

# Community Legal Awareness and Customary Sanction to Prevent Littering: How Penglipuran Village in Bali Makes Efforts?"

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## Abstract

Penglipuran is a customary village in Bali that traditionally imposes a customary sanction for villagers who litter waste in the territory of the village in the form of holding a *prayascita* ceremony. This article aims to analyze the existence of *prayascita* customary sanctions in Penglipuran Village, the efforts to overcome littering in the village territory, and the implications of such sanctions on the legal awareness of the community. This paper combines a religious based-research in social-humanities and empirical juridical research that analyzes data and legal sources in descriptive, qualitative, and systematic methods. This research revealed that *prayascita* customary sanction is imposed on anyone who is decided guilty for littering in a village meeting, entails that he/she has to hold a *prayascita* ceremony that takes place in the village's *catus pata* (crossroad). The efforts of Penglipuran Village to tackle littering problems are overseeing and maintaining the sanctity, sustainability, cleanliness, and orderliness of the area of the village. The programs and facilities that are implemented to control littering practice in this article can be divided into preventive and repressive measures. In terms of legal awareness, the village community has generally obeyed the customary rules. It is proven by the absence of people who have been imposed *prayascita* customary sanctions. It may be assessed that village members have a high community legal awareness to sort waste and put it in the rubbish bin. Therefore, the sanction to hold a *prayascita* ceremony has never happened until now. This indicates that a clean living culture has been well internalized by the community.

**Keywords:** Customary sanctions; Environmental concerns; Hindu ceremony; Legal awareness; Littering of waste.

## 1. INTRODUCTION

### 1.1. Background

Improper waste management is an environmental problem that becomes a global concern. Lack of waste management may cause environmental problems such as health, comfort, orderliness, and aesthetic matters. In Indonesia, the heap of garbage in 2020 was predicted to amount to 67.8 million tons and the number is likely to continue to grow.<sup>1</sup> In specific, plastic waste reflects one of the biggest problems in the modern world.<sup>2</sup> Waste sourced from plastic-based products that are generally used

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<sup>1</sup> Tiara Aliya Azzahra, "Menteri LHK: Timbunan Sampah di Indonesia Tahun 2020 Capai 67,8 Juta Ton," <https://news.detik.com/berita/d-5046558/menteri-lhk-timbunan-sampah-di-indonesia-tahun-2020-capai-678-juta-ton>

<sup>2</sup> Kiran Mustafa, Javaria Kanwal, and Sara Musaddiq, "Waste Plastic-Based Nanomaterials and Their Applications," *Waste Recycling Technologies for Nanomaterials Manufacturing* (2021): 795.

daily by human beings may consist of hazardous and toxic materials that would potentially harm both humans and the natural environments as they affect soil and waters.<sup>3</sup>

From the national law perspective, there have been several legal instruments stipulated to address the issue of waste in Indonesia. This includes, but is not limited to, Law No. 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Law), Law No. 18 of 2008 concerning Waste Management (Waste Management Law), and Government Regulation No. 27 of 2020 concerning Specific Waste Management. The Waste Management Law stipulates criminal offense against individuals and corporations that carry out waste management activities without paying attention to norms, standards, procedures, or criteria that may result in public health disturbances, security disturbances, environmental pollution, and/or environmental destruction; the act of a waste manager who due to his/her negligence carries out waste management activities without paying attention to norms, standards, procedures, or criteria that may result in public health disturbances, security disturbances, environmental pollution, and/or environmental destruction.<sup>4</sup> Besides, the Waste Management Law also regulates the resolution of disputes related to the waste problem.<sup>5</sup>

The pile of garbage will increase in line with the projected population growth and industrial growth.<sup>6</sup> Lack of public awareness in environmental management creates serious environmental problems. Criminal provisions and civil lawsuits seem to not become the main resolution to approach the real problem of waste. This is because environmental problems are started from people's behavior and will only be resolved with public awareness.

It is generally known that cleanliness and environmental health have a direct impact on human life. Garbage does not only threaten the environment in cities but also rural areas and villages. Penglipuran Village is a great example of how *hukum adat* (customary law) regarding the prohibition of trash disposal is effectively applied in maintaining cleanliness and environmental sustainability. The rule determines that any member of the village who violates it will be imposed sanctions by *prajuru*.<sup>7</sup> From the

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<sup>3</sup> Hannah M Diaz, "Plastic: Breaking down the Unbreakable," *Fla. Coastal L. Rev.* 19, (2018): 85.

<sup>4</sup> See Law No. 18 of 2008 concerning Waste Management, Arts. 39-43.

<sup>5</sup> *Ibid.* Arts. 33-38.

<sup>6</sup> Yosi Agustina Hidavat, Saskia Kiranamahsa, and Muchammad Arya Zamal, "A Study of Plastic Waste Management Effectiveness in Indonesia Industries," *AIMS Energy* 7, no. 3 (2019): 350.

