

Customary law and justice: Protecting the rights of women victims of sexual violence in Bali

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Abstract

Introduction to The Problem: The disparities in societal roles often manifest as systemic inequality, rooted in a patriarchal culture that positions men in a dominant role while undermining the concept of women as equals. Gender-based discrimination is intricately woven into the fabric of society, perpetuated through entrenched social customs, traditions, child-rearing practices, educational systems, and the differentiation of social responsibilities assigned to men and women.

Purpose/Objective of Study: This study aims to investigate and critically analyze the characteristics of sexual violence experienced by women within Bali's customary law communities, with a focus on mechanisms for restoring legal capacity. It further explores the interplay between statutory regulations and customary practices to enhance equitable legal protections for victims of sexual harassment.

Design/Methodology/Approach: This study applies a sociolegal approach, combining statutory, comparative, conceptual, and sociological methods. Primary and secondary data were analyzed using legal hermeneutics, interpreting regulations within their context to examine the rights of women victims of sexual violence. The research highlights justice and cohesion within customary law communities in the fulfillment of these rights.

Findings: First, the forms of sexual violence perpetrated against women within customary law communities in Bali—specifically in the traditional villages of Sudaji, Undisan Kelod, Munti Gunung, and Angantelu—were predominantly instances of rape and familial sexual relations (incest). Second, the findings highlight the integration of statutory regulations with customary law to enhance equitable legal protections for women affected by sexual violence within these communities. This integration focuses on measures for comprehensive restoration, including restitution, compensation, assurances of victim satisfaction, rehabilitation, and guarantees for the prevention of recurrent offences.

Paper Type: Research Article

Keywords: Legal Protection; Violence; Communal Customary Law Systems; Balinese Customary Law



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Introduction

Sexual violence against women remains a prevalent issue in media coverage, reflecting the pervasive nature of such crimes. The complexity of these cases deepens when viewed through a gendered lens (Arbain, Azizah & Sari, 2015). This imbalance often stems from a patriarchal culture that positions men as dominant figures and struggles to accept women as equals. Such gender-based discrimination is socially constructed, entrenched through daily practices, customs, traditions, child-rearing methods, education, and the division of gendered social roles (Bangun, 2020). While these distinctions may partly stem from natural biological differences, which shape psychological traits and behaviors, they have also evolved into structural inequalities, fostering discrimination and marginalization. This inequality is often reinforced by verbal stereotypes, such as labeling women as "weak" or assigning negative perceptions, which ultimately contribute to the manifestation of physical and psychological violence against women (Antari, 2021).

This cultural framework engenders socio-cultural constraints on the status, position, and roles of women, simultaneously cultivating a glorified image of men as inherently stronger, more powerful, and more entitled to leadership and control. As a result, women are often relegated to positions of weakness, expected to remain passive, silent, and accepting, regardless of any mistreatment they may endure (Niswara et al., 2019). This cultural conditioning leads women to adopt a reserved and silent stance, internalizing their struggles and refraining from voicing their experiences. Such behavior is reinforced by various social norms that emphasize propriety, respectability, and dignity, which, in turn, create significant psychological burdens for women living within a masculinized cultural framework. This environment often deepens women's feelings of fear, shame, and helplessness, compelling them to silently endure negative experiences, both physical and psychological, including sexual violence (Mangku, Yuliantini & Suandita, 2022). The prevalence of sexual violence against women is intrinsically linked to surrounding social and political dynamics, complicating efforts to address these injustices and amplifying the challenges women face in advocating for their rights as survivors of sexual violence.

On March 7, 2023, the National Commission on Violence Against Women published a report titled "Violence Against Women in the Public and State Spheres: Lack of Protection and Remedies." This report highlights that over the past seven years (2016-2022), the Agency for Religious Justice (BADILAG), as documented by the National Commission, has recorded a staggering 2,542,547 cases of violence against



women. These cases have been reported and addressed, with further details provided in the accompanying table below.

Table 1. Number of Women Victims of Violence in Indonesia 2016-2022

No.	Year	Total
1	2016	256.150
2	2017	348.446
3	2018	406.178
4	2019	431.471
5	2020	299.911
6	2021	338.496
7	2022	457.895
Total		2.542.547

Source: The National Commission on Violence Against Women, 2023

Furthermore, data from the End of Year Notes from the Legal Aid Institute of the Indonesian Women's Association for Justice Bali (hereinafter referred to as LBH APIK Bali) shows that throughout 2018-2022 there were fluctuations in the number of cases of sexual violence in Bali, as follows:

Table 2. Number of Sexual Violence Cases in Bali 2018-2022

No.	Year	Total
1	2018	54
2	2019	41
3	2020	31
4	2021	11
5	2022	5

Source: CATAHU LBH APIK Bali of 2023

According to data from the National Commission on Violence Against Women and LBH APIK Bali, incidents of violence against women, including sexual violence, persistently occur. In addition to sexual violence reported within urban settings, there are also more complex and clandestine cases that often remain undisclosed. Notably, these incidents frequently arise within Customary Law Community Units (KMHA), particularly in traditional villages across Bali (Yuliantini, Mangku & Darayani 2022).

