

# Implementation of Indigenous Sanctions “*Kasepekang* (Exiled)” in Resolving a Credit in Village Credit Institution in Bebetin Village, Buleleng Regency

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**Abstract.** Financial institution is established because traditional villages have an important role. This study aims to provide knowledge and understanding to the community related to the management of financial institutions known as the Village Credit Institutions (VCI). The legal issues raise the question of the form that application of traditional sanctions “*kesepekang*” in the settlement of credit at the Village Credit Institution and the legal consequences of it in Bebetin village, Buleleng Regency. The research method is done by interviewing the coaches, supervisors, traditional village administrators and the officers of village credit institution and classified as sociological empirical research. The conclusion that can be drawn from this study are the form of application of traditional sanctions “*kesepekang*” in the settlement of loans at the VCI Bebetin of Buleleng Regency raises pros and cons because traditional sanctions is contradicted and the application of VCI loans does not give positive impact to the existed law.

**Keywords:** Customary sanctions; customary village; village credit institutions; village credit institution management

## 1. Introduction

The provisions of Article 18 B paragraph (2) of the 1945 Constitution regulate the recognition of the existence of “customary law communities”, from various groups of people who have original arrangements within the territory of the Republic of Indonesia. As a customary law community, with the recognition as a nation and state. The existence of traditional villages and their traditional rights are recognized by the state. The existence of traditional villages in Bali, has two main functions, namely; cultural functions and economic functions. The cultural function is the function of cultural maintenance and development. While the economic function is the maintenance and development of culture as an economic potential, as well as economic institutions owned by traditional villages to sustain the needs in the implementation of their functions [1].

Indigenous peoples in Bali, according to their nature and function are institutions that are social-religious and socio-economic. In the fact that the role of indigenous villages is not limited to social cultural and religious roles, but also the role of the economy and public services

originating from the government. Traditional villages carry out various functions, both in the context of their existence as indigenous villages and as elements of the nation. Such a large role has illustrated the variety of functions and the amount of costs that must be borne as a burden by traditional villages in their daily lives. The cost is not limited to financing for its own affairs, but also the additional affairs that come from the government. These problems by the Provincial Government of Bali are overcome through the development of village economic institutions, especially traditional village financial institutions [2].

One of the obstacles that can be faced by Village Credit Institutions is the possibility of non-smooth loan repayment. Holloh conducted studies in East Java, Bali and NTB, finding that the low level of credit disbursement by similar institutions in the Village Credit Institution was caused by several things, namely: 1) Non-current billing, 2). Human Resources (HR) and bad loans, all of which are caused by external and internal factors such as economic conditions, character and inadequate credit analysis. The low quality of debt portfolios, the low value of collateral and the lack of provision for possible loan losses are also factors that cause the institution's low ability to channel financing to the public [3]. Furthermore, Holloh also stated that there were 2 (two) reasons for low credit disbursement, namely: the absence of supervision of loans disbursed and the high level of lending rates compared to financial institutions such as commercial banks. In practice for "borrowers" who do not fulfill their obligations to the VCI to make payments, customary sanctions are applied. In customary law there is no distinction between criminal and civil contexts. Often, the application of customary sanctions is indeed effective in enforcing VCI management rules. But many people who consider