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## Sanctions for violations of the marriage process in awig-awig in the village: What is the role of customary village

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### Abstract

Traditional Villages as a customary legal community unit in the Province of Bali have a unity of traditions and social etiquette, the life of the Hindu community has for generations been in the bond of Kahyangan Tiga (Kahyangan Desa) which has its own territory and assets and has the right to manage its own household. As an Indigenous legal community unit (Traditional Village) it is bound by customary rules or Customary laws that grow and develop within the local community, which is better known in the form of Awig-Awig which is the basic guideline of a Traditional Village in its governance. The main problem in this writing is how to apply the awig-awig sanctions in Traditional Villages and what obstacles are experienced in relation to marriage violations committed by residents of Takmung Traditional Village. The type of research used is empirical research. Primary data and secondary data were carried out through library and field research using document studies and interview guides. The conclusions of this research show that the application of sanctions for violations of awig-awig in Traditional Villages depends on the violation committed in accordance with what is stated in the awig-awig of the Traditional Village of Takmung by prioritizing amicable solutions, either in the form of physical fines or fines with assets (material). With continuous outreach to village residents and firm action by both village officials and village residents' compliance, obstacles to implementing sanctions can be resolved as well as possible.

**Keywords:** Awig-awig, traditional villages, sanctions, marriage

### Introduction

Humans always coexist and need other creatures to interact with each other. They are created as social beings who cannot live alone. Traditional Villages as a customary legal community unit in the Province of Bali have a unity of traditions and social etiquette, the life of the Hindu community has for generations been in the bond of Kahyangan Tiga (Kahyangan Desa) which has its own territory and assets and has the right to manage its own household. As an Indigenous legal community unit (Traditional Village) it is bound by Customary rules or Customary laws that grow and develop within the local community, which is better known in the form of Awig-Awig which is the basic guideline of a Traditional Village in its governance.

The Awig-Awig Traditional Village contains rules that regulate and force the community to create harmony and harmony in every legal relationship in society. The Awig-Awig is made and determined by the Krama Desa based on mutual agreement and is adhered to by the Krama Desa itself and the most important thing is that the Awig-Awig is a binding force for the unity and integrity of the Krama Desa to ensure cohesion and integrity in uniting common goals, realizing a safe life, peace, order and prosperity for the sake of village peace. Every social relationship must not conflict with the legal provisions and regulations that exist and apply in society. Any violation of existing legal regulations will be subject to sanctions as a reaction by the community or traditional administrators against people who commit acts that violate the law <sup>[1]</sup>.

Awig-Awig is compiled by Prajuru Adat together with Krama Adat to absorb the aspirations and needs of the Customary Village in line with the circumstances and situation of the local village and through the sacralization process, namely the Pasupati ceremony. Because customary law as a law that grows and has a development in society in accordance with the principle of ubi societas ibi ius, meaning that where there is society, there is also law. Awig-Awig Desa Adat after the proclamation of independence, which was previously only guided

by the teachings of Hinduism, was then added to Pancasila, which is the basis of the state, as well as the 1945 Constitution of the Republic of Indonesia and the 1945 Constitution of the Republic of Indonesia.

As stated in Article 18 B paragraph 2 of the Law of the Republic of Indonesia, it states that: "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". The state shows its seriousness and commitment in respecting the existence of customary villages, which existed before the state was established, and is then outlined in the state constitution. *Awig-Awig* is guided by provincial regulations (PERDA), often resulting in *Awig-Awig* undergoing changes and adjustments to updated provincial regulations, indirectly showing that indigenous villages with all their organizations are very dynamic, able to keep up with the times and the flow of global culture but still holding fast to the noble values of custom and culture.

The life of Balinese indigenous people based on the value of customary law is unique in the development of modern citizens to establish the concept of cultural tourism. The implementation of the concept of cultural tourism in Bali is certainly related to the existence of a traditional village which is an association of indigenous people who have lived and grown in Balinese society, which has been stipulated in the Bali Regional Regulation (PERDA), No. 5 of 2020 concerning the standards for organizing Balinese cultural tourism.

The rapid development of the tourism industry in Bali directly and indirectly affects the existence of customary laws that can relate to the needs of tourism development in Bali. Balinese customary law citizens who have made tourism a part of Balinese society and culture have demanded that local society and culture "*go international*" and with this internationalization process this society certainly needs to become a multicultural global citizen and become "*a tourist society*". Cultural tourism has unconsciously brought the local people between two forces. On the one hand, they are required to maintain and implement Adat law, which is a commodity that can be sold, while on the other hand, internationalization with tourism networks means that the culture is pitted against the modern world.

