



Traditional Sanctions for the Performers of the Theft of Pratima (Holy Objects)

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Received 20-07-2022	Abstract: The purpose of this study is to examine the assessment of traditional villages in protecting sacred objects from the crime of theft in the Yangapi Tembuku Bangli Traditional Village and also to assess the implementation of sanctions against theft in the Yangapi Tembuku Bangli Traditional Village. This research is an-empirical legal research, namely research on the implementation of law in the life of indigenous peoples. The research location is in the Yangapi Traditional Village, Tembuku District, Bangli Regency. The results of the study show that the role of the traditional village in protecting sacred objects from the crime of theft has protected sacred objects, the role of the Pakraman village in the occurrence of the crime of theft of sacred objects lies only in restoring balance in the form of ceremonies or religious rituals borne by the thief of sacred objects. The implementation of sanctions for errors in theft of sacred objects is guided by Parare Yangapi Tembuku Bangli, namely: giving sanctions to the perpetrators of theft of sacred objects in the form of: each temple in heaven universe village and a spectacle in the form of pecaruan, rice replacement carried out by the perpetrator according to the number of families in the village Yangapi Tembuku Bangli.	Keywords: Customary Sanctions, Theft, Sacred Objects
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INTRODUCTION

The Background

It is undeniable, Bali is very famous throughout the world because it has a variety of natural beauty and various forms of cultural arts that are heavily influenced by Hindu teachings. Tourists, both domestic and foreign, whose numbers are in the millions, come to Bali for a vacation while enjoying the natural panorama and its cultural arts. Besides, there are also many tourists who like to visit Hindu holy places in the form of temples which have their own uniqueness in terms of architecture.

Each Temple usually has sacred objects according to the beliefs of Hindus in Bali. In general, sacred objects in temples are highly purified by Hindus. This is because the sacred object known as *Pratima* is considered the embodiment of God Almighty. God is indeed difficult to imagine his form, so according to the belief of the Hindu community in Bali to get closer to him, certain media are needed. Media in the form of *Pratima* are not ordinary objects, but are objects that are designed in such a way from selected materials that have main characteristics and go through certain ritual processes.

Pratima which is made of selected materials and made in an artistic form looks very beautiful to look at. This beautiful form reflects the results of the sincere outpouring of the heart of Hindus as a means of connecting with the creator. Because *Pratima* has a beautiful shape and there are materials of high selling value, so *Pratima* is often the target of criminal theft.

The act of stealing *Pratima* is an act that is very detrimental to indigenous people in Bali, especially Hindus because it has damaged the balance of people's lives, and is also considered to have insulted the customary rules contained in *awig-awig*. *Pratima* theft is a form of blasphemy against Hinduism, and the perpetrators can also be considered to have damaged the nature reserve considering that the *Pratima* in Bali is part of cultural heritage objects and hereditary heritage (I Ketut Sandika, 2011). According to the belief of the customary law community in Bali, to restore this balance, religious rituals are needed. Theft is certainly prohibited by every religion and by the Criminal Code (KUHP) and violates the values and norms that apply in a society.

In reality in the community, meanwhile, every time there is an incident of *Pratima* theft will be reported to the authorities, in this case the police. After receiving the police report, further investigations and investigations are carried out if the suspect is found. The police in handling the *Pratima* theft always apply state law, namely the Criminal Code (KUHP), which is as regulated in the provisions of Articles 362-365 regarding about Theft.

When examined from the legal elements of customary offenses, the occurrence of customary offenses is caused by the existence of customary provisions that are violated, whether committed by individuals or

groups of people, and these customary offenses cause the cosmic balance to be insured in indigenous peoples, thus causing reactions and corrections from legal officers. customs and indigenous peoples (I Made Suastawa Dharmayuda,1991).

However, the cases of theft of sacred objects that occur, it is very unfair if they are only subject to sanctions in accordance with Article 362 of the Criminal Code (KUHP) regarding ordinary Theft, giving rise to various thoughts in the community that the theft of sacred objects is equated with cases of theft in general, such as cases of bicycle theft, stealing fruit, stealing livestock and so on. Theft is prohibited by every religion and in the Criminal Code (KUHP) because it violates the values and norms that live and apply in a society.

In the practice of the judiciary in Bali, there has never been a judge's decision that imposes a criminal or customary sanction in the form of fulfilling traditional obligations. Whereas on the one hand, indigenous peoples want the imposition of criminal penalties or customary sanctions in the form of fulfilling these customary obligations. In these cases, the judges collided with the provisions of Article 10 of the Criminal Code (KUHP) which does not regulate the fulfillment of customary obligations as a type of crime even though the demands are reasonable for the community to make. This is the reason and the background for the author to study more deeply with the title: **Sanksi Adat Bagi Pelaku Pencurian *Pratima* (Benda Sakral) di Desa Adat Yangapi.**

Formulation of the Problem

Based on the description above, the formulation of the problem can be presented as follows:

- What is the function of the traditional *Prajuru* in securing the *Pratima* in the Yangapi Traditional Village?
- How is the implementation of sanctions against the perpetrators of theft of sacred objects in the fire traditional village?