<sup>7</sup> According to Article 1 number 15 of the Bali Provincial Regulation No. 4 of 2019 concerning Customary Villages in Bali, the Prajuru of the Customary Village is the Management of the Customary Village.

laws of nature, the breach of customary law may cause bad luck.<sup>8</sup> This customary sanction may also be regarded as customary criminal law.<sup>9</sup>

Penglipuran Village is a customary village in Bali Province, Indonesia. The customary village is a type of village that was genuinely conceived, accepted, and inherited by Balinese people that has existed since time immemorial,<sup>10</sup> and guides and manages the life of its village members based on Balinese Customary Law.<sup>11</sup> In terms of national government administration, Penglipuran Village is part of the area of Kubu Village, Bangli Regency, Bali Province.

In 1995, Penglipuran became the first example of a tourism village in Indonesia.<sup>12</sup> This village has also received the Kalpataru award, a prestigious award given for the action to preserve and protect the environment in Indonesia. Penglipuran was also chosen as the third cleanest village in the world according to international magazine *Boombastic*, after Mawlynnong in India and Giethoorn in the Netherlands.<sup>13</sup>

One form of effective social control in the community is to apply customary law and impose customary sanctions. The regulatory system in customary villages is generally manifested in a codified customary law that is called *awig-awig*.<sup>14</sup> Basically, *awig-awig* regulates the standard of behavior of everyone, especially, the customary village members, in the territory of the customary village. However, this *awig-awig* does not only regulate the relationship between people in the society but also regulates the relationship between people and God, and people and the environment. Every single customary village in Bali has its own *awig-awig* that even though upholding similar philosophy and principles, it may also adopt different specific rules and traditions. In the context of the writing of this article, Penglipuran Village has established its *awig-awig* that adopts

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<sup>8</sup> Jacqueline D. Lau, Georgina G. Gurnev, and Joshua Cinner. "Environmental justice in coastal systems: Perspectives from communities confronting change," *Global Environmental Change* 66, (2021): 7.

<sup>9</sup> Customary criminal law holistically animates all levels of legal science in legal practice. Therefore, the existence of the legal dimension of customary criminal law as a characteristic of legal practice in Indonesia is essentially unquestionable. See Lilik Mulyadi, "Eksistensi Hukum Pidana Adat Di Indonesia: Pengkajian Asas, Norma, Teori, Praktik dan Prosesnya," *Jurnal Hukum dan Peradilan* 2, no. 2 (2013): 244.

<sup>10</sup> See Paskalis Nvoman Widastra, et. al., "The Customary Village Hegemony in Bali Towards Minority Groups," *International Journal of Multicultural and Multireligious Understanding* 7, no.7 (2020): 451.

<sup>11</sup> All customary village in Bali shares the same philosophy and general religious practice based on Hindu. However, some customary villages also inherited communal belief and local practice based on each peculiarity.

<sup>12</sup> The determination of Penglipuran Village as a tourism village can be seen in Bangli Regent Regulation No.16 of 2014 concerning Tourism Villages in Bangli Regency.

<sup>13</sup> Portal Informasi Indonesia, "Desa Wisata; Udara Desa Penglipuran Terbersih di Dunia," <https://indonesia.go.id/ragam/pariwisata/sosial/udara-de-sa-penglipuran-terbersih-di-dunia>

<sup>14</sup> Md Putri Wivantari Sutarvantha and Bevaola Kusumasari. "Indigenous Collaborative Governance: An Understanding of Decision-Making Process at Desa Adat in Bali, Indonesia," *Udayana Journal of Law and Culture* 4, no. 2 (2018): 121.

*prayascita* sanction for those who are proven to have committed improper waste disposal.

The application of customary sanctions for the violation of village rules on the prohibition of littering is in line with Hinduism. Hindu law is a moral understanding and life guidance to become a better human being. To be able to apply it in the community and provide sanctions for violations, Hindu law should be formulated into customary law.<sup>15</sup> *Manawa Dharmasastra*, a compendium of Hindu law also covers a regulation against littering. It is in *Adyaya IV Sloka 56* which states as follows: "*napsu mutram purisam va sthivanam va samutrsjet amedhya liptam anya dva lohitam va visani va*" (it means, anyone should not urinate or defecate in the waters of rivers, lakes, and seas; spit; speak dirty words; and throw garbage, blood, or anything venomous or poisonous). It is therefore interesting to analyze the application of such Hindu-based customary sanctions in preventing the practice of littering in Penglipuran Village.

## **1.2. Research Problem**

This article formulates three research problems as follows:

1. How is the existence of *prayascita* customary sanctions in Penglipuran Village?
2. How are the efforts to overcome littering in Penglipuran Village?
3. What are the implications of the application of *prayascita* sanction on the legal awareness of the community?

## **1.3. Method**

This research is a combination of a religious based-research in social-humanities and empirical legal research that uses empirical legal research methods. The nature of the research is descriptive, while the form of qualitative data are primary data sources (in the form of observations and interviews) and secondary data (in the form of primary, secondary, and tertiary legal materials). Data, sources, and resources are collected from observation, interviews, and literature study. Observations were made directly in Penglipuran Village, Bangli, Bali, Indonesia while interviews were conducted with I Wayan Supat, the *Bendesa* (head) of the Penglipuran Village on October 1, 2020 and on January 13, 2022. Determination of research informants uses probability sampling techniques while research instruments use interview guides equipped with digital recording means. The analysis is conducted in a descriptive qualitative manner.

