

## Judges' Reasoning in Applying the Customary Offense of Lokika Sanggraha: Case Study of Decision No. 997/Pid.Sus/2019/PN Dps

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### Abstract

This study examines the application of Balinese customary law, specifically the criminal offense of Lokika Sanggraha, in filling legal gaps in Indonesia's national criminal law system, with a case study of Decision No. 997/Pid.Sus/2019/PN Dps. The defendant, I Dewa Gede Ardana, was charged under Balinese customary law for violating a promise to marry after engaging in sexual relations. This study focuses on the legal reasoning applied by the judge in interpreting Article 359 of the Adhigama Code, which regulates adultery outside marriage, which is not specifically regulated in the Criminal Code (KUHP). The research method used is normative legal research by analyzing court decisions, legal doctrines, and related regulations. The findings reveal that judges utilize customary law to address situations not covered by national law, thereby ensuring justice while respecting local moral and social values. This study highlights the role of legal discovery in bridging legal gaps and demonstrates the Indonesian legal system's ability to integrate customary law. The study concludes that the application of Balinese customary law in this case not only fills a legal void but also reinforces the importance of local traditions in contemporary judicial processes, contributing to a more inclusive legal system.

**Keyword:** Lokika Sanggraha; Balinese Customary Law; Rechtsvinding; Legal Vacancy; Kitab Adhigama.

### INTRODUCTION

Criminal law in Indonesia has a long history that involves a combination of colonial law and customary law that is still alive in local communities. (Siombo & Wiludjeng, 2020) In many cases, especially those involving social norms and morality, customary law still has an important role, especially in areas where people still strongly maintain customary traditions, such as Bali. One clear example is the criminal case related to Lokika Sanggraha's offense, which is regulated in Kitab Adhigama, a customary law that is still used in the Balinese community.

Case No. 997/Pid.Sus/2019/PN Dps is an interesting example of how customary law is applied in the modern Indonesian legal system. Defendant I, Dewa Gede Ardana, was accused of committing the customary offense of Lokika Sanggraha, which in Balinese customary law is considered a criminal act when a person engages in sexual relations with the promise of marriage but later breaks it. Although in the national legal system, there are no explicit rules governing this act in the Criminal Code (KUHP), the judge in this case used Balinese customary law as the basis for his legal reasoning. This case also highlights the existence of a legal vacuum in Indonesian positive law regarding adultery involving individuals who are not yet married, as well as the role of judges in conducting rechtsvinding. The judge, in this case, must find a

legal basis that is in accordance with the values of justice that live in society, so the use of customary law is a relevant option to resolve disputes.

The application of Balinese customary law in this case is important because it shows how the law can adapt to local needs and specific social situations. In the context of Balinese society, where customary law is still considered to have binding force, the application of Kitab Adhigama as a basis for punishment provides space for the recognition and protection of customary values that live in the community. However, the application of customary law also raises important questions regarding how to fill legal gaps in the national legal system and how the principle of *rechtsvinding* can be used by judges to find a just solution when positive law has not specifically regulated an event. Therefore, this study is relevant to examine how judges decide cases by considering customary law and how this contributes to the development of the legal system in Indonesia. With this background, this paper aims to examine more deeply the application of the Lokika Sanggraha customary offense in court decisions and how judges make legal discoveries to fill the legal vacuum related to adultery in Indonesian national law.

Customary law is a set of norms and rules that grow and develop in Indigenous communities as a result of local culture and traditions. (Azami, 2022) The definition of customary law includes unwritten laws, which are upheld by indigenous peoples and passed down from generation to generation. Customary law in Indonesia is very diverse because each tribe or group of indigenous peoples has different rules that regulate social life, religion, customs, and morality. (Alam et al., 2024) The scope of customary law covers various aspects of life, including agriculture, marriage, inheritance, and dispute resolution, all of which are regulated in accordance with local norms and customs that have been recognized and accepted by the Indigenous community. The position of customary law in Indonesia's national legal system is recognized, although it does not have the same power as written laws such as laws. (Ismi, 2012) Article 18B paragraph (2) of the 1945 Constitution recognizes and respects the unity of customary law communities and their rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Thus, customary law in Indonesia continues to apply in indigenous communities as long as it does not conflict with national law and the basic principles of the state. Customary law is also often used to consider resolving customary disputes in customary courts or even in district courts, especially in cases involving Indigenous communities.