Writing Purpose

Based on these problems, there are several objectives of the problems raised as follows:

- To examine what is the function of traditional *Prajuru* in securing *Pratima* in the Yangapi Traditional Village
- To examine the implementation of sanctions against perpetrators of theft of sacred objects in the Fire Traditional Village

METHODS

Empirical legal research is the method used to examine this research which is research on the implementation of law in the lives of indigenous peoples. The research location is in the Yangapi Traditional Village. The selection of research locations with samples in the village with the consideration that the village concerned has its own characteristics in the application of customary law. Interview technique is a technique used to collect data which will later be used as a data source. Interviews were conducted with the *Bendesa Adat* (customary leader) of the local village regarding the applicability of *awig-awig* (customary law) especially with regard to *pratima* (sacred objects). In the end, all the materials that have been collected are presented analytically descriptively.

RESULT AND DISCUSSION

Awig-Awig by Customary Villages

Awig-awig is the order in social life. Society itself is characterized by several characteristics, such as the existence of interactions, bonds, typical behavior patterns in all aspects of life that are steady and continuous, as well as a sense of identity to the group in which the individual concerned is a member. In social life, humans will always be faced with other human forces, so it is necessary to have norms and rules that determine which actions are permissible and which are not. In the life of the Balinese indigenous people, which is accommodated by customary villages, these norms are commonly referred to as *awig-awig*, *sima*, *dresta*, *pararem*, and other terms.

In general, what is meant by *awig-awig* are behavioral standards, both written and unwritten, made by the community concerned, based on the sense of justice and propriety that live in society, in the

relationship between *Krama* (customary village members) and God, between among humans, as well as between humans and their environment (Oka Parwata, 2010).¹

This is of course made not to contradict the *awig-awig* itself, basically every traditional village writes its *awig-awig* as well as the *awig-awig* in every traditional village. *Awig-awig* is a traditional village with religion, Pancasila, the 1945 Constitution of the Republic of Indonesia, and human rights (HAM). *Awig-awig* comes from the word "*wig*" which means damaged while "*awig*" means not damaged or good. So, *awig-awig* is interpreted as something that becomes good.

Literally, *awig-awig* has the meaning of a provision that regulates the manners of social life in society to realize a stable life order in society. While in the Regional Regulation No. 4 of 2019 concerning Traditional Villages in Bali, states that "*awig-awig* is a rule made by the Traditional Village and/or *Banjar Adat* which applies to *Krama Desa Adat*, *Krama Tamiu*, and *Tamiu*" as a guide in the implementation of *Tri Hita Karana* in accordance with the village *mawacara* and *Dharma Agama* in customary village or *banjar adat* respectively.

Awig-awig proportionally contains rules that aim to maintain or realize a balanced relationship between humans and God (*parhyangan*), a balanced relationship between humans and humans (*pawongan*), and a balanced relationship between humans and the natural environment (*palemahan*). The relationship between man and God is manifested in the form of devotional service, the relationship between man and man is manifested in the form of *tresna*, and the relationship between man and the environment is manifested in the form of *asih* (Dharmayuda, 1991).

Therefore, *awig-awig* uses the concept of *Tri Hita Karana* as its philosophical foundation. By carrying out the concept of *Tri Hita Karana*, it is expected to behave in accordance with Hindu religious teachings, such as *Tat Twam Asi*, brotherhood, harmony, and non-violence in living together, so it can be said that *awig-awig* traditional village is an inseparable part of Hindu community life. in Bali has a very strong correlation with the concept of *Tri Hita Karana*.

The *awig-awig* that is used as a guide by the traditional *Prajuru* in carrying out their obligations, is made according to the situation and objective conditions of each traditional village (Windia, 2006). This causes differences between the traditional village *awig-awig* with each other even though they are geographically close together. This difference is considered normal and normal in accordance with the *mawacara* village principle.

Awig-awig proportionally contains rules that aim to maintain or realize a balanced relationship between humans and Ida Sang Hyang Widhi Wasa (*parhyangan* aspect), the balance of relations between humans and humans (*pawongan* aspects) and the natural environment (*palemahan* aspects).

The term traditional village has been used again since the issuance of the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali. Previously, the term Pakraman village has been used since the issuance of Bali Provincial Regulation Number 3 of 2001 concerning *Pakraman Jungto Village*, Regional Regulation Number 3 of 2003 concerning Amendments to Regional Regulation Number 3 of 2001 concerning Pakraman Village. Previously, based on the Bali Provincial Regulation Number 06 of 1986 concerning the Position, Function, and Role of Traditional Villages as Units of Customary Law Communities in Bali Province, the term used was customary village. Juridically, traditional villages receive protection and a strong legal basis based on Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia.