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<sup>15</sup> I Nengah Lestawi and Dewi Bunga, "The Role of Customary Law in the Forest Preservation in Bali," *Journal of Landscape Ecology* 13, no.1 (2020): 29.

#### 1.4. Theoretical Framework

Previous studies conducted by several researchers discussed topics that relative similar to, or related to this paper. Those, among others, are Desta Ardiyanto who discussed local wisdom-based land management in Penglipuran Village;<sup>16</sup> Made Agus Dwi Pradnyana Dita, *et. al.* who studied Penglipuran as an Educational Village Based on Tri Hita Karana in Elementary Character Development;<sup>17</sup> I Gede Januariawan who conducted a Hindu theology-based research regarding the environment in Penglipuran Pakraman Village;<sup>18</sup> and M. Taufan Qolby and M. Tsani Alhaq who made a study on local wisdom-based community care in the efforts to preserve the environment in Penglipuran Village.<sup>19</sup>

The similarity between the present research and the previous researches is using Penglipuran Village as the location and object of research. However, the present study takes more emphasis on the legal culture of the indigenous people of Penglipuran Village in protecting the environment.

In this study, the theory of legal functions and the theory of legal awareness are used as theoretical basis. This theory is often associated with a very famous *adagium* “*ubi societas ibi ius*”, that generally understood as “wherever there is society, there is law”.<sup>20</sup> Law exists in every society, anytime and anywhere.<sup>21</sup> This means that the existence of law is very universal, apart from the state of the law itself, it is very much influenced by the style and color of the people (law also has a unique character, depending on the development and changes that occur in a community). In the history of legal thought, there are two understandings about the function and role of law in society, namely:

- a. The legal function is to follow and validate (justify) changes that occur in society, meaning that law is a means of social control.
- b. The law functions as a means of making changes in society.<sup>22</sup>

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<sup>16</sup> Desta Ardiyanto, “Local Wisdom-Based Land Management in Penglipuran Village,” *Journal of Green Growth and Environmental Management* 8, no. 2 (2019): 80-89.

<sup>17</sup> Made Agus Dwi Pradnyana Dita, *et. al.*, “Penglipuran Sebagai Desa Edukasi Berbasis Tri Hita Karana Dalam Pengembangan Karakter SD,” *Indonesian Values and Character Education Journal* 2, no. 2 (2019): 97-105.

<sup>18</sup> I Gede Januariawan, “The Environment in Penglipuran Pakraman Village: A Study of Hindu Theology,” *Hindu Religion Research Journal* 3, no. 1 (2019): 65-74.

<sup>19</sup> M. Taufan Qolby and M. Tsani Alhaq, “Kajian Kepedulian Masyarakat Berbasis Kearifan Lokal Dalam Upaya Pelestarian Lingkungan di Desa Penglipuran Bali,” *Jurnal Ilmiah Pendidikan Lincakungan dan Pembangunan* 20, no. 2 (2019): 1-12.

<sup>20</sup> Keebet von Benda-Beckmann and Bertram Turner, “Anthropological Roots of Global Legal Pluralism,” in *The Oxford Handbook of Global Legal Pluralism*, ed. Paul Schiff Berman (Oxford Handbook Online, 2020), 16.

<sup>21</sup> Hamzah, Haidarsyah Muhammad, and Zulkarnain Zulkarnain, “Customary Law Impact in the Development of Indonesia’s Criminal Code,” *Journal of Critical Reviews* 7, no. 3 (2020): 233-236.

<sup>22</sup> Divanto, “Peran Dewan Perwakilan Rakyat Daerah (DPRD) Dalam Pembentukan Hukum Daerah,” *Dinamika: Jurnal Ilmiah Ilmu Hukum* 25, no. 10 (2019): 4-5.

In carrying out its function as a means of controlling social change, law has the aim of creating an orderly, peaceful, and just society which is supported by legal certainty so that the interests of individuals and society can be protected. The law can play a role in inspiring social change as well as bringing about peace and order for the whole society. This, according to Subekti is illustrated in the following sentence: "The law can not only be used to reinforce patterns of habits and behavior that exist in society, but also to direct to goals which it deems inappropriate and create new patterns of behavior."<sup>23</sup>

Law has a very important function in creating peace and order in people's lives. Otje Salman Soemodiningrat distinguishes 4 (four) functions of law, including:<sup>24</sup>

- a. Law as a guide for community behavior;
- b. Law as supervision or social control;
- c. Law as a dispute settlement; and
- d. Law as social engineering.

In this paper, theory of legal function is used to analyzes the application of *Prayascita* customary sanctions in Penglipuran Village for those who commit littering practice.

