



# Wisdom in the Implementation of Ngerampag Sanctions in Balinese Customary Law

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**Abstract.** Ngerampag (seizing or confiscating) is a form of pamidanda (traditional sanctions) carried out by the Traditional Village against people or groups authorized to confiscate/take over ownership of an object/goods by krama desa (village residents) who do not fulfill obligations or agreements previously agreed upon mutually agreed, especially those in the form of certain obligations as krama banjar/traditional village. The problems studied here are how to ngerampag in accordance with Balinese local wisdom values? The analysis of the conventional punishments is the study's goal of perampagan which are regulated normatively in an awig-awig. The study's methodology, which combines the conceptual and awig-awig approaches, is normative juridical. Primary legal resources and secondary legal materials are the origins of the legal materials used. The collection of legal materials uses recording techniques. The obtained legal data is next examined using qualitative methods, and it is finally presented in an analytical descriptive way. The study's findings indicate that each awig-awig of traditional villages in Bali regulates the matter of grabbing (seizing or confiscating) krama desa (village residents) assets. In general, the awig contains a number of things related to ngerampag, including: citizens whose property can be confiscated, procedures for carrying out ngerampag, officials authorized to do ngerampag, prohibitions on ngerampag, and consequences for those who obstruct the process of ngerampag.

**Keywords:** Ngerampag, Traditional Sanctions, Awig-awig, Balinese Customary Law

## 1 Introduction

### 1.1 Background Problem

The terms pamidanda and awig-awig have been known in the life of the Community of Customary Law Units in Bali, such as adat villages, subak, and dadia. Communities in Bali, known as the Traditional Village, have long existed because of the strong attachment between individual members of the community. This attachment is based on the belief that has grown among all its citizens to respect one another. Within the

framework of the Traditional Village, the social-religious function is very closely tied to the customary values and habits that apply in the Traditional Village. A traditional village is a collection of people that uphold their local laws, in an autonomous, democratic manner, cover certain areas (ulayat rights) with clear boundaries, have leaders, awig-awig (rules) for their citizens, have wealth and are not hierarchically under the a higher power.

In addition to "village" in the sense mentioned above, in Bali there are also traditional villages, namely institutions whose role is to take care of socio-religious matters. Traditional Village is an autonomous social organization, especially in relation to the order of life in accordance with the teachings of Hinduism. (Wayan P.Windia, 2004: 217) Etymologically, Traditional Village means an autonomous region that governs its citizens, which are neither material nor material and based on custom or morality.

The concept of this Traditional Village originated from L.A. Liefrinck's research in North Bali (1886-1887) which stated that a village in Bali was actually a small republic that had its own laws or customary rules. This research was then strengthened by research conducted by V.E.Korn on the study of customary law in Bali. Korn, who produced the book *Het Adatrecht van Bali* (1932), stated that villages in Bali were autonomous. This is where the Traditional Village emerged, which means a village that has customs or traditional laws that serve as guidelines for the community and the arrangement of the Traditional Village which is called customary law.

The plurality of cultures or customs can also save the potential for conflict or customary cases that can affect and even threaten national integration. This can happen if the conflict cannot be managed, interpreted, and resolved politely, kindly, peacefully, and wisely by the government in synergy with the nation's children (I Nyoman Nurjaya, 2008: 2)

Talking about Balinese customary law, there are three main things that must be used as a foundation to understand the existence of Balinese customary law more fundamentally. The three primary things are: Parahyangan, which is a peaceful relationship with God; Pawongan, which is a peaceful relationship with other people; and Palemahan, which is a peaceful relationship with nature. The basic starting point of the life of indigenous peoples groups in Bali, which is based on the three things above, is the personification of the Tri Hita Karana school of Hinduism. This philosophy has deeply colored the life/lifestyle of the Balinese people, so that now efforts to restore social inequality are always based on these three things. (Depdikbud, 1982: 5)

As for the traditional village membership system in Bali, it is generally known that there are two types, namely customary villages whose membership is based on occupying village land (village land), and traditional villages whose membership is based on the will to organize themselves in the form of a traditional village. From this system, several types of Traditional Village arise, namely:

- A Traditional Village whose membership in a Traditional Village is based on occupying the village's Ayahan Karang, so that the number of members is the same as the number of the Village's Karang Ayahan.

- Traditional Village whose membership is based on a married person who resides in a region of a traditional village. Thus, the number of Traditional Village (krama ngarep) members is not based on the status of a traditional village father (work load), but on the basis that a person is already married.
- The Traditional Village which was just formed a few years ago, which is a group of people who have complained about their fate in opening up vacant land to be used as settlements. People as members of this Traditional Village do not only come from one place, but from various places of origin who have the desire to unite as a Traditional Village.