Incidents of sexual harassment transpired in Sudaji Village, Sawan District, Buleleng Regency in 2015. A biological father coerced his child into attending school by threats, insisting that refusal would result in severe consequences. Despite the child's resistance, the father persisted in his intimidation tactics to ensure compliance. The resolution of this matter occurred solely through an oath-taking or *balik sumpah* ceremony, as per the village's custom. The traditional village ceased the proceedings of this case as it had already imposed customary sanctions through a ceremony, and



the citizens collectively decided not to pursue the matter further ([Sudiarawan, et al, 2022](#)).

Customary law tends to prioritize the interests of the perpetrator, resulting in the neglect of the rights of women victims. This is evident in the customary regulations (*perarem*) of Jumpai Village, Klungkung Regency, which dictate that individuals who commit offenses against customary law, including sexual violence, are subject to penalties such as a fine of Rp. 500,000.00 and participation in a village purification ceremony. Consequently, there are no provisions that specifically address the rights of women victims of sexual violence, leaving them without a viable means to seek justice through a legal framework that primarily focuses on the criminal aspects of such offenses.

Additionally, there is a notable absence of customary laws that offer protection and uphold the rights of women victims of sexual violence, as illustrated by the situation in Dinas Giri Emas Village, Sangsit Daging Yeh Traditional Village, Sawan District, Buleleng Regency. The traditional village head of Sangsit Village has indicated that there are no existing customary rules designed to safeguard and fulfill the rights of women who have suffered sexual violence ([Yasa, et.al, 2022](#)). Typically, incidents of sexual violence are addressed solely through cleansing ceremonies meant to purify areas deemed '*leteh*' or 'dirty.' In contrast, the most promising avenue for victim protection lies within Indonesia's positive legal institutions, which offer a more robust framework for addressing these critical issues.

These case studies illustrate that victims of sexual violence within the context of KMHA encounter significant challenges due to the influence of various sociological factors in traditional village communities. Specifically, the prevailing values in these communities often prioritize collective interests over individual rights, which can hinder the resolution of their cases. To address this issue, it is imperative to restore the role of law as a vehicle for social engineering aimed at ensuring the fulfillment of victims' rights. This restoration seeks to prevent the marginalization of victims whose rights may otherwise be overlooked or ignored, with the hope of reducing the incidence of sexual violence against women in the future ([Campbel, 2019](#)). Ultimately, this endeavor aims to foster a living environment characterized by certainty, equity, and benefit for all, particularly for women, thereby enabling them to lead lives that are safe, peaceful, and free from the threat of sexual violence. The law can effectively serve as an instrument of protection for both individuals and the community, safeguarding against threats and acts of sexual violence ([Rasjidi & Putra, 2012](#)).

Numerous instances exist where the rights of women victims of sexual violence remain inadequately addressed due to the absence of binding regulations. Additionally, the response of traditional villages to legal matters pertaining to the rights of these women has been insufficient, resulting in ongoing challenges in securing justice for victims of sexual violence. Given the complexity surrounding

these issues, it is imperative to conduct a comprehensive examination of the regulatory frameworks necessary for safeguarding the rights of women affected by sexual violence, alongside an evaluation of the role that traditional villages have played, which has not been optimized in this regard.

This investigation is both critical and urgent, considering the pivotal role traditional villages occupy, which affords them significant potential to foster gender justice despite the prevailing influence of patriarchal norms within their communities ([Sudantra, 2015](#)). Traditional villages can leverage their authority to formulate and enact binding customary regulations aimed at addressing the rights of women victims of sexual violence ([Faridah, 2022](#)). Furthermore, these customary regulations can serve as vital instruments of customary law to promote peace and order within the traditional village setting. In their capacity to uphold and maintain harmony, traditional villages possess the authority to adjudicate traditional disputes, thereby presenting substantial strategic opportunities to prevent and ensure the fulfillment of the rights of women victims of sexual violence in their communities.

Research conducted by Tiernne Gene Waani, titled "Legal Protection for Women Victims of Human Trafficking in North Sulawesi," elucidates that human trafficking manifests in various forms, primarily aimed at exploiting individuals for the benefit of others. Women, as victims of human trafficking, require focused attention not only for their protection as victims but also in their role as witnesses. Frequently, due to the stigma associated with their experiences, victims may withdraw from legal proceedings, complicating the efforts of law enforcement officials. Criminal law serves a dual purpose: it plays a crucial role in the prevention of human trafficking and regulates the enforcement of laws to maintain public order. This legal framework is essential for formulating social policies aimed at safeguarding communities, thereby enhancing both preventative and repressive measures against human trafficking, ultimately ensuring legal protection for female victims of these crimes.

