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# The Essence of Pamidanda (Customary Sanctions) In Balinese Customary Law

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## Abstract

The purpose of this study is to examine the nature of pamidanda (customary sanctions) in Balinese customary law. According to Balinese customary law, the adat village as a unit of customary law community has original autonomy, namely the right or power to regulate and manage its own household. Based on this autonomy right, the customary village has the power to settle customary cases and impose pamidanda on its citizens who violate customary law. Lately, there has often been polemic in the community regarding the implementation of pamidanda, especially for the implementation of heavy pamidanda, such as pamidanda kasepekang (excommunicated) and kanorayang (dismissed as members of a traditional village), hence it is important to study the nature of pamidanda in order to understand the meaning and purpose of this pamidanda. The method used in this research is a normative legal research method, with a statutory approach and a conceptual approach. The results of the study show that the nature of pamidanda in Balinese customary law is a form of effort to restore the balance of the relationship between the elements of Tri Hita Karana (human-God-nature) which is disrupted as a result of violations of customary law. The purpose is to create a sekala-niskala kasukertan, namely an orderly, peaceful, peaceful, prosperous and happy atmosphere in the life of indigenous peoples, both physically and spiritually.

**Keywords:** Customary Sanctions, pamidanda, kasepekang, kanorayang, Balinese Customary Law.

## 1. Introduction

A traditional village in Bali (formerly called Desa Pakraman) is a territorial customary law community unit, which has genuine autonomy, namely the right to take care of its own household. (Astara, Budiarta, & Wesna, 2020) Based on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution) the existence of traditional villages and their traditional rights is recognized and respected by the State with certain conditions, namely: (i) remain in existence; (ii) in accordance with the the societal development; (iii) in accordance with the principles of the Republic of Indonesia; and (iv) regulated in law. (Yuliartini, Mangku, & Adnyani, 2021) In addition, based on Article 28I paragraph (3) and paragraph (4) of the 1945 Constitution, traditional village customary rights are also recognized as part of human rights which must receive protection, promotion, enforcement and fulfillment from the State, especially the government. (Perangin-angin, Nababan, & Siahaan, 2020)

State recognition of the existence and traditional rights of traditional villages brings positive consequences to the recognition of the rights or powers traditionally possessed by traditional villages. One of the traditional rights of customary villages is the right to autonomy. With regard to the concept of autonomy, Cornelis van Vollenhoven with his Catur Praja theory argues that autonomy includes powers: (i) form their own legislation (zelfwetgeving), (ii) carry out itself (zelfuitvoering), (iii) do their own police work (zelf-politie) and (iii) conduct their own justice (zelfrechtspraak). (Prihatin, 2016) This theory can be applied to traditional village powers. The application of the power to form its own law (zelfwetgeving) can be seen from the power of the adat village in forming its own legal order which is called awig-awig of adat village; the power to exercise itself (zelfuitvoering) can be seen from the power of the customary village in carrying out its own laws and governance, which is organized by the customary village government called prajuru; the power to carry out police duties themselves (zelf-politie) is exercised by a traditional security agency called pecalang; while the power to conduct their own justice (zelfrechtspraak) can be seen from the customary village power resolving its own legal issues through an institution called kertha desa.

In carrying out the function of the judiciary, traditional villages have powers to resolve customary (wicara) cases that occur in their territory, both in the form of disputes and violations of the law. The form and mechanism for settling cases is regulated in each customary village or awig-awig, (Astomo, Saraswati, & Sukirno, 2019) so that each customary village settlement is always based on the provisions stipulated in the customary village law or awig-awig. The form of settlement of the case can be in the form of mediation to achieve peace or it can be in the

form of a trial which ends in a customary village decision imposing customary sanctions (pamidanda) on those who violate customary law.

