

# Criminal Law Policy against 'Pratima' Theft: Perspective of Balinese Customary Criminal Law

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## Abstract

Law enforcement of the crime of Pratima theft in Bali does not provide a sense of justice for traditional law communities as victims. In response to this, it is necessary to construct law enforcement for the crime of Pratima theft to achieve a sense of justice, benefit, and legal certainty for the Balinese customary law community. This research method is sociological law (sociological jurisprudence), emphasizing the study of the operation of law in traditional law communities in Bali. The object of the study is the legal facts related to the crime of Pratima theft. Based on the research results, it was found that law enforcement prioritized legal certainty rather than social justice itself. The Balinese traditional law community desires fair and beneficial law enforcement. The provisions on the principle of legality in deciding pratima theft cases in Bali do not prevent the application of laws that exist in society. Judges should also apply customary criminal sanctions, thereby demonstrating that criminal law policies protect customary law communities. In imposing sanctions, the panel of judges is expected to be guided by the harmony of law enforcement objectives, based on local wisdom. The application of the Tri Hita Karana concept as local wisdom in customary criminal sanctions shows that criminal law policy provides a sense of justice and protects customary law communities as victims, and restores harmony in the lives of Balinese customary law communities.

**Keywords:** Adat Law; Customary Law; Criminal Law; Legal Policy; Theft.

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## 1. INTRODUCTION

Customary law is known to have lived and developed in Indonesian society for a long time. It is based on values that live in the community itself, such as original values that have been respected in certain communities and syncretic values which are a combination of values that come from outside and only apply to people in that environment [1]. The function of customary law is essentially to establish a balance between members of a community, both individually and in groups who are members of indigenous communities.

The life of the Balinese indigenous people is very thick with customs. The Indigenous peoples highly protect holy places or sacred places which are believed to be a bridge to achieve a balance between living things and God the creator. Therefore, the indigenous people of Bali strongly oppose actions that destroy sacred places,

because such actions are considered to desecrate themselves and the surrounding environment, especially with acts that are considered as blasphemy or desecration.

The island of Bali is known as the island of a thousand temples, because temples are places of worship for Hindus in Bali. Every temple in Bali has sacred objects in the form of *keris*, coins (*pis kepeng*), and *Pratima*. The existence of holy objects does not escape the target of perpetrators of criminal acts of theft. The perpetrators targeted sacred objects, which, apart from having economic value because they are made from gold, silver, and bronze, are also sought after by collectors of antiques and ancient objects.

Over time, the Bali Provincial Government issued Governor Regulation No. 25 of 2020 regarding

<sup>1</sup>Mulyawati, Kade Richa, Gita Pritayanti Dinar, and Anak Agung Sagung Laksmi Dewi. "Application of Balinese Customary Law Sanctions in Criminal Acts of

Blasphemy Against Sacred Places." In *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, pp. 19-26. Atlantis Press, 2023.

Protection Facilities for Temple, Pratima, and Religious Symbol. The current phenomenon is that Pratima theft has occurred again in Bali Province. In 2023, several cases will occur, such as the theft of pratima at Pura Dalem Perancak. The head of Perancak Village, I Nyoman Wijana, stated that acts of theft at the Dalem Perancak Temple had occurred twice a year—likewise, the theft of pratima at Dalem Siyut Temple, Tulikup Village, Gianyar Regency, Bali. In fact, this temple has been burglarized four times.

In this article, the main problem that will be discussed is related to the construction of law enforcement against criminal acts of Pratima theft in the future based on local wisdom in Bali. Pratima theft is included in the customary offense. Theft of Pratima, a type of sacred object, is a customary offence because the impact resulting from the theft of Pratima is very detrimental to the lives of the Balinese traditional law community, the majority of whom are Hindu. The theft of Pratima caused unrest and commotion in the indigenous community and hurt the trust and confidence of the Hindu community in Bali.

Previous research on the crime of Pratima theft, according to I Gusti Ngurah Oka Putra Setiawan (2018), concluded that judges, in deciding a case related to customary issues, only use the Criminal Code as a guide in making their decision, the Judge should be guided by the Judicial Power law where the Judge is obliged to explore, follow and understand the legal values and sense of justice that exist in society [2]. Research by Luh Mia Ayu Pratiwi and Ngurah Wirasila (2022) concluded that it would be very unfair if law enforcement against the theft of sacred objects in Bali were only subject to national criminal sanctions. Apart from being subject to general criminal sanctions, the defendant was also subject to customary criminal sanctions because these sacred objects cannot be separated from religion and custom, social, economic, etc.