In interacting, residents live life according to the social order, including following various customary rules. If residents do not follow predetermined customary law, especially those related to obligations or They will be punished according to custom if they break customary rules. Talking about sanctions in Balinese society, in general they are classified into three namely arta danda, jiwa danda, and sangaskara danda. One type of arta danda, namely kerampag, is in the form of confiscation by traditional villages of residents' property to fulfill obligations that have not been fulfilled within a predetermined time limit.

## 1.2 Problem Formulation

Given the foregoing context, the following issues can be investigated: How are the provisions on ngerampag reflecting the value of wisdom in Balinese Customary Law?

## 2 Research methods

This investigation is a normative legal investigation. Normative research because of its nature of disclosing legal norms (state law and customary law) which are closely related to library research alone (Irwansyah, 2020: 98). The statutory approach is one of the methods employed. and the awig-awig approach (customary law), and supported by a conceptual approach to strengthen arguments. A documentation study with recording is the method used to gather legal evidence. After the legal materials are collected, classification and preparation and analysis are carried out with reasoning and argumentation and presented in a qualitative descriptive manner.

## 3 Results and Discussion

### 3.1 Traditional Village Powers

Awig-awigs are rules made by traditional villages and/or traditional banjars that apply to krama desa, which governs Parhyangan, Pawongan, and Palemahan Traditional Villages, according to Regional Regulation of the Province of Bali Number 4 of 2019 Concerning Traditional Villages in Bali Article 13. Each village has pararem, pararem

are customary village rules/decisions as the execution of awig-awig, or to organize fresh issues and/or resolve old disputes in Traditional Villages.

To prevent denials from occurring, the traditional village functions to organize and regulate community life from its village residents as a traditional village, namely elements of its citizens called Pawongan, elements of its village area called Palemahan, and elements of places of worship for its village residents called Parhyangan. known as Tri Hita Karana. Village duties are programmed according to their intended use in the form of written and unwritten village awig-awig. Indigenous peoples in various literatures are known by various names, namely among others "legal partnership", as used by Soepomo, A. Soehardi, Surojo Wignjodipuro, and Mahadi. (I Wayan Surpha, 1992: 16-17). In relation to autonomy, the powers of the Traditional Village can be divided into 3 (three), namely:

1. The power to set rules, in order to maintain peace in society;
2. The power to carry out organizational life that is socio-religious in nature;
3. The power to resolve disputes related to conflicts of interest between villagers.

(Wayan P. Windia, 2004: 217)

The power that sustains Bali's traditional communities comes from (1) its own nature (original autonomy) and (2) the legitimacy of power by the state. They have the power to manage their own home, including passing laws that apply to the Traditional Village people in question, in accordance with the Traditional Village's autonomy. The Republic of Indonesia's constitutional framework is the second source of legitimacy, which derives from the legitimacy of state power. According to the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Traditional Villages are legally recognized on the basis of the constitution.

As a customary law community, Traditional Villages receive respect and acceptance in the life of the country and state, so that their existence and traditional rights are recognized and respected by the state, including making awig-awig, carrying out self-government, resolving legal issues that occur in their territory. , either in the form of disputes/conflicts or against existing violations. All of that is the implementation of the autonomy of the Traditional Village. (I Ketut Sudantra, 2008: 18) The contents of the customary village autonomy are:

1. the power or authority to determine the legal rules that apply to them. Armed with this power, the Traditional Village can create its own legal framework that governs every facet of life contained within the Traditional Village boundary and establishes a comprehensive legal framework that applies to all facets of existence within the container for the traditional village. These legal rules usually take the form of awig-awig or pararem, which are determined by deliberation through the Paruman Desa institution. This power is identified as statutory (legislative) power within the state.

2. The ability or authority to plan the organization's daily activities. In general, it can be argued that the main activities of the Traditional Village in Bali are activities that are social-religious in nature, aside from the numerous variations of the organizational structure and governance system. The realization of customary village autonomy in the social field concerns social relations, namely relations between fellow citizens, both in group and individual ties. Whereas in the religious field, the autonomy

of the Traditional Village is in the form of the implementation of the collective community engages in religious activities. Prajuru adat, a traditional village administrator or leader, serves as the coordinator for all of these activities. The authority to carry out the organization's daily operations is equated with the state's governmental (executive) authority.