Harmonious conditions in the lives of traditional citizens in the institution called Desa Adat in Bali have experienced changes due to the influence of industrialization, globalization, and modernization. Non-agrarian life and globalization have changed homogeneous citizens into plural citizens with heterogeneous living conditions. Thus, to carry out the assessment of *Awig-Awig* Desa Adat in the era of modernization and global cultural flows cannot be separated from the existence of customary villages which are the development of customary law in Bali [2].

Bali in terms of its village *Krama* (citizens), which is no longer inhabited by homogeneous Balinese *Krama* (citizens) but has turned into a heterogeneous society. Where *Krama* who live and settle in Bali already consist of various tribes, races, religions, and even come from different countries. Such a situation will certainly provide a variety of different elements and patterns in Bali, which results in a variety of different cultural elements, beliefs, livelihoods, and ways of

life. Way of life. Also the occurrence of cross-culture that must be observed and anticipated in order to avoid conflicts that can disrupt security, peace, and comfort and can undermine the charisma of Bali as a tourist island which can have direct or indirect effects on national security and stability, and can undermine unity and integrity in the life of the nation and state.

The implementation of *Awig-Awig* sanctions in Bali is necessary because *Awig-Awig* is the strongest fortress in Bali. Because however the changes that occur in Bali are also occurring in other Indigenous Village areas, where in the current Indigenous Village area there have been various forms of change, one of which is in the field of *pawongan* (community), which is not only inhabited by native *Krama* but also inhabited by immigrant *Krama* who come from different ethnicities, races, religions. This situation has the impact of sharing differences, ranging from cultural differences, different ways or practicing worship and differences in living costs, which can result in cultural friction that lived and developed previously owned by *Krama* Desa Adat. Such friction can arise at any time as a customary problem that can harm the traditional village itself and can also undermine the unity and integrity that already exists and lives in the Aadat Village. This situation is not only experienced by certain indigenous villages, but also by most indigenous villages in Bali [3].

Sanctions in *Awig-Awig* are referred to as *pamidanda*, aiming to restore balance in the event of a disturbance in the balance of relationships in aspects of territorial relations (*palemahan*), society (*pawongan*), and religion (*parhyangan*). *Pamidanda* in legal literature or in the understanding of the general public is better known as customary sanctions. In general, the forms of *pamidanda* (customary sanctions) consist of three groups, namely sanctions related to property (money or goods) called *artha danda*, sanctions related to mental or physical distress called *jiwa danda*, and sanctions related to efforts to restore the balance of the invisible world (*niskala*) called *panyangaskara danda*. The forms of sanctions from the three classes of sanctions above vary greatly from very mild to the most severe. The lightest form of sanction from the *artha danda* group, for example, is in the form of a fine of money or goods called *dedosan*, *kebakaran*, etc. while the heavy one is *kampang* (his property is confiscated to be sold and then the proceeds are used to pay off his obligations in the village).

The mild sanctions of the *jiwa danda* class are *kagelemekin* (reprimanded by the Prajuru or in Paruman), while the severe ones are *kasepe kang* (ostracized) and *kanorayang makrama* (dismissed as *Krama* desa). The sanction of the *panyangaskara danda* group, for example, is the obligation to *nasunin* desa (perform a holy sacrifice ceremony to restore the sanctity of the village).

Generally, there are often irregularities in the field of Adat which are related to the concept of *Tri Hita Karana* among *parhyangan*, *pawongan*, *palemahan*. This has happened, where the community or *Krama* Desa Adat did not obey all applicable regulations. Violations that have occurred in Takmung Traditional Village, among them is a violation in which a *Krama* Desa Adat does not report a marriage to the prajuru of the Traditional Village. The reason the *Krama* did not report his marriage to the prajuru of the Traditional Village was because the *Krama* did not want to have responsibility and did not want to be involved in the

activities of the Traditional Village, the *Krama* who committed the *Awig-Awig* violation was named I Gede Budiasa where during his time as part of the Traditional Village the *Krama* was not active in the activities of the Traditional Village.