In the context of the modern era, customary law remains relevant in some areas, particularly in Bali, where people still strongly hold to local traditions and customs. In Bali, customary law, as stated in the Kitab Adhigama, is still used to regulate community behavior, including in customary criminal cases such as Lokika Sanggraha. (D. A. Putri et al., 2021) The relevance of customary law in Bali is reflected in the daily lives of people who still respect their customs even though national laws already exist. The existence of this customary law reflects how local traditions can go hand in hand with the times and how customary law plays a role in maintaining social balance and justice in Indigenous communities. (Pitriyantini, 2019) Adultery is regulated in the Criminal Code (KUHP) Article 284, which defines adultery as sexual intercourse committed by a married person with another person who is not their spouse. (Muzakir, 2022) In national law, adultery can only be criminally prosecuted if one or both parties

involved are bound in a legal marriage. This article covers adultery committed by a husband or wife with a third party, but adultery outside of marriage is not specifically regulated if both parties are not yet bound by marriage. Thus, the regulation of adultery in the Criminal Code provides strict limitations on who can be prosecuted under this article, namely, only those who have a legal marital status. (Hidayatulloh, 2024)

The history of criminalization of adultery in Indonesia has long roots, starting from the Dutch colonial influence. During the colonial period, adultery was regulated in the *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvSNI), which was an adoption of Dutch criminal law. The colonial law was influenced by social and religious norms, especially the Catholic religion, which considered adultery as a serious violation of public morality. (Teguh Kurniawan Z et al., 2023) After Indonesia's independence, the Criminal Code retained this provision in Article 284, with some adjustments to reflect the social and cultural conditions of Indonesian society. Although the majority of Indonesia's population is Muslim, which also considers adultery to be a grave sin, the criminal law regulation on adultery focuses more on offenses against the institution of legal marriage. Meanwhile, in the context of Balinese customary law, adultery is regulated differently through the concept of a customary offense known as *Lokika Sanggraha* in the *Kitab Adhigama*. *Lokika Sanggraha* is an offense that applies specifically in Bali and involves sexual relations that are based on a promise from the man to marry the woman, but the promise is broken. (Aghata et al., 2022) In Balinese customary law, adultery accompanied by broken promises is considered a serious violation of the norms and morality of the indigenous community. Unlike the national law, which only criminalizes adultery for married people, the *Lokika Sanggraha* offense covers acts of adultery between men and women who are not yet married, as long as there is a promise to marry, which is then not fulfilled. This arrangement shows that Balinese customary law has a broader and more specialized approach to dealing with adultery, which is strongly linked to customary values and family honor.

A legal vacuum occurs when there are no rules or legal provisions that clearly and specifically regulate a particular situation or case. (Taqiuddin, 2019) This condition can be caused by several factors, such as social, technological, or economic developments that are faster than legislative updates. In addition, a legal vacuum can arise because existing laws are too general or do not cover new cases arising in society. In the context of adultery, a legal vacuum occurs when national laws, such as the Criminal Code (KUHP), only regulate adultery for individuals who are already bound by marriage, while adultery outside the bonds of marriage or marriage vows is not covered by this regulation.

The implications of a legal vacuum in the criminal case of adultery can be very significant, especially when society feels that there is a moral violation taking place, yet there is no legal basis to criminalize the act. Such cases can lead to confusion and legal uncertainty, as existing regulations are inadequate to deal with social or moral transgressions that develop in society. For example, in the case of extramarital affairs with a promise of marriage, national laws do not provide clear provisions, so such acts cannot be prosecuted under national criminal laws, even though they are considered to violate social and moral norms in some communities.

The first previous study, titled "Implementation of Customary Criminal Sanctions in Efforts to Resolve the Criminal Act of *Lokika Sanggraha* (Study of

Decision NO.997/PID.SUS/2019/PN.DPS)" written by Nurul Azmi et al., examined the application of Balinese customary sanctions in resolving the criminal act of Lokika Sanggraha, particularly cases of extramarital sex resulting in abortion.(Azmi et al., n.d.) This study was motivated by questions regarding the effectiveness of customary sanctions from a national legal perspective, as well as how the recognition of customary law can protect women's rights. Using a normative legal method with an analysis of Decision No. 997/PID.SUS/2019/PN.DPS and various legal sources, this study found that Balinese customary law (awig-awig) is constitutionally recognized in the Indonesian legal system. Customary sanctions such as fines, excommunication, or purification ceremonies are considered more restorative and accepted by the local community compared to conventional criminal sanctions. However, the study highlights the need for further synchronization between customary law and national law to ensure legal certainty. Another interesting finding shows that while customary sanctions tend to protect female victims through a harmonious social restoration approach, their implementation still faces challenges in ensuring substantive justice.