In conclusion, it is imperative to implement comprehensive prevention strategies against human trafficking in North Sulawesi by developing a detailed action plan and disseminating it among schoolchildren, families, and local government officials. Additionally, the application of Article 297 of the Criminal Code and Regional Regulation Number 1 of 2004 in cases of human trafficking is rarely invoked by investigators or prosecutors during court proceedings, leading to a lack of uniform understanding and enforcement of these legal provisions. This issue can be addressed by prioritizing collaboration and coordination among law enforcement agencies within the integrated criminal justice system ([Soepadmo, 2021](#)).

Research by Mahrita Aprilya Lakburlawal, titled "The Position of Women in the Customary Village Government System (A Study of Gender Justice in Customary Law)," analyzes the challenges women face in leadership roles within Maluku's customary villages. It reveals that women's leadership is often seen as a substitute for



male leadership, reflecting the prevailing belief that leadership is inherently male. Consequently, the laws, values, and cultural norms in Maluku perpetuate inequality and injustice for women in customary governance, often relegating them to marginal roles and subjecting them to harmful stereotypes.

While women participate in the customary village government—serving as village heads and members of the Village Consultative Body—their representation remains significantly lower than that of men. Those in leadership roles tend to adopt a feminist transformational leadership style, promoting democratic and inclusive governance. However, existing legislation, including Law Number 6 of 2014 on Villages and Maluku Province's Regional Regulation on Traditional Villages, fails to clearly define women's positions as traditional village heads. This lack of explicit regulation reflects an implicit gender bias, resulting in considerable legal uncertainty regarding women's authority in the traditional village governance system ([Lakburlawal, 2021](#)).

Based on description above, the primary aim of this study was to thoroughly examine and analyze the characteristics of sexual violence against women within the living arrangements of customary law communities in Bali. Additionally, the study sought to explore the ways in which legal capacity can be restored, alongside a critical evaluation of existing statutory regulations and customary law. This examination is essential in order to maximize just legal protection for victims of sexual violence within these customary law communities, ensuring that their rights are recognized and upheld in a manner that is both effective and culturally sensitive.

Methodology

This research employs a sociolegal methodology, integrating both doctrinal and non-doctrinal approaches, as outlined by Irianto ([Irianto, 2017](#)). Document analysis involves a detailed examination of relevant legal articles, elucidating their normative meanings and analyzing the resultant implications. Field studies are conducted through observations and interviews to gather social data, thereby merging legal and social science perspectives ([Yuliartini, Mangku & Yasa, 2022](#)). In addressing fair legal protection for women victims of sexual violence within Balinese customary law, both statutory regulations and field observations serve as foundational elements for analysis. Consequently, the research employs a combination of statutory, comparative, conceptual, and sociological approaches to yield comprehensive insights into the justice issues facing women victims within the Balinese traditional law community.

The study utilizes both primary and secondary data, which are processed and analyzed through the lens of legal hermeneutics. This analytical framework situates legal texts within their contexts and employs interpretative methods to elucidate their meanings ([Yuliartini, Mangku & Darayani, 2022](#)). By applying legal hermeneutics, the research critically examines statutory regulations, extracting

meanings and contextualizing them within the framework of legal protection for women victims of sexual violence specifically within Balinese customary law.

Results and Discussion

Characteristics of Sexual Violence Against Women in the Living Order of Traditional Law Community Units in Bali

Sociological research indicates that women continue to occupy a marginalized position within society, particularly in developing and underdeveloped countries. In these contexts, women frequently bear a dual burden: they are primarily responsible for domestic tasks—such as cooking, cleaning, and childcare—while also participating in income-generating activities outside the household (Mangku, Yuliantini & Hadi, 2022). Neglecting domestic responsibilities often results in negative societal judgments toward women, while men typically face a singular burden. This disparity reflects a sociological institutionalization of values that perpetuates the view of women as fundamentally different from and inferior to men, commonly referred to as patriarchal ideology.

Such cultural norms give rise to socio-cultural constraints on women's status, position, and roles, simultaneously reinforcing a heroic image of masculinity characterized by strength, power, and authority. Consequently, women are relegated to subordinate positions, enduring mistreatment in silence and acceptance of their circumstances (Dantes, Mangku & Yuliantini, 2022). These societal attitudes are entrenched in various social values, such as impropriety, disgrace, and notions of dignity, which impose psychological burdens on women living within patriarchal cultures. This cultural framework fosters an environment where women are increasingly consumed by fear, shame, and resignation, leading them to endure a range of adverse experiences, including sexual violence. The issue of sexual violence against women cannot be disentangled from the surrounding social and political dynamics (Nasution, 2017). Consequently, addressing sexual violence becomes increasingly complex, particularly for women advocating for their rights as victims.

Cases of violence against women, deeply intertwined with gender issues and moral discourse, significantly constrain women's ability to advocate for their rights, including the rights to truth, justice, recovery, security, and guarantees against recurrence. Gender injustice, according to Masour Fakh, is manifested in various forms of injustice, including (Fakh, 2016): (1) marginalization, which impoverishes women; (2) subordination, which diminishes their significance in political decisions; (3) stereotypes, which impose negative labels; (4) increased workloads; (5) violence; and (6) the socialization of gender role ideologies. These six manifestations of gender-based violence are shaped by political, religious, social, economic, and legal factors. Consequently, the inequalities that emerge stem primarily from a patriarchal culture that places men in dominant roles, denying women the status of equals.



