

Deviations Against Awig-Awig As Written Customary Law In Balinese Communities

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Abstract

The application of *awig-awig* as written customary law which is still used and obeyed by the Balinese people, of course this does not rule out the possibility of deviation. Deviations or violations committed by the Balinese people are generally resolved according to the rules written in *awig-awig*. The research methodology carried out in this study begins with the identification of a variety of literature related to customary law in terms of problems that occur and challenges that must be faced by the community. Then arranged to come up with the right problem formulation which later can be comprehensively reviewed through field studies and direct observations especially related to the problem taken in this research namely the deviation from the application of *awig-awig* as written customary law. The results obtained in this study aim to determine the deviations that occur in the Balinese community and how the Balinese community to resolve them.

Keywords: Deviations, Awig-Awig, Customary Law, Balinese People

I. Introduction

Bali as a tourist area that is often exposed to foreign cultures still apparently adheres to customs and regional rules that previously existed. *Awig-awig* is a written customary law which until now is still being used as a basis in every activity carried out by the Balinese indigenous people. The indigenous Balinese are known as *pakraman*, in *awig-awig* regulated various things according to their territory, *awig-awig* in the Balinese community in the plains area is certainly different from *awig-awig* in coastal communities.

In general *awig-awig* can be interpreted as benchmarks for behavior behavior, both written and unwritten made by the community concerned based on a sense of justice and propriety that lives in the community in the relationship between manners (members of the *Pakraman* village), with God, between fellow manners and manners with their environment.¹ Changing conditions in *Pakraman* village today, for example, migrants who

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¹ Tjokorda Istri Puta Astiti. (2005). *Pemberdayaan Awig-Awig Menuju Ajeg Bali*. Lembaga Dokumentasi dan Publikasi Fakultas Hukum Universitas Udayana. p 9.

from time to time need to get serious attention related to environmental issues, which are mainly affected due to Bali's very strategic position. So that in the *Pakraman* village area things often happen that have an impact on the environment that requires serious attention and treatment so that harmonization in the *Pakraman* village is maintained.

In accordance with the above, the existence of *awig-awig* in *Pakraman* Village needs to be done an in-depth study to see how *awig-awig* can respond to global challenges that affect the culture of the surrounding communities made.

II. Method

This research is a field research where this research is carried out with direct observation to the place studied in order to get the data needed and related to the problem under study, the data from the field research is called primary data. The chosen research subject is the customary head (*adat kliyan*) in one of the *Pakraman* Villages of the Province of Bali and the objects of this study are 4 (four) villages in the Province of Bali. The sampling technique is done by using a non-random sampling technique, that is, sampling of the nature of the population that is known beforehand is known and determined with not all individuals in the population given the same opportunity to become members of the sample. The type of sample used is purposive sampling, where the sampling / research subjects have been determined in advance. The determination of the research subject is based on the subject's competence on the issue of this research. Data collection, especially field data, was carried out by means of interviews conducted directly with the interviewees using interview guidelines. The interview guide contains questions that will be asked in the interview and digitized using an electronic voice recorder.

III. Main Heading of the Analysis or Results

In the field research conducted, researchers obtained data that was felt to be very supportive and influential on legal knowledge in Indonesia in the context of customary law. After an intensive interview with one of the MUDP officials (Main Assembly of *Pakarman* Village), the local community was very obedient in implementing the provisions in *awig-awig*. The *awig-awig* itself outlines regulates 3 aspects related to community life, both its relationship with God, others and the environment. *Awig-awig* is *awig-awig* traditional village which is the basic law and has been established by the

traditional village that serves as a guideline for the implementation of tri hita karana that regulates the procedures for the life of the indigenous villagers and their sanctions.

In the life of an indigenous community, there will certainly be many social interactions which are more or less influenced by various interests and the increasingly complex needs of the community in the current era of globalization, so in the process of interaction there are several violations of the *awig-awig* provisions that should be obeyed and guided in every movement and steps of customary village manners as an institution tends to experience a change in accordance with the times. With regard to violations of the *awig-awig* provisions, the resolution process is as far as possible in the form of persuasion, namely in the form of social sanctions such as direct reprimands.