Another theory that is also used in this research is the theory of legal awareness, considering that legal obedience and compliance of customary rules by the village society are related to both individual and communal awareness of the society. There are four indicators of legal awareness that are consecutive (step by step), namely:<sup>25</sup>

1. Knowledge of the law is the knowledge of a person with certain behaviors that are regulated by written law, namely about what is prohibited and what is allowed.
2. An understanding of the law is a number of information that a person has regarding the contents of a (written) rule, namely regarding the content, purpose, and benefits of the regulation.
3. Attitude towards law is a tendency to accept or reject the law because of appreciation or conviction that the law is beneficial for human life, in this case there is already an element of appreciation for the rule of law.
4. Legal behavior is about whether or not a rule of law applies in society, if a rule of law applies, the extent to which it applies and the extent to which society complies with it.

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<sup>23</sup> Suteki. *Hukum dan Alih Teknologi* (Yogyakarta: Thafa Media, 2013),14.

<sup>24</sup> H. R. Otje Salman Soemadiningrat. *Rekonseptualisasi Hukum Adat Kontemporer* (Bandung: Alumni, 2011), 37.

<sup>25</sup> *Ibid.*

## 2. RESULT AND ANALYSIS

### 2.1. The Existence of *Prayascita* Customary Sanctions in Penglipuran Village

The recognition of customary communities and their traditional rights is scattered in various laws and regulations.<sup>26</sup> Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that “The state recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

Further, Article 97 (1) of the Law No. 6 of 2014 concerning Village states that the determination of a traditional village fulfills the following requirements:

1. The customary law community unit and its traditional rights are actually still alive, whether territorial, genealogical, or functional;
2. The customary law community unit and its traditional rights are deemed in accordance with the development of the community; and
3. The customary law community units and their traditional rights are in accordance with the principles of the Unitary State of the Republic of Indonesia.

The Minister of Villages, Development of Disadvantaged Regions and Transmigration issued Regulation No. 1 of 2015 concerning Guidelines for Authority Based on Origin Rights and Village-Scale Local Authorities.<sup>27</sup>

In Indonesia, customary law is studied from various perspectives, such as socio-legal studies, particularly legal anthropology, constitutional law, legal pluralism, and human rights.<sup>28</sup> Customary law still exists in various customary communities spread in islands in this archipelagic country. In Bali, *Hukum Adat Bali* (Balinese customary law) reflects a unique customary law as it based on the teachings of Hinduism which always strive for a balance of life between God (*parahayangan*), humans (*pawongan*), and nature (*palemahan*), known as the *Tri Hita Karana*

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<sup>26</sup> Sartika Intaning Pradhani. “Dynamics of adat law community recognition: struggle to strengthen legal capacity,” *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 31, no. 2 (2019): 285.

<sup>27</sup> This regulation states that the authority based on the rights of origin of the traditional village includes the arrangement of the organizational system and institutions of indigenous peoples; customary law institutions; ownership of traditional rights; management of customary village treasury lands; customary land management; agreement in the life of the customary village community; filling in the positions of the head of the customary Village and the apparatus of the traditional village; and the term of office of the traditional village head.

<sup>28</sup> Bono Budi Priambodo. “Positioning adat law in the Indonesia’s legal system: Historical discourse and current development on customary law,” *Udayana Journal of Law and Culture* 2, no. 2 (2018): 143.

teachings.<sup>29</sup> *Tri Hita Karana* is an underlying philosophy that upholds harmony and balance between religious, social, and environment.<sup>30</sup> Every action that is deemed to disturb the balance, including violation of customary law are required to take actions to restore the balance. *Prajuru Desa Adat* (the customary village's apparatus) has an obligation to implement *awig-awig* and/or *pararem* and settle customary law dispute.<sup>31</sup> In addition, the *Prajuru* has an authority to impose customary sanctions to those who violate customary rules which have been decided through meeting forum of the villagers (*Paruman Desa Adat*).<sup>32</sup>

In legal pluralism, it is generally accepted that state is not the only institutions that have an authority to create regulations.<sup>33</sup> Many entities in the society, such as customary community are also eligible, and having social legitimation, to create customary law, meaning that they apply the function of self-governing community and self-regulating community. Each customary village in Bali can establish customary law, known as *awig-awig* that inherits values, principles, and norms from generation to generation. In its current form, *awig-awig* is a written rule that reflects the community's socio-religious character based on the concept of *Tri Hita Karana* that may contain customary sanctions.<sup>34</sup>

In Bali, customary law and Hinduism are closely related. This can be seen from the pattern of implementing customary sanctions which is always associated with the implementation of religious rituals and ceremony. It reflects that the adherence of peoples of Bali to their customary laws is not only strengthened by sanctions that are external in nature, but also sanctions that are internal in nature. The implementation of customary sanctions is in the form of an obligation to carry out certain traditional religious rituals. It is based on and related to the basic philosophical values

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<sup>29</sup> *The Tri Hita Karana* philosophy provides teaching guidance to *Krama Bali* as a form of devotion to God Almighty (*Parahyangan*), *punia* to fellow humans (*Pawongan*), and compassion for nature (*Palemahan*). The philosophy of *Tri Hita Karana* is derived from the values of Balinese local wisdom (*Sad Kerthi*), including: efforts to purify the soul (*atma kerthi*), preserve forests (*wana kerthi*) and lakes (*danu kerthi*) as sources of clean water, sea and beaches (*segara kerthi*), social harmony and dynamic nature (*jagat kerthi*), and build the quality of human resources (*liana kerthi*).