In writing this journal, the findings obtained were that the construction of law enforcement for the

crime of Pratima theft was based on local wisdom in Bali, namely guided by the Tri Hita Karana (THK) concept [3]. As a philosophy of life, THK has been accepted as the most essential principle of balance and harmony between the physical and spiritual worlds [4]. A balanced relationship between parhyangan (spiritual), palemahan (environment or nature) and pawongan (humans) is the goal of human life from the perspective of Balinese customary law.

## 2. METHOD

This is qualitative research using sociological jurisprudence approach), which emphasizes the study of the actual operation of law in a particular society. The method used in writing this journal is normative research supported by empirical data. The primary legal materials resulted from relevant laws and legislation [5]. Furthermore, the data were analyzed with content analysis to analyze the formulation of the problem and then made a conclusion and suggestion. Those legal material collected are analysed descriptively.

## 3. RUSULTS AND DISCUSSION

The increasing development of Bali's tourism has finally made it possible for temples to also serve as a tourist attraction area. However, this in turn allows cases of blasphemy against sacred places to occur. If it is viewed from the perspective of criminal law, in fact the crime of harassment or blasphemy against a sacred place needs to receive an exclusive attention in terms of imposing criminal sanctions.

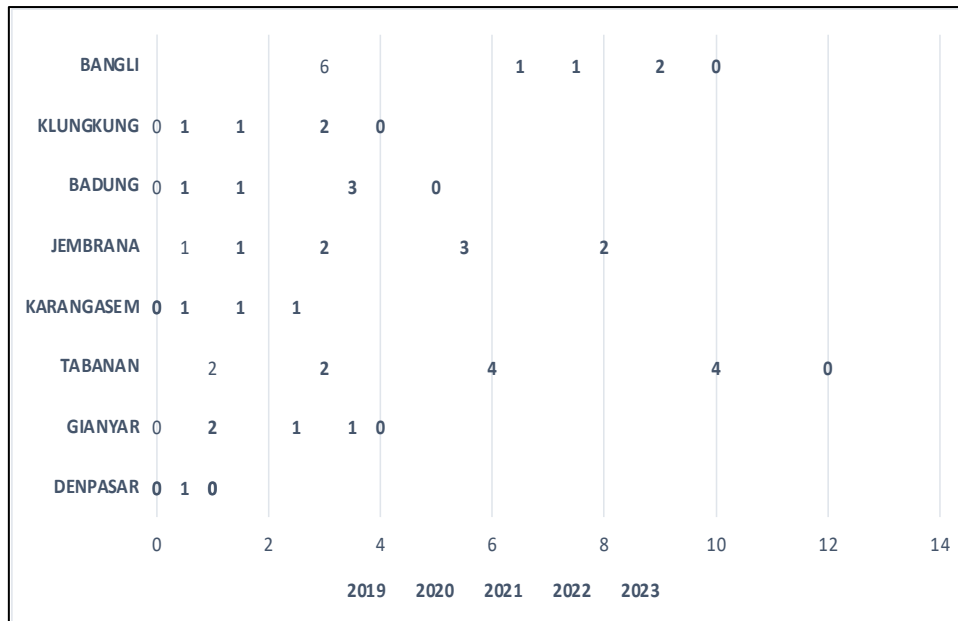
Over time, the Bali Provincial Government issued Governor Regulation No. 25 of 2020 regarding Protection Facilities for Temple, Pratima, and Religious Symbol. Law enforcement regarding the criminal act of pratima theft has become an interesting discussion among both academics and ordinary people, especially the Balinese traditional law community, because this criminal act always occurs every year in the jurisdiction of the Bali Regional Police (Chart 1).

<sup>2</sup>Setiawan, I. Gusti Ngurah Oka Putra. "Tindak Pidana Pencurian Benda Sakral dalam Putusan Pengadilan di Wilayah Hukum Pengadilan Tinggi Bali." *Jurnal Cakrawala Hukum* 9, no. 1 (2018): 79-88.

<sup>3</sup>Anggana, I. Putu Surya, I. Gede Mudana, Ni Nyoman Triyuni, and Ni Made Rai Sukmawati. "Tri Hita Karana as a form of pro-environmental behavior in Bindu Traditional Village." *International Journal of Green Tourism Research & Applications* 4, no. 1 (2022): 30-37.

<sup>4</sup>Wesnawa, I. Gede Astra, and I. Gede Sudirta. "Management of boundary areas based on Nyamabraya values." *International journal of linguistics, literature and culture* 3, no. 5 (2017): 63-71.

<sup>5</sup>Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.