In *Awig-awig*, it is not regulated in detail about the things needed by each customary village, then the details are arranged in the derivation of *awig-awig* called *pararem*. This *pararem* has 3 types:

1. *Pararem Penyacah*, namely *pararem* because it was instructed by *awig-awig*. For example matters relating to the next regulatory procedure
2. *Pararem Pengelih*, namely *pararem* made because it is not sufficiently regulated in *awig-awig* and also this *pararem* is made to keep up with the needs of the times. For example *pararem* made in terms of drug eradication
3. *Pararem Penepas Wicara*, *pararem* related to legal decision-making regarding *Awig-Awig* violations or sanctions. For example physical sanctions or social sanctions given to communities who violate adat.

The Decree of the Fall of *Pamidanda* (Balinese customary sanctions) was imposed in accordance with the violations that occurred. Violations that occur in *Pakraman* Village can be grouped into three, namely:

1. Violations of national law / KUHP and other rules. The imposition of pamphlets on violations of national law is left to the authorities who are authorized
2. Violations of traditional Balinese law (*Awig-awig pararem*, etc.). *Pamidanda*'s fall in violation of customary law of Bali by *Pakraman* village was adjusted to the type of customary violation committed. Types of traditional violations can be grouped into

two, namely:

- a. Customary violations that only cause interference *sakala* (reality). Example: negligence in carrying out his *ayahan* and *pawedalan*
- b. Customary violations that cause interference *sakala* and *niskala* (occult). Example: destroying the holy place, stealing *pratima*.

Pamidanda of violations that only cause *sakala* disturbance, can include *pangaksama* (apologies) and *arta danda* (material fines).

Pamidanda against violations that cause interference *sakala* and noetic, among others, can be in the form of *pangaksama* (apologize), *arta danda* (fines), and *sangaskara danda* (certain ceremonies). *Pamidanda* is intended to restore the balance of the sacred and the noetic, and as an effort to increase awareness and learning for violators.

If you object to the *pamidanda* dropped by the pakraman village, then the party who received the *pamidanda* can file an objection and request a more just decision from the village *kerta* (peace judge) in each pakraman village.

If the decision of the village related party is still considered as not fulfilling the sense of fairness by the parties in dispute with *adat*, those who object to the village's decision can file an objection and request the decision of the Pakraman Village Assembly (MDP), in accordance with its level, starting from the District MDP, District / City MDP, and Provincial MDP. Provincial MDP decisions are final and binding.

- c. Violations of national law and customary law of Bali. The dropping *pamidanda* of the on violations of national law and customary law in Bali was carried out in a coordinated manner between the *Pakraman* village and the law enforcement authorities, with due regard to the intention to impose the *pamidanda*, namely to restore the balance of the sacred and the noetic, and as an effort to raise awareness and learning for violators.
- d. customary sanctions *Kasepekang* and *kanoroyang*, be temporarily prohibited, until there is an adequate formulation of the understanding and procedures

of the customs sanctions, which apply to all *Pakraman* in Bali.

Institutions tasked with resolving adat disputes

1. Each *pakraman* village manners who face adat disputes should settle the adat disputes at the village / *prajuru* villages in their respective *pakraman* villages
2. MDP at all levels has the authority to resolve adat disputes that have not been successfully resolved at the the village *kerta* / *prajuru* village level in *pakraman* village

As for the deviations from the application of *awig-awig*, there are several things:

a. Deviations from Dispute Resolution in Troubled *Pakraman* Village

There are problems in *Pakraman* village and there are also problematic *Pakraman* villages. The *Pakraman* village problem is a common problem faced by almost all *Pakraman* villages in Bali. Problematic *Pakraman* Village means a *Pakraman* village that is facing problems, both with its own citizens, with its neighbor *Pakraman* village, and with other institutions outside the *Pakraman* village.