In general, every customary village decision, including in the settlement of cases, can be accepted and implemented immediately by the customary village residents (krama desa) because the customary village residents (krama desa) are very loyal and obedient to the customary village or awig-awig. However, recently there have been frequent cases of rejection of traditional village decisions so that the case has been protracted and has resulted in the imposition of severe customary sanctions, such as being ostracized (kasepekang), or even being terminated as a member of a traditional village (kanorayang). Sudantra shows several examples of cases of residents rejecting traditional village decisions, such as what happened in the case of the imposition of the customary sanction of kasepekang on a family in the Traditional Village of Paselatan (Karangasem) and the case of the imposition of the customary sanction of kanorayang on two residents of the Traditional Village of Jero Kuta (Gianyar). (Sudantra, 2021:493). The existence of these rejections indicates that there is a problem in these customary sanctions, especially the customary sanctions of kasepekang and kanorayang. In general, problems with the implementation of law in society occur because there are problems with one or several components of the legal system, between the substance of the law, the legal structure, or the legal culture.

Apart from the problems behind the rejection of customary village residents against the imposition of customary sanctions, an ontological question becomes important and interesting to study, namely what is the essence of pamidanda (customary sanctions) in Balinese customary law? This question is examined through this paper.

## **2. Research Method**

This research is normative legal research (Fajar & Achmad, 2013) because it examines the nature of customary sanctions from an internal perspective of the norms governing these customary sanctions. The approach used in this study is the statutory approach and the awig-awig (customary law) approach, and is supported by a conceptual approach to strengthen arguments. The technique of collecting legal materials is carried out by studying documentation and recording. After the legal materials have been collected, classification and compilation are then carried out as well as analysis with reasoning and argumentation and presented in a qualitative descriptive manner.

## **3. Result and Discussion**

### **3.1 Pamidanda and its Types in Balinese Customary Law**

Sanctions among traditional communities or indigenous peoples are known as customary sanctions, customary corrections or customary reactions. In Bali, the customary sanction is called danda or pamidanda. (Windia & Sudantra, 2006) The purpose of this sanction is to restore the balance that has been disrupted due to customary violations. Soepomo said that in relation to the imposition of sanctions, what is important is prioritizing the creation of a balance between the world of birth and the world of the unseen, between the association and its people (Soepomo, 1987) In Bali, customary sanctions or danda are sanctions imposed by traditional villages on people or groups of people because they are considered proven to have violated customary norms and Hindu religious norms, (Suarthaa, Marthab, & Pranajayac, 2020) meaning that they are intended to restore the balance of sekala (the real world) and niskala (the supernatural world) in Public.

Every legal event, be it a legal act or an event, will result in certain legal consequences, one form of which is in the form of sanctions. The term sanction is adopted from the Dutch language, namely sanctie, which comes from the Latin, namely sanctum, which means affirmation, which can be positive (award, reward) or negative (punishment). Customary law writers prefer to call customary sanctions in terms of customary reactions or customary corrections because they are more interpreted to restore balance in a society that has been disrupted due to certain legal events. (Soepomo, 1977: 14; Soekanto 2002: 288). Soepomo further stated the forms of action as a reaction or correction to violations of customary law in various legal environments in Indonesia, including: compensation for immaterial losses in various forms; various corporal punishments; and alienation from society. In Balinese customary law, customary sanctions (customary reactions or customary corrections) are called danda or pamidanda. The forms of pamidanda vary from mild to severe. The purpose of danda is to realize kasukretan sekala-niskala, which means creating an orderly, peaceful, prosperous, happy and peaceful atmosphere, both physically and spiritually. In the minds of the Balinese people, such an atmosphere of life can only be realized if the harmony of the Tri Hita Karana relationships can be maintained. (Suamba & Sutama, 2017) Therefore, every time an event occurs that is considered to disturb the harmony of these relations, an effort must be made in the form of a reaction or customary correction whose aim is to return the situation to normal.

Generally, the types of pamidanda in Balinese customary law can be identified from the awig-awig of each Traditional Village that usually regulated in the chapter of Wicara lan Pamidanda. This chapter regulates in a limited way the institutions authorized to resolve cases, the settlement mechanisms, and the forms of pamidanda (sanctions). The pamidanda forms regulated in awig-awig usually vary.

