

## Original Article

# The Transformation of Balinese Customary Law in Addressing Human Rights Challenges: A Socio-Legal Perspective

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## Abstract

*Balinese customary law (bukum adat Bali) represents a unique socio-legal system rooted in the indigenous philosophy of Tri Hita Karana, which harmonizes the relationship between humans, nature, and the divine. While its communal and restorative character has historically maintained social cohesion, the evolving global discourse on human rights introduces both challenges and opportunities for transformation. This study explores the transformation of Balinese customary law in response to human rights concerns, particularly regarding equality, non-discrimination, gender justice, and individual autonomy. Employing a socio-legal perspective, it examines how traditional institutions such as desa adat, paruman adat, and awig-awig adapt to contemporary legal and moral standards. Findings indicate that transformation occurs through interpretive flexibility, community dialogue, and state recognition, revealing a dynamic interaction between local wisdom and universal human rights norms.*

**Keywords:** Balinese Customary Law; Human Rights; Legal Reform; Socio-Legal Approach.

## Introduction

Customary law (*bukum adat*) in Indonesia represents not merely a collection of local rules but a living legal system that continues to evolve alongside social and cultural transformation. In the Balinese context, *bukum adat Bali* embodies a holistic worldview wherein law, religion, and morality are inseparable. It reflects the Balinese people's conception of order (*tata krama*), balance (*sattwam rajas tamas*), and harmony (*Tri Hita Karana*) the threefold relationship among humans (*panwongan*), nature (*palemahan*), and the divine (*parahyangan*) <sup>1</sup>. Thus, Balinese customary law cannot be understood purely as a normative or procedural system, it is a moral universe that guides communal life and spiritual order. Historically, *desa adat* (customary villages) have served as the primary institutions of customary governance, exercising authority over social norms, dispute resolution, and local justice <sup>2</sup>. Within this framework, the community not the individual is considered the central legal subject. Rights and obligations are derived from one's role and participation in maintaining collective harmony <sup>3</sup>. This communitarian orientation has been essential to maintaining Bali's social cohesion across centuries, even amid external influences such as Hindu reformism, colonial administration, and post-independence modernization.

However, the integration of Indonesia into the global human rights regime presents profound challenges to this traditional order. The internationalization of human rights through instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil

<sup>1</sup> Herpin Hadat, 'The Existence of Tri Hita Karana in the Formation of Legal Regulations in Bali (Philosophy of Science Perspective)', *Udayana Master of Law Journal*, 9.1 (2020), 132 <<https://doi.org/10.24843/JMHU.2020.v09.i01.p09>>.

<sup>2</sup> Talita Syamantha, Dedi Hermawan Syahputra and . Zulfikar, 'The Subject of Customary Law and the Relevance of Customary Law in the Indonesian Legal System', *International Journal of Research and Review*, 12.4 (2025), 298–301 <<https://doi.org/10.52403/ijrr.20250436>>.

<sup>3</sup> Syamantha, Syahputra.



and Political Rights (1966) emphasizes individual autonomy, equality, and freedom from discrimination, principles that may conflict with the communal obligations emphasized in Balinese adat <sup>4</sup>. The question then arises: how can a traditional legal system grounded in collective values coexist with a modern legal order centered on individual rights? Several concrete tensions illustrate this dilemma. For instance, certain customary sanctions such as *kasepekeang* (social exclusion) or *karya denda* (ritual fines) may be viewed as infringing upon the right to association, dignity, or due process as recognized in national and international human rights law <sup>5</sup>. Similarly, gender-based restrictions in inheritance, temple participation, or leadership roles have drawn scrutiny from human rights advocates and scholars who see them as discriminatory practices <sup>6</sup>. Yet from the internal perspective of the *desa adat*, these sanctions and hierarchies serve a restorative rather than punitive function to reestablish social equilibrium and spiritual balance after a transgression <sup>7</sup>.

