

The Role of Traditional Institutions in Resolving Bali's Customary Criminal Law Using a Restorative Justice Approach

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Abstract

The Balinese legal system, deeply rooted in customary law, emphasizes reconciliation and the restoration of community harmony over punitive measures. Institutions such as Desa Adat and Majelis Desa Pekraman are central to implementing these restorative principles, serving not only as mediators in disputes but also as custodians of cultural values. This study examines how these institutions operate, their effectiveness in resolving conflicts, and their contribution to maintaining social equilibrium within Balinese society. Using qualitative methodologies, including interviews with local leaders and case studies of traditional conflict resolution processes, the research highlights the success of these institutions in addressing the root causes of disputes and fostering communal cohesion. The findings underscore the importance of integrating traditional practices with modern legal frameworks to enhance justice systems worldwide. By bridging the gap between customary law and contemporary legal practices, this paper offers insights into the potential for a more harmonious coexistence between different justice paradigms, emphasizing the role of culturally sensitive legal solutions in a globalized world.

Keywords : Criminal, Law, Traditional, Bali, Customary, Restorative, Justice

INTRODUCTION

Bali, renowned for its vibrant culture and traditional values, stands as a unique testament to the coexistence of modern legal systems and indigenous customs. The Balinese community is deeply rooted in customary law, which governs various aspects of life and plays a pivotal role in maintaining societal harmony. Unlike the conventional punitive approach of modern criminal law, Balinese customary criminal law emphasizes restorative justice, focusing on reconciliation and the restoration of relationships rather than punishment. This approach is inherently aligned with the cultural values of Bali, where community cohesion and mutual respect are paramount.

Traditional institutions such as the Desa Adat/Penkraman and Majelis Desa Pekraman serve as custodians of customary law, embodying the principles of restorative justice. These institutions are integral to the Balinese legal system, not only because they facilitate dispute resolution but also because they uphold cultural values that have been passed down through generations. By mediating conflicts and fostering consensus, these institutions enable the community to address criminal matters in a way that promotes healing and social equilibrium.

The adoption of restorative justice principles by these traditional institutions highlights a profound understanding of the community's needs and underscores the importance of culturally sensitive legal frameworks. This approach to justice seeks to address the root causes of disputes, involve all stakeholders in the resolution process, and reintegrate offenders into society with dignity and respect. Such practices not only ensure effective conflict resolution but also reinforce social bonds and collective responsibility within the community.

This paper aims to explore the crucial role that traditional institutions play in resolving Bali's customary criminal law through a restorative justice approach. It examines how these institutions operate, their influence on maintaining social harmony, and the potential lessons they offer for broader legal systems. By understanding the dynamics of Balinese customary law and the effectiveness of restorative justice, this research seeks to contribute to the discourse on alternative legal systems and their applicability in promoting justice that resonates with cultural values.

As Bali navigates the complexities of globalization, the preservation and evolution of its customary legal practices become essential for sustaining the cultural identity and social integrity of the community. Through this lens, the paper endeavors to shed light on the significance of integrating traditional and restorative practices within modern legal frameworks, offering insights into the potential for harmonious coexistence between these distinct yet complementary systems of justice.

METHOD

This research includes normative legal research, prescriptive and applied with a case approach. The technique for collecting legal materials used in this research is literature study. The legal material is obtained from statutory regulations, judge's decisions, books, legal journals related to the problems studied. The analytical method in this research is deductive/syllogism deduction, the legal material that has been collected is analyzed using a case approach and then draws conclusions from general matters regarding the problems faced.

RESULTS AND DISCUSSION

The Customary Institution is a community organization that is either deliberately formed or has naturally grown and developed within the history of the relevant community or within a specific customary law society, with jurisdiction and rights over wealth within the customary area. It has the authority and power to regulate, manage, and resolve various life issues related to and referring to customs and applicable laws. Juridically, the position of Customary Institutions is very strong because it is based on Article 18B paragraph (2) of the 1945 Constitution.

In Balinese Indigenous Society, customary communities based on territorial principles can be seen in the village (Desa Adat, Desa Pekraman). For customary communities based on lineage principles, they can be seen in *sekeha dadia*, and for customary communities based on common interests, they can be seen in *subak* and *sekaa*. Therefore, it can be said that Balinese Hindu society is not only bound by one type of customary community but is tied to three forms of customary communities: their village (Desa Adat/Desa Pekraman), their lineage unity (*dadia*), and their community of common interests such as *subak* and *sekaa*. The customary institutions that play a role in resolving disputes or customary violations in Bali are, first, the Desa Pekraman and second, the Majelis Desa Pekraman.

Historically, before societies became familiar with written laws, the method they used to resolve the issues they faced was through their informal customs (local Adat Law). This is still evident in villages in Bali, where traditional mechanisms exist for resolving disputes in a tiered manner, starting from family institutions, Banjar, and village levels (Adat and official villages), with a family-based approach rooted in the principle of deliberation and consensus.