In Balinese tradition, which adheres to patriarchal norms, the differential treatment of women is stark. Customarily, women are viewed as subordinate due to misinterpretations of the concepts of *purusa* and *pradana*. The theological concept of "*Ardhanareswari*" (as noted in *Manawadharmasastra* I.32) illustrates this: "*Ardha*" signifies half or equal, "*nara*" refers to man, and "*iswari*" signifies woman (Nimah, 2018). In Hindu thought, the absence of the feminine element precludes complete incarnation, indicating that both genders possess equal importance, akin to the left and right hemispheres of the brain. Symbolically, the *Ardhanareswari* concept suggests that women's roles are both equal and complementary to men's, deserving high regard. There are no theological justifications for asserting women's inferiority.

Nevertheless, the practical realities within the traditional Balinese context reveal that women's positions remain underdeveloped and marked by structural inequalities, discrimination, and marginalization. This is often reflected in derogatory verbal expressions, such as "weak women," negative stereotypes, and widespread societal disdain, ultimately resulting in both physical and psychological violence. Such cultural norms create a social environment that cultivates fear, shame, and silence among women, compelling them to endure a range of adverse experiences, including sexual violence. Sexual violence against women in Bali has occurred in several districts in Bali, including:

Table 3. Characteristics of Sexual Violence Against Women in Balinese Traditional Society

Village	Case	Resolution Effort
Sudaji Village, Buleleng (2015)	A biological father raped his daughter until pregnant	This case was solved only through <i>balik sumpah</i> ceremony
Undisan Kelod Village, Tembuku Bangli Regency (2017)	A grandfather aged 59 years old impregnates his granddaughter	Customary offense of <i>gamia gemana</i>
Muntigung Village Karangasem (2015)	A biological father raped his daughter	Customary Offense of <i>gamia gemana</i>
Angantelu Traditional Village, Manggis Sub District, Karangasem Regency	Rape	The traditional sanction in the form of <i>pecaruan</i> / cleaning and submitted to the law enforcement officers based on the prevailing positive law
Semate Traditional Village, Abian Base Urban Village, Mengwi Sub District, Badung	Rape	Submitted to the law enforcement officers based on the prevailing positive law

The data indicates that the response of traditional villages to victims of sexual abuse is modest. Sexual violence against women in Bali has transpired in several regions, including Buleleng Regency, where in Sudaji Village, a biological father raped his daughter, resulting in her pregnancy. Sexual violence, specifically sexual intercourse, is perpetrated by fathers against their children in Tabanan, Gianyar, Klungkung, Karangasem, and Buleleng Regencies. In Kerobokan Village, Buleleng Regency, a father perpetrated sexual assault against his child by sexual intercourse over a period of four years (Rasta, 2021). In 2017 in Undisan Kelod Village, Tembuku, Bangli Regency, a 59 year old grandfather impregnated his 14 year old granddaughter (*delik gamia gemana*) (Arimatea & Pura, 2022).

In Muntigung Village, Karangasem, in 2015, the biological father sexually assaulted his child, resulting in pregnancy and childbirth in 2016. The event transpired in Tajun Village, Buleleng Regency, while the culprit and victim were engaged in clove harvesting. Moreover, the offender only confessed to his conduct during a traditional funeral in the village in 2020. Examining multiple instances of sexual violence across various districts in Bali reveals that such acts are predominantly perpetrated by acquaintances or family members, resulting in forms of sexual violence categorized as incest, referred to in the Balinese traditional community as *delik adat gamia gemana* (incest).

Within the Balinese customary law community, certain actions are still regarded as customary offenses, alongside minor infractions. The classification of these acts includes (Suartha, 2015):

1. Customary crimes against morality;
2. Customary crimes against property;
3. Customary crimes against the interests of the public; and
4. Customary crimes against a person's honor.

In Balinese customary law, sexual violence is categorized as a form of moral transgression, constituting a specific type of customary crime. Customary crimes against morality include crimes:

1. *Lokika Sanggraha*, namely having sex before marriage/pre-marital sex, from that relationship results in pregnancy and the man promises to marry, but the promise is not kept;
2. *Gamia Gemana*, namely sexual intercourse carried out by people who are still very closely related by blood or called incest;
3. *Salah Krama*, namely having sex with other creatures such as animals;
4. *Amandel Senggama*, namely a wife who is still in a legal marriage, leaves her husband or does not carry out her obligations (*dhrama*) as a wife without her husband's permission.

A closer examination reveals that sexual violence within Balinese customary law is intricately linked to the customary offenses of *lokika sanggraha* and *gamia gemana*



(Budawati, 2016). This article will concentrate on these two specific customary crimes. *Lokika sanggraha* refers to actions by a man seeking sexual gratification from a woman, resulting in her pregnancy. Following the conception, the man typically refuses to marry her, despite having previously promised to do so. This behavior violates the *lokika* principle that every pregnancy should be sanctified through a *biakaonan* ceremony, which ensures the pregnancy's sacredness according to religious beliefs and clarifies the child's status in accordance with tradition.