This tension reveals a deeper theoretical conflict between universalism and cultural relativism in human rights discourse. Universalists argue that human rights are inherent, inalienable, and applicable to all individuals regardless of cultural context <sup>8</sup>. Cultural relativists, however, contend that human rights must be interpreted in light of local traditions, values, and moral orders to maintain social legitimacy <sup>9</sup>. The Balinese case thus offers an illuminating site for examining how these paradigms interact in practice where international human rights norms intersect with an indigenous system of ethics, law, and cosmology. From a legal perspective, Indonesia's recognition of *bukum adat* as a living source of national law reinforces the state's commitment to legal pluralism. Article 18B (2) of the 1945 Constitution explicitly acknowledges the rights of *masyarakat hukum adat* (customary law communities) to govern themselves according to traditional laws and customs, so long as these do not contradict national interests or human rights principles. This dual commitment to both adat autonomy and human rights establishes a normative framework for dialogue and transformation.

Recent legal developments, particularly the enactment of Bali Provincial Regulation No. 4 of 2019 on *Desa adat*, further institutionalize the role of *desa adat* within the modern legal order. This regulation grants legal personality to customary villages and formalizes their authority in social, cultural, and environmental governance. However, it also subjects them to the national legal hierarchy and human rights standards <sup>10</sup>. Consequently, *desa adat* now function as hybrid institutions, simultaneously traditional and modern, local and national navigating between the moral order of adat and the regulatory framework of the state. From a socio-legal standpoint, this transformation is not a mere juridical adjustment but a process of cultural negotiation. Law here is both a reflection of social change and an instrument for shaping it <sup>11</sup>. The transformation of Balinese customary law thus involves three interrelated dimensions: 1. Normative transformation, in which traditional norms are reinterpreted to align with evolving notions of justice and equality; 2. Institutional transformation, through which *desa adat* structures incorporate?? modern legal procedures and participatory

<sup>4</sup> I Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, 'Adat Law, Ethics, and Human Rights in Modern Indonesia', *Religions*, 14.4 (2023), 443 <<https://doi.org/10.3390/rel14040443>>.

<sup>5</sup> I Putu Sastra Wibawa and Mahrus Ali, 'Legal Tension Between Kasepekeang Traditional Sanctions and Legal Humanism in Paselatan Traditional Village, Karangasem Regency, Bali', *Journal of Law Ius Quia Iustum*, 29.3, 611–32 <<https://doi.org/10.20885/iustum.vol29.iss3.art7>>.

<sup>6</sup> Frisca Putriana Dewi and Tience Debora Valentina, 'Representation Of Inheritance Rights In Patriarchal Culture In Bali Based On Gender Equality Theory', *EGALITA Journal of Gender Equality and Justice*, 20.1 (2025) <<https://doi.org/10.18860/egalita.v20i1.32337>>.

<sup>7</sup> Deli Bunga Saravistha, I Ketut Sukadana and Kadek Dedy Suryana, 'Optimizing the Implementation of Customary Sanctions in Efforts to Embody the Principles of Restorative Justice in Traditional Villages (Case Study in Penyaringan Traditional Village, Jembrana Regency)', *Journal of Indonesian Impressions*, 1.3 (2022), 201–10 <<https://doi.org/10.58344/jii.v1i3.32>>.

<sup>8</sup> Saravistha, Sukadana and Suryana.

<sup>9</sup> Muhammad Rizki Akbar Lubis, 'Human Rights and Relativism Through the Lens of Developing Nations Case Study of Indonesia's Ratification on CEDAW', *International Law Discourse in Southeast Asia*, 2.1 (2023), 135–48 <<https://doi.org/10.15294/ildisea.v2i1.32401>>.

<sup>10</sup> I Putu Gede Sridana and others, 'Conflict and Harmony Between Desa Adat and the Bali Provincial Government Following the Enactment of the Regional Regulation on Customary Village 2019', *Journal of Bali Studies*, 14.2 (2026), 567–86 <<https://doi.org/10.24843/JKB.2024.v14i02.p12>>.