The mechanism for imposing sanctions is generally carried out by the Traditional Village in stages through *Prajuru* in accordance with its level (starting from *Banjar* *Prajuru* to village *prajuru*) and is adjusted to the severity of the mistake or the consequences caused (*masor singgih manut kasisipanya*)<sup>[4]</sup>. Although here and there there is resistance from *Krama* in the application of *Awig-Awig* (imposing sanctions) so that it appears to be a case published in the mass media, in general *Awig-Awig* and *Adat* sanctions are obeyed by *Krama* *Desa*. *Krama* *Desa*'s obedience to *Awig-Awig* is because *Awig-Awig* has *sekala* and *niskala* legitimacy. In *sekala* (the real world) *Awig-Awig* is accepted and obeyed because it is a collective agreement, made democratically through a Village meeting (*paruman*), in a forum where all Village *Krama* have equal voting rights. In *niskala*, *Awig-Awig* is obeyed because it is considered to have magical powers because *Awig-Awig* is only enacted after a *pasupati* or *pemelaspasan* ceremony is held.

## Methods

The type of research used in this research proposal is empirical, in other words, it is a type of legal research which can also be called field research, which examines forms of violations committed by members of the Traditional Village *Krama*, such as violations of not reporting marriages to traditional officials and obstacles in apply sanctions in the form of a lack of knowledge of Traditional Village etiquette towards the applicable *Awig-Awig*.

## Results and Discussions

### The Role of Traditional Villages in Implementing *Awig-Awig* Sanctions of Takmung Traditional Village Against Marriage Violations Committed by *Krama* of Takmung Traditional Village

Customary Law is all forms and kinds of habits and patterns of behavior of the Indonesian people that have turned into rules of decency and these habits have no legal consequences and some have legal consequences<sup>[5]</sup>.

According to Soekanto, "Role is a dynamic aspect of position (status). If a person carries out his rights and obligations in accordance with his position, he carries out a role. Meanwhile, according to Gross, Mason and MC Eachen in David Berry defines that.

"Role as a set of expectations imposed on individuals who occupy certain social positions. These expectations are the balance of social norms and therefore it can be said that the role is determined by the norms in society, meaning that we are obliged to do things that are expected by society in our work in the family and in other roles."

Customary villages are born in line with the interests of people to jointly bind themselves into a group bond that is territorial in nature and facilitates the achievement of various needs of their lives that are territorial in nature and facilitate the achievement of various needs of their lives both outward and inward. In addition to the traditional village that was formed in the interests of its citizens, it seems that the application of sanctions against violations committed by the *krama* is inseparable from the

organizational structure and regulations (*awig-awig*) that live for the village *krama*.

*Pakraman* Village *de facto* has the authority to resolve its own cases that occur in its environment, both in the form of violations of the law and in the form of disputes<sup>[6]</sup>.

Traditional villages were born in line with the interests of people to collectively bind themselves into one group bond which is territorial in nature and makes it easier to achieve their various life needs which are territorial in nature and makes it easier to achieve their various life needs both externally and internally. Apart from traditional villages which are formed in the interests of their citizens, it seems that the application of sanctions for violations committed by *krama* cannot be separated from the organizational structure and regulations (*awig-awig*) that live by village *krama*.

The role of the *Kelian* Traditional Village is that it can regulate the operation of the existing *awig-awig* and is a very dominant guideline in carrying out traditional village government. If we look at the sanctions in *awig-awig*, there are rules that bind every citizen or traditional village manners, including violations of them that can be subject to sanctions. The sanctions in the *Awig-awig* Traditional Village referred to in *pawos 63 indik parindanda* are.

1. *Miwah* *Banjar* Village Authority *Niwakang* *Pamindanda* *Ring* *Krama/Banjar* Village Residents *Waras* *Sisip* (Villages and *Banjar* Villages can also impose sanctions on guilty *Banjar* Villagers).
2. *Tatiwak danda inucap kalaksanayang* olih *Kelihan* *Kelihan* *Banjar* Traditional Village, *manut kawentenan*. (The fine sanctions are carried out by the 3 *Adat* *Banjar* *Complaints* and the *Traditional Village* *Complaints* according to the situation).
3. *Read the pamidanda luwire* (Various types of fines).
  - *Antuk ayahan maka penukun sinip* (Fines with force, the sanction fine in question is; carrying out mutual cooperation activities).
  - *Danda artha mawit saking dadosan, pamindanda, urunan, seselangun miwah keteke tekeng penikel-tikelnya*. (Artha fine, the fine/sanction in question is: in the form of payment of a sum of money or property).
  - *Rerampangan* (Production fines, fines/sanctions in question, namely; in the form of payment of a certain amount of goods and money).
  - *Keadut karang ayahanya* (Fine for taking his father's land, the fine/sanction in question is: the coral or land it occupies is taken by the traditional village through customary officials and *krama* which places the land as having no rights and obligations as village *krama*).
  - *Kepehang. Kesepehang* fine (excommunication), the fine/sanction in question is: not being invited to talk/mekrama village for manners that violate the provisions of *awig-awig*.
  - *Peyanggaskara. Peyanggaaskara* fine (performing *pamarisuda*), the sanction fine in question is: punishment in the form of religious ceremonies such as carrying out the *pakeling* ceremony at *Kahyangan Tiga* Temple to purify and balance the elements of *sekala* and *niskala* (the world of the afterlife)
4. *Pamidanda waras katiwakan* patut *madudonan*, *masor singgih manut kaiwangan* (sanctions imposed so that they are differentiated according to the error).
5. *Jinah pamidanda raja berana* olih-olihan *pamidanda inucap kengin ngeranjing dados druwen* *Banjar* Village.