In addition to *lokika sanggraha*, another prevalent form of sexual violence in Balinese traditional society is *gamia gemana*. This offense occurs when individuals related by blood engage in sexual relations, such as between a biological father and his child, siblings, or between a grandfather and his grandson (Ali et al., 2022). The customary penalty for violations of *gamia gemana* is a ritual of village purification. This offense is addressed in Articles 171 and 172 of the *Manawa Dharmacastra*, which stipulates: "*Guru talpawratam kuryad; Retah siktwa swayonisu; Sukhyun putrasya ca strisnu; Kumariswantiyajasu ca.*" This translates to: "He who engages in sexual relations with his biological sister, a friend's wife, a child's wife, an unmarried woman, or a woman of low status must perform the prescribed penance for their transgressions." Article 172 continues: "*Paitriswayirn bhaginim; Swasriyam matyrewa ca; Matuccabhratustanayam Gatwa candrayanam caret.*" Meaning: "He who engages with the child of his father's sister, akin to the mother's sister, or the child of his mother's brother, must undergo purification through a month of ascetic practices."

An examination of the responses to customary offenses, such as *lokika sanggraha* and *gamia gemana*, as outlined in the *Kita Manawa Dharmasastra* and the regulations governing customary villages in Bali, reveals a consistent alignment with the customary sanctions detailed in *Pandecten van Het Adatrech* Part X. This section compiles foundational concepts of customary criminal law and enumerates the various customary responses applicable to such violations, including:

1. Compensation for immaterial losses in various forms, such as being forced to marry a girl who has been defiled;
2. Customary payment to the affected person, in the form of a sacred object as compensation for spiritual losses;
3. Salvation (sacrifice) to cleanse society from all supernatural impurities;
4. Various forms of corporal punishment up to the death penalty; and
5. Exile from society and placing people outside the legal system.

The tangible manifestation of customary sanctions related to sexual violence can be examined in the Tenganan Karangasem Traditional Village. Here, sanctions imposed on perpetrators of sexual violence, particularly those involving unmarried couples, include a mandate for the couple to marry in accordance with the prevailing customary laws of Tenganan. Beyond the requirement of marriage, there are also moral repercussions for the woman's parents, expressed through the *nampah nandan* being tradition. This ritual, observed annually during *Purnama Kapat* (the fourth full

moon of the Balinese calendar), obliges the parents of individuals involved in sexual offenses to pay a fine of Rp. 1,000.00 (one thousand rupiah) each year for life. Such sanctions serve to cultivate a negative societal stigma against parents who fail to adequately educate their children (Antari, 2021).

The concept of imposing customary sanctions aimed at enhancing victim protection lacks specific literature or regulatory frameworks. This observation aligns with the historical school of thought articulated by Karl von Savigny, which posits that as societies become more complex, their legal systems also become more intricate; conversely, simpler societies tend to have more straightforward laws. The law serves as a mechanism of social control, striving to uphold established societal norms. However, it is important to recognize that not all social orders contribute positively to society. Certain social frameworks may be detrimental, and when linked to socio-economic development, they can act as significant impediments to progress (Effendi, 2018).

The notion of victim protection within Balinese customary law is notably scarce in the community's regulatory framework. This is evident in the conceptualization of punishment in customary (criminal) law, where sanctions are primarily aimed at restoring cosmic equilibrium rather than punishing offenders. The customary approach emphasizes the restoration of harmony between the physical and supernatural realms and seeks to foster peaceful coexistence among community members (Mangku et al., 2022). Thus, these sanctions prioritize the maintenance of a harmonious social order based on the *Tri Hita Karana* philosophy rather than retribution against the perpetrators.

In a specific instance from Angantelu Traditional Village in Manggis District, Karangasem Regency, cases of sexual violence have been reported. Interviews with I Made Widiartara, the Secretary of Angantelu Traditional Village, reveal that incidents of sexual harassment or violence, while occurring multiple times over an extended period, were perceived as minor and resolved amicably to protect the community's reputation. Widiartara noted that, as a child at the time, he lacked the understanding of social issues, including the village's regulations (*awig-awig*). However, the current *awig-awig* suggests that the norms applied retroactively to the incidents, highlighting the absence of specific provisions addressing the rights of women victims of sexual violence within customary law.

In addition to the previously mentioned cases, a similar incident occurred in Angantelu Traditional Village approximately nine years ago, involving a rape in one of the *banjars* (Dewi et al., 2023). The resolution of this case was conducted solely through formal legal channels, with no traditional sanctions imposed by the village authorities. Traditional penalties, such as cleansing rituals or fines, are reserved for perpetrators of specific deviant behaviors, such as incest or bestiality.