Procedure for Resolving adat issues:

1. *Desa Pakraman* can form a village paper and village *sabha* whose membership is organized based on *awig-awig*
2. *Bandesa Pakraman* or other designation that has the same meaning and meaning as well as the head of the village *kerta* and village *sabha* in the village *pakraman*
3. *Kerta* villages are supposed to assist *Pakraman* village *prajuru* in resolving adat cases, while village *sabha* is tasked with assisting *pakraman* village *prajuru* in terms of planning and resolving problems outside adat cases

b. Balinese women may inherit inheritance.

Inheritance is an object of inheritance law, which means all assets that have been left by someone who has passed away (heir). The definition of assets in this case does not only involve assets that have economic value, but also includes assets that have a religious meaning. Every Balinese Hindu family has family assets in the form of good property that has religious magical values, that is, those that have to do with religion / religious ceremonies and assets that do not have religious magical value, among

others: *Harta Akas Kaya*, *Harta Jiwa Dana*, *Harta Druwe Gabro*. Judging from the type, inheritance according to customary law can be divided into:

1. Heritage

Property Heritage property is a treasure that has a religious magical value and is normally not divided. The process of inheritance is maintained in the family as a whole and hereditary not to get out of the family environment. In Bali these treasures are generally associated with places of worship, so that their integrity is maintained for religious purposes and not for other purposes. This is because the majority of Balinese people adhere to Hinduism. As for the types of heirlooms in Bali are sanggah, kerisas pengentas, ceremonial tools, proof land of the kingdom, profit pura and middle druwe.

2. Inborn

property Inheritance is inheritance which is not obtained because of the hard work of working alone in marriage but is a gift because of a loving relationship, reciprocity or for some purpose. This gift can occur in the form of fixed objects or movable objects. In Bali this inborn property is called a treasure property consisting of:

- a. *Harta Akas Kaya* is the wealth obtained by each husband / wife for their own efforts before entering marriage. After marriage and they live harmoniously as husband and wife, then this *Harta Akas Kaya* will become a joint treasure / *Druwe Gabro*

- b. *Harta Jiwa Dana* is a sincere gift from parents to their children both men and women before entering marriage. The giving of *Jiwa Dana* is absolute and applies immediately, this means that the recipient of *Jiwa Dana* can transfer the assets without asking permission from his siblings. Likewise, if a daughter who marries out, a divorced wife from her husband, he still has the right to bring the *Harta Jiwa Dana*.

3. Joint

assets Joint assets, namely assets obtained by husband and wife in marriage.

In Balinese customary law called the treasure *Druwe Gabro*. The mention of the term shared assets apparently has not been uniform in Bali, there are those who say that for *Guna Kaya*, *Maduk Sekaya*, *Pekaryan Sareng*, *Peguna Kaya*, *Sekaya Bareng Kalih* and so on. In the event of a divorce, goods called rich goods (*druwe gabro*) must be divided equally.²

There are several requirements to become a bali custom heir, among others:

1. The heir must have a blood relationship, for example, the heir's own child.
2. The child must be male.
3. If there are no children then fall on a child who is not in blood who, because of the law he has the right to become an heir, for example adopted children. In Balinese customary law which is based on a patrilineal family system, those who can be counted as heirs in the main line of virtue and substitute main lines are the men in the family concerned, as long as their rights are not severed as heirs. The group of people who are included in the first line of virtue as heirs are descendants of the heirs straight down, namely biological sons or daughters who are upgraded to status as successors etc. (*sentana rajeg*).

The customary inheritance law of Bali follows the provisions *awig-awig* which are the result of male construction, so it is said to be of a nature more likely to men who determine attitude (male oriented). *Awig-awig* is constructed by indigenous people in *Sangkepan*, a forum that is generally attended by men and almost never involves women, so that the needs, problems, experiences, and aspirations of women are never considered in decision making.

One of the Hindu Scriptures, *Menawa Dharmasastra* (MDS), Article 147 states as follows: "Basically an adult girl, or an older woman, they are not free to act even in their own homes." The customary law of Hindu inheritance is based on Hindu law, the MDS.

² Lilik Mulyadi. (2017). *Ekstensi dan Dinamika Perkembangan Hukum Waris Adat Bali*. Jakarta: Pulitbang MA. p 21.