<sup>30</sup> Ni Nvoman Sri Astuti, Gede Ginava, and Ni Putu Wiwiek Arv Susvarini. "Designing Bali tourism model through the implementation of *tri hita karana* and *sad kertih* values." *International journal of linguistics, literature and culture* 5, no. 1 (2019): 13. See also Article 1 number 27 Bali Provincial Regulation No. 4 of 2019 concerning Traditional Villages in Bali which states "*Tri Hita Karana* is the three causes of happiness, namely a balanced or harmonious attitude to life between serving God, serving fellow human beings, and cherish the natural environment based on holy sacrifice (*yadnya*)."

<sup>31</sup> Bali Provincial Regulation No. 4 of 2019 concerning Customary Villages, Art. 30 d and e.

<sup>32</sup> *Ibid.* Art. 31 f.

<sup>33</sup> Benda-Beckmann, Keebet von, and Bertram Turner, "Legal pluralism, social theory, and the state," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 262.

<sup>34</sup> For customary sanction. See I Dewa Made Rasta, "Tindak Pidana Adat di Bali dan Sanksi Adatnya." *Jurnal Yustitia* 13, no. 2 (2019): 40-48.

of customary reactions, namely to relieve the spiritual imbalance of society due to defilement (*leteh*).<sup>35</sup>

From a conceptual perspective, social control mechanism is needed to enforce customary rules. As stated by Soerjono Soekanto, "The mechanism of social control is any process that is planned or not planned to educate, invite or even force members of the community to conform to the rules and values of the life of the community concerned."<sup>36</sup> Humans basically want a free life, but this freedom must pay attention to the rights of others, balance in life and respect for the environment. In this regards, customary sanction may play as an instrumental part of social control for the community. It is perceived, and also believed that, violation of customary rules results in a psychological imbalance in the community. Therefore, every violation should be imposed to customary sanctions, which functions as a means of restoring community psychological balance.<sup>37</sup>

For centuries, Balinese peoples are used to hold purification ceremony to respond any form of imbalance, disturbance, and violations of customary rules.<sup>38</sup> In this context, theory of legal function may be used to describe the function of the customary sanctions. Wayan P. Windia and I Ketut Sudantra explained that customary sanctions consist of *artha danda*, *sangaskara danda*, and *jiwa danda*, which can be detailed as follows:<sup>39</sup>

1. *Artha danda* is customary sanction in the form of payment of money or replacement of goods.
2. *Sangaskara danda* is a sanction in the form of carrying out certain Hindu ceremonies, such as *mecaru*, *pemarisuda*, and *prayascita*, that aims to restore spiritual balance.
3. *Jiwa danda* is a customary sanction in the form of physical, spiritual or mental punishment, such as *mengaksama*, *mapilaku*, *lumaku*, *mengolas-olas*, *nyuaka*.

In Penglipuran Village, the *awig-awig* covers sanctions that range from doing work as a janitor, land confiscation, or being removed from the community membership.<sup>40</sup> In the *awig-awig* in Penglipuran Village,<sup>41</sup> there are 5 (five) types of sanctions, namely:<sup>42</sup>

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<sup>35</sup> I Gusti Ketut Ariawan. *Eksistensi Delik Hukum Adat Bali Dalam Rangka Pembentukan Hukum Pidana Nasional* (Denpasar: Program Pascasarjana Program Studi Ilmu Hukum Universitas Udayana, 1992), 10.

<sup>36</sup> Soerjono Soekanto, *op.cit.*, 179.

<sup>37</sup> H. R. Otje Salman Soemadinerat. *op.cit.* 16.

<sup>38</sup> See for example I Gede Yusa and Ni Ketut Supasti Dharmawan. "The Balinese Traditional Law Instrument: A Realism between the Balance of Cosmic and Human Rights Context," *Padjadjaran Journal of Law* 5, no. 3 (2018): 452.

<sup>39</sup> Wayan P. Windia and I Ketut Sudantra. *Pengantar Hukum Adat Bali* (Denpasar: Lembaga Dokumentasi dan Publikasi Fakultas Hukum, 2006). 143.

<sup>40</sup> Aceng Gima Sugiama. "The Sustainable Rural Tourism Asset Development Process Based on Natural and Cultural Conservation," *Advances in Social Science, Education and Humanities Research* (2019): 251.

- 1) *Ayahan pinaka panukun sisipe*, which is a substitute for non-fulfillment of obligations such as buying *ayahan*;
- 2) *Artha danda*, namely customary sanctions in the form of assets;
- 3) *Nunas pangampura (nyuaka iwang)*, namely apologies;
- 4) *Panyangaskara*, a ceremony performed to restore the balance of the cosmos in the form of *prayascita*, *caru* and others;
- 5) *Kanorayang makraman*, which is dismissed as a member of the customary village community.