Traditional villages have an autonomous nature because they have the authority to regulate their own households, including making rules, implementing and enforcing rules, and having their own assets which is also one of the characteristics of a traditional village. This wealth itself, can be in the form of material or immaterial.

¹ Oka Parwata, AA Gede, 2010, *Memahami Awig - Awig Desa Pakraman*, hal 54

This tangible or immaterial property can be in the form of a *pratima* that is highly purified by its customary manners. This is because *pratima* is a symbol of Ida Sang Hyang Widhi Wasa (God Almighty) in its various manifestations according to the beliefs of the Hindu community in Bali. *Pratima* in various forms and made of various materials, some are even plated with gold. Because the form of *pratima* which may be viewed by people outside of Hinduism as an art item or the materials may have economic value, they are often targeted by thieves.

In fact, the act of theft really makes people nervous about the local indigenous community and suffers more from these actions, this is certainly related to criminal law. Criminal law according to C.S.T. Kansil is: "the law that regulates violations and crimes against the public interest, the act of which is punishable by law which constitutes suffering or torture" (Kansil, 1984).

Theft is also called theft with qualifications (*gequalificeerde deifstal*) or special theft in certain ways or in certain circumstances so that it is more severe and therefore is threatened with a maximum sentence that is higher, namely more than a five-year prison sentence from Article 362 of the Criminal Code (KUHP) and the following: this is regulated in book II of the Criminal Code in chapter XXII and its formulation as referred to in Article 363 (KUHP). According to P.A.F. Lamintang, that (*gequalificeerde deifstal*) is theft which has elements of the act of theft in its main form, which because it is added with other elements, so that the threat of punishment becomes aggravated (Lamintang, 1982).

Meanwhile, M. Sudradjat Bassar said that the theft as regulated in Article 363 of the Criminal Code (KUHP) includes "special theft" meaning a theft in a certain way or under certain circumstances, so that it is more severe and is threatened with a higher maximum sentence, which is more than a prison sentence 5 year. Qualitative theft can cause losses suffered by the community, namely economic losses (material) and psychological losses (psychological conditions of the community whose moral feelings were carried out with the crime). Therefore, this type of theft must be taken seriously (Sudradjat Bassar, 1986).

Combating theft in particular and crime in general is closely related to criminal policy, which is a rational effort from society to tackle crime. Policies or efforts to combat crime are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. The ultimate goal of criminal policy is "protection of the community to achieve public welfare." Criminal policy (criminal policy) which is an effort to overcome crime can be carried out through penal (criminal) and non-penal efforts (Sudradjat Bassar, 1986). In connection with this prestige theft, indigenous peoples will feel a shock, and this shock indicates an imbalance that needs to be restored. Restoration of balance is carried out as a form of customary reaction to the occurrence of the crime of theft, because the stolen objects are not ordinary objects but objects that have spiritual value and are only issued at certain times with special rituals.

The Role of Traditional Villages in Protecting Sacred Objects from the Crime of Theft in the Yangapi Tembuku Traditional Village, Bangli

Legal protection is an action or effort to protect the community from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings (Setiono, 2004). Legal protection is also defined as an activity to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in social life between humans. Based on the definition of legal protection, legal protection basically aims to create harmony, peace and order in social life.

In the life of the Balinese traditional community which is accommodated by the *Pakraman* village, the prevailing norms are commonly referred to as *awig-awig*, *dresta*, *perarem*, and other terms. These norms are indirectly (unwritten) regulations that apply to local indigenous peoples, so they are automatically binding on local indigenous peoples. Regarding the legal protection of sacred objects by the traditional village in Yangapi Tembuku Village, Bangli, it is regulated in the *awig-awig* of the traditional village. As a rule, traditional village *awig-awig* is not something new. *Awig-awig* has existed for a long time, in line with the origins of the existence of the traditional village itself, which if traced its history dates back to the ancient Balinese era (Astiti, 2016).

Cases of theft of sacred objects have occurred in the Yangapi Traditional Village Immediately, the traditional village immediately held a religious ceremony in order to restore balance considering that the stolen objects were sacred (sacred) objects and the basic value of indigenous peoples' life in Bali was "the value of balance". The cost to hold the ceremony still comes from the traditional village itself and costs quite a lot. The perpetrators of theft have never been held accountable and the perpetrators of the theft are only subject to sanctions in accordance with the provisions of national law. In the *awig-awig* the traditional village in Yangapi Village itself has not specifically regulated but the suspect has an obligation to pray to temples and pay for everything needed in every Temple in Yangapi Tembuku Village Bangli (Interview with Mr. I Made Adnyana, as *Bendesa Adat Yangapi Tembuku Bangli*).