In general, the resolution of an Adat (customary) case in Bali is carried out in stages by the Adat institutions, with the following stages:

1. First, resolution through direct negotiation between the disputing parties (internal family resolution),
2. If the matter cannot be resolved, the resolution continues to the Banjar Pakraman level, where the case is resolved by the Banjar Pakraman officials, especially if the disputing parties come from the same Banjar,
3. If the matter cannot be resolved at the Banjar Pakraman level with the help of the Banjar officials, the resolution is escalated to the Desa Pakraman level by the Bendesa, Sabha Kerta, and Kerta Desa, especially if the disputing parties come from different Banjars,
4. If resolution at the Desa Pakraman level fails, it continues with mediation through a third party, either an individual or another institution or the Majelis Desa Pakraman (MDP) according to the stage. At this stage, the Adat case resolution will be carried out by the Majelis Alit Desa Pakraman (MADP) at the sub-district level if the Desa Pakraman officials cannot resolve the Adat case based on existing rules (*awig-awig*) of the local Desa Pakraman,
5. If an Adat case cannot be resolved through mediation at the MADP level, the disputing parties can submit the resolution to the Majelis Madya Desa Pakraman (MMDP), with a referral letter from the sub-district MADP for a decision. In making a decision, the MMDP is required to consult with the MUDP. The form of resolution is a decision by the Bendesa MMDP and all members of Sabha Kertha MMDP,
6. At the final stage, the resolution of an Adat case by the Adat Institution is carried out at the MUDP provincial level by the Bendesa Agung along with the Sabha Kerta, if the Adat case cannot be resolved at the MMDP level at the district/city level. (Here, the MUDP functions to make the final decision in resolving an Adat case),
7. If the resolution at the Adat Institution level does not result in a resolution of an Adat case, the case can be submitted to the authorized judicial body for a decision deemed more just. Generally, if the judicial route is taken and a court decision is obtained, it does not reduce the application of Adat sanctions imposed on the suspect..

A form of mechanism for resolving Adat (customary) cases has been accommodated within the Adat law regulations, known as *awig-awig*. In fact, the Legal Bureau of the Provincial Government of Bali has issued an example of *awig-awig*, one of which points regulates the mechanism for resolving Adat cases, as follows:

1. Those authorized to decide on matters in the village are the village officials referred to as the kerta desa:
 - a. The Kelihan Banjar, who adjudicates matters involving members of the same Banjar;
 - b. The Bendesa Adat, who adjudicates matters involving members of the same Adat Village.
2. The procedure for adjudicating and resolving village residents' disputes is as follows:
 - a. First, the matter is brought to the Kelihan Banjar;
 - b. If the matter cannot be resolved by the Kelihan Banjar, it is referred to the Banjar leaders;
 - c. If the Banjar leaders cannot resolve the matter, it is brought to the Banjar assembly;
 - d. If the Banjar assembly cannot resolve the matter, it is referred to the Bendesa Adat;
 - e. If the Bendesa Adat cannot resolve the matter, it is referred to the village leaders known as the kerta desa;
 - f. If the village leaders cannot resolve the matter, it is brought to the village assembly for final resolution.

The free translation is as follows:

1. The parties authorized to resolve matters in the Desa Pakraman are the prajuru (village officials) acting as the kerta desa (village judges):
 - a. The Kelihan Banjar, if the parties involved are from the same Banjar;
 - b. The Bendesa Adat, if the parties involved are from the same Desa Pakraman.
2. The procedures for discussing and deciding on village residents' cases are as follows:
 - a. At the first level, it is resolved by the head of the Banjar;
 - b. If the parties do not agree with the decision of the head of the Banjar, they may request resolution from the senior elder of the Banjar;
 - c. If the decision of the senior elder or the Banjar committee is not followed, resolution is sought from the Banjar council (meeting);
 - d. If the decision of the Banjar council is not followed, resolution can be requested from the traditional village leader (Bendesa Adat);
 - e. If the Bendesa Adat is unable to resolve the matter, the resolution is escalated to the senior elder acting as the village committee;
 - f. If this is also not accepted by the parties, resolution can be requested at the village council as the final level of resolution within the village.

In the example of traditional village regulations (awig-awig) issued by the Legal Bureau of the Bali Provincial Government Secretariat, the role of the MDP (Majelis Desa Pakraman) is not evident in the process of resolving a customary case. This is because the MDP was only established in 2004, whereas this example of awig-awig was issued in 2001. In fact, research by Ida Bagus Nyoman Rai, who participated in handling customary conflicts in Gianyar, states that in resolving a customary case, a Customary/Social Case Handling Team of Gianyar Regency is formed. Based on the Decree of the Regent of Gianyar Number 181 of 2007 concerning the Establishment of the Customary/Social Case Handling Team in Gianyar Regency, the tasks of this team are as follows:

- a. Carrying out activities related to handling Adat/social cases occurring in Gianyar Regency;
- b. Coordinating with relevant agencies and security apparatus in handling Adat/social cases in Gianyar Regency;
- c. Preparing reports on the results of the discussions of the team handling Adat/social cases in Gianyar Regency; and
- d. Being responsible for and reporting the results of the work to the Regent of Gianyar.