This Pamidanaan functions to restore material and spiritual balance and to make people aware that manners that violate existing provisions are more guiding than those that violate them. The imposition of criminal penalties (sanctions) always prioritizes harmony and a sense of propriety in society (principle of *paras paros salung sabayantaka*) and is carried out in stages according to the error of the offense (*kewenangan masorsingih manut kasisipan ipun*) always taking into account and sanctity remains fulfilled by the Tri Hita Karana philosophy. Violation of the Awig-Awig of the Traditional Village by the Takmung Traditional Village Krama. According to information from the Takmung Traditional Village Kelian, there was a violation by the Village krama, where the problem was that the Village Krama held a wedding ceremony but the krama did not report the marriage to the traditional village official. where these manners do not comply with all the applicable rules of life regarding the rules, as well as the implementation of the Awig-awig of the Traditional Village which should be implemented and obeyed by all the manners of the Takmung Traditional Village. So that marriages carried out according to traditional village manners are considered invalid.

So based on the *Paruman* (Village Meeting) Decision of the Takmung Traditional Village at that time, the customary sanctions were temporarily not given the rights and obligations of the Takmung Traditional Village Clergy in the form of.

1. **Parahyangan, namely:** Krama Desa is not permitted to *nyungjung* (use prayers) at the Kahyangan Tiga Temple (Pura Desa, Pura Puseh, Pura Dalem) or other temples in the Takmung Traditional Village.
2. **Pawongan, namely:** Village manners must not have any relationship with Takmung Traditional Village manners, including having no obligations and responsibilities for ownership of the Traditional Village, both material and non-material assets.

Based on article 10 of the Awig-awig of the Takmung Traditional Village, if it is related to this case, if there are residents of the Takmung traditional village who do not comply with the rules of the customary order, the implementation of the customs that have been carried out in the traditional village is appropriate or reasonable and they will not be invited to become village residents by not accepting it. kahyangan tiga, and was moved from the village, even his residence and housing were taken by the village.

After there is and based on deliberation to reach a consensus (*Paruman*) (Village Meeting) the Krama Desa Adat, the Krama Desa is accepted back as the Krama Desa Adat Takmung, and has the right and obligation to maintain village property, both material and non-material assets. The return of the Krama Desa becomes krama Takmung Traditional Village based on the awareness of the Krama Desa itself, he lives in the Takmung area. Of course, Krama Desa is able to follow the applicable rules, such as carrying out the payanggaskara ceremony at Kahyangan Tiga Temple and apologizing for the disputes that have occurred in order to create a peaceful, safe and orderly village in a traditional village environment full of a high sense of solidarity based on the principle of *paras. paros sagilik saguluk sabayantaka*. Such concrete actions must be pursued continuously by traditional leaders in Krama Adat.

The problem of Krama Desa Adat has been tried to be solved by bringing the problem to the *pesangkepan / paruman* (meeting) of Desa Adat. Where the *pesangkepan* presents all parties involved in solving the problem using the Awig-awig of Takmung Traditional Village as a legal basis.

The participation of the Takmung Traditional Village Institution in resolving traditional cases, the presence of the Traditional Prajuru is very important with the aim of preventing the residents of the Traditional Village from being herded out of the village. In essence, the *danda* who are released are providing advice, educating so that they are aware of violations of applicable regulations. Other residents should not be involved in violating applicable village rules. So in this case the traditional village institutions and traditional prajuru justify being flexible in dealing with existing problems. In this way, the traditional leaders in the Traditional Village Institution, which functions as a forum for deliberative and consensus organizations, will be able to create a harmonious relationship with traditional customs in a reciprocal manner through consensus deliberation involving all traditional elements in the traditional village. In making this decision, it can be accepted by all elements, because customary problems will arise if one party feels disadvantaged.