Pawos 68 angka (4) Awig-awig of Desa Adat Benoa (Badung, 1981) stipulated that: “pawosan pamidanda sebagai berikut: dosan antuk artha, paanebus kasisipan antuk ayah, upacara antuk bebanten, kacepikang ring desa adat, kebancutan karang, katurang ring pemerintah mangda kebawosan, nunas geng sinampura ring krama desa adat, manut suaran paparem”.

Awig-awig of Desa Adat Kesiman (Denpasar) in pawos 78 (4) stipulated: “bacakan pamidanda miwah penysisip luwire: (1) kepetingetin sang sisip; (2) danda artha saha panikelannya; (3) kasepekan makrama; (4) pengampura utawi nyewakayang keiwangan; (5) upacara pengaskara ring banjar utawi desa”. Awig-awig of Desa Adat Gunaksa (Klungkung), pawos 74 (2) stipulated: “bacakan pamidanda luwire: ha. Ayah-ayah panukun kasisipan; na. dhandha artha miwah dedosan saha panikel paturunan; ca. pangupakara utawi pamrayascita; ra. Pamidhandha padewa saksi; ka. Lan pamidhandha siosan manut pararem”. Awig-Awig of Desa Adat Baler Bale Agung (Jembrana, 2006) pawos 69 (3) stipulated: “Pamidanda manut kasisipannane marupa: a. artha/jinah; b. ayahan; c. upacara upakara; d. kasepekan tur tan polih pasubayan; e. kenorayang utawi karayanang makrama; f. kapalasang; g. nunas pangampura ring krama desa utawi banjar”.

Awig-awig of Desa Adat Talepud (Gianyar, 1988) pawos 79 (3) stipulated: “bacakan pamidanda luwire: 1. Ayahan panukun kasisipan; 2. Danda artha (dosa, danda saha panikel-panikelnia, miwah panikel-panikel paturunan); 3. Rerampagan; 4. Kedaut karang ayahania; 5. Penyangaskara.” Awig-awig of Desa Adat Sengkidu (Karangasem, 2007) in Pawos 51 (1) stipulated: “lwiring pamidanda sane wenang katiwakang antuk prajuru desa, banjar pakraman, pahaman, tempek, subak, sekaa-sekaa sawawengkon Desa Pakraman Sengkidu, sakadi ring sor puniki: ha. Danda artha; na. Upasaksi, dewa saksi, pangrarata, sumpah; ca. danda panyangaskara, lwire: mrayascita, marisudha, miwah salwir ipun; ra. Kasepekan saha kaheladang; ka. Pamidanda siosan manut panugran guru wisesa”. Awig-awig of Desa Adat Bantang (Bangli, 1991) in pawos 66 (3) stipulated: “bacakan pamidanda luwire: a. ayahan panukun kasisipan; b. danda artha (dosa, danda saha panikel-panikelnia miwah panikel-panikel urunan; c. rerampagan; d. kedaut karang desa; e. kasepekan; f. penyangaskara”.

The various types of pamidanda listed in the awig-awig of traditional villages in Bali mentioned above are types of pamidanda that still live in the life of the local community. According to principle of Desa Kala Patra, the village principle means that the implementation of the pamidanda is adjusted to the place where the pamidanda is applied, the principle of kala means the time when the pamidanda is implemented, and the patra principle means the condition of the party subject to the pamidanda. (Clendinning, 2022) Based on the display of the pamidanda example in the awig-awig above, there is a certain type of pamidanda but in other adat villages they do not recognize that type of pamidanda. In the past, the types of pamidanda were even regulated which were very severe and in the present are considered no longer used because they are no longer in accordance with the times, such as kapademang (killed), katugel limane (hands cut off), kaselong (thrown outside the kingdom), mapulang ke pasih (drowned in the sea), kablagbag (shackled), kalatenging (tortured by using leaves that make the body itch), kaople (paraded around the village), ngingu banjar/village (serving all residents of banjar/village) and others.