Some decisions that Hindu women have the right to inherit, in fact there has been a Decree of the Bali Level I Landreform Committee on May 28, 1962 No. 2 / Sk. / XX / 1962 and the results of the meeting of the Ad.Hoc Committee of the Bali Level I Landreform Committee on October 1, 1962 it was formulated that those who were classified as heirs were widows, children both men and women or boys and children women have the same rights as men. Even though in reality the Landreform Committee Decree was not implemented by the Balinese, it indicates that the customary inheritance law of Bali which is influenced by ideology is patriarchal very binding on the Balinese people.³

Infact there is also in the *Manava Dharmasastra* Scripture that guides the Balinese Hindus in the ninth book (*atha navamo dhyayah*) *sloka* (verse) 118 which explains about the inheritance rights of women such as: *Svebhym, sebhystu kanya Bhyah pradadyur bhratarah prthak Svat svadamsac chessbhagam Patitah syuraditsavah*. Which means: "But to the sister, the brothers will give some part of their portion, each one quarter of the portion; those who refuse to give it will be ostracized."⁴

According to *Sloka* (paragraph) it explains that women get inheritance rights with each quarter share, but in reality this has not been taken into account in Balinese life, until the issuance of the Decree of the Main Assembly of Pakraman Village in Bali Province Number: 01 / KEP / PSM -3 / MDP BALI / X / 2010, October 15, 2010, concerning the results of Pasamuan Agung III MUDP Bali decided on the position of husband and wife and children over heirlooms and riches , including inheritance rights of daughters (biological and adopted children) .

Basically, women are not heirs according to the Balinese Customary Law, but women are entitled to inheritance from their parents, which in practice the gift is used with a variety of terms including tetatadan assets, living provisions, soul makers and also called soul funds. This is a form of volunteerism that comes from the work of his parents and not from the inheritance or descendants of his ancestors.

In various *awig-awig*, *Pakraman* Village in Bali has not been followed by *Pakraman* Village

³ Sukerti. (2012). *Hak Mewaris Perempuan Dalam Hukum Adat Bali Sebuah Studi Kasus*, Denpasar: Udayana University Press. p.63

⁴ Pudja, G dan Rai Sudharta. (2004). *Manava Dharmasastra (Manu Dharmasastra) atau Veda Smrti Compendium Hukum Hindu*. Surabaya:Paramita. p.467.

generally for various reasons. First, the process of changing awig-awig also requires an adat meeting in the form of *Sangkepan* which must be attended by men. Second, the awig-awig arrangement and change requires a short amount of time. Nevertheless, slowly but surely *awig-awig Pakraman* Village will experience changes along with the times.

In *Awig-awig Pakraman Sangket* Village, Buleleng Regency, Bali for example. The regulation on women's inheritance rights has been regulated in its *awig-awig* as stated in *Pale 3 Indik Sentana Pawos* 53 it says:

- (1) *Sentana wenten kalih pawos, sane kaucap prati sentana, miwah sentana peperasan.*
- (2) *Prati sentana inggih punika, sentana sane metu saking pawiwahan kepatut.*
- (3) *Prade pawiwahane ten kepatut ngawetuang sentana, mangda tan kantun kewastanan bebinjat utawi astra yohya ka menggala antuk penyangaskara.*
- (4) *Prade pawiwahane tan ngawetuang sentana, kengin ngidih sentana antuk upasaksi niskala sane kewastanan sentana peperasan.*
- (5) *Sentana peperasan patut polih pengingkup bawos (persetujuan) kulawarga purusa utawi tunggalan dadia.*
- (6) *Sentana rajeg inggih punika: prati sentana wadon (predana) sane ngemanggehang lanang (purusa), sesampune upacara putrika, tur risampune ngelaksanayang pawiwahan nyeburin (kidiang anak muani).*
- (7) *Sang sane dados kearsayang sentana rajeg inucap wiwit (6) inggih punika.*
 - a. *Prati sentana sinalih tunggil.*
 - b. *Sampun kemanggehang dados preti sentana lanang (purusa).*
 - c. *Pawiwahan kacenurin, kautamayang antuk jadma sane megama hindu, utawi jadma sane megama siosan, sane sampun ngelaksanayang pemarisudha raga utawi sudi wadani.*
 - d. *Sane kemanggehang sentana rajeg, patut mesadok ring kelian desa, tur I kelian patut nyiarang ring desa saha ngaturang ring prajuru desa adat.*