#### **The Types of Obstacles That Occur in Applying Sanctions of the Awig-Awig Adat Village to The Violation of Marriage Committed by Krama of The Takmung Adat Village.**

For the Balinese people, the existence of customary family law is still very strong, meaning that it is still recognized and followed by the Balinese people, especially in the legal aspects that are the scope of family law as regulated by Law Number 1 of 1974<sup>[7]</sup>.

In the life of a village community (village residents) there will definitely be a lot of social interaction which is more or less influenced by various interests and the increasingly complex needs of society in the current era of globalization, so in the process of interaction there will be violations of the provisions of awig-awig which are should be obeyed and guided in every movement and step of traditional village manners as an institution which tends to experience changes according to the times<sup>[8]</sup>. Likewise, if seen from the theory of evolution, the changes that occur are seen as a "progress" which is in line with the evolutionary process from a simple traditional society to a more complex (modern) society, which is structural differentiation according to the term Neil Smelser (1964).

The obstacles that occur are the lack of knowledge of the indigenous village community about the *awig-awig* that applies in the environment where they live. Lack of continuous socialization such as during *sangkep* (meetings) in the traditional village or in each *banjar* so that *awig-awig* is truly embedded and can be used as a guideline in every citizen (*krama* of the traditional village), besides that the traditional village officials (village officials) who have knowledge of the law have not really understood the understanding and guidance by the local government, there is also no court institution that is outlined in the region so that the decisions taken by the traditional village *kelihan* have no strong legal basis and are in accordance with orderly national law.

Takmung Village in terms of *Krama* (residents) of the

village, which is no longer inhabited by homogeneous original *Krama* (residents) but has turned into a heterogeneous society. Where the *Krama* who live and settle in Takmung Traditional Village already consist of various tribes, races, religions. Such a situation will certainly provide a variety of different elements and patterns in the Traditional Village, which results in a variety of different cultural elements, beliefs, livelihoods, and ways of life. Cross-cultural differences must also be observed and anticipated in order to avoid conflicts that could disrupt security, peace and tranquility. Disrupt security, peace, and comfort and can undermine the charisma of Bali as a tourist island which can have direct or indirect effects on national security and stability, and can undermine unity and integrity in the life of the nation and state. The heterogeneity of society causes social changes in indigenous communities that will cause clashes which in turn have negative implications for the spirit of kinship and unity among the traditional village *krama*, so that these conditions will have the potential to cause customary conflicts and violations. For violations of the *awig-awig* provisions, both violations in the fields of *parahyangan*, *pawongan*, and *palemahan*, the resolution process will be pursued by persuasive measures such as direct admonition or guidance to the violator, where sanctions are usually applied in the Takmung traditional village in the form of fines and sanctions for *ceremonies / prayascita* (purification).

The action is carried out so that there is a firmness and legal certainty in the village so that *awig-awig* is truly obeyed by the indigenous people and commander in controlling life. So *awig-awig* in community life has a very determining value in organizing community life, therefore customs are dynamic in addition to being a binder that seems to force the *krama* (indigenous people). Therefore, *awig-awig* in community life has a very decisive value in organizing community life, therefore customs are dynamic in addition to being a binder that seems to force customs to do something so that their collective life can continue.

## Conclusion

Application of the *Awig-awig* Traditional Village sanctions against violations committed by *Krama Desa* (Village Residents) in the Takmung Traditional Village, applied or carried out in accordance with what is listed and contained in the village *awig-awig* (regulations), in which case the violation is committed village manners are adjusted to the severity and severity of the offense committed, and the sanctions that will be received include fines, whether physical or labor fines and wealth fines in the form of monetary payments. Implementation of violations committed by village manners is carried out through a *sangkep* or village meeting, where all the village community and village *prajuru* (village officials) are present to hold a deliberation to determine the sanctions that will be given to village manners that violate the village *awig-awig*.

Obstacles in implementing customary village *awig-awig* sanctions for violations committed by village *krama* (village residents) in the Takmung Traditional Village are that there is no understanding and comprehension by the village *krama* itself regarding *awig-awig* which is applied in society, because it has not yet been implemented. there is continuous socialization of village manners by village officials, which is carried out by the Village *Kelihan* (Traditional Head) and also other village officials.

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