3. Power or authority to resolve legal issues in Traditional Villages, which can take the shape of disagreements or conflicts as well as infractions of the law (awig-awig, pararem, dresta, or other legal restrictions). This power can be identified with the power of the judiciary (judicative) in the realm of state life.

The 1945 Constitution's Article 18 stipulates that Indonesia's territory is divided into large and small areas, with the form and structure of the government being determined by law, with consideration for and consideration of the rights of origin in the areas that are special. Traditional Villages are community units that are governed by customary law. According to the clarification of Article 18 Point II, there are roughly 250 *zelfbesturende landschappen* and *volksgemeenschappen*, also referred to as *Desa* (Java and Bali), *nagari* (Minangkabau), or *Marga* (Palembang), that have the original structure and are therefore capable of being considered a special area.

According to the justification, the Republic of Indonesia recognizes the position of these unique regions and will take into account their origin rights in all state rules pertaining to them. The Republic of Indonesia's 1945 Constitution's Article 18B, paragraph (2) was later amended to include this justification as supporting evidence. The Traditional Village's autonomy can be broken down into 3 (three) categories, namely:

- (a) The power to set rules, in order to maintain order in society;
- (b) The power to carry out organizational life that is socio-religious in nature;
- (c) The power to resolve disputes related to conflicts of interest between villagers.

The reputation of Indonesian society is one of adherence to religious customs and culture. According to the sociocultural theory, religion is an integral part of Indonesian society and intersects with the belief in supernatural beings. Religion also comprises components of shared ideas or values. This natural force is thought to directly affect a society's development, or at the very least Indonesian society's social life. (Ahmad Tholabi Kharlie, 2013: 95).

The following is determined in accordance with Article 1 Point 8 of Bali Provincial Regulation Number 4 of 2019 about Traditional Villages in Bali:

"A traditional village is a customary law community unit in Bali that has territory, position, original composition, traditional rights, own assets, traditions, social manners for the community's social life that are passed down from generation to generation in the ties of a sacred place (*kahyangan tiga* or *kahyangan desa*), duties and authorities, as well as rights to regulate and manage their own household."

This right is referred to as the traditional rights of indigenous and tribal peoples, and it is protected by the government in accordance with Article 18B, paragraph 2, of the Republic of Indonesia's Constitution from 1945, which states:

"As long as they are still living and in accordance with social progress and the established legal principles of the Unitary State of the Republic of Indonesia, the state recognizes and upholds customary law community units and their traditional rights."

For the original Indonesian culture, have a perspective that those who rule are religious values, solidarity values, and artistic values. In this universe, humans still believe in supernatural powers that must be mastered through various religious ceremonies to get blessing or help from spiritual powers or good forces to keep away harmful evil forces. It is even still very strongly believed that there are certain spirits that descend among their children and grandchildren. (Sutan Takdir Alisyahbana: 1981: 25).

### 3.2 Wise and Just Customary Sanctions

Talking about customary sanctions, meaning including a right and a responsibility, both of which are governed by law. There are various notions of law since the concept of law is not singular. According to Lawrence M. Friedman, the three components of the legal system are legal structure, legal substance, and legal culture. Larry M. Friedman (1977:7). The legal structure is a framework that endures, a diagram that lends the whole a certain form and definition. Legal substance is a rule, a style of actual human conduct that permeates the entire system, including the output of goods, the conclusions reached, and the formulation of new laws. Legal culture, on the other hand, provides an overview of attitudes and behaviors toward the law as well as the elements that affect how well-liked a certain legal system is in a given society.

One of the legal goals that is frequently brought up in discussions of legal philosophy is justice. Law should be able to provide for these three objectives in addition to justice, legal certainty, and other benefits. Indeed, among the three things mentioned above, justice is the most important. This is in accordance with Radbruch's opinion that the purpose of law is the embodiment of justice, benefit and legal certainty in human relations, namely certainty due to law and certainty in or from law. (Nurul Qamar, 2013: 13)

According to Jhon Stuart Mill, the need for expediency cannot be isolated from any philosophy of justice. Justice refers to the laws that safeguard pledges that are deemed crucial for society's benefit, ensure that all promises are treated fairly, and other similar laws. (Karen Labacqs, 2011: 23). Hans Kelsen contends that a social order's ability to manage people's behavior in a way that makes them happy will determine if it is fair. A general rule will be fair if it is truly applied, but it will be unjust if it is only applied to one situation and not to other cases that are comparable to it. (Hans Kelsen, 2008; 16)