This lack of customary regulations addressing sexual violence is also evident in Semate Traditional Village, located in Abian Base Village, Mengwi District, Badung. I Gede Suryadi, the *Bendesa Adat* (traditional village head), noted that various forms of violence have become inevitable due to the pressures of overpopulation. Consequently, any incidents of violence, including sexual assault, in Semate Traditional Village have been referred to law enforcement under statutory law.

Given the circumstances of these cases, victims of sexual violence within traditional villages often encounter significant barriers to resolution due to various sociological factors inherent in these communities. The prevailing traditional values prioritize collective well-being over individual rights, leading to a lack of adequate protection for victims. As a result, women frequently find their voices suppressed, often relegated to roles that are only deemed necessary for ceremonial preparations ([Antari, 2021](#)). This indicates that existing procedures for addressing sexual violence do not afford sufficient protections or equitable norms for victims in traditional villages.

Forms of Restoring Legal Capacity Legislation and Customary Law in Maximizing Fair Legal Protection for Victims of Sexual Violence Against Women in Customary Law Community Units

According to data on violence against women compiled by the National Commission on Violence Against Women, there have been alarming figures in the past seven years (2016-2022). Specifically, based on information from BADILAG (the Religious Justice Agency) obtained by the Commission, there have been 2,542,547 reported cases of female victims of violence. Additionally, the End of Year Notes from LBH APIK Bali indicate that between 2018 and 2022, the incidence of sexual violence cases in Bali exhibited notable fluctuations. Both the National Commission on Violence Against Women and LBH APIK Bali confirm the ongoing prevalence of violence against women, including sexual violence. This situation necessitates that the government fulfills its obligation to provide comprehensive protection and necessary services for women victims of sexual violence, encompassing medical care, psychological support, and legal assistance aimed at restoring the victims' well-being ([Yuliartini et al., 2021](#)).

The aforementioned data highlights that sexual violence against women remains a pervasive issue, occurring with alarming frequency, thus necessitating institutional efforts toward resolution. Addressing the legal protection of women victims of sexual violence in a fair manner within the context of Balinese customary law requires substantial community involvement, particularly from the KMHA (Kelembagaan Masyarakat Hukum Adat), which refers specifically to Traditional Villages in Bali. Traditional villages possess regulatory autonomy, enabling them to enforce customary laws effectively. Defined as customary legal community units, these villages have distinct territorial boundaries, social hierarchies, cultural wealth, traditional rights, and practices that have been passed down through generations. They are also vested with the authority to govern their internal affairs ([Sudiarawan](#)

et al., 2022). Consequently, the fulfillment of the rights of women victims of sexual violence can be approached through the lens of indigenous communities and traditional villages, grounded in local wisdom. The KMHA framework, as informed by the *Tri Hita Karana* philosophy, aims to enhance the operational success of traditional villages in a systematic and formal manner. This approach emphasizes the protection of the *parahyangan* (spiritual), *pawongan* (social), and *palemahan* (environmental) dimensions as critical responsibilities of traditional villages. Thus, these elements serve as a philosophical foundation (*Pawongan*) that aligns with the values of Pancasila, particularly its second principle, guiding indigenous communities within traditional villages in their protective roles concerning the rights of women victims of sexual violence. However, in practice, the engagement of indigenous communities through traditional villages in Bali has not effectively ensured the fulfillment of rights for women who are victims of sexual violence within their jurisdiction.

In the elucidation of Article 6 of Law Number 15 of 2023 concerning the Province of Bali, the term "traditional village" refers to a Balinese customary community unit characterized by a cohesive identity rooted in Balinese customs, traditions, arts, and culture, regardless of whether its territorial boundaries align with those of the administrative village. This legal framework emphasizes that such villages possess distinct institutional structures and the authority to govern matters pertaining to Balinese customs, traditions, arts, and culture, drawing upon local wisdom.

Moreover, Bali Province Regional Regulation Number 4 of 2019, which addresses Traditional Villages and is consistent with the principles outlined in the State Constitution, underscores that traditional villages are empowered to formulate *awig-awig* and traditional village *perarem*. These regulations are designed to safeguard the customs of residents, including the protection of the rights of women victims of sexual violence, alongside the existing provisions of national law that govern these matters. *Awig-awig*, as articulated in the Regional Regulation on Traditional Villages, constitutes rules established by traditional villages and/or traditional *banjars*, applicable to both residents (*karma*) and immigrants (*karma tamiu*) as well as guests (*tamiu*) (Itasari & Karyawan, 2021).