The forms of pamidanda can basically be grouped into three groups known as tri danda, namely (Purwanto, 2020):

1. artha danda
2. jiwa danda
3. panyangaskara danda.

Artha danda is basically a form of pamidanda in the form of material payment obligations, which can be in the form of goods or money. The form of artha danda in general is dedosan, namely the form of pamidanda in the form of obligations imposed on village krama (customary village residents) to make material payments (fines). (Sumada, 2018) Pamidanda dedosan is imposed on village krama who do not carry out village ngayahang (certain obligations towards the village), such as not being present when carrying out work that is the responsibility of the customary village, not being present at lunges/sangkep (village meetings) and so on. In general, the form of dedosan is in the form of money, but sometimes items that can be valued in money can be used, and this has been decided through the Paruman, then set forth in the awig-awig or pararem.

Dedosan can be qualified as the lightest form of artha danda. If a person who is subject to a pamidanda dedosan does not carry out his obligation to pay the dedosan within the allotted time, then the person concerned may be given a more severe sanction in the form of a panikel (the amount of the sanction is doubled). For example, if the dedos is five thousand rupiah, then the panikel can be ten thousand rupiah, twenty thousand rupiah, thirty thousand rupiah (depending on the size of the panikel). A specific time that is used as the due date for payment of dedosan can use a sangkepan, namely the duration of time between the sanction from the time the sanction is imposed until the next implementation of the sanction, which can be a span of three months, six months or one year. Therefore, there is a sufficient grace period for village residents to find money to pay dedosan.

Sometimes village krama who are sentenced to dedosan and their officers do not pay dedosan, who may not be able to pay or do not have the desire to pay because they really want to disobey. If that's the case, the adat village provides a more severe form of sanction for the artha danda group, namely pamidanda karampag in the form of confiscation and confiscation of the offender's property to be auctioned. The implementation of the pamidanda karampag must not be arbitrary, but must be carried out through strict procedures by prajuru accompanied by several witnesses, obtaining approval from the party subject to the pamidanda, and may not confiscate assets that

are used to make a living and or have religious magical value. The proceeds of the auction are used to pay off the obligations concerned to pay the owed dedosan and the panicles, if there are still leftovers, the remainder will be returned to the krama of the village concerned. If this procedure is carried out on the principle of togetherness with a pattern of mutual care, compassion, care, actually the implementation of this pamidanda contains elements of mutual help. On the one hand, the customary village helps village residents not to get stuck in debt that multiplies from small to large, on the other hand, village krama helps traditional villages in order to maintain and maintain common interests.

Apart from the pamidanda which is in the form of an obligation to make material payments, traditional villages also recognize forms of sanctions that cause physical or mental suffering. This type of sanction is known as the soul of danda which is imposed on village krama who are proven to have committed kasisipan (mistakes) such as committing acts prohibited by awig-awig, violating the provisions of awig-awig/pararem, committing betrayal to traditional villages and so on. The form of the pamidanda can be tiered from the mildest to the most severe, starting from the pamidanda which is coaching in nature to the pamidanda which is alienating or disposing of village manners from the customary village unit.

As a unit of living together, if there are village krama who make mistakes, guidance will first be carried out through certain pamidandas in stages that can awaken the krama desa to the right path. But if the krama desa cannot be fostered anymore and endangers the survival together in the adat village, then the person concerned can be dismissed as a krama desa. The lightest form of danda's soul is kaglemekin (advised/reprimanded), either by traditional officials or kaglemekin in the paruman. There are still other forms of sanctions that are still relatively mild but people with a heavy heart carry out them, namely the pamidanda in the form of an obligation to apologize for mistakes that have been made. Terms that are commonly used for this form of sanction include: matur sisip, nunas pangampura, or other terms. The pamidanda level which is heavier than nunas pangampura is in the form of social work called ayahan panukun kasisipan, namely doing work to make amends for mistakes that have been made. Finally, the most severe forms of pamidanda in the category of coaching sanctions are pamidanda kasepekang (excommunicated), kajongkokang (punished to squat for a certain time), sayangan banjar/village (pity banjar/village) or other terms.