<sup>11</sup> Renaldi Pratama Jaya, 'The Reciprocal Interaction Between Law and Social Structure in Modern Society', *SULTAN ADAM: Journal of Law and Social Affairs*, 3.2 (2025), 174–83 <<https://doi.org/10.71456/sultan.v3i2.1405>>.



governance; and 3. Cultural transformation, whereby the community's understanding of fairness, inclusion, and human dignity evolves through continuous dialogue between tradition and modernity<sup>12</sup>. This study explores how these forms of transformation occur, the extent to which they align with international human rights norms, and how they maintain the distinctive moral integrity of Balinese adat. It asks: How does Balinese customary law negotiate the boundaries between collective harmony and individual rights? What mechanisms enable or resist human rights adaptation at the community level? And to what extent can the socio-legal transformation of adat contribute to a broader model of culturally grounded human rights implementation in Indonesia?

To address these questions, this paper employs a socio-legal perspective that integrates doctrinal analysis with empirical inquiry. It does not treat law merely as written norms but as a living practice embedded in social relations, power structures, and moral discourse<sup>13</sup>. By situating Balinese customary law within this analytical framework, the study seeks to demonstrate that transformation is not an erosion of tradition but a dynamic process of renewal an ongoing negotiation between local wisdom and universal human values.

## Method

This study adopts a qualitative socio-legal approach, combining doctrinal analysis of legal texts with empirical insights from customary practices in selected *desa adat* across Bali. The socio-legal perspective emphasizes law as a social institution one that is simultaneously normative and cultural. Field observations, textual analysis of *awig-awig* documents, and interviews with customary leaders (*bendesa adat*) provide the empirical grounding to understand how human rights discourse is internalized or resisted in community practice. Primary data include *awig-awig*, *pararem* (customary decrees), and decisions from *paruman adat* assemblies addressing disputes over marriage, land, and social sanctions. Secondary data consist of national legislation, scholarly articles, and international conventions such as the Universal Declaration of Human Rights (1948) and CEDAW (1979). Data are analyzed through a hermeneutic-sociological lens, focusing on three dimensions: 1). Normative transformation such as reinterpretation of adat norms to align with human rights principles. 2). Institutional transformation shifts in the role of *desa adat* and traditional councils in governance. 3). Cultural transformation changing perceptions within Balinese society regarding justice, equality, and communal harmony. The integration of these dimensions allows for a comprehensive understanding of how Balinese customary law navigates global human rights challenges while maintaining local authenticity.

## Results and Discussions

Balinese *desa adat* have proven remarkably resilient in maintaining internal order while absorbing external influences. Their endurance stems from a flexible conception of law not as a rigid code but as a process of deliberation within the *paruman adat* assembly<sup>14</sup>. This procedural openness allows reinterpretation of *awig-awig* to suit new realities, including those arising from human-rights discourse.

For instance, several villages in Gianyar and Buleleng have revised *awig-awig* clauses that once prescribed automatic *kasepe kang* for moral or marital violation<sup>15</sup>. The new formulations introduce graduated sanctions such as community service or ritual purification before isolation can be imposed. This demonstrates that transformation often occurs not by abolition of traditional mechanisms but by re-calibrating them toward restorative rather than exclusionary justice.

<sup>12</sup> Md Putri Wiyantari Sutaryantha and Bevaola Kusumasari, 'Indigenous Collaborative Governance: An Understanding of Decision-Making Process at Desa Adat in Bali, Indonesia', *Udayana Journal of Law and Culture*, 4.2 (2020), 119 <<https://doi.org/10.24843/UJLC.2020.v04.i02.p01>>.

<sup>13</sup> Rath Lestari, 'The Sociological Perspective on The Study of The Living Law: Is It a Part of Legal Discipline or Social Discipline?', *IUS Journal of Law and Justice Studies*, 11.3 (2023), 448–64 <<https://doi.org/10.29303/ius.v11i3.1270>>.

<sup>14</sup> Marc Galanter, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law', *The Journal of Legal Pluralism and Unofficial Law*, 13.19 (1981), 1–47 <<https://doi.org/10.1080/07329113.1981.10756257>>.