These sanctions are decided in a meeting forum of the villagers, called as *Pasangkepan* or *Paruman Desa Adat* village meeting. The application of sanction always prioritizes propriety for the sake of harmony (the principle of *paras paros salulung sabayantaka*), which is educational and can cause embarrassment. This *pamidanda* is implemented with the aim of providing a deterrent effect for the offenders so that indigenous villagers can live in an orderly manner.<sup>43</sup>

The practice of littering of waste is classified as a violation in the realm of *palemahan* (human relations with the environment). The *pararem* of Penglipuran Village stipulates that a littering in the territory of the village is subject to a customary sanction in the form of *prayascita* ceremony. This means that if a person is decided guilty for a littering, then he/she has to hold a *prayascita* ceremony that takes place in the *catus pata* (crossroad) of the Penglipuran Village and witnessed by *prajuru* and villagers.<sup>44</sup> With regards to the mechanism, the imposition of the sanctions is not only decided personally by the head of the village, but also by the villagers through *pesangkepan* meeting forum.<sup>45</sup> The term *prayascitta* is derived from the words *prayas* which means happy and *cita* which means mind. *Prayascita* is an offering, in form of *banten*, that functions to purify the mind or *bhuana alit* (the nature in the narrowest meaning, the living things including human) and *bhuana agung* (the universe). It is also believed to be able to purify the holy building of Balinese Hindus, called *pelinggih*. Besides, *banten prayascita* may be used as a medium for concentration of thoughts and as holy sacrifice.<sup>46</sup>

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<sup>41</sup> *Awig-awig* in Penglipuran Village was formulated on August 19, 1989 and until now there has never been revised. I Wayan Supat, "The Legal Awareness of Penglipuran Community Village in Maintaining Cleanliness," Interview by Ida Bagus Sudarma Putra, Bangli, January 13, 2022.

<sup>42</sup> I Wayan Supat, "The Legal Awareness of Penglipuran Community Village in Maintaining Cleanliness," Interview by Ida Bagus Sudarma, Bangli, October 1, 2020.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> I Wayan Supat. *loc.cit.*

<sup>46</sup> I Made Ardika Yasa and Ni Komang Wiasti. "Pelatihan Pembuatan Sarana Upakara Pabersihan Dalam Pengabdian Masyarakat Pinandita Sanggraha Nusantara Koordinator Wilayah Nusa Tenggara Barat," *Selaparang Jurnal Pengabdian Masyarakat Berkemajuan* 4, no. 2 (2021): 297-298.

## 2.2. Efforts to Tackle Littering in Penglipuran Village

The development of tourism in Penglipuran Village was supported by the villagers. This can be seen from their involvement in maintaining and caring for the cleanliness and comfort of the environment, preserving culture both physically and non-physically and their participation in supporting various tourist attraction activities.<sup>47</sup>

Study by M. Taufan Qolby and M. Tsani Alhaq reveals the seven efforts of Penglipuran village community in preserving the environment, namely:<sup>48</sup>

1. Developing *awig-awig* (customary law rules) that regulate the relationship between humans and God, humans with others and humans with nature;
2. Making customary villages the highest institution at the village level that manages the village environment in general;
3. Establishing customary administrators who are specifically in charge of environmental management, who are responsible to the head of village and the community;
4. Sharing the responsibility to the community to protect their respective housing environment and groves (roads and waterways in front of the yard);
5. Determining the materials that are permissible to be used as a yard wall and gate;
6. Conducting conservation of the holy forest; and
7. Carrying out *gotong-royong* (mutual cooperation) once a week in rotation from the respective customary organizations.

One of the efforts to preserve the environment is the implementation of waste sorting to classify organic waste and non-organic waste, that has been carried out by each family head. The sorted waste will then be transported for processing to the *banjaran* (the smallest form of local government in Bali, lower than village).<sup>49</sup>

Community involvement in waste sorting is an example of human awareness of their role as members of an ecological community. Community involvement in waste management is a mandate from Article 28 of the Waste Management Law and Article 70 of the Environmental Protection and Management Law. Efforts in the prevention of improper disposal of waste are carried out from the upstream, to tackle as close as possible to the source and run in the smallest community unit. Therefore, efforts are needed from the participation of customary villages to carry out measures that are carried out by reducing, handling, and law enforcement against improper disposal of waste. Through the formation of its own legal rules in the form of

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<sup>47</sup> Anak Agung Istri Andriyani. "Pemberdayaan Masyarakat Melalui Pengembangan Desa Wisata dan Implikasinya terhadap Ketahanan Sosial Budaya Wilayah (Studi di Desa Wisata Penglipuran Bali)." *Jurnal Ketahanan Nasional* 23. no.1 (2017): 6.

<sup>48</sup> Qolby, M. Taufan, and M. Tsani Alhaq, *op.cit.*, 9-10.

<sup>49</sup> *Ibid.*, 10.

*awig-awig* or *perarem* to regulate the rights and obligations of the community (*krama desa* or villagers, *krama tamiu* or guest, *tamiu*, and business entities that are in the area of the customary village) so that they are willing to carry out and obey the rules in waste management along with the prohibitions and the sanctions.

