

## ***Comparative Analyzation of Criminal Law for Sexual Harassment Based on Awig-Awig and Law 12 of 2022***

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### **Abstract**

*Indonesia has two legal systems, customary law and national law, which often clash in sexual harassment cases. Bali's Awig-Awig promotes restorative justice, while Law No. 12 of 2022 emphasizes strict criminal sanctions. This difference can trigger conflict, especially regarding the rights of female victims. Therefore, this study will discuss how the mechanism between the two laws compares and which law is more effective in applying in sexual harassment cases in Bali. This research compares the effectiveness of the two legal systems using a socio-legal method and comparative approach. The results show that the integration of customary deliberation with formal legal protection can bridge such differences, ensuring culturally sensitive and comprehensive justice.*

### **Abstrak**

*Indonesia memiliki dua sistem hukum, yaitu hukum adat dan hukum nasional, yang sering berbenturan dalam kasus pelecehan seksual. Awig-Awig Bali mengedepankan keadilan restoratif, sementara Undang-Undang No. 12 Tahun 2022 menekankan sanksi pidana tegas. Perbedaan ini dapat memicu konflik, terutama terkait hak korban perempuan. Maka dari itu, dalam penelitian ini akan dibahas bagaimana perbandingan mekanisme antara dua hukum tersebut dan hukum apa yang lebih efektif di terapkan dalam kasus pelecehan seksual di Bali. Penelitian ini membandingkan efektivitas kedua sistem hukum dengan metode sosio-legal dan comparative approach. Hasilnya menunjukkan bahwa integrasi musyawarah adat dengan perlindungan hukum formal dapat menjembatani perbedaan tersebut, memastikan keadilan yang peka budaya dan komprehensif.*

## INTRODUCTION

Parents who pay little attention to their children's development and let them to mature on their own are more likely to raise youngsters with unregulated morality.<sup>1</sup> Juvenile delinquency emerges in society and is closely related to the situation faced by children in the modern era. One form of deviant behavior in children is sexual violence committed against fellow children, which is largely influenced by easy access to pornographic films. Therefore, children's deviant or unlawful behavior is actually not entirely their fault, but rather a result of the influence of the environment that shapes such behavior.<sup>2</sup>

In everyday life, it is not uncommon to hear cases of sexual harassment that occur around us. The Law on the Crime of Sexual Violence (UUTPKS) states that the Crime of Sexual Violence is an act that fulfills the elements of a criminal offense as stipulated in the Law. According to Mannika (2018), sexual harassment is an act of coercion to force sexual contact without the consent of the party concerned. The Sexual Violence Law states that these acts do not only include verbal or physical threats, but also actual actions that can result in physical damage, material loss, or even lead to someone's death.<sup>3</sup> Sexual harassment itself knows no age limit, where both children and adults can potentially become victims or even perpetrators in this case. What is even more disheartening is the fact that despite the existence of laws related to sexual harassment, cases of this kind still continue to occur unabated to this day.

Indonesian society is diverse, with people from various cultures existing around this country.<sup>4</sup> This situation leads to a multiplicity of institutions in society. Societies have cultural values and systems that impact their lives.<sup>5</sup> Therefore,

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<sup>1</sup> Sumardiana, B. (2018). Penggunaan internet cerdas sebagai upaya Penanggulangan tindak pidana Hate speech Pada Remaja (didasarkan Surat Edaran Kapolri No. Se/6/X/2015 tentang Penanganan ujaran kebencian. *Jurnal Pengabdian Hukum Indonesia*, 1(1), 41–52.

<sup>2</sup> Utari, I. S., Sumardiana, B., & Ramada, D. P. (2019). Trends of Children Delinquency and Disfunctions of Social Control. *South East Asia Journal of Contemporary Business, Economics and Law*, 18(4), 76–81.

<sup>3</sup> Mannika, G. (2018). Studi Deskriptif Potensi Terjadinya Kekerasa Seksual pda Remaja Perempuan. *Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya*, 7(1), 2540–2553.

<sup>4</sup> Bernard L. Tanya. (2018). *Pancasila Bingkai Hukum Indonesia*. Genta Press.

<sup>5</sup> Lawrence M. Friefman. (1989). *The Legal System: A Social Science Perspective*. Russel Sage Foundation.

society is a "vessel" that already "contains" the living global system.<sup>6</sup> Society's belief framework establishes a set of principles that all members embrace together.<sup>7</sup> Nonetheless, there is sometimes an overlap between the application of the prevailing law in the community or what is known as the living law and the national law that applies in Indonesia. Living law, which is local in nature and based more on local customs or habits, often interacts or even contradicts the provisions of state law, leading to difficulties in effective law enforcement, especially in cases involving indigenous communities or regions with strong customary law systems.