**Chart 1: Data on the theft of temple crime scenes in the Bali Police jurisdiction**

Source: Primary data, 2024 (processed)

Based on the Chart 1, it is known that in the last 5 years, from 2019 to 2023, there were 48 thefts with the crime scene at the temple as a place of worship for Hindus in Bali. The goal of good law is a law that makes its people happy. In the context of making its people happy, the law in question is a conscientious law, namely a law that is formed to lead humans to a just, prosperous life and make humans happy [6]. However, in its application, law enforcement for criminal acts of practical theft has philosophical problems, juridical problems and sociological problems, as follows:

Philosophical problems, from the perspective of criminal law and Balinese customary criminal law, there are differences in views regarding the crime of Pratima theft related to the purpose of punishment. In formal criminal law, the aim of criminal sanctions is oriented towards the perpetrator in order to provide a deterrent effect. The sanctions in the current Criminal Code do not provide attention and a sense of justice for victims, in this case, indigenous communities, who bear the impact of the theft. Meanwhile, customary criminal law not only provides a deterrent effect for the perpetrator but also seeks to restore balance and harmony that was disturbed in the traditional community as a result of the

perpetrator's actions of stealing pratima, which is sacred or purified by the Balinese traditional community.

Juridical problems. The view of Balinese customary criminal law, which is the original law of the Balinese traditional community, is that the offense of pratima theft is a customary criminal offense that destroys the balance in society and causes disruption to the cosmic balance in society [7]. Pratima theft is very detrimental to the Hindu community in Bali, and violates the customary rules stated in the awig-awig and perarem in Bali [8]. Pratima theft is a form of desecration of religion, and the perpetrators are also considered to have damaged cultural heritage, considering that sacred objects in Bali are generally part of cultural heritage objects and inherited from generation to generation [9].

The sociological problem that occurs is that the theft of pratima, which occurs in several temples in Bali, causes shock, disrupts balance and harmony, and harms the lives of traditional law communities in Bali. The state judiciary has so far played the role of adjudicating and deciding cases of pratima theft, per the provisions in the Criminal Code. The panel of judges outlined aggravating

<sup>6</sup> Harun, Muhammad. "Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law." *Walisono Law Review* 1, no. 2 (2019): 195-220.

<sup>7</sup> Jiwana, I. Made Wata, and Putu Eka Trisna Dewi. "Conception of Sanctions for Same-Sex Marriage Couples in the Perspective of Balinese Customary Law (Comparison of Laws in the United States)." *Jurnal Hukum Prasada* 9, no. 2 (2022): 80-85.

<sup>8</sup> Putrawan, I. Nyoman Alit, I. Made Adi Widnyana, I. Made Suastika Ekasana, Desyanti Suka Asih K. Tus, and

I. Gusti Ayu Jatiana Manik Vedanti. "Penerapan Ajaran Tri Hita Karana Dalam Penyusunan Awig-Awig Sekaa Teruna Taman Sari Di Banjar Lantang Bejuh Desa Adat Setetan." *Jurnal Penelitian Agama Hindu* 5, no. 2 (2021): 98-105.

<sup>9</sup> Setiawan, I. Gusti Ngurah Oka Putra. "Tindak Pidana Pencurian Benda Sakral dalam Putusan Pengadilan di Wilayah Hukum Pengadilan Tinggi Bali." *Jurnal Cakrawala Hukum* 9, no. 1 (2018): 79-88.

matters in the form of material losses experienced by the traditional law community but did not impose additional laws on the defendant with customary sanctions to restore the temple's sanctity. The customary law community finally became the victim again to carry out the ceremonial procession to restore the temple's sanctity.

The theft of pratima, which has occurred again in several districts/cities under the jurisdiction of the Bali Regional Police, shows that the criminal law policy, which only decides cases of theft of sacred objects based on the positive law contained in the Criminal Code, does not have a deterrent effect on the perpetrators and does not provide the benefit and justice for indigenous peoples in Bali.

The network of perpetrators of Pratima theft and their recipients, who were foreign nationals, was uncovered by the Bali Police. The defendant, on behalf of Roberto Gamba, an Italian citizen who is a collector of antiques, purchased several statues from the classical Balinese patchouli art shop/gallery owned by I Komang Oka Sujaya, which are sacred objects resulting from criminal theft from several temples in Bali. The Gianyar District Court sentenced the defendant Roberto Gamba, an Italian citizen, to 5 (five) months in prison based on the Gianyar District Court decision number 234/Pid.B/2010/PN.GIR. January 24 2011. The Balinese people strongly opposed this decision. The verdict was considered very light and hurt the community's sense of justice and harmed the Balinese Hindu community both materially and immaterially, namely resulting in disruption of the spiritual balance of the Hindu community.