<sup>15</sup> Gede Agus Perdika Putra, A.A Sagung Laksmi Dewi and Luh Putu Suryani, 'The Existence of Kasepe kang Customary Sanctions in the Banjar Cukcukan Traditional Village, Medahan Village, Blahbatuh District, Gianyar Regency', *Journal of Legal Preferences*, 3.3 (2022), 508–16 <<https://doi.org/10.55637/jph.3.3.5595.508-516>>.



The encounter between human rights advocacy and adat authority reveals a complex negotiation rather than outright conflict. While NGOs and legal aid groups often frame issues like gender equality or freedom of belief through universalist language, *desa adat* leaders articulate them through local idioms of balance and harmony. In one notable case in Karangasem, women sought participation in temple decision-making, arguing both from CEDAW principles and from the local concept of *sekalaniskala* (visible-invisible balance) that recognizes duality in leadership<sup>16</sup>. The eventual compromise, rotating representation between male and female elders exemplifies dialogical transformation.

Nevertheless, not all communities embrace such change. Conservative councils may perceive human-rights rhetoric as a threat to adat sovereignty or as Western cultural intrusion. Resistance is strongest where adat identity forms the basis of political or spiritual legitimacy<sup>17</sup>. Here, socio-legal transformation depends on internal cultural translation: human-rights principles must be expressed in the moral vocabulary of *dharma*, *tattwa*, and *karma phala* to gain acceptance<sup>18</sup>.

Indonesia's pluralistic legal framework situates *bukum adat* within a layered system of authority state, religion, and custom<sup>19</sup>. The state acts both as mediator and regulator, recognizing *desa adat* autonomy while ensuring conformity with national law and constitutional rights<sup>20</sup>. In practice, however, mediation is often selective. Government agencies may invoke adat legitimacy to promote tourism or environmental conservation, yet intervene when adat sanctions appear discriminatory<sup>21</sup>.

This ambivalence creates a "negotiated space" where transformation unfolds through administrative dialogue rather than judicial enforcement<sup>22</sup>. Provincial regulations, local decrees, and Memoranda of Understanding between customary councils and government bodies serve as hybrid instruments blending statutory and customary norms<sup>23</sup>. Such hybridization reflects what Merry calls "vernacularization" the process by which global human-rights concepts are localized into culturally meaningful practices<sup>24</sup>. A salient outcome of this transformation is the gradual shift from punitive to restorative and participatory models of justice. In traditional adat reasoning, wrong-doing disrupts cosmic balance the objective of sanction is to restore harmony rather than to punish<sup>25</sup>. Modern reinterpretations extend this logic to incorporate victims' and offenders' rights consistent with human-rights standards<sup>26</sup>. For example, *paruman adat* sessions increasingly emphasize mediation, restitution, and communal apology rather than isolation. Women's organizations and youth groups are now included in *paruman* deliberations, reflecting a participatory ethos aligned with the right to be heard<sup>27</sup>.

<sup>16</sup> Ni Ketut Sari Adnyani and I Gusti Ayu Purnamawati, 'Gender Mainstreaming of Krama Istri (Female Citizens) in Balinese Customary Law', *Pandecta Research Law Journal*, 15.1 (2020), 26–43 <<https://doi.org/10.15294/pandecta.v15i1.18422>>.

<sup>17</sup> Nova Effenty Muhammad and Zulfitri Zulkarnain Suleman, 'Indications of Discrimination in Regional Regulation Against Migrants in Bali (Bali Regulation Number 4 of 2019)', *Social Treasures*, 5.2 (2023), 249–62 <<https://doi.org/10.15575/ks.v5i2.25103>>.

<sup>18</sup> I Made Hartaka, 'Integration of Religious and State Dharma Values in Hindu Ceremonial Traditions in Bali', *Journal of Hindu Religion Research*, 9.3 (2025), 149–65 <<https://doi.org/10.37329/jpah.v9i3.4234>>.