The next article is written by Ni Putu Rai Yulianti et al. entitled "Customary law and justice: Protecting the rights of women victims of sexual violence in Bali." (Yulianti et al., 2024) This study examines the protection of the rights of women victims of sexual violence in the Balinese customary law community, with a focus on the integration of state law and customary practices to achieve more inclusive justice. This study stems from gender inequality in Balinese society, which is patriarchal in nature, where male dominance is deeply rooted in customs, traditions, and the education system. The main issues raised include the forms of sexual violence experienced by women in traditional Balinese villages and the mechanisms for restoring the rights of victims. The study also explores how state and customary law can collaborate to strengthen fair legal protection for victims, given the frequent overlap or conflict between the two legal systems. The study identifies that the dominant cases of sexual violence in traditional villages in Bali (such as Sudaji, Undisan Kelod, Munti Gunung, and Angantelu) are rape and incest. Another key finding is the importance of integrating positive law and customary law to create comprehensive recovery mechanisms, including restitution, compensation, and rehabilitation for victims. This study also emphasizes a socio-legal approach to analyzing victims' rights, suggesting that justice must consider the local context and social cohesion. The results of the study show that although customary law plays a significant role in resolving cases, collaboration with state law is necessary to ensure more holistic and sustainable protection.

This study differs fundamentally from two previous studies. The first study by Nurul Azmi et al. focused on the effectiveness of the application of Balinese customary sanctions in resolving Lokika Sanggraha crimes, particularly highlighting how customary sanctions such as fines or ostracism are more accepted by the local community than conventional criminal sanctions. Meanwhile, the study by Ni Putu Rai Yulianti et al. placed greater emphasis on the protection of the rights of women victims of sexual violence in the Balinese customary community, highlighting gender inequality and the importance of integrating customary law and national law to ensure substantive justice. Unlike the two previous studies, this research specifically examines the legal reasoning of judges in applying the customary law of Lokika Sanggraha as a form of rechtsvinding to fill gaps in national law. The focus of this research is more on

the methodological aspects and legal arguments of judges rather than merely the effectiveness of customary sanctions or victim protection issues, thereby contributing differently to the study of customary criminal law in Indonesia.

From the above description, the research question for this study is how the legal reasoning used by the judge in applying Article 359 of the Book of Adhigama related to the offense of Lokika Sanggraha in Decision No. 997/Pid.Sus/2019/PN Dps and the purpose and usefulness of this research are to find out the legal reasoning used by the judge in applying Article 359 of the Adhigama Book related to the Lokika Sanggraha offense in Decision No. 997/Pid.Sus/2019/PN Dps.

This study aims to analyze and explain the legal reasoning used by the judge in applying customary law *Lokika Sanggraha* in Decision No. 997/Pid.Sus/2019/PN Dps. In particular, this study seeks to reveal how the judge conducted *rechtsvinding* or legal discovery to fill the legal vacuum in the Criminal Code (KUHP), as well as how the application of customary law can provide a legal solution that is in line with the values of justice in Balinese society.

The urgency of this study lies in the importance of providing an argumentative and methodological basis for the application of customary law as part of the national legal system, particularly in the context of gaps in national criminal law. Amidst the dynamics of legal pluralism in Indonesia, this research is necessary to strengthen the legitimacy of the use of customary law by judges in judicial practice while supporting the integration between the law that lives in society and the formal legal system of the state. In addition, this research is also relevant to enrich the study of judges' *rechtsvinding* practices so that the law is not only understood textually but also substantively in accordance with local justice needs.

The main focus should be on the analytical depth of the judge's considerations in applying Balinese customary law, particularly in relation to the criminal offense of Lokika Sanggraha, rather than merely reviewing descriptive doctrines. An analysis of the judge's reasoning will highlight how the judge conducted *rechtsvinding* or legal discovery in filling legal gaps related to adultery without marriage, which is not regulated in the Criminal Code. In this context, it is important to critique whether the judge's reasoning has fulfilled the principles of due process and legal certainty. Does the decision provide procedural guarantees of fairness for the Defendant, and does the application of customary law provide clear and consistent legal certainty in judicial practice? By reducing repetition, this analysis will examine whether the use of customary law by judges creates a solution that is both fair and accommodates the evolving legal needs of Balinese society without violating the fundamental principles of the Indonesian judicial system.

## METHODS

This study uses normative legal research that focuses on the study of positive legal norms, both those derived from legislation and unwritten law in the form of customary law. The normative location of this study lies in analyzing the application of customary law in criminal court practices to fill gaps in the Criminal Code. Thus, this study is not only oriented toward the text of the regulations but also toward the interaction between customary law as living law and the national legal system. The approach used in this study consists of three approaches. First, the statute approach examines the provisions of the Criminal Code, the Adhigama Book as a source of Balinese customary law, the 1945 Constitution, and other related regulations.

Second, a case approach, which involves an in-depth analysis of Decision No. 997/Pid.Sus/2019/PN Dps. Third, a conceptual approach to understanding legal concepts such as *rechtsvinding*, *rechtsvacuum*, and the position of customary law in the Indonesian legal system. The legal materials in this study consist of three types, namely primary legal materials in the form of court decisions, legislation, and the *Adhigama*; secondary legal materials in the form of legal literature, journals, and previous research results; and tertiary legal materials such as legal dictionaries and legal encyclopedias. The technique for collecting legal materials was conducted through library research by tracing court decisions, legislation, literature, journals, and relevant electronic reference sources. All collected legal materials are analyzed qualitatively through descriptive-analytical methods. The analysis is conducted by interpreting and elaborating legal materials to build logical and systematic arguments regarding the application of customary law as a form of *rechtsvinding* by judges in addressing legal gaps. An interpretative approach is used to assess the social relevance of the application of customary law in the national legal system.