The aforementioned description highlights the critical role of traditional villages in championing the rights of women victims of sexual violence, illustrating the potential for these communities to engage proactively in this endeavor. Such active participation is facilitated by the inherent authority of traditional villages to enact customary regulations, fostering collaboration between state law and customary law (*awig-awig* and/or *perarem*) that is both participatory and responsive. A responsive *awig-awig* and/or *perarem* embodies the fulfillment of the aspirations of individuals and diverse social groups within the community, particularly women, thereby enhancing the realization of justice within society. In relation to the regulatory model for legal protection concerning the rights of female victims of sexual violence in

customary law communities (customary villages), the proposed scheme of this regulatory framework is as follows:

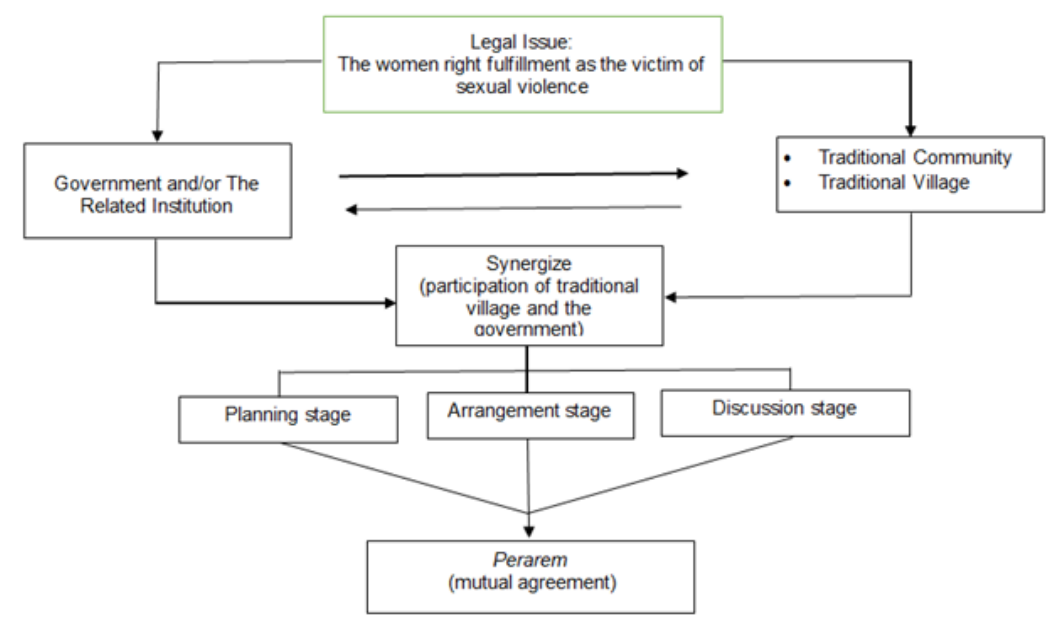


Figure 1. Scheme of the regulatory model

Based on the framework outlined above, it can be articulated that the model for ensuring legal protection in the fulfillment of the rights of women victims of sexual violence within traditional law communities is predicated on the active participation of these communities, particularly through traditional villages, which serve as the principal actors, with the government fulfilling a supervisory role. Additionally, it is noteworthy that traditional villages collaborate synergistically with governmental authorities, engaging with state law throughout the planning, preparation, and deliberation phases, ultimately culminating in a collaborative agreement (*perarem*) that addresses the rights of women victims of sexual violence within the context of traditional villages, while duly considering the specific needs of these victims (Itasari, 2020).

To effectively fulfill the rights of women victims of sexual violence within customary law communities, it is imperative that efforts extend beyond medical and psychological recovery to include social reintegration, which is essential for restoring the social well-being of the victims. Traditional sanctions, such as fines or the performance of religious ceremonies aimed at purifying the territory of customary law communities, do not significantly contribute to the recovery process for victims; in fact, the imposition of such sanctions often places additional burdens on victims, compelling them to participate in religious rites as a means of atonement for the circumstances they endured. It is crucial for traditional law communities to accept, respect, and facilitate the reintegration of victims into their social environments,

thereby ensuring protection from negative stigmas or stereotypes. Strengthening community-based services within traditional village settings is vital for enhancing access to legal resources and information, thereby promoting greater equity for women.

In addition to facilitating social reintegration to restore the conditions of victims of sexual violence, KMHA must also implement protective measures, such as establishing designated safe spaces for victims, exemplified by the concept of a safe house. In the realm of law enforcement and security, a "safe house" refers to a secure location designed to shield individuals from unwanted exposure or dangerous circumstances. The overarching objective of such provisions is to support the effective functioning of the criminal justice process, which relies heavily on the participation of protected witnesses and victims. The establishment of safe houses is particularly crucial for victims of sexual violence, especially in cases where the perpetrator is from the victim's familial environment. These safe houses can be provided by governmental entities, regional authorities, or community organizations.

Moreover, when formulating customary law regulations (*perarem*) at the village level, it is imperative to consider the principles of Pancasila and feminist values to ensure adequate protection of the rights of women who are victims of sexual violence. In the development of traditional village regulations aimed at safeguarding these rights, a thorough assessment of the specific needs of sexual violence victims must be conducted prior to delivering any assistance, including (Yusyanti, 2020):

1. Acceptance Needs: The desire for recognition, love, and appreciation within their communities.
2. Self-Esteem Needs: The need for validation from others, which necessitates support for victims to foster a positive self-image and enhance their self-worth.
3. Self-Actualization Needs: The victim's aspiration to develop their potential and achieve personal empowerment.
4. Security Needs: The necessity for a sense of safety from potential risks and threats to which victims may be vulnerable.
5. Justice Needs: Given that the traumatic experiences faced by victims often result in significant mental, physical, and material losses, there is a pressing need for restorative measures that enable victims to reclaim their rights, which have been infringed upon as a result of these incidents.