Pamidanda kasepekang can be said as a form of sanction that is coaching in nature with the intention that the village residents who have been subject to this sanction can realize their mistake. The way of construction is specific, that is puikin banjar (ostracized from society krama desa) even though they do not lose their rights as krama desa. If the krama desa realizes their mistake and states that they are willing to fulfill their obligations and are preceded in carrying out the nunas pangampura in the Paruman desa, then the krama desa will be treated normally again. If coaching through the kasepekang sanction is not able to awaken the krama of the village concerned, then the most severe sanctions can be applied, namely kanorayang makrama (dismissed as a villager). This form of sanction is no longer intended as developing, but aims to save life together so that the traditional village teamwork which includes peace, prosperity, happiness and peace in the abstract can be maintained. Hence, by being dismissed as village krama, the rights as village krama will disappear in all respects.

The pamidanda group described above is the pamidanda group which is imposed in an effort to maintain and realize customary village kasukertan on a regular basis (in the real world). As stated in the provisions of Article 21 of the Bali Provincial Regulation Number: 4 of 2019 concerning Traditional Village (Desa Adat) in Bali, Traditional villages are not solely tasked with realizing peace, prosperity, happiness and peace at once (in the real world), but are also tasked with realizing traditional villages in relation to niskala (supernatural). That is why the traditional village also recognizes the pamidanda group in the awig-awig called panyangaskara danda. The word panyaskara comes from the word sangaskara which means to perform a purification ceremony (Sarjana, 2018: 105) so that panyangaskara danda includes all forms of pamidanda in the form of the obligation to perform sangaskara (purification ceremony) to eliminate this leteh (unholy) state of nature which is caused by an act prohibited by customary law and religious norms. As for the forms of panyagaskara danda, it really depends on the level of the fault in question, it can take the form of nyarunin desa, nyapuh ring kahyangan, and others.

### **3.2 The Dynamics of Pamidanda (Customary Sanction)**

The forms of customary sanctions above are forms of sanctions that were once known and applied in Balinese society. The development of the times has brought changes to the values prevailing in society, so that the sense of decency, sense of justice, and legal awareness in society has also changed. That is why not all forms of customary sanctions above are still alive in Balinese society today. Some of these forms of sanctions have now been modified in their implementation, and some have even been abandoned because they are no longer in accordance with the prevailing sense of justice in society. This is where it appears that in addition to Balinese customary law firmly holding traditions, it can also change and adapt to changing times. The concept of Desa Kala Patra is a concept that is highly upheld by indigenous peoples in Bali in the application of customary law values or norms.(MS, Gelgel, Windia, & Dwijendra, 2022) Based on this concept, the implementation of customary values or norms in reality is always adjusted to desa (the place) where the norm is applied, with kala (time) when the norm is to be implemented, as well as adjusting to patra (condition) how the values or norms are

to be applied. Most of these changes come from below, that is, they change automatically in the habits of society, some of them change because they are engineered, either by community leaders or by the government with various considerations.

Customary sanctions that are still known in awig-awig (written or unwritten), but almost never or rarely implemented, among others is kedaut karang ayahan desa (taken over/withdrawn the land given by the village); kerampag (forcible expropriation of property by the village); ayahan panukun kasisipan (compulsory work as a substitute for mistakes), etc. Customary sanctions that are officially prohibited by the authorities are for example sanctions in the form of being placed temporarily near a grave or outside the village area for those who have died manak salah or who have twins of different genders known as buncing.