Case No. 997/Pid.Sus/2019/PN Dps was selected because it contains important values in examining the application of Balinese customary law, particularly in relation to the criminal offense of *Lokika Sanggraha*, which fills a legal vacuum in the Indonesian legal system regarding adultery without marriage. This case is relevant for studying *rechtsvinding*, in which judges use customary law to address gaps in the KUIHP. The selection of this case is also based on its uniqueness, which reflects how the Indonesian legal system accommodates local values and resolves legal disputes not regulated by national positive law. The analytical approach used to assess the judge's legal reasoning includes the theory of legal argumentation, a hermeneutic approach in interpreting customary norms within their social context, and the application of *rechtsvinding* to find legal solutions that align with the local needs and cultural values of the Balinese community.

## DISCUSSION AND RESULT

This case began when Defendant I, Dewa Gede Ardana, and Ni Putu Dwik Supartini started dating in 2015. During their relationship, the two had sexual intercourse several times in 2017. In July 2018, their relationship ended, and I, Dewa Gede Ardana, went abroad to work on a cruise ship. A few months later, Ni Putu Dwik Supartini realized she was six months pregnant. She then tried to hold I Dewa Gede Ardana accountable by going to his family. Mediation was conducted between the families of both parties, and the P2TP2A of Badung Regency, the village chief, and local traditional leaders were involved. However, because the Defendant was still abroad, the family decided to wait for his return. In March 2018, Ni Putu Dwik Supartini gave birth to a child, and after the Defendant returned in June 2018, Ni Putu's family again asked I Dewa Gede Ardana to marry Ni Putu and acknowledge the child that had been born. However, the Defendant refused to marry Ni Putu and was only willing to recognize the child after a DNA test was conducted. The DNA test conducted in August 2018 showed that the child was the Defendant's biological child, but the Defendant still refused to marry Ni Putu. As there was no agreement during further mediation, Ni Putu Dwik Supartini reported I Dewa Gede Ardana to Badung Police Station.

During the legal process, the Defendant was charged with the offense of Lokika Sanggraha, a customary offense regulated in the Kitab Adhigama, because he had broken his promise to marry after having sexual intercourse with Ni Putu. In decision No. 997/Pid.Sus/2019/PN Dps, the court found the Defendant guilty and sentenced him to one month and 15 days' imprisonment and ordered him to pay court costs. In case No. 997/Pid.Sus/2019/PN Dps, the judge considered Article 359 of the Kitab Adhigama, which governs the offense of Lokika Sanggraha, a Balinese customary offense relevant to sexual relations based on a promise to marry. In this case, Defendant I, Dewa Gede Ardana, was accused of violating customary law for breaking a promise to marry Ni Putu Dwik Supartini after having sexual intercourse several times. The judge considered that the Defendant's actions fulfilled the elements of the Lokika Sanggraha offense, which is sexual intercourse accompanied by a promise of marriage but reneged on by the male party. (Artana, 2021) This consideration is in line with Balinese customary values, which place importance on responsibility for promises in such relationships. The judge, in this case, used Balinese customary law, set out in the Kitab Adhigama, as the basis for sentencing. Customary law provides a legal basis for handling cases like this, where adultery is not specifically regulated in the Criminal Code (KUHP), especially for unmarried parties. In this context, Kitab Adhigama, as part of Balinese customary law, provides a legal solution that is more in line with local norms and customs so judges can impose sentences based on these regulations. Thus, the application of customary law in this case is a form of recognition of the applicability of customary law in the Balinese region.

Judges in conducting rechtsvinding use Emergency Law Number 1 of 1951 concerning Temporary Measures to Organize the Unity of the Structure of Powers and Procedures of Civil Courts. The purpose of the regulation is that Emergency Law Number 1 of 1951 regulates the reform and unification of the civil justice system in Indonesia after independence. At the time, Indonesia inherited various legal systems from the Dutch colonial period, local kingdoms, and different customary laws in different regions. To address this fragmentation, Emergency Law No. 1/1951 was introduced with the aim of unifying civil justice structures and procedures across Indonesia.

Some of the things regulated in this Emergency Law No. 1 Year 1951 include:

- a. Abolition of the Old Courts: Courts that were established during the colonial period and were dualistic in nature (European and native courts) were abolished.
- b. Establishment of District Courts and High Courts: District courts of first instance and high courts of appeal were established in each region to replace the old courts.
- c. Uniformity of Procedure: Uniformity in judicial procedures was introduced to be followed by all courts in Indonesia.
- d. Transfer of Cases: Cases ongoing in the old court are transferred to the new court established in accordance with this law.
- e. Appointment of Judges: Establish provisions regarding the appointment of judges that must meet national standards so that judges throughout Indonesia have equal qualifications.