From the perspective of formal criminal law, law enforcement for the crime of pratima theft is no different from ordinary theft, namely that all elements of the offense of theft must be fulfilled. The objective element is that the items stolen are objects that are sacred to Hindus. The Criminal Code does not explicitly regulate norms related to theft of sacred objects, resulting in empty norms. The offence of Pratima theft is included in the crime of ordinary theft or aggravated theft, which can be subject to criminal sanctions in accordance with Article 362 or Article 363 of the Criminal Code.

Werner Menski's triangular concept paradigm is used to harmonize three elements, namely, law that is born by society, law that is a product of the state, and moral, religious and ethical values [10]. The panel of judges imposing sanctions should also be guided

by the harmony of law enforcement objectives, namely in order to realize justice, benefit and legal certainty. Provisions related to the principle of legality in deciding cases of theft of sacred objects in Bali do not reduce the validity of the laws existing in society, which determine that a person deserves to be punished even though the act is not regulated in the Criminal Code. The panel of judges can base the theft offence on the Criminal Code and the Bali Governor's regulation Number 25 of 2020 concerning facilitating the protection of temples, Pratima and religious symbols to decide cases of theft of sacred objects.

The judge stated that the material and immaterial loss clause for the victim, in this case the temple owner, was a burdensome consideration. The material loss of having to hold a purification ceremony (prayascita), which takes up the community's time, energy and attention to restore the temple's purity, which the temple owner carries out, is also a consideration for the judge. Judges should also apply customary criminal sanctions, showing that the applicable criminal law policy provides a sense of justice and benefit and protects customary law communities as victims [11]. The actions of the perpetrators are a crime that is very detrimental to followers of the Hindu religion, especially in Bali, because they have damaged people's life beliefs and tarnished the local customary rules contained in the awig-awig in Bali. The judge's decision, which is guided by the laws that exist in society, shows that customary law functions and has legal force, both against perpetrators who are part of the Balinese customary law community as well as against perpetrators who are not part of the Balinese customary law community.

The applicable laws and regulations to overcome legal problems related to the theft of sacred objects, taking into account existing rules in positive law and Bali Governor Regulation Number 25 of 2020 concerning facilitating the protection of temples, Pratima and religious symbols, provide a sense of justice and benefit to the community Balinese customary law. Legal issues related to the offence of Pratima theft, which are not regulated in the Criminal Code, resulting in a vacuum in norms, can be filled by Bali Governor Regulation Number 25 of 2020. The conflict of norms is related to criminal sanctions for theft offences in general in the Criminal Code, and customary crimes, as regulated in the Regulations Governor of Bali Number 25 of 2020, can be applied cumulatively.

Applying customary sanctions as a form of local wisdom in Bali is more beneficial than sanctions in the Criminal Code. Customary sanctions can restore balance

<sup>10</sup>Pasaribu, Muldri Pudamo James, and Ningrum Natasya Sirait. "Triangular concept of legal pluralism in the establishment of consumer protection law." In *E3S Web of Conferences*, vol. 52, p. 00032. EDP Sciences, 2018.

<sup>11</sup>Jamaludin, Ahmad, Dodi Suhendar, Ading Yahya, Dani Romadhon, and Mella Maylani. "A Preliminary Look at the New Kuhp in The Light of Indonesian Criminal Law Pluralism." *History of Medicine* 9, no. 1 (2023): 174-181.

or harmony that is disturbed due to customary criminal acts. Law enforcement against customary crimes will be better if it also uses customary institutions and institutions because if it remains only in the general justice route, it will not be able to provide a sense of justice to the community and will not be able to restore balance and harmony in the relationship between God and humans with nature and humans with humans, as a result of the offense of theft of sacred objects. Therefore, the perspective of customary criminal law must be emphasized regarding the offence of Pratima theft because it is in direct contact with indigenous communities.

#### 4. CONCLUSION

The Balinese traditional law community desires fair and beneficial law enforcement. The provisions on the principle of legality in deciding pratima theft cases in Bali do not prevent the application of laws in society. Judges should also apply customary criminal sanctions, thereby demonstrating that criminal law policies protect customary law communities. In imposing sanctions, the panel of judges must be guided by the harmony of law enforcement objectives based on local wisdom. The application of the 'Tri Hita Karana' concept as local wisdom in customary criminal sanctions shows that criminal law policy provides a sense of justice, usefulness, and certainty, protects customary law communities as victims, and restores harmony in the lives of Balinese customary law communities, by implementing sanctions to carry out obligations custom for perpetrators of Pratima theft.

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