Being a country with various ethnicities and cultures, Indonesia is one of the causes of diversity in social life, including in terms of the application of law. This diversity often causes problems related to the uniformity of laws that apply throughout Indonesia. Each ethnic group has customs and habits that have been passed down from generation to generation by their ancestors, including in terms of solving legal problems. In this context, each tribe has a different customary law system, which includes specific ways to deal with problems that occur in their society. According to Soekanto (2017), customary law (common law) is a tradition that is basically unwritten, does not follow a rule, and does not need to be sanctioned (this law) to have legal consequences.<sup>8</sup> But unlike other customary laws, customary law in Bali is different. Within Balinese Traditional Villages, there is a customary law that has grown and developed since the past and has history, wisdom, and autonomy rights to govern its own community. Balinese indigenous people have their own written laws called *Awig-Awig*. In the Regional Regulation of Bali Province No. 3 of 2001 about *Pakraman* Village states that *Awig-Awig* of Indigenous Village is a rule that applies to Balinese Indigenous people where the rules are made by *Krama Pakraman* Village and used as a guide for Balinese

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<sup>6</sup> Jürgen Habermas, and J. M. (1989). Work and Weltanschauung: The Heidegger controversy from a German perspective. In *Critical Inquiry* (Vol. 15, Issue 2).

<sup>7</sup> Utari, I. S., & Sumardiana, B. (2022). Prevention of Violence Againsts Children During the Covid-19 Pandemic Perspective of Criminology. *Journal of Law and Legal Reform*, 3(1), 85–110. <https://doi.org/10.15294/jllr.v3i1.54836>

<sup>8</sup> Soekanto. (2017). *Meninjau Hukum Adat Indonesia, Hukum Adat di Indonesia: Suatu Pengantar untuk mempelajari Hukum Adat*. Rajawali Press.

Indigenous people in the implementation of *Tri Hita Karana* which is certainly in accordance with the Village *Mewacara Dharma Agama* in each *Pakraman* Village.<sup>9</sup>

The rules of *Awig-Awig* and/or *Pararem* of an Indigenous Village are compiled by the Village *Sabha*. In Sanskrit, *Sabha* is a community that is respected either in terms of expertise or wisdom of life.<sup>10</sup> The purpose of the formation of the Village *Sabha* is not only to compile *Awig-Awig*, but to plan village development, plan the Customary Village Budget (APBD), and implement programs related to the development and sustainability of the customary village. Therefore, the Village *Sabha* can be seen as a vital institution in the management of the Customary Village, working together with the Customary Village *Prajuru* in formulating policies, managing village resources, and implementing various social, economic and cultural goals aimed at maintaining the welfare and harmony of the customary community. Thus, the Village *Sabha* has a very important role in maintaining the survival of customs and culture and realizing sustainable development at the traditional village level.

In *Awig-Awig* there is the term “*Wicara*” which is a legal problem that must be resolved, either a legal problem in the form of a dispute or in the form of customary law or *Awig-Awig*.<sup>11</sup> Legal problems in Balinese customary society can classify as *Delik Adat*. *Delik Adat*, according to Hilman Hadikusuma (1992), is an act that disturbs the social balance. This disturbance causes a reaction from the community itself that makes the balance must be restored.<sup>12</sup> The act or event can be in the form of physical or non-physical acts or circumstances, and can be directed at humans or supernatural beings. If this causes unrest in the community, it must be resolved through the imposition of fines or the performance of traditional ceremonies. For example in the case of sexual harassment that often occurs in the community. In these cases, if examined using *Awig-Awig*, there are separate legal

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<sup>9</sup> Bali, P. (n.d.). *Peraturan Daerah Propinsi Bali Nomor 3 Tahun 2001 tentang Desa Pakraman*.

<sup>10</sup> Adat, M. D. (2021). *Pedoman Ngadegang Bandesa Adat/Kalian Desa atau Sebutan Lain dan Prajuru Desa Adat*. 3. <https://jidhat.baliprov.go.id/storage/buku/1ZfQ79ggaE4vRjwb7RfKjgF4gPIV54sowO60Gcsp.pdf>

<sup>11</sup> Widnyana, I. M. (2013). *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*. Penerbit PT. Fikahati Aneska.

<sup>12</sup> Hadikusuma, H. (1992). *Pengantar Ilmu Hukum Adat Indonesia*. Penerbit Mandar Maju.

rules, such as the imposition of fines for perpetrators of sexual harassment, then the implementation of traditional ceremonies as a means of cleansing sins, even in some villages requiring forced marriage, and many more.