The meaning is:

Article 3 Page 53 about Sentana

- (1) The offspring can be divided into two, namely biological and adopted children
- (2) Natural children are descendants obtained from marriage
- (3) Supposing and the marriage of a pregnant woman outside of the marriage so that her offspring are not called illegitimate children is therefore rewarded in the form of abuses.
- (4) If the marriage does not get / produce keturuna, can raise the child that is done by traditional ceremonies
- (5) Lifting a child must get the approval of a male family or extended family.
- (6) *Sentana rajeg* is a premarital offspring who plays the role of a man after the putrika ceremony, and after having a *Pernikahan Nyeburin* (bringing in a son)
- (7) Which can be categorized *sentana rajeg* mentioned 6, namely:
 - (a). Birth / biological child
 - (b). It has been determined as male offspring
 - (c). Marriage is legalized, preferably for people of Hinduism, or people of different religions who are as young as cleansing / washing the body / soul or carrying out the *Upacara Studi Wadani*.
 - (d). Someone who becomes the *Sentana rajeg* must inform the *kelian desa* and *kelian desa* that must inform the community and customary staff / village leaders.

In this *Pawos*, it is regulated about how the procedures and provisions of a woman have inheritance rights have been regulated. Provisions and the inheritance cannot directly fall into the hands of women. Other efforts are needed so that a daughter can inherit her rights even though she is an only child. The girl must be appointed first / crowned as a male actor because its function is to replace the function of the boy, namely leading the release ceremony / funeral of his parents, such as in the *Ngaben* ceremony for example. A daughter may inherit if she obtains legal status if he is made as a *sentana rajeg*.

Bali Customary Law does not forbid gifting between husband and wife as long as it is not related to inheritance, an heir can give his wealth to his child especially to a daughter called *Jiwa Dana/ tetata* or provision of life. This means that from the ruling it turns out

that there is a slight allowance for the rights of the daughter, at least to get a share of the inheritance of her parents.

As a consequence of the Patrilineal family system, the role of women in relation to inheritance is not so great. Even public opinion in the community until now has not been able to give the right to inherit to girls. However, this does not mean that the daughter does not get the wealth of her parents at all, because among parents who are able to, when the daughter gets married, a gift is given. This gift is called *Bebaktaan*, the content is *Ketupat*, *bekel* and there is also a term called *tetatadan*. These prizes can be both movable and immovable property.

Although *Awig-awig* Pakraman Sangket Village, Buleleng Regency, Bali has regulated the procedure for women to get inheritance rights in their family environment, but it does not regulate at this time many *Pade Gelahang principles* have been applied. So that a wife participates in the custom of her own family and the husband participates in the custom of her husband and even both of them have agreed that as a husband and wife have rules in his small family. The wife's inheritance is the right of the wife as well as the husband's inheritance.

Customs who return rights and obligations as a husband or as a wife, only the wife as a daughter from her original family is obliged to obey customary rules if she becomes the sole heir and is determined as a *sentana rajeg* (acting as a son). Thus, his obligation as a *sentana rajeg* is in accordance with adat, namely to pay for the funeral and pay the debts of his late parents.⁵

The patrilineal family system (*kapurusa*) adopted by Balinese-Hindus causes only descendants of the status of *kapurusa* who are considered to be able to take care and carry on the family's *swadharma* (responsibility), both in relation to *parahyangan* (Hindu beliefs), *pawongan* (Hindus), and *palemhan* (preservation of the natural environment in accordance with Hindu beliefs). Consequently, only descendants with the status of *kapurusa* only have self-ownership (inheritance) of inheritance, while offspring with *pradana* status (women), it is impossible to continue *swadharma*, so that it is equated with those who

⁵ Interview with pedande. Ida Bagus Gde Sudirga. di desa adat Sangket Kelurahan Sukasada Kecamatan Sukasada Kabupaten Buleleng . 9th July 2019. 3pm WITA.

leave family responsibilities (*ninggal kadaton*), and because that, is considered not entitled to inheritance in the family.