The law is an important first step in the establishment of an independent and unified judicial system in Indonesia, which aims to improve public access to justice and

ensure more consistent law enforcement throughout the country. The law also introduces temporary measures necessary to achieve unity in the organization of powers and procedures in the civil courts in order to ensure consistency and effectiveness of law enforcement throughout Indonesia. The correlation with this case, which has become the basis for the judge's consideration, is contained in Article 5, paragraph (3) letter b of Emergency Law Number 1 of 1951 concerning Temporary Measures to Organize the Unified Structure of the Powers and Procedures of Civil Courts, stipulates that:

*"The material civil law and for the time being also the material civil criminal law which have hitherto been applicable to the subjects of the Swapraja regions and to persons formerly tried by the Customary Courts, shall continue to apply to such subjects and persons, with the understanding that an act which according to the living law must be considered a criminal act, but for which there is no appeal in the Civil Penal Code, shall be punishable by a sentence not exceeding three months imprisonment and/or a fine of five hundred rupiahs, i.e. as a substitute punishment in the event that the customary punishment imposed is not followed by the offender and the substitute in question is deemed by the judge to be commensurate with the amount of guilt of the offender, that, if the customary punishment imposed is, in the opinion of the judge, superior to the imprisonment or fine referred to above, a substitute punishment of up to 10 years' imprisonment may be imposed for the guilt of the accused, on the understanding that customary punishments which, in the opinion of the judge, are no longer in harmony with the times, shall always be substituted as aforesaid, and that an act which, according to the living law, must be considered a criminal act and for which there is an appeal in the Civil Code, shall be punished by the same punishment as the most similar appeal punishment to the criminal act."*

Article 5 paragraph (3) letter b of Emergency Law Number 1 of 1951 regulates the conditions for the application of customary law in the Indonesian legal system, especially in the context of civil courts for Swapraja regions and people previously tried by the Customary Court. Based on this article, the conditions for the application of customary law are as follows: (N. S. Putri, 2021) Living and Applicable Material Law. Enforceable customary law is material law that is "alive" or still in force in the local community. This means that customary law was still recognized and practiced by the community concerned at that time.

Conformity with Civil Criminal Law. If an act under customary law is considered a criminal act but has no counterpart in the Indonesian Criminal Code, then it may be subject to an equivalent customary criminal sanction but not exceeding a sentence of three months imprisonment and/or a fine of five hundred rupiahs. This emphasizes that the application of customary law must not contradict the principles of national criminal law. Customary Penalties and their Substitutes. If the customary punishment imposed is not followed by the punished party and a substitute punishment is deemed commensurate by the judge with the wrongdoing committed, then the substitute punishment will be applied. If the customary punishment is deemed too severe by the judge, it can be replaced with the most similar punishment in the Criminal Code, with a maximum limit of imprisonment of up to 10 years.

Harmony with the times. Customary law that, in the view of the judge, is no longer in line with the times must be replaced with the penalties provided for by the Criminal Code. This shows that customary law can only be applied if it is in line with



the values and norms prevailing at the time. Conformity with the Criminal Code. If an act under customary law is considered a criminal offense and has a counterpart in the Criminal Code, then the penalty imposed must be equivalent to the penalty in the Criminal Code for the most similar criminal act.

Therefore, it can be taken legally that there is a legal vacuum in the actions committed by the Defendant, by referring to Article 5 of the Law mentioned above, so that the basis for imposing punishment can use the Civil Criminal Code, namely the Adhigama Code. As explained, the actions of I Dewa Gede Ardana, who had impregnated Ni Putu Dwik Supartin but did not take responsibility by marrying her even though he had promised to marry her, were included in the actions that violated the provisions in Article 359 of the Book of Adhigama. The history of the enactment of Emergency Law No. 1 of 1951 as a form of emergency in filling the post-independence criminal law vacuum resulted in changing the categorization aspects of criminalized and decriminalized acts. Therefore, the offense contained in the Adhigama Book can be used as a basis for assessing the actions of I Dewa Gede Ardana as an element of an offense that can be punished.

The main reason why Kitab Adhigama can be used in this case is because I Dewa Gede Ardana and Ni Putu Dwik Supartini are Balinese and are subject to Balinese customary law. If one of them is not subject to Balinese Customary Law, it is likely that it cannot be judged based on the Kitab Adhigama. This is a legal breakthrough in providing justice to justice seekers so that they understand the law not only formally but also look at the social realities that develop in society. In the judge's consideration, in line with the indictment by placing the actions of I Dewa Gede Ardana have been proven to fall into the category of elements of Article 359 of the Book of Adhigama included as Delik Adat Lokika Sanggraha and is a specific customary offense and only found in Bali. Delik Adat Lokika Sanggraha has the following elements:

- a. Sexual intercourse is consensual;
- b. Accompanied by a promise from the man that he will marry the woman;
- c. But the man broke his promise;

That because all elements of Article 359 of the Adhigama have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime of Lokika Sanggraha as charged in the Single Indictment. Considering the values and laws that are still alive in Balinese society in the form of customary law, namely Article 359 of the Book of Adhigama concerning Lokika Sanggraha, where the actions of the Defendant have disturbed the feelings of law and feelings of justice in Balinese society so that for his actions the Defendant needs to be punished.