However, the implementation of *Awig-Awig Adat Village* has caused significant conflict because some of the legal rules contained in *Awig-Awig* are considered to be in conflict with applicable national laws, such as Law No. 12 of 2022 on Criminal Acts of Sexual Violence. This is also influenced by the enforcement of the existing laws in Bali, where they still uphold their customs. One example of this discrepancy can be seen in Article 4 paragraph (1) of Law No. 12 of 2022, which explicitly states that forced marriage is included in the crime of sexual violence. This potentially conflicts with some customary rules in *Awig-Awig* that may not explicitly regulate forced marriage as a criminal offense. In some traditional villages in Bali, custom and tradition may emphasize social norms and family relationships in mediating marriage-related issues. Therefore, despite the conflicts involved, in the customary context, forced marriage is often seen as part of efforts to maintain social harmony within the customary community, rather than as a criminal offense that should be subject to criminal penalties. In fact, in Article 10 paragraph (1) of Law No. 12 of 2022, it is clearly explained that every person who unlawfully forces, places someone under his power, or abuses his power to perform or allow a marriage to be performed by force, will be subject to criminal sanctions, with a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). The contradiction between this provision and the understanding of customary law that prioritizes peaceful solutions based on deliberation poses a major challenge in ensuring appropriate protection for victims, especially in contexts where indigenous communities prefer customary approaches over formal law. Such conflicts demonstrate the need for synchronization between customary law and national law in order to create a legal system that can fulfill justice and protect human rights, especially for women and children who are vulnerable to forced marriage in indigenous communities.

In contrast to the punishment in *Awig-Awig*, Law No. 12 of 2022 on Sexual Violence, precisely in Article 5 and Article 6, regulates the punishment caused by sexual harassment, both physical and non-physical. In general, Indonesians often

use national laws such as Law No. 12 of 2022 to resolve legal issues, including sexual harassment. The majority consider that the highest law in Indonesia is the Law, and almost all levels of society tend to abide by it as it has the force of law that is formally recognized throughout Indonesia. The law provides clearer protection for victims, stipulates strict criminal sanctions, and ensures victims' rights such as rehabilitation and compensation. However, the situation is different with the Balinese indigenous community who have a customary law system that is closely integrated with their culture. Balinese indigenous communities have a Chief of *Adat* or *Prajuru Adat Village* who leads and makes decisions based on customary rules listed in *Awig-Awig*. *Awig-Awig* is a local customary law norm, where each customary village has its own *Awig-Awig*, which is regulated by the Village *Sabha* and *Prajuru* of each customary village. In this context, Balinese indigenous people are more adherent to *Awig-Awig* and uphold their culture, which is considered a guideline for living in relationships between people and relationships with God and nature. The rules in *Awig-Awig* focus on restoring social harmony and provide sanctions that tend to be more based on restorative processes, such as deliberation and social sanctions, rather than formal criminal penalties. Therefore, although Law No. 12 of 2022 offers more systematic and comprehensive protection, Balinese indigenous communities tend to have more confidence in *Awig-Awig*-based remedies due to their familiarity with long-standing norms and traditions, which they feel better accommodate existing customary values.

Based on the explanation above, we can understand that Indonesia adheres to two legal systems that run simultaneously, namely customary law and national law. Each of these legal systems has different characteristics and rules, which reflect the values and traditions that develop in society. Customary law, known as *Awig-Awig*, applies at the level of certain customary communities, while national law is regulated by the state and has a broader scope, covering the entire territory of Indonesia. The coexistence of these two legal systems raises big questions about the certainty and effectiveness of their application. Can indigenous communities fully enforce their customary laws in handling certain cases, especially in cases of sexual harassment, or should the national laws that are more general and have stronger formal legal force be the main reference? Along with the dynamics of

existing laws, this research aims to dig deeper into the comparison between *Awig-Awig* customary law and Law No. 12 of 2022 regarding the criminal offense of sexual violence. This research will highlight the mechanisms that apply in both legal systems, compare how they handle sexual harassment cases in Balinese society, and assess the effectiveness of each legal system in providing justice, protection to victims, and restoration of social relations in indigenous communities. Thus, it is hoped that this research can provide a clearer picture of whether the two legal systems can coexist harmoniously or instead create gaps in the provision of fair legal protection for victims.

## **RESEARCH METHODS**

According to Dr. Nanda Dwi Rizkia, S.H., S.E., M.H., M.Kn., M.A. (2023), research is an activity carried out individually or in groups to explore information with the aim of collecting data using certain structured and thorough methods, in order to gain knowledge and find solutions to problems.<sup>13</sup> Meanwhile, according to Dr. Wiwik Sri Widiarty, S.H., M.H. (2024), legal research methods are an organized and systematic approach to conducting research in the field of law.<sup>14</sup> According to the author, legal research is an activity carried out by analyzing legal events or problems in a structured and systematic manner. The purpose of this research is to collect data, find the truth, and find solutions to the problems that are the object of study, with reference to the applicable laws and regulations.

The approach method used in this research is socio-legal research method with a comparative approach. The socio-legal approach is a combination of methods from various social science disciplines, such as politics, economics, culture, history, anthropology, and communication, with methods commonly used in legal studies, including analysis of legal principles, doctrine, and hierarchy of

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<sup>13</sup> Mezak, M. H. (2006). Jenis, Metode dan Pendekatan Dalam Penelitian Hukum. In Law Review: Fakultas Hukum Universitas Harapan. Lihat juga. Dr. Nanda Dwi Rizkia, S.H., S.E., M.H., M.Kn., M.A. dan Dr. Hardi Fardiansyah, S.E., S.H., M.A., M.H., M. E. D. (2023). Metode Penelitian Hukum (Normatif dan Empiris) (M. H. Dr. Elan Jaelani, S.H. (ed.)). Penerbit Widina Media Utama.