Some customary sanctions which in one place are still valid, while in other places are abandoned by the community, such as sanctions of kataban (livestock taken and owned); kedaut karang ayahan desa (takeover of agricultural land granted by the village); karampag (his property was confiscated by the village); tan polih suaran kulkul matehin pikenoh kapuikin (for a while they are considered not as residents so they do not receive any notification about activities in traditional villages and this is similar to being ostracized). Traditional sanctions that have completely been abandoned are kapademang (killed); katugel limane (cut his hand).

Among the types of customary sanctions that are still in force, sanksi kasepekang (ostracize) including the heaviest customary sanctions, besides kanorayang makrama (dismissed as a villager). This sanction is usually given by the village to its citizens who conduct ngatuwel (continual violation and defiance) on pasikian and pasubayan (mutual agreement) as stated in awig-awig of Traditional Village. Those who are in a state of kasepekang do not receive customary services as long as the person concerned improves himself and declares that he is subject to the applicable provisions. It often happens that the application of sanctions, the application of the kasepekang sanctions, is carried out beyond the meaning contained in it, namely ostracizing so that the person concerned realizes his mistake and improves himself so that he can return to society properly. Sometimes it happens that besides being ostracized, those who are castrated are also prohibited from using customary-owned facilities, for example using banjar halls, praying at temples, using setra (cemeteries), and other sanctions that are usually imposed on people who are subject to kanorayang/kawusang makrama (dismissal/dismissed as a member of a traditional village). If later one of the villagers who has received the sanction of kasepekang dies, it often happens that the person concerned is only allowed to use the setra (grave) to bury his body if he has paid a penanjung batu (a kind of rent). The imposition of penanjung batu is actually intended for outsiders who are not members of the traditional village concerned, so they can use the cemetery facilities. Therefore, the imposition of penanjung batu on residents who received the sanction of kasepekang is an inappropriate action. In principle, Krama desa are still in the status of Krama Desa, so they still have the right to use facilities belonging to the traditional village, it's just that they don't get services from the adat community. This will be very different if village krama have been dismissed as customary village krama, which will be equated as outsiders and it is natural to be subject to penanjung batu if they want to use setra belonging to a traditional village.

In the context of violations of customary law norms, actions to restore legal order are often called customary sanctions or customary reactions. The customary reaction is intended to restore the disturbed state of magical tranquility and neutralize the unlucky situation caused by a violation of custom. Customary sanctions can function as a stabilizer, namely balancing the harmony of the unseen world and the world of birth. The purpose of sanctions according to the concept of customary law is to restore cosmic balance, balance between the world of birth and the unseen world to bring about a sense of peace among fellow citizens. The most important thing is that the application must be fair, meaning that the offender (convicted) feels fair as well as the victim and society so that balance in people's lives can be restored.

As stated above, the purpose of these customary sanctions is to restore the balance that has been disrupted due to customary violations. Because violations of adat (delik adat) can cause balance disturbances in sekala-niskala life (real or not real). There are three groups of customary sanctions which in indigenous peoples in Bali are called pamidanda. The three categories of sanctions are known as Tri Danda, as follow :( Sukadana, Sudibya, & Karma, n.d.)

1. artha danda, namely legal action in the form of fines (goods or money);
2. jiwa danda, legal action in the form of imposition of physical and spiritual suffering on the offender (physical and psychological punishment);
3. sangaskara danda, in the form of legal action to restore magical balance (punishment in the form of performing religious ceremonies). (I Made Suwasthawa Dharmayuda, 2001: 145).

There are many forms of pamidanda which can be classified into these three pamidanda groups. For instance, for pamidanda, dedosan namely a fine in the form of payment of a sum of money (a form of artha danda), kasepekang (a form of jiwa danda), maprayascita, nyarunin desa (a form of panyangaskara danda) i.e. performing religious ceremonies to remove occult impurities.