The customary crime of Lokika Sanggraha in Bali regulates extramarital sexual intercourse resulting in pregnancy, where the man abandons the woman without justifiable reason. (Saitya et al., 2020) Although not enshrined in Indonesian positive law, this crime is recognized by law enforcement and judges, who refer to Article 359 of the Kitab Adhigama when making decisions. Judges consider juridical and non-juridical factors in their decisions, with the aim of providing justice for women. From a criminological perspective, social control theory can be applied to understand the tendency of criminal offenders to ignore the law and break promises. The continued recognition of Lokika Sanggraha reflects the judge's obligation to consider both written and unwritten law in Balinese society.

The application of customary law by the judge in this case is very relevant in filling the legal vacuum in the Criminal Code, which only regulates adultery for married parties through Article 284. As the Criminal Code does not cover sexual relations outside of marriage between two unmarried people, the judge utilized Balinese customary law, which is broader in scope. This application of customary law demonstrates the flexibility of Indonesia's legal system, which allows customary law to remain in force and be applied, especially in areas where customs are still respected. It also shows how the legal system can remain responsive to local social and cultural conditions.

In case No. 997/Pid.Sus/2019/PN Dps, the judge played a very important role in *rechtsvinding* or law discovery. This was done when the judge found a legal vacuum in the Criminal Code (KUHP) related to adultery, which does not cover sexual relations outside of marriage if the parties involved are not married. The judge, through *rechtsvinding*, looks for ways to apply the law that are relevant to the local social and cultural situation. (Amin, 2023) In this context, the judge decided to use Balinese customary law, specifically Article 359 of the Kitab Adhigama on the offense of Lokika Sanggraha, as the basis for sentencing, which was considered more in line with local customary norms. The judge interpreted Balinese customary law as a legitimate alternative to fill the legal void in the Criminal Code. In this case, adultery with a promise to marry but broken is not covered by Article 284 of the Criminal Code, which only regulates adultery if one party is already married. Taking into account the customary norms living in Bali, the judge interpreted that customary law, through the Kitab Adhigama, could be applied to deal with the offense. The judge used *rechtsvinding* by combining customary law and existing legislation, resulting in a decision that was fair and in accordance with local social and cultural circumstances. (Sujono, 2021)

This decision is very important in the context of the development of customary law and national law. First, it shows that customary law still has a significant role to play in Indonesia's national legal system, especially in situations where national law does not adequately regulate certain cases. (Yuliyani, 2023) By using *rechtsvinding*, judges can accommodate customary norms that live in the community while strengthening the recognition of customary law in the modern legal system. Secondly, this decision is also relevant as an example of how customary law can serve as a complement to national law, especially in a region that highly respects customs, such as Bali. This reflects the flexibility of Indonesian law, which respects cultural diversity and local norms in law enforcement.

The judge in Case No. 997/Pid.Sus/2019/PN Dps showed foresight by applying progressive legal interpretation. In this case, the judge was not only fixated on the existing positive legal text but also considered the social and moral norms that live in Balinese society. By accommodating Balinese customary law, particularly Article 359 of the Kitab Adhigama, on the offense of Lokika Sanggraha, the judge managed to fill the legal vacuum that exists in the Criminal Code regarding adultery between unmarried parties. This approach reflects a progressive view because judges do not merely act as implementers of existing laws but also as law finders (*rechtsvinder*) who seek to provide substantive justice in the existing social and cultural context. (Suhardin, 2023) In this case, judges conduct inclusive legal interpretations, combining

national and customary law, to create decisions that are fair and relevant to the social conditions of the local community.

This progressive view can also be seen in how judges understand the importance of flexibility in the national legal system. By considering customary law, judges provide space for local norms to be recognized and respected in the judicial process. This step is important to ensure that the law remains responsive to the social dynamics that develop in society, as well as maintaining a balance between national law and customary law. This decision shows that judges have the foresight to create harmony between positive law and customary law and contribute to the development of law in Indonesia that is more inclusive and adaptive to local values that live in the community. Thus, judges not only ensure legal certainty but also ensure that justice can be achieved in every decision taken. This decision is in line with the regulatory objectives in Article 2 of Law Number 1 of 2023 concerning the Criminal Code, which explicitly accommodates laws that live in society as part of a valid source of law. (Tongat et al., 2020) The article confirms that customary law, which is still recognized and implemented by indigenous peoples in various regions in Indonesia, can be used as a basis for judges to make legal decisions.