<sup>14</sup> Abdulkadir, M. (2004). Hukum dan Penelitian Hukum. PT. Citra Aditya Bakti. Lihat juga. Widiarty, W. S. (n.d.). Buku Ajar Metode Penelitian Hukum.

laws and regulations. This approach unites the two approaches into one integrated concept, so as to provide a more comprehensive view in understanding legal phenomena in a social context.<sup>15</sup>

## **RESULT AND DISCUSSION**

### **A. Differences in Legal Mechanisms between Awig-Awig and Law No. 12 of 2022 that Occur in the Implementation of Criminal Sanctions for Sexual Harassment Cases**

Customary offense or commonly called “Customary Crime” is a term used for an act that is continuous with customary law in a region. In the Bali Province Regional Regulation No. 4 of 2019 concerning Customary Villages, to be precise in Article 1 paragraph (8), it is stated that the Customary Village is a unit of customary law communities in Bali that has an area, position, original structure, traditional rights, its own assets, traditions, manners of community life for generations in the bonds of a sacred place (*kahyangan tiga or kahyangan desa*), duties and authorities and the right to regulate and manage its own household.<sup>16</sup> In addition, in Regional Regulation No. 3 of 2001 concerning Pakraman Village precisely in Article 6 also states that *Pakraman* Village has the authority to resolve customary and religious issues in each region, then participate in determining every decision in the context of implementing regional development, especially related to *Tri Hita Karana*, and carry out legal actions within and outside the *Pakraman* Village.<sup>17</sup>

*Awig-Awig* is a rule made by the village that generally aims to maintain order and tranquility in village life.<sup>18</sup> In community life, sanctions can also be found for villagers who violate the *Awig-Awig* that has been determined. In the *Awig-Awig* of the village, it can be seen that what actions are prohibited along with the customary

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<sup>15</sup> Wiratraman, H. P. (2005). *Penelitian sosio-legal dan konsekuensi metodologisnya*. 1–12.

<sup>16</sup> Bali, G. (2019). *Peraturan Daerah Provinsi Bali No. 4 Tahun 2019 tentang Desa Adat*. 1–23. [https://jidhat.baliprov.go.id/storage/produk\\_hukum/2LkjUz2uppItAdVn91LbaE5jMSLA1L2MVwDzPd6d.pdf](https://jidhat.baliprov.go.id/storage/produk_hukum/2LkjUz2uppItAdVn91LbaE5jMSLA1L2MVwDzPd6d.pdf)

<sup>17</sup> *Ibid.*

<sup>18</sup> Widnyana, I Made, 2013, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*, Penerbit PT. Fikahati Aneska, h. 14-15.



sanctions. These customary sanctions can be imposed on a person, family or the village community itself, but this depends on the form of action.

In the context of violations of decency or sexual harassment in Bali, there are several kinds of customary offenses, such as *Lokika Sanggraha*, *Drati Krama*, *Ketangehan*, *Mamitra Ngalang*, and *Gamia Gamana*.

#### 1. *Lokika Sanggraha*

In the *Kitab Adhigama*, *Lokika Sanggraha* is defined as a sexual relationship that occurs between a man and a woman who have not entered into a legally recognized marital bond, either through traditional customary practices or formal state registration.<sup>19</sup> Engaging in sexual activity outside of marriage, commonly known as adultery, is a violation of established rules and should be subject to penalties.<sup>20</sup> This type of customary offense typically originates from a situation where a man makes a sincere promise to the woman, assuring her that he intends to marry her, leading her to trust his words fully. Consequently, this trust often results in the woman becoming pregnant by the man. However, in a cruel twist of events, the man abruptly decides to sever the relationship with the woman without providing any clear or justifiable reason for his actions, leaving her in a state of emotional, social, and sometimes legal vulnerability.

#### 2. *Drati Krama*

*Drati Krama* is considered one of the most serious forms of behavior that significantly violates the deeply rooted norms upheld by traditional villages, not only from a religious perspective but also within the social and environmental frameworks of the traditional village community. This customary offense arises when a man and a woman engage in sexual intercourse outside the bonds of marriage, which is further compounded by the fact that both individuals are already bound by marital commitments to their respective spouses. Such actions are seen as a grave transgression, as they not only disrupt the moral fabric of the community

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<sup>19</sup> Saputra, T., & Nugraha, Y. A. (2023). Criminal Polcy Lokika Sanggraha Dalam Perspektif Hukum Pidana Indonesia. *Iblam Law Review*, 3(2), 72–78. <https://doi.org/10.52249/ilr.v3i2.132>

<sup>20</sup> Utari, I. S., Sumardiana, B., Sastroadmodjo, S., & Ramada, D. P. (2019). *Social Controls and Trends Juvenile Delinquency: Criminology Study about Complexity Of Child Delinquency In Society*. 335(ICESSHum), 858–863. <https://doi.org/10.2991/icesshum-19.2019.134>

but also threaten the harmony and sanctity of relationships within the traditional societal structure.<sup>21</sup>