### 3.3 Sanksi Adat Kasepekang dan Hak Asasi Manusia (HAM)

Based on Article 18B paragraph (2) and 28I of the 1945 Constitution, the traditional rights of customary law community units are recognized and respected by the State. These rights are categorized as part of human rights (HAM), which must receive promotion, fulfillment and protection from the State. Thus, the right of a customary village to impose customary sanctions is part of the customary village's human rights which must be recognized and respected by the State. Bali has a fairly advanced legal system in relation to the recognition of human rights of the customary law community. To strengthen the recognition, protection and guarantee for customary village human rights, the Provincial Government of Bali has issued Regional Regulation Number 4 of 2019 concerning Traditional Villages (hereinafter Regional Regulation No. 4 of 2019) in Bali. Recognition of traditional villages through regional regulations can be interpreted as strengthening, recognizing, protecting and guaranteeing the existence of traditional villages including the social, cultural and economic systems that exist within them. (Ida Bagus Wyasa Putra, 2010: 126). Regional Regulation No. 4 of 2019 places recognition and guarantees for traditional villages, which are also interpreted as recognition and guarantees for the implementation of customary village rights in imposing customary sanctions (pamidanda).

The emergence of various causes related to the application of pamidanda kasepekang recently has caused polemics in society. The implementation of pamidanda by adat villages has begun to be measured, discussed and questioned from a human rights perspective. Pros and cons views arise in society. On the one hand, there is a notion that the pamidanda kasepekang is no longer appropriate to implement because it is considered a violation of human rights, on the other hand there is a notion that the adat village has the authority to impose the pamidanda kasepekang because the adat village has the autonomy to organize and manage its own household, so it has the authority to make, implement and enforce own rules.

According to Wyasa Putra, the source of customary sanctions is customary law and the source of customary law is the societal or cultural values of indigenous peoples and finally Hindu religious values by indigenous peoples, not ideas of human rights. (Putra, 2010) Therefore, to measure the right or wrong application of customary sanctions, it must be returned to the values that are the source, namely Hinduism, not human rights. Violation of the rights of a person or group of people by another group, which has been regulated by law, is a violation of law, not a violation of human rights.

Wyasa Putra's opinion above seems to need to be criticized, because the implementation of customary village rights must not only be measured from the perspective of customary law and Hinduism, but must also be assessed and measured from a constitutional perspective. (Putra, 2010) Based on the constitution, in accordance with Article 18B paragraph (2) of the 1945 Constitution, the recognition and respect by the State for customary village rights is not unconditional, but conditional recognition, namely that these rights are still alive and in accordance with the times and the principles of the Republic of Indonesia. So, the implementation of customary law related to the application of this pamidanda can be judged from the existence of these rights at the present time, their suitability with the changing times and the principles of the Republic of Indonesia. To measure whether a customary village right is in accordance or not with the development of the times and the principles of the Republic of Indonesia can be assessed by the current laws and regulations of the Republic of Indonesia. That means, the implementation of customary village rights must not conflict with current laws and regulations.

One of the laws and regulations that cannot be violated in the application of customary law is Law Number 39 of 1999 concerning Human Rights. Thus, the application of pamidanda kasepekang customary sanctions may not conflict with the human rights stipulated in the law.

## 4. Conclusion

The essence of pamidanda (customary sanctions) in Balinese customary law is as a form of traditional village efforts to restore the balance of the relationship between the elements of Tri Hita Karana (Human-God-Nature) which was disrupted as a result of violations of customary law. Pamidanda's aim is to manifest kasukertan sekala-niskala which means the creation of an orderly, peaceful, prosperous, happy and peaceful atmosphere, both sekala (in birth) and niskala (inner) in the life of customary law community. Constitutionally, the rights of customary villages to implement pamidanda are recognized and respected by the State, but this recognition is conditional recognition, that is as long as these rights are still alive, in accordance with the times and the principles of the Republic of Indonesia. The development of the era and the principles of the Republic of Indonesia can be measured from the prevailing laws and regulations (positive law). Therefore, the implementation of customary village rights in the application of pamidanda must be careful hence, they do not conflict with the prevailing laws and regulations of the Republic of Indonesia, including laws and regulations governing human rights.

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