The judge in Decision No. 997/Pid.Sus/2019/PN Dps showed how Balinese customary law, through the Kitab Adhigama, can be used as a legal basis to prosecute acts that are not specifically regulated in the National Criminal Code. By accommodating the laws that live in the community, judges not only respect local values and traditions but also strengthen the position of customary law in the national legal system. This approach reflects the purpose of Article 2 of Law No. 1 of 2023 on the Criminal Code, which aims to ensure that the laws that live in society remain applicable in the context of modern justice. It also shows that customary law not only functions as a social norm but also as a force of law recognized by the state. (Apriani & Hanafiah, 2022) Thus, this decision not only provides justice for the Balinese indigenous community but also emphasizes the importance of integration between national law and customary law within the framework of the Indonesian legal system.

This decision shows that with the regulation in Article 2 of Law No. 1 of 2023, the Indonesian legal system has become more inclusive and able to accommodate the diversity of laws that exist in society. (Hasan & Nugroho, 2022) This is also an example of how customary law can function as a complement to national law, especially in cases where positive law does not specifically regulate an act that is considered to violate social and moral norms in society. Thus, the application of customary law, in this case, is not only in line with the regulatory objectives in Law No. 1 of 2023 but also contributes to the development of a legal system that is more just, responsive, and in accordance with the existing socio-cultural conditions in Indonesia.

In the study of customary law in Indonesia, there are several similar cases involving adultery and customary law, especially in communities that are still very much bound by traditional values. For example, in Bali, customary law is often applied in cases of adultery, especially those involving broken marriage vows by the man. Outside Bali, in the indigenous Minangkabau community, for example, violations of custom in the form of adultery are also often resolved through local customary law, with sanctions in accordance with customary norms in the region. (Irawan et al., 2021) Cases such as these show that customary law in various parts of Indonesia still plays an important role in maintaining social norms and justice in society.

In cases involving adultery in different Indigenous territories, there are similarities in terms of the use of customary law as a legal rationale, especially when national law does not explicitly regulate the act. However, differences can be found in the details of the customary norms that apply in each community. In Bali, as in case No. 997/Pid.Sus/2019/PN Dps, the offense of Lokika Sanggraha emphasizes sexual intercourse accompanied by broken marriage vows, while in other Indigenous areas, the offense may be more focused on the act of adultery itself without taking into account the existence of marriage vows. Furthermore, the penalties imposed under customary law can also differ depending on the values espoused in each region, although the underlying customary principles of justice remain the same.

This decision has had a significant influence on the application of customary law in other courts, particularly in the context of recognizing that customary law is still relevant and can be legitimately applied in state courts. With this decision, judges in other regions facing similar cases can use *rechtsvinding* to refer to local customary law if national law is inadequate. The ruling also strengthens the position of customary law in the Indonesian judicial system, confirming that customary law is not just a social norm but can also serve as a legitimate basis for law. (Prasetio, 2021) This may encourage courts in other regions to be more active in applying customary law that lives in local communities in accordance with the principles recognized in the constitution and laws.

The decision in case No. 997/Pid.Sus/2019/PN Dps has a significant impact on the recognition of customary law in Indonesia's national legal system. The decision to use Balinese customary law, specifically Article 359 of the Kitab Adhigama, which regulates the offense of Lokika Sanggraha, strengthens the position of customary law as a legitimate part of the national legal system. It shows that customary law is not only relevant in the resolution of customary disputes but can also be used as a basis for criminalization in the district court, especially in cases that are not regulated by national laws such as the Criminal Code. As such, this decision expands the scope of recognition of customary law in formal justice, which has the effect of increasing the legitimacy of customary law throughout Indonesia. This decision also has a strong connection with efforts to protect the values of customary law in society. In this case, the application of Balinese customary law respects the social norms that are alive and respected by the indigenous community. By using customary law as a basis for punishment, the court protected and defended local values that have been an integral part of Balinese social life. This decision shows that the national legal system can be inclusive, accommodating the existence of customary law as one of the pillars of justice recognized at the local level. In addition, this decision provides an important signal to indigenous communities across Indonesia that their customary values are still protected and respected by the state.

Based on the implications of this decision, one of the main recommendations for legal reform in Indonesia is the harmonization between national law and customary law, especially regarding adultery and other moral offenses. The legal vacuum in the Criminal Code regarding adultery that does not involve married parties, as seen in this case, needs to be filled with more comprehensive rules. One solution is to give clearer recognition to customary law in the Criminal Code or at least provide flexibility for judges to refer to customary law in situations of legal vacuum. Updating laws to reflect the social dynamics and local values of indigenous communities will ensure that

national laws are more responsive to the needs of society while strengthening the integration between customary law and positive law in Indonesia. (Kurniawan et al., 2024) This can also prevent legal uncertainty and provide clarity for all parties involved in similar disputes.