### 3. *Ketangehan*

*Ketangehan*, commonly referred to as "caught red-handed," is a customary offense that arises when a man and a woman engage in sexual intercourse outside the bounds of marriage, and their actions are directly witnessed or discovered in the act by members of the customary community, leading to immediate social or legal repercussions within the framework of traditional norms and regulations.<sup>22</sup>

### 4. *Mamitra Ngalang*

The word "*Memitra*" refers to the act of adultery, signifying a breach of marital fidelity, while the word "*Galang*" carries the meaning of "*light*," which in this context symbolizes a carefree or indifferent attitude, often referring to a person's behavior that disregards the well-being or moral expectations of their surrounding environment. Therefore, the term "*Mamitra Ngalang*" describes a situation in which a married man, despite already having a wife, engages in an extramarital sexual relationship with another woman who is not legally married to him. However, this relationship is further characterized by the man providing physical and emotional support to the woman, mimicking the responsibilities and obligations typically associated with a legally binding marital union, thereby creating a semblance of a legitimate relationship despite its illegitimacy.<sup>23</sup>

### 5. *Gamia Gamana*

*Gamia Gamana* is a customary offense that involves sexual relations between individuals who are closely related by blood, such as sons with their mothers or fathers with their daughters, which is considered a severe violation of social and

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<sup>21</sup> Trisna Dewi, K., & Riva Prathiwi, K. J. (2023). Penyelesaian Kasus Drati Krama Di Desa Pakraman Songan, Kecamatan Kintamani, Kabupaten Bangli. *Pariksa: Jurnal Hukum Agama Hindu*, 7(1), 11. <https://doi.org/10.55115/pariksa.v7i1.4218>

<sup>22</sup> Sutha I Gusti Ketut, 1987, *Bunga Rampai Beberapa Aspekta Hukum Adat*, Penerbit Liberty, Yogyakarta, h. 76.

<sup>23</sup> I Gusti Ngurah Sutarka, S. H. (2012). *Memitra Ngalang Salah Satu Delik Adat Bali-Hindu*. *Scribd*. <https://www.scribd.com/document/103261584/Artikel-Memitra-Ngalang-I-Gusti-Ngurah-Sutarka>

moral norms within the community. This type of customary offense is explicitly addressed in Balinese customary law and is specifically regulated within the *Awig-Awig*, precisely in Pawos 46 paragraph (1) letter g, which states: “*Sene kasinangeh kacutna sekadi ring sor: g. cuntaka untuk gamia gamana.*” This provision can be translated as: "A state of impurity is caused by *gamia gamana*," referring to the act of sexual relations between family members resulting in conditions of defilement or spiritual pollution. Such offenses are seen as not only disrupting the harmony of familial relationships but also violating deeply rooted cultural and spiritual values within Balinese society, necessitating strict regulation and resolution through customary law mechanisms.<sup>24</sup>

The customary offenses above certainly have sanctions for every indigenous community that commits these acts. The purpose of this customary sanction is to restore the balance that occurs due to customary violations. The customary sanctions present in Bali are very strong, and comprehensive for the indigenous community. The entire customary law is based on the philosophy of customary law such as *Tri Kaya Parisuda* and *Tri Hita Karana*. The types of customary sanctions that exist in Balinese customary law are contained in a separate chapter (*sarggah*) entitled “*wicara lan pamidanda*” in each *Awig-Awig* and for the size of the sanctions are regulated by the *pararem* of each traditional village. In Balinese Traditional Villages, there are customary sanctions commonly referred to as *Tri Danda* or three customary sanctions.<sup>25</sup> The following are the sanctions imposed on perpetrators of sexual violence:

#### 1. *Arta Danda*

*Arta Danda* refers to a legal action taken against individuals who commit acts violating societal decency, often in the form of punitive measures designed to restore balance and justice within the community. These actions may include the imposition of monetary fines, commonly known as *Danda Artha*, which require the offender to pay a specific amount as compensation or restitution for their actions.

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<sup>24</sup> Arimatea, K. J., & Pura, M. H. (2022). Penerapan Sanksi Adat Dan Hukum Positif Terkait Kejahatan Kesusilaan (Studi Kasus *Gamia Gamana* Di Desa Pakraman Undisan, Kelod, Tembuku, Bangli). *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora*, 9(6), 2919–2924.