Jeremy Bentham as an adherent of the utilitarianism school argues that lawmakers or laws reflect justice for all members of society individually. Adhering to this principle, legislation should be able to provide the greatest happiness for most people. (Ishak, 2008; 206). The main thing regarding justice from Hans Kelsen complies with the social norms that exist and change, including both legal and non-legal norms. The purpose of these norms is to achieve everyone's happiness. (Salim and Erlies Septiani Nurbani, 2014 :30)

The sociological school pioneered by Roscou Pound, Eugen Ehrlich, Emile Durkheim and Max Weber said that law is what actually becomes a reality in society, how in fact the law is accepted, grows and applies in society. Eugen Ehrlich in Purnadi

Purbacaraka distinguishes between positive law and living law, positive law must mesh with existing social norms in order to be effective. (Purnadi Purbacaraka, M. Chadir Ali, 1981: 53).

Sanctions for awig-awig violations are governed by Balinese customary law, which is contained in each traditional village's awig-awig. One type of custom regulated in awig-awig is the kerampag/ngerampag sanction. As an example of the arrangement of ngerampag, pawos 66 awig-awig Jero Kuta Pejeng Traditional Village determines the matter of ngerampag as follows:

1. *krama sane langkungan ring tigang paruman nglantur nenten naur urunan miwah pamidanda, wenang karampag.*
2. *Rerampagan ngangge tatacara kadi ring sor:*
  - a. *kalaksanayang antuk prajuru kasarengin antuk krama saakeha sareng tiga maka saksi;*
  - na. *Sang ngrampag sangkaning darsana ngambil barang utawi nyawenin tanem tuwuh, akehnyane manut ring utang sang karampag, sang karampag mangda lila nyuhserahang barangnyane sane dados wala;*
  - ca. *Prajuru/dulu miteketang mangda barang-barang sane karampag, digelis katebus, masengker awuku (7 rahina), ring kutus rahina pacang kaadol;*
  - ra. *Nenten ngeninin saluir barang sane patut inggilang manut agama miwah nenten mademang pangupajiwa sang karampag. (awig-awig Desa Adat Jero Kuta, Pejeng, Gianyar, 2002: 37)*

The free translation of pawos 66 awig-awig Jero Kuta Pejeng Traditional Village is as follows:

1. Residents who have passed three meetings, do not pay mandatory dues or do not comply with the sanctions that have been imposed, must have their property confiscated.
2. Forfeiture using the procedure as below:
  - carried out by customary officials, witnessed by residents as many as 3 (three) people as witnesses;
  - Officers who carry out ngerampag, based on their authority to take goods or give a mark on certain long-lived plants (economic value), the value is in accordance with the amount of debt owned by those who are subject to confiscation. The party whose property is confiscated must be willing to give up the property;
  - Prajuru adat must make it clear that the confiscated goods are immediately redeemed, with a maximum time limit of 7 (seven) days. If the time limit is exceeded, the loot will be sold;
  - Customary officers may not carelessly take items that have been confiscated, may not take items that are worthy of respect/sanctified by religious norms, and may not eliminate livelihoods that are subject to robbery.

It should be noted that the ngerampag sanction, which seizes the property of krama desa (traditional village people), should not be implemented carelessly in light of the awig-awig quote. The things that become guidelines or procedures (as procedural law) in carrying out ngerampag are:

- Only prajuru desa (customary officials) can be carried out, and there must be witnesses from 3 (three) villagers;
- Prajuru desa (customary officials) may only take goods in accordance with the amount owed by the party being confiscated;
- Prajuru adat is obliged to confirm the time limit for the redemption of confiscated goods;

Ngerampag has also been determined to be carried out wisely, humanely, and with due regard to values according to religious norms and decency. As for the norm, it is not permissible to take carelessly, may not take things that deserve respect/purification, for example places of prayer, pratima, prayer facilities or tools. In addition, it is also not permissible to seize property that is used to fulfill the necessities of life, which causes loss of livelihood.

#### **4 Conclusion**

The implementation of the ngerampag sanction (seizes/confiscates) the property of krama desa (traditional village residents) should not be carried out haphazardly. The things that serve as guidelines or procedures (as procedural law) in carrying out ngerampag are: (1) it can only be done by prajuru adat, and there must be witnesses from 3 (three) villagers; (2) Customary officers may only take goods in accordance with the amount owed by the party who has been confiscated; (3) Prajuru adat is obligated to confirm the time limit for the redemption of confiscated goods. Ngerampag has also been determined to be carried out wisely, humanely, and with due regard to values according to religious norms and decency. As for the norms, it is not permissible to take things that deserve respect/purification, nor are they allowed to take possessions that are used to fulfill the necessities of life, which causes loss of livelihood.



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