To bridge the gap between customary law and national law, there needs to be a clear regulatory mechanism that can regulate the application of customary law within the state legal system. One solution that can be proposed is the creation of guidelines for judges in applying customary law, especially in cases that are not explicitly regulated in national law. These guidelines can serve as a reference to ensure that the application of customary law does not conflict with the basic principles of human rights, non-discrimination, due process, and legal certainty. In addition, limited codification of certain aspects of customary law that are frequently applied in judicial practice could also be an alternative. In this way, customary law that is alive in the community can continue to be respected, but with limitations and regulations that prevent discriminatory application or violations of universal principles of justice.

The application of customary law such as *Lokika Sanggraha*, which punishes a person for breaking a marriage promise even though the two parties are not legally married according to state law, has the potential to cause discrimination, especially against individuals who do not comply with prevailing social norms. This can give rise to inequality, especially for those who do not conform to traditional social expectations, such as women or individuals with different life orientations. In this context, customary law has the potential to reinforce discrimination against individuals who do not follow these norms, as the rules that apply in customary societies often do not accommodate the diversity of life choices or individual freedoms, which should be guaranteed by universal human rights. Furthermore, sanctions imposed under customary law, such as imprisonment or social fines, may be considered disproportionate in a modern context, as they do not take into account the principle of equality before the law guaranteed by the constitution and international human rights standards. Punishments imposed through customary law may also be considered disproportionate to the offense committed, especially when compared to state legal standards that prioritize rehabilitation and social reintegration.

The long-term impact of this ruling on the formation of jurisprudence is very important. Rulings that use customary law, such as *Lokika Sanggraha*, have the potential to become precedents that inspire other courts in similar cases. However, if not properly monitored, this could lead to greater legal uncertainty, given that not all judges understand the context and application of customary law correctly. Therefore, although this ruling can enrich jurisprudential practice in accommodating customary law, it is important for the Indonesian judicial system to ensure that the application of customary law is carried out carefully and in accordance with the times and prevailing legal values. Without clear regulations, the risk of overly broad interpretations of customary law could lead to legal uncertainty, which could potentially harm the parties involved in the judicial process.

The application of customary law may also be considered a violation of the principle of due process in the judicial process, which should provide every individual with the right to defend themselves and clear legal procedures. If customary law is applied unilaterally without adequate oversight, potential inequalities in the judicial process may arise, especially if customary law is not in line with international principles regarding personal freedom and women's rights. In this case, the application

of customary law without transparent and fair procedures can harm the parties involved, especially victims who may not receive equal protection rights. Therefore, it is important to evaluate whether the application of customary law in this case provides sufficient guarantees of justice and does not violate human rights, both for the accused and the victims. This evaluation must consider whether the legal process truly reflects the principles of true justice and respects the fundamental rights of every individual in society.

## CONCLUSION

In analyzing decision No. 997/Pid.Sus/2019/PN Dps, it can be concluded that the court successfully accommodated Balinese customary law, specifically the violation of *Lokika Sanggraha*, as the basis for sentencing in an adultery case not regulated in the Criminal Code (KUHP). Defendant I, Dewa Gede Ardana, was sentenced for breaching a promise to marry Ni Putu Dwik Supartini after engaging in sexual relations, which violated Balinese customary norms. The application of Article 359 of the Adhigama Book in this decision demonstrates the important role of customary law in the national legal system, particularly in filling *rechtsvacuum* in national law. This decision provides a clear example of how customary law can be used to uphold justice in a local social and cultural context that may not be clearly regulated in the KUHP.

The application of *rechtsvinding* by judges plays a key role in filling such legal gaps. The judge utilized Balinese customary law as the basis for sentencing, which is more in line with local customary norms. This reflects the flexibility of the Indonesian legal system in accommodating customary law and providing solutions that are relevant to local social and cultural conditions. This decision also demonstrates how judges can combine national law and customary norms to create decisions that are fair and relevant to the social conditions of Balinese society. However, this decision also raises questions about the application of customary law that may violate human rights principles, particularly those related to equality and non-discrimination.

The application of customary law, such as *Lokika Sanggraha*, risks exacerbating discrimination against individuals who do not comply with prevailing social norms and potentially violates the principle of *due process* that must be guaranteed in every judicial process. Therefore, it is important to evaluate whether the application of customary law in this case provides sufficient guarantees of justice and does not violate human rights, both for the Defendant and the victim. This decision also has significant implications for the recognition of customary law within Indonesia's national legal system, strengthening the position of customary law as a legitimate part of the legal system in Indonesia. The application of customary law in the judicial process, while taking into account the values that are alive in society, demonstrates that Indonesia's national law is becoming increasingly inclusive and responsive to the cultural diversity that exists in society.

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