<sup>25</sup> Sukadana, I. K., Sudibya, D. G., & Karma, N. M. S. (2021). Sanksi Kasepekang Dalam Hukum Adat Bali. *Kertha Wicaksana*, 15(1), 72–79. <https://doi.org/10.22225/kw.15.1.2819.72-79>

Additionally, sanctions may extend to the confiscation of personal property, a penalty referred to as *Kerampag*, where certain belongings of the perpetrator are seized as part of the disciplinary process. Furthermore, another form of sanction involves mandatory visits to all members of the village, an act called *Ngigu Banjar*, which obligates the offender to personally acknowledge their wrongdoing and seek forgiveness or reconciliation from the community as a whole. These measures collectively serve to uphold social harmony, reinforce communal values, and deter future misconduct. According to Prof. Dr. I Made Suwitra, S.H., M.H., the existence of Arta Danda is beneficial for the management of each Traditional Village, precisely to be managed as additional funds in holding traditional ceremonies.<sup>26</sup>

## 2. *Jiwa Danda*

*Jiwa Danda* is a form of legal action specifically designed to inflict both physical and mental suffering on perpetrators who have committed acts deemed violations of decency, encompassing both physical and psychological punishment as a means of accountability. This type of customary punishment can take various forms, including expulsion from the customary village, known as *Katundung*, which serves to isolate the offender from the social fabric of the community; social ostracization by the customary community, referred to as *Kasepekang*, which denies the individual any form of interaction or acceptance within the local society; removal or dismissal of the offender's status as a member of the customary community, termed *Kawusang Mabanjar*, effectively severing their ties and privileges within the community; public shaming rituals, such as being paraded around the customary village, referred to as *Kaople*, as a method to instill regret and highlight the community's disapproval; and in some cases, an obligation to marry the village girl as a form of immaterial restitution, also known as *Gantirugi immateriil*. These punishments are deeply rooted in customary law and are meant not only to serve as a deterrent for similar offenses but also to restore harmony and balance within the affected community.

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<sup>26</sup> Prof. Dr. I Made Suwitra, S.H., M. H. (2025). *Wawancara dengan Prof, I Made Suwitra, S.H., M.H. (Dosen Mata Kuliah Tatanan Masyarakat Adat & Penyuratan Awig-Awig Universitas Warmadewa Bali)*.

### 3. *Sangaskara Danda*

*Sangaskara Danda* is a traditional sanction that involves the implementation of specific ceremonies rooted in the teachings of Hinduism and is designed to address various forms of transgressions within the community. These ceremonies, such as the *Prayascita* Ceremony, *Pemarisuda*, and other similar rituals, are performed with the primary purpose of purifying the sins or wrongdoings committed by individuals within the indigenous community. Additionally, these rituals aim to restore harmony, balance, and social order within the community by addressing the moral and spiritual disruptions caused by such actions, ensuring that both the individual and society can move forward in alignment with cultural and religious values.

Meanwhile, In the legal system of Indonesia, the 1945 Constitution serves as the fundamental source of legal order and acts as a reference for laws and regulations beneath it. The constitution regulates various essential matters, with Pancasila as the foundation of the state, serving as a guiding principle and basis for addressing all national issues, as it represents the nation's philosophy.<sup>27</sup> As for this issue, Law No. 12 of 2022 on the Crime of Sexual Violence regulates the sanctions for perpetrators who commit sexual violence both physically and non-physically. The sanctions are as follows:<sup>28</sup>

1. Article 5 of Law No. 12 Year 2022 on Non-physical Sexual Harassment
2. Article 6 of Law No. 12 of 2022 on Physical Sexual Harassment
3. Article 8 of Law No. 12 of 2022 on Forced Contraception
4. Article 9 of Law No. 12 of 2022 on Forced Sterilization
5. Article 10 of Law No. 12 of 2022 on Coercion of Marriage
6. Article 11 of Law No. 12 of 2022 on Sexual Torture
7. Article 12 of Law No. 12 of 2022 on Sexual Exploitation
8. Article 13 of Law No. 12 of 2022 on Sexual Slavery
9. Article 14 of Law No. 12 of 2022 on Electronic-based Sexual Violence

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<sup>27</sup> Sumardiana, B. (2016). Formulasi Kebijakan Penanganan Tindak Pidana Berbasis Isu Sara dalam Pemilihan Umum. *Pandecta*, 11(1), 81–95.  
<http://journal.unnes.ac.id/nju/index.php/pandecta>

<sup>28</sup> UU RI. (2022). Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Kementerian Sekretariat Negara Republik Indonesia*, 1(69), 1–84.

10. Article 18 of Law No. 12 of 2022 Concerning Corporations that Commit Criminal Acts of Sexual Violence

In essence, the rules of customary law (*Awig-Awig*) and national law (Law No. 12 of 2022) are similar in terms of providing sanctions to perpetrators of sexual violence, namely in the form of fines imposed by legal leaders or local authorities. However, although they both regulate the form of sanctions, there are significant differences between them regarding the type and implementation of other sanctions. One example of this difference can be found in *Awig-Awig*, which in some traditional villages enforces a controversial policy of requiring perpetrators who commit sexual abuse and impregnate victims to perform forced marriages. This forced marriage is intended as a form of accountability for the perpetrator's actions, as well as to ease the social tension caused. However, on the other hand, Law No. 12 of 2022 on the Crime of Sexual Violence contains an article that explicitly prohibits the practice of forced marriage. Article 10 of Law No. 12 of 2022 clearly states that forced marriage is unacceptable in the country's legal system, as it contradicts human rights, especially a woman's right to choose her life partner freely without coercion. This distinction highlights the conflict between the prevailing values of customary law and the principles of national law that prioritize the protection of individual rights, particularly those of women, and ensure free consent in any marriage relationship. It also reflects the challenges faced in harmonizing customary law, which is rooted in tradition, with national law, which focuses on the protection of human rights in the modern context.