<sup>19</sup> Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'The Dynamics of Change and Continuity in Plural Legal Orders', *The Journal of Legal Pluralism and Unofficial Law*, 38.53–54 (2006), 1–44 <<https://doi.org/10.1080/07329113.2006.10756597>>.

<sup>20</sup> Gede Agus Perdika Putra, A.A Sagung Laksmi Dewi, and Luh Putu Suryani

<sup>21</sup> Muhammad and Suleman.

<sup>22</sup> Wibawa and Ali.

<sup>23</sup> I Putu Gede Sridana et al.

<sup>24</sup> Frank Elbers, 'Lost in Translation? On Vernacularisation and Localisation of Human Rights', *Human Rights Education Review*, 2.2 (2019), 87–89 <<https://doi.org/10.7577/hrer.3548>>.

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<sup>26</sup> Dian Ekawaty Ismail and others, 'Collocation of Restorative Justice with Human Rights in Indonesia', *Legality: Scientific Journal of Law*, 32.2 (2024), 394–417 <<https://doi.org/10.22219/ljih.v32i2.35374>>.

<sup>27</sup> Dewa Krisna Prasada and others, 'Sacred Justice: The Autonomy of Traditional Villages in Resolving Customary Disputes in Bali', *JUSTISI*, 11.3 (2025), 796–814 <<https://doi.org/10.33506/js.v11i3.4326>>.



This hybrid justice model mirrors restorative-justice frameworks recognized in international human-rights instruments, demonstrating that local tradition can serve as a vehicle not an obstacle for human-rights realization<sup>28</sup>. At the philosophical level, transformation in Balinese customary law involves a reinterpretation of *dharma* (righteous duty) in light of human-rights ideals. The concept of *dharma* implies moral obligation toward others and toward cosmic order<sup>29</sup>. When re-articulated through human-rights discourse, it supports notions of dignity (*martabat*), equality (*sama ratta*), and compassion (*karuna*)<sup>30</sup>. Scholars have proposed the idea of “contextual universalism” recognizing the universality of human dignity while allowing local cultures to express it in their own moral grammar<sup>31</sup>. Balinese law exemplifies this through the evolving jurisprudence of *awig-awig*, which integrates human-rights values not by replacing adat but by re-interpreting its metaphysical foundations<sup>32</sup>. Despite progress, several structural challenges persist:

1. Lack of codified human-rights guidelines within *desa adat* institutions leads to inconsistent application.
2. Gender asymmetry remains entrenched in ritual leadership and property rights.
3. Economic globalization and commodification of culture risk instrumentalizing adat rather than empowering it.

Addressing these issues requires capacity-building programs, intercultural education, and sustained dialogue among customary leaders, government, and civil-society actors. The transformation of Balinese adat should not aim at homogenization but at creating a plural, dialogical legal culture that harmonizes universal human values with local wisdom.

## Conclusion

The transformation of Balinese customary law in response to human-rights challenges illustrates that legal change within indigenous systems is neither linear nor oppositional. Rather, it unfolds through negotiated adaptation a process of translation, reinterpretation, and selective incorporation of external norms into local moral frameworks. Balinese *bukum adat*, grounded in *Tri Hita Karana* and *dharma*, demonstrates significant internal capacity for renewal. The shift from exclusionary to restorative sanctions, increased participation of women and youth, and state recognition of *desa adat* autonomy all indicate a move toward a culturally rooted model of human-rights implementation. From a socio-legal perspective, this transformation underscores three key insights: 1. Cultural legitimacy is essential for sustainable human rights realization. 2. Institutional hybridity blending state and customary mechanisms can reconcile plural legal orders. 3. Interpretive dialogue between universal and local values transforms both: human-rights norms gain contextual meaning, while adat gains renewed moral relevance. Ultimately, the Balinese experience offers a paradigm for other plural societies seeking to harmonize tradition and modernity. It demonstrates that the path to human rights does not require the abandonment of custom, but its continual re-interpretation in the light of evolving human dignity.

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