This protection, guidance, development, and empowerment is needed as a complete strengthening of the customary village in order to realize the life of *Krama Bali* in accordance with the "*Trisakti*" principle conveyed by Soekarno, as the founder of the Unitary State of the Republic of Indonesia, in his speech on August 17, 1964, namely: politically sovereign, economically self-sufficient, and having a cultural personality.<sup>50</sup>

The role of traditional villages in the prevention of littering has actually been regulated in general as referred to in Article 22 letter (j) of the Bali Provincial Regulation No. 4 of 2019 concerning Customary Village in Bali regarding the duties of customary villages in realizing *kasukretan sakala dan niskala* (prosperity both in real and unseen world) that states "Maintaining purity, preservation, cleanliness, and orderliness of *Palemahan Desa Adat* ", however this is not only the duty and responsibility of the traditional village but also the community based on the principle of togetherness and responsibility in waste management.<sup>51</sup> The role of the customary village in a repressive context can be seen in Articles 30 and 31 of the provincial regulation regarding the duties and obligations as well as the authority of the *prajuru* of customary village in the application of *awig-awig* as previously described.

In the efforts to empower and protect customary villages as one of the customary institutions, Penglipuran Village takes the role of a facilitator to maintain *palemahan*, namely overseeing and maintaining the sanctity, sustainability, cleanliness and orderliness of the area of the village. The programs and facilities that are implemented to control littering practice in Penglipuran Village can be divided into preventive and repressive measures that will be discussed in the following sub sub-sections.

### **2.2.1. Preventive Measures**

As described in Section 1.4, the theory of the legal function teaches that the law serves as a guide for the community in preventing law violations. Preventive efforts carried out by Penglipuran Village includes preventing the community from carrying out garbage disposal carelessly such as on roads, empty land, rivers and from burning garbage. Besides, the Penglipuran Village also directs the community to obey existing regulations through appeal, socialization, and good guidance (coaching) to individuals

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<sup>50</sup> I Gusti Neurah Santika. *Menaadi dan Menemukan Roh Pancasila Secara Kontekstual*. (Klaten: Penerbit Lakeisha, 2020), 64-65.

<sup>51</sup> Article 12 of the Bali Provincial Regulation No. 4 of 2019 concerning Customary Village in Bali regarding the Duties of Traditional Villages states "Everyone who being or residing in *Palemahan Desa Adat* is obliged to maintain sanctity, preservation, cleanliness and orderliness", based on the concept of *Tri Hita Karana* and *Sad Kerthi*.

and community groups. The explanation of preventive measures is as follows:<sup>52</sup>

#### **a. Appeal**

The role of Penglipuran Village as a facilitator is by providing advice to the community to dispose of waste according to the proper place and type and to use and maintain waste facilities that spread in the village territory.

#### **b. Socialization**

The socialization carried out from the Penglipuran Village is a socialization about the importance of maintaining the cleanliness of the environment of the village, one of which is the movement of disposing of waste according to the place and type. The socialization was then carried out by providing understanding of existing waste management facilities and facilities such as from temporary shelters, final processing sites, integrated waste processing sites, waste reduction, waste management, then socialization regarding waste management using the 3R method (reduce, reuse, and recycle) by government, how to make compost on a household scale, waste banks and others. Preventive action that is also taken by this village is to carry out socialization of the waste bank through the Empowerment and Family Welfare group.

#### **c. Coaching**

Coaching steps are carried out by establishing a community activity program in the form of family-based waste reduction and handling, namely from the upstream which is carried out as close as possible to the source. Coaching is carried out based on the government's Sapta Pesona Program and the Empowerment and Family Group Program. The Sapta Pesona Program consists of security, orderliness, cleanliness, coolness, beauty, hospitality, and memories, while the Empowerment and Family Group Program consists of 10 programs, one of which emphasizes environmental sustainability. The environmental preservation is carried out by establishing an activity, namely the movement to dispose of garbage in its place, waste bank, and compost management.

### **2.2.2. Repressive Efforts**

Customary law are values that are lived, upheld, and carried out by citizens, and are psychological in nature as values, ideals, and legal feelings that exist in social interaction according to the culture they believe in.<sup>53</sup>

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<sup>52</sup> I Wawan Sumat. *loc.cit.*

<sup>53</sup> I Ketut Seregig. "Legal Sanction of Kesepekang in Balinese Customary System (In Perspective: Empiricism Theory of David Hume)," *Fiat Justisia: Jurnal Ilmu Hukum* 11, no. 3 (2017): 304.

Countermeasures with repressive measures are carried out by imposing *prayascita* customary sanctions to tackle violations of throwing garbage. The application of the *prayascita* customary sanction is one part of the form of implementing the *sangaskara danda* which is regulated in this village *pararem*.

The existence of customary sanctions is recognized by the state. This can be seen from the Supreme Court Decision No. 1644 K/Pid/1988 dated 15 May 1991. In this decision, the panel considered a person who has committed an act which according to the living law (customary law) in the area is an act that violates customary law, namely "customary offense". Thus, if later there are customary villagers who violate this *awig-awig* and have been given customary sanctions, then the violation cannot be filed either criminally or civilly.