In its development, the reality in the community shows that there are people who *ninggal kedaton* but within a certain extent it is still possible to carry out *swadharma* as Hindus (limited *ninggal kedaton*), and there is also the fact that people who *ninggal kadaton* are totally no longer possible for them to practice *swadharma* as Hindus (*ninggal kadaton penuh*). Those who are categorized as leaving as *Ninggal kadaton penuh* have no right at all to inheritance, while those who are left with a limited cadaton are still allowed to get inheritance based on the principle of *ategen asuwun* (two to one). Those classified as limited *Ninggal Kadaton* are as follows:

- a. Women who get married normally
- b. Men who get married with *nyentana* / *nyeburin*
- c. Has been adopted child (*kaperas sentana*) by another family in accordance with Hinduism and Balinese customary law
- d. Surrender (*makidihang raga*) to other families of their own volition

Based on the facts above, the Pasamuan Agung III of the Pakraman Village Assembly of Bali decided on the position of husband and wife and children over heirlooms and treasures as follows

1. Husband and his wife and brothers husband and wife, have the same position in an effort to ensure that the inheritance can be passed on to their children and grandchildren to preserve or preserve immaterial inheritance.
2. During marriage, husband and wife have the same position on his property *gunakaya* (assets that are obtained during marital status).
3. Natural children (male or female) as well as adopted children (male or female) who are not married, basically have the same position with respect to the rights of their parents Natural.
4. Children (male or woman) as well as adopted children (male or female) are entitled to the assets of their parents, after deducting one-third as *duwe tengah* (Common assets), which are controlled (not owned) by children who are *nguwubang* (continuing *swadharma* or responsibilities) of their parents.

5. Children with *kapurusa* status are entitled to one part of inheritance, while those with *pradana / ninggal kadaton terbatas* are entitled to part or half of the inheritance received by a child with *kapurusa* status.
6. In the case of inheritance distribution, children who are still in the womb has the same rights as a child who has been born, as long as he is born alive.
7. Children who *ninggal kadaton penuh* are not entitled to inheritance, but can be given provision (*Jiwa Dana*) by their parents and property using without harming the heirs.

Based on the results of research that has been done, *awig-awig* as a written law exists because of demands in the community to create order and peace in indigenous communities which in each village has different characteristics

Bali as a tourist destination for domestic and foreign countries certainly affects more or less the culture that exists in the community, but *awig-awig* is still effective to be applied in the current era of globalization. *Awig-awig* as a source of customary law have *pararem* as the implementing regulations, wherein the *pararem* regulates matters that are more detailed and adapted to the needs of indigenous peoples and the development of the times. So *awig-awig* not only regulates matters relating to customary law but also the daily behavior of traditional people. Surely the existence of *awig-awig* does not replace the position of other positive laws in Indonesia.

IV. Conclusion

Based on the results of this research, it can be concluded that the people of Desa *Pakraman* still need a container in the form of regulations which regulate traditional activities, customary norms so that *Awig-Awig* is formed as written customary law. Where in the current era of globalization the position of *Awig-awig* as written customary law still exists and is still obeyed by local indigenous communities, as well as the contents of these *awig-awig* also adjust to the development of the times so that the existing rules can still have relevance to the current state. The adjustments related to the contents of these *awig-awig* are inseparable from the appearance of violations against *Awig-awig* itself. Indigenous peoples generally solve problems related to violations of *awig-awig* through several stages.

Although there are written sanctions in them, indigenous peoples prefer to resolve these violations by means of family relations. The existence of *Awig-Awig* as written customary law still needs further study, but an important role is needed by the government in supporting *awig-awig* as a basis for local wisdom as *awig-awig* has an important role as a guide in current globalization and it is hoped that Balinese people will be able to both understand the importance of applying *awig-awig*.

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