javanese domination of large-scale tourism investment without consideration of the Balinese space order (Warren 1998).
In the course of the debate on RTRWP the case of tourism development of the region Buyan-Tamblingan was the most prominent example of public protest not only of the local communities. Opponents of the tourism projects fear violations of the official and also the adat-law awaiting the region with the realization of the projects. During the ongoing debate I conducted interviews with members of the advisory boards, politicians, university lecturers, speakers of NGOs, people involved in tourism business in the region and with the local communities.

Both the analysis of RTRWP and of local opinions concerning tourism investment at Buyan-Tamblingan show, that the dispute was above all a debate on Balinese identity tied to questions of political power. While former protests against large-scale tourism projects were mainly directed against the centralized control by the national state, the case of Buyan-Tamblingan reveals power struggles on many political levels. The differentiated profit districts make from tourism business puts poorer districts now in opposition to a governor, who favours central forms of natural resource control by the province. In the adat sphere, the “conservative” village union of Catur Desa with its “ancient” adat (adat kuno), is in conflict with the dinas structure of the district of Buleleng, voices from the province capital stressing the uniform adat order of Balis regions in favour of agama, and also with a secessionist sub-unit of the village of Munduk, which tries to get directly involved in tourism investment independently of their former adat-structure. It is important to note how environmental arguments against tourism were always so tightly combined with either adat in order to stress local Balinese identity and with arguments from a more general Hindu point of view, while proponents of tourism use environmental jargon to justify the dinas structure of the conservation area. A lot of tension is created on the mentioned levels in the negotiation of Balinese identity and political power after decentralization, especially on the local level, where the adat conflict even resulted in violent acts.

Methods
For the documentation and analysis of the strategies and interactions of the actors or actors’ groups, qualitative ethnographic interviews and a variety of techniques summed up under the term „participant observation“ were applied. I used these methods with very different groups and persons: peasants, priests, adat-authorities, government officials and representatives of the official administrative apparatus, for example the tourism department, the forestry and conservation department, historians, archaeologists, NGO members, conservationists and environmental activists, experts in agriculture, tourists and people involved in the tourism business, during adat-meetings, agricultural activities, during numerous religious ceremonies, pilgrimages and private meetings with informants, on the local level in the context of irrigation agriculture, horticulture, conservation of water pollution control and forest conservation, fishing and water provision for households of the region. Expert interviews were an important method especially those with experts in adat-law and religion (priests, adat-authorities) of the region Buyan-Tamblingan. To avoid a one-sided account dominated by the polarized views of persons directly involved in the conflict as supporter or opponent, the close contact to the local communities with long talks, interviews and participation in daily activities of the communities at the lakes played a very important role. The inhabitants of the villages directly at the lakes earn their living as peasants, fishermen, traders and different involvements in the tourism business. Interviews were conducted mainly in Indonesian, the lingua franca in Indonesia, and partly in Balinese, the regional language (Bahasa daerah) and mother tongue of Balinese villagers. During religious ceremonies and
adat-events Balinese was used exclusively. Events connected with the official legal system (for example meetings organized by government in the context of agriculture, fishing or others) were mostly held in Indonesian or in both languages.

Workshop on the topic of ecotourism with members of the tourism departments and university lecturers in the village of Sambangan (Buleleng).
Foto: Sophie Strauß.

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