### **2.3 The Implication of *Prayascita* Customary Sanctions on the Legal Awareness of Community**

In essence, law is a concretization of values, in particular the legal value of a society. This value is the core of the culture of a society, especially the spiritual aspects of the society's culture.<sup>54</sup> Legal awareness inherently exists in a society's culture. It is a matter of values that exist in humans regarding existing laws or about laws that are expected to exist and relates to the function of law and not a legal assessment of concrete events in the community.<sup>55</sup> Legal awareness is closely connected to obedience of law that indicates the effectiveness of law implementation in the society. It is because legal awareness is sourced from the elements of values and refers to dynamics situation of the community.

The present article views how legal awareness, in particular on how to perceive *prayascita* customary sanction, may be influenced from the spiritual aspects of the society's culture, that refers to Hindu teachings. The *Vedic* (relating to *Veda*, Hindu holy book), among others, guides the relation between humans and their natural environment. The *Veda* teaches that human character is the most important element in conservation of natural environment because environmental effort is not only work at the physical level, but also include moral, mental, religious, and spiritual aspects.<sup>56</sup>

The indicators that affect legal awareness of the application of *prayascita* sanctions in tackling littering in Penglipuran Village can be divided into 4 (four) elements that will be discussed later.

#### 1. Legal Knowledge

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<sup>54</sup> Soerjono Soekanto, & Soleman B. Taneko. *Hukum Adat Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2002), 337.

<sup>55</sup> Soeriono Soekanto. *op.cit.*, 215.

<sup>56</sup> I Gede Januariawan, *op.cit.*, 65.

Panglipuran Village community upholds the principle of “keep clean, clear and green”.<sup>57</sup> They realize that customary sanction of *prayascita* is regulated under *awig-awig* and *perarem*. The community has also been informed, and to some extends, involved programs related to the cleanliness of the village *palemahan adat*.

## 2. Understanding of the Law

Penglipuran Village community has an understanding that *prayascita* sanction is only given in case of improper waste disposal. The villagers realize that if they use facilities (lay stall, organic and inorganic waste bins, waste banks, and compost management) and participate in village’s cleaning programs, there will be no sanction to impose to them.

## 3. Legal Attitude

Penglipuran villagers accept the application of *prayascita* sanctions because they belief that it will be directly beneficial to the spiritual balance of the society in a short term, just after the ceremony held. But they also belief that it will have an indirect impact in the long term. This relates to a fact that Penglipuran as a tourism village are crowdedly visited by tourists every day, meaning that the waste does not only sourced from the Penglipuran Village members but also potentially comes from tourists. Therefore, it is very useful for maintaining cleanliness and orderliness in the *palemahan* of the village.

## 4. Behavioral Patterns

It can be assessed that village community in general has obeyed the customary rules. It is proven by the absence of people who have been subject to the *prayascita* customary sanctions. The implication of the *prayascita* customary sanctions can be seen from the relationship between the sanctions and the legal awareness of the community in this village. First, the high understanding of the community regarding *prayascita* customary sanctions is encouraged by the attitudes and behavior patterns to keep the environmental clean and to maintain the sanctity of the village from defilement (*leteh*). Second, the implications of *prayascita* customary sanctions are to achieve one of the purposes of law, namely to provide legal certainty in society. This implies a sense of deterrence. The customary sanctions of conducting *prayascita* is believed to be able to relieve the spiritual imbalance in a community as well as restoring the environment that feels polluted.<sup>58</sup>

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<sup>57</sup> Desta Ardiyanto, “Pengelolaan Lahan Berbasis Kearifan Lokal di Desa Penglipuran.” *Jurnal Green Growth dan Manaiemen Linakunaan* 8. no. 2 (2019): 83.

<sup>58</sup> Agung Anisca Primadwivani and AA Gde Oka Parwata. “Analisis Saksi Adat/Kewajiban Adat Memravascitta Sebagai Pidana Tambahan Ditinjau Dari Tujuan Pemidanaan Dalam RUU KUHP di Indonesia,” *Kertha Wicara* 7, no. 2 (2018): 5.

### 3. CONCLUSION

*Prayascita* is an offering that functions to purify the mind and relief the spiritual imbalance of the community that may also serve as a holy sacrifice. In Penglipuran Village, *prayascita* becomes a type of customary sanction as stipulated in its written law called *pararem*. According to the *pararem*, anyone who is decided guilty for littering in a village meeting, he/she has to hold a *prayascita* ceremony that takes place in the *catus pata* (crossroad) of the Penglipuran Village and witnessed by the village managements and villagers.

The efforts of Penglipuran Village to tackle littering problems are by taking role as a facilitator to overseeing and maintaining the sanctity, sustainability, cleanliness and orderliness of the area of the village. The programs and facilities that are implemented to control littering practice in Penglipuran Village can be divided into preventive measure (appeal, coaching, and socialization) and repressive measure.

Legal awareness on how to perceive *prayascita* customary sanction, may be influenced from the spiritual aspects of the society's culture, that refers to Hindu teachings. The indicators that affect legal awareness of the application of *prayascita* sanctions in tackling littering in Penglipuran Village can be divided into 4 (four) elements, namely legal knowledge, understanding of the law, legal attitude and behavioral patterns. It can be assessed that village community in general has obeyed the customary rules. It is proven by the absence of people who have been subject to the *prayascita* customary sanctions.

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