**B. Effectiveness of Criminal Sanctions Between *Awig-Awig* and Law. No. 12 of 2022 Against Sexual Harassment Cases**

When talking about the effectiveness of criminal sanctions between customary law (*Awig-Awig*) and national law (Law No. 12 of 2022), there are advantages and disadvantages of each in handling sexual harassment cases experienced by Balinese indigenous people. Balinese indigenous people have upheld the rules of *Awig-Awig* since time immemorial. *Awig-Awig* according to the Balinese indigenous village community is very closely related to the problems of the inner and outer aspects of the indigenous community. This is because *Awig-*

*Awig* regulates, both horizontally and vertically, the relationship between the Balinese indigenous people and God Almighty (*Sang Hyang Widhi Wasa*).<sup>29</sup> Even so, Balinese people are still Indonesian citizens who must obey the applicable laws. However, in essence, the Indonesian state has recognized the existence of customary law as stated in the 1945 Constitution of the Republic of Indonesia, precisely in Article 18B paragraph (1) which states that the state recognizes and respects the unity of local governments that are special or special in nature which are regulated by law.<sup>30</sup> In addition, the article also explains the protection and welfare of indigenous peoples and their traditional rights.

The application of *Awig-Awig* for Balinese indigenous people is essentially relatively superior compared to the application of national law. This is indicated by the application of *Awig-Awig* in the *Tenganan Pegringsingan* Traditional Village of Bali. *Tenganan Pegringsingan* Traditional Village is one of the three original Balinese villages or commonly called *Bali Aga*. The village is known for its superior application of *Awig-Awig* as an aspect that regulates the lives of that people. They still maintain their customs because it is a tradition passed down by their ancestors.<sup>31</sup> In *Awig-Awig*, the rules are interpreted as originating from *Krama Adat Banjar* which is used as a guideline in the implementation of *Tri Hita Karana*, namely the relationship between humans and God Almighty (*Prahyangan*), relationships between humans (*Pawongan*), and relationships between humans and the natural environment (*Palemahan*).<sup>32</sup> The process of resolving cases using *Awig-Awig* is usually carried out by means of deliberations attended by the *Prajuru* of the Indigenous Village and the indigenous community which makes the settlement of the case take place quickly and can be directly accepted by the indigenous community. *Awig-Awig* also refers more to the restorative aspect which seeks to maintain and restore the relationship between the perpetrator and the

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<sup>29</sup> Artadi, I. K. (2003). *Hukum Adat Bali Dengan Aneka Masalahnya*. Denpasar: Pustaka Bali Post.

<sup>30</sup> RI, S. J. M. (1945). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dalam Satu Naskah. *Jdih.Bapeten.Go.Id*, 1–21. <https://jdih.bapeten.go.id/en/dokumen/peraturan/undang-undang-dasar-negara-republik-indonesia-tahun-1945>

<sup>31</sup> Kristiono, N. (2017). Pola Kehidupan Masyarakat Adat Desa Tenganan Pegringsingan Bali. *Integralistik*, 28(2), 158–175. <https://doi.org/10.15294/integralistik.v28i2.13734>

<sup>32</sup> Rika Rika, Dr. Maman Sudirman, S.H., SpN., MKn, Dr. Benny Djaja, S.H., M.N., M. K. (n.d.). (NOMOR 73) *Peran Desa Adat Dalam Pencegahan Tindak Pidana Pelecehan Seksual di Kabupaten Buleleng.pdf*.

victim, besides that *Awig-Awig* also functions as a forum to maintain community harmony.

Although *Awig-Awig* is an important guideline in resolving cases in Balinese customary society, it also creates a number of problems, one of which is the non-uniform application of sanctions from one customary village to another. This is due to the fact that each customary village has its own *Awig-Awig*, which is drafted independently by the Village *Sabha* and *Prajuru* of each customary village, so the rules that apply can vary from region to region. As a result, this inconsistency creates legal uncertainty that potentially makes it difficult to ensure justice for victims of sexual harassment cases. In addition, the process of resolving cases using *Awig-Awig* tends to be closed, which raises concerns regarding the protection of victims' rights, especially if the victims are women. Customary norms that are still thick with patriarchal culture can lead to injustice, where women's rights are often ignored. On the other hand, the application of *Awig-Awig* also opens up opportunities for discrimination against ethnic minorities, those who are not part of the Balinese indigenous community but live in the area. This is because decisions resulting from customary processes do not have the force of formal law recognized outside the customary village area, so access to justice for ethnic minorities (other than Balinese) or outsiders can be limited and unequal.