The approach to supporting women victims of sexual violence encompasses two key phases: first, assessing and understanding the victim's circumstances to deliver essential services; and second, offering recommendations or referrals to law enforcement agencies or organizations that can provide additional protective services. Moreover, the guiding principles for assisting women victims of sexual violence include (Karmen, 2015): non-discrimination; equal and reciprocal respect; safeguarding privacy and confidentiality; ensuring a sense of security and comfort; honoring individual perspectives, including diverse backgrounds, life experiences,



and coping strategies; adopting a non-judgmental stance; respecting the victim's choices and decisions; employing clear and accessible language; demonstrating empathy; maintaining objectivity without succumbing to emotional biases; and refraining from exploiting the relationship with the victim for personal gain.

In light of the above considerations, by attentively addressing the victims' conditions and adhering to assistance principles rooted in the values of Pancasila and feminism, traditional villages can play a pivotal role through the implementation of *perarem* (traditional regulations). This framework is expected to provide protection and empower them to act as defenders, facilitators, protectors, mobilizers, motivators, and mediators in upholding the rights of women victims of sexual violence within the context of KMHA (Keluarga Masyarakat Hukum Adat) (Sondakh, 2018).

1. Advocate: The advocate plays a crucial role in assisting victims in accessing services and resources that may be challenging due to their navigation of the political system. Advocates engage with the political landscape to ensure that victims' needs are met and that they obtain the necessary resources (Pratiwi, Mangku & Yuliantini, 2020).
2. Facilitator: The facilitator's role is to empower victims to manage situational or transitional stress effectively. Facilitators assist victims in recognizing and harnessing their personal strengths for problem-solving. Their function is to enable victims to implement mutually agreed-upon changes. This facilitative role is intricately connected to that of an enabler, as they provide support that aids victims in accessing resource systems, identifying challenges, and enhancing their capacity to overcome difficulties (GW, Mangku & Yuliantini, 2021).
3. Protector: The protector provides assistance that serves the interests of victims and other vulnerable populations. This role encompasses a range of abilities, including the exertion of power, influence, authority, and social oversight, to safeguard those at risk (Yuniarti et al., 2023).
4. Dynamisator: The dynamisator functions as a mentor, playing a pivotal role in mobilizing resources, creating opportunities, and securing funding to enhance service delivery.
5. Motivator: In their mentoring capacity, motivators explore the latent resources available to victims while fostering community awareness regarding the challenges and barriers faced by these individuals.
6. Mediator: The mediator acts as a liaison between victims and other stakeholders in pursuit of resolution. This role encompasses facilitating behavioral contracts, engaging in negotiations, and implementing various conflict resolution strategies.

Conclusion

The analysis of the findings and discussion reveals that the manifestation of sexual violence against women within the traditional law community systems in Bali predominantly features cases of rape and incestuous relations. Notable incidents



include: (1) in the traditional village of Sudaji, Buleleng, a disturbing case involved a father impregnating his biological daughter; (2) in Undisan Kelod, Bangli, a grandfather's sexual relations with his granddaughter led to her pregnancy; (3) Munti Gunung village in Karangasem reported a similar incident where a father engaged in sexual relations with his biological child, resulting in pregnancy; and (4) in Angantelu village, Karangasem, a case of rape was recorded, perpetrated by a young male resident classified as a minor.

The mechanisms for restoring legal capacity within statutory regulations and customary law aim to enhance equitable legal protection for female victims of sexual violence in these community units. Such restorative measures include restitution, compensation, satisfaction, rehabilitation, and guarantees against the recurrence of such crimes. Specifically, in the context of customary law community units, victim recovery strategies involve facilitating social reintegration and providing protective measures. This includes the establishment of designated safe spaces for victims—akin to the concept of safe houses—designed to safeguard their interests and ensure the effective progression of the criminal justice process, which necessitates the involvement of protected witnesses and victims.

Acknowledgement

The author expresses his appreciation to anonymous University for contributing support and resources to facilitate this research. Additionally, sincere thanks go to the anonymous reviewers and editors for their valuable feedback, which has improved the quality of this manuscript, making it interesting and worthy of quotation

Declarations

Author contribution : Author 1: Designed the research framework and ide, collected secondary data, performed data analysis, and wrote most of the manuscript. Author 2: Playing a role in the field of legal analysis related to legal protection for the fair fulfillment of women's rights as sexual victims in the lives of customary law communities in Bali, as well as compiling legal aspects in the discussion section. Author 3: Contributed to the literature review that supports the theoretical framework of this article and assisted in the text preparation process.

Funding statement : -

Conflict of interest : There is no conflict of interest

Additional information : There is no additional information

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