At a glance, the Case Handling Team for Adat/Social Issues in Gianyar Regency bears similarities to the role of Community Police, emphasizing the resolution of issues by prioritizing preventive efforts, namely preventing a problem from developing into a criminal case. This preventive approach is carried out using a familial approach. If preventive efforts cannot prevent an Adat case, the case will be resolved in stages.

The handling efforts are similar to other Balinese Adat Institutions, starting at the village/sub-district level, facilitated by the Village Head with mediation by respected Adat elders in the area. If it cannot be resolved at the village level, it is escalated to the sub-district level, facilitated by the Sub-district Head. The Sub-district Head brings together the disputing parties by involving the Sub-district Leadership Coordination Forum, the Adat Development Council, and relevant agencies (usually including formal law enforcement officers). If it cannot be resolved at the sub-district level, it is escalated to the regency level (Regency Adat Development Council), and if unsuccessful at the regency level, it continues to the Provincial Adat Development Council.

The formation of the Customary/Social Case Handling Team in Gianyar Regency represents an implementation of the Hybrid Justice System Mechanism, wherein this team is established by Government Institutions, Customary Institutions, and the Criminal Justice Subsystem. This team is chaired directly by the Deputy Regent, with the chairman of the Gianyar Regency Customary Assembly and the Assistant I of the Gianyar Regency Regional Secretariat serving as vice chairs. The secretary is the Head of the National Unity and Politics Agency of Gianyar Regency.

Its members consist of elements from government, the Criminal Justice Subsystem, and government officials such as the Head of the Cultural Office, the Head of the Village Community Empowerment Office, and others. Elements from the Criminal Justice Subsystem include the Head of Intelligence at the Gianyar Police, the Head of Intelligence at the Gianyar Military Command 1616, and the Head of Intelligence at the Gianyar District Attorney's Office.

The resolution of a customary case in Gianyar Regency prioritizes deliberation (which reflects the intrinsic values of the Indonesian nation) and peaceful methods through both formal and informal approaches. The disputing parties are brought together for dialogues, emphasizing the philosophy of "menyamebraya" (brotherhood) and "ngandap kasar," so that the resolution benefits all parties involved. The resolution by this team truly reflects the values of Restorative Justice, focusing on deliberative resolution, prioritizing dialogues among the parties to achieve a mutually beneficial solution.

CONCLUSION

The exploration of the role of traditional institutions in resolving Bali's customary criminal law through a restorative justice approach reveals the intricate balance between tradition and modernity. Balinese society is deeply

rooted in its indigenous legal systems, where customary law plays a pivotal role in maintaining social harmony and cultural identity. The Desa Adat and Majelis Desa Pekraman, as key traditional institutions, act as custodians of these legal practices, emphasizing communal cohesion and collective well-being over punitive measures.

In contrast to the adversarial nature of conventional legal systems, the restorative justice approach in Balinese customary law prioritizes healing and reconciliation. This approach aligns with the cultural values of Bali, where the focus is on restoring relationships and achieving mutual agreement among the parties involved. The integration of restorative justice into customary law not only reflects a deep understanding of the community's needs but also offers a more holistic solution to criminal disputes by addressing the root causes of conflicts and ensuring the rehabilitation of offenders.

Traditional institutions in Bali serve as vital mechanisms for implementing restorative justice principles. They facilitate community participation, mediate conflicts, and offer culturally sensitive resolutions that are accepted and respected by the community. Through these institutions, the principles of restorative justice—such as inclusivity, dialogue, and consensus-building—are seamlessly integrated into the resolution process, reinforcing the community's commitment to harmony and cohesion.

Furthermore, the effectiveness of these traditional institutions in resolving disputes underscores the significance of preserving and adapting indigenous legal practices within the broader legal framework. By recognizing the value of customary law and the role of traditional institutions, there is potential to enrich the legal landscape with diverse perspectives and approaches that contribute to a more just and equitable society.

In conclusion, the role of traditional institutions in Bali's customary criminal law highlights the enduring importance of cultural heritage and community values in the pursuit of justice. The restorative justice approach not only provides an effective means of resolving disputes but also strengthens the social fabric of Balinese society. As Bali continues to navigate the challenges of modernity and globalization, the preservation and adaptation of these traditional practices remain essential for maintaining social harmony and fostering a justice system that truly reflects the values of its people.

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