This is also important in order to create a common understanding of the implementing rules of *awig-awig* which serves to emphasize and concrete the general rules in *awig-awig* related to the regulation of sacred objects. *Pararem* that are made must also adapt to their respective customary *banjars*, so it can be said that between *awig-awig* and *pararem* there is a very close relationship in regulating indigenous peoples.

Sanctions in *awig-awig* do not include sanctions regarding the theft of sacred objects, but are guided by *Pararem* (the decision of the indigenous peoples meeting) which is a community decision that explains the sanctions regarding the theft of sacred objects, namely:

- Offering *banten* at each temple in Yangapi Village and witnessed by village officials (*Prajuru Desa*);
- Doing *pecaruan* in Yangapi Village;
- Compensation in the form of rice carried out by the perpetrator according to the number of families in Yangapi Village.

Implementation of Sanctions against Theft According to the Traditional Law of Yangapi Tembuku Village Bangli

There are several customary sanctions known in Balinese customary law, such as *danda arta* (fines), *sangaskara danda* (performing certain ceremonies) and *kasepekang* (dismissed and ostracized as traditional villagers). Among several known customary sanctions, the *kasepekang* customary sanction can be said to be the most famous. This fact is caused by several things, such as: the prohibition of burial of bodies, the emergence of internal village conflicts and the emergence of pro and con discourse in the mass media, immediately after the *kasepekang* sanction was imposed.

In the implementation in Yangapi Tembuku Bangli Village which has not been fully implemented due to the lack of socialization carried out by the village to the community, therefore what is still an obstacle is because the rules made are only limited to agreements made by Yangapi Bangli Village, namely by carrying out and bearing all offerings. to carry out prayers at the temple in Yangapi Tembuku Village, Bangli. (Interview with Mr. I Made Adnyana as *Bendesa Adat Yangapi Tembuku Village Bangli*).

Thus, it is clear that law and sanctions are like one package. The law is always accompanied by sanctions that can be imposed on parties who renege on the law in question. By social scientists this sanction is given a broader meaning than its use in law (Durkheim, 1976). Saying that the social reaction in the form of punishment or sanctions is very necessary, because it has the intention to carry out maintenance so that the traditions of traditional beliefs do not waver so that community stability can be realized. By following this view, it can be argued that customary sanctions (customary reactions, customary corrections) are a form of action or efforts to restore imbalances, including magical imbalances due to disturbances which are customary violations.

The most important thing is that there is an emphasis on creating a balance between the external world and the unseen world, between the whole human group and individuals, between the community and its friends. Any act that disturbs the balance is a violation of the law and legal officers are obliged to take the necessary actions to restore the legal balance (Soepomo, 1979).

Thus, customary sanctions have a function and act as a distributor to restore the balance between the world of birth and the unseen world. Sanctions in this function have an important role in the lives of indigenous people in Bali. It is so important that criminal acts (crimes and violations) are sometimes

burdened with customary sanctions even though the perpetrators have been sentenced according to positive law (KUHP).

According to the *Pararem* in Yangapi Tembuku Village, Bangli, sanctions are imposed on perpetrators of theft of sacred objects in the form of:

- Offering *banten* at each temple in Yangapi Village and witnessed by village officials (*Prajuru Desa*);
- Doing *pecaruan* in Yangapi Village;
- Compensation in the form of rice carried out by the perpetrator according to the number of families in Yangapi Village.

In this case, sanctions are given to the perpetrators in order to create harmonious community conditions as before.

CONCLUSION

The role of the traditional village in protecting sacred objects from the crime of theft in Yangapi Tembuku Village Bangli is that in practice the traditional village has protected sacred objects, but the regulation does not include detailed regulations on theft of sacred objects. Forms of protection carried out by the local traditional village in preventing the crime of theft, namely: forming a *pekemit* institution by the customary village chief or *kelian banjar adat*, guarding by *pecalang*, making fences to protect sacred objects from irresponsible people. However, in the event that a criminal act of theft of sacred objects is suspected, the traditional village still reports the incident to the authorities (the police), so that all matters or processes related to national law are handed over to the authorities. The role of the *Pakraman* village in the occurrence of the crime of theft of sacred objects only lies in restoring the balance in the form of religious ceremonies or rituals whose funds are borne by the suspect of stealing sacred objects.

The implementation of sanctions against perpetrators of theft of sacred objects is guided by the *Pararem* of Yangapi Tembuku Bangli Village, namely: giving sanctions to perpetrators of theft of sacred objects in the form of: Arranging offerings (*banten* in each temple in heaven universe village and witnessed by village officers, performing *pecaruan*, Compensation in the form of rice that carried out by the perpetrators according to the number of families in Yangapi Tembuku Village, Bangli.

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