The legal process using Law No. 12 of 2022 tends to take longer than the settlement through *Awig-Awig*. This is due to the relatively long and detailed procedures of national law, as it must pass through many stages involving various institutions such as the local police and the authorized prosecutor's office. This condition is often a challenge for indigenous people, especially those who do not fully understand the proper national legal procedures. As a result, most Balinese indigenous people prefer to use the *Awig-Awig*-based settlement procedures that have become part of their traditions and customs rather than national laws that are considered to be frequently changing. However, when highlighting the aspect of legal protection for victims, national law has more significant advantages over *Awig-Awig*. This is evident in Law No. 12 of 2022 on the Crime of Sexual Violence, which explicitly includes articles on the protection of victims rights. For example,



Article 1 paragraph (16) of the law explicitly states that victims' rights include the right to treatment, protection, and recovery that must be obtained, used, and enjoyed by victims. Thus, despite the longer process, national law provides clearer and more comprehensive guarantees of protection for victims than *Awig-Awig*-based settlements.

Harmonization between *Awig-Awig* and Law No. 12 of 2022 is a strategic approach in realizing a more inclusive and effective legal system for Balinese society. This integration allows local values contained in *Awig-Awig*, such as social harmony and restorative approaches, to go hand in hand with more universal formal legal protection for victims of sexual harassment. In practice, *Awig-Awig* serves as a quick and community-accepted early resolution mechanism through customary deliberation, which not only restores social relations, but also maintains balance within the community. However, the limitations of *Awig-Awig*, such as inconsistency between adat villages and potential discrimination against victims due to patriarchal adat norms, can be overcome with support from Law No. 12 of 2022. This national law ensures legal certainty through the protection of victims' rights, rehabilitation, compensation, and strict sanctions against perpetrators. However, national legal processes are often more complex and less familiar to indigenous communities. Therefore, synergy between the two is key to effectively resolving sexual harassment cases. By empowering indigenous communities to collaborate with law enforcement officials, *Awig-Awig* can serve as an initial resolution mechanism, while Law No. 12 of 2022 ensures the continuation of formal legal protection. This approach not only strengthens the effectiveness of law enforcement, but also creates a bridge between customary and national legal systems, so that justice can be served without ignoring the cultural identity of Balinese.

In addition, according to the opinion of Prof. Dr. I Made Suwitra, S.H., M.H., who is one of the Professors at Warmadewa University Bali, said that in dealing with sexual harassment cases in Bali, it can be effective if the implementation of the two laws is carried out side by side. Therefore, it is very important to adapt customary law into modern values while still fulfilling its main role to protect

members of the indigenous community. This can be realized by having an official legal registration at the Indigenous Peoples Advancement Office which ensures that the validity of the Awig-Awig rules and regulations do not conflict with state law.<sup>33</sup>

## **CONCLUSION**

The discussion highlights the legal complexities surrounding the application of Awig-Awig (customary law) and national law (Law No. 12 of 2022) in handling sexual harassment cases in Bali. Awig-Awig operates within the framework of local traditions, emphasizing social harmony through customary sanctions such as fines (*Arta Danda*), social and physical punishment (*Jiwa Danda*), and cleansing ceremonies (*Sangaskara Danda*). However, its lack of uniformity and potential for patriarchal biases raises concerns about fairness, particularly for female victims. In contrast, national law offers a structured legal framework with clear provisions for victim protection, rehabilitation, and strict sanctions against perpetrators. While this ensures legal certainty and universal applicability, the formal legal process can be time-consuming and difficult for indigenous communities to navigate. A key issue in harmonizing these legal systems lies in their differing approaches to justice—Awig-Awig prioritizes restorative justice within the community, whereas national law enforces punitive measures with state intervention. The challenge remains in bridging these approaches to ensure that justice is both culturally sensitive and legally comprehensive. One potential solution is the integration of customary deliberation with formal legal protections, allowing indigenous communities to participate in legal processes while ensuring that victims' rights are upheld under national law.

## **SUGGESTIONS**

Legal alignment and strengthening can be done by harmonizing Awig-Awig with national laws to reduce potential conflicts, such as officially registering Awig-Awig with the Office for the Promotion of Indigenous Peoples. In addition, training indigenous communities on national legal procedures is also important to improve

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<sup>33</sup> Prof. Dr. I Made Suwitra, S.H., M. H. (2025). *Wawancara dengan Prof, I Made Suwitra, S.H., M.H. (Dosen Mata Kuliah Tatanan Masyarakat Adat & Penyuratan Awig-Awig Universitas Warmadewa Bali).*

their understanding and access to justice. Collaboration between parties is also crucial to ensure fairness in the application of customary law. One step that can be taken is to involve formal law officials in customary deliberations to create a more balanced and equitable solution. In addition, the government also needs to increase its role in overseeing the application of Awig-Awig so that customary sanctions remain in line with the principles of national law. This can be done by legalizing the Awig-Awig rules that have been deliberated with the indigenous community into national law so that there are no more overlapping laws that occur in the implementation of criminal sanctions for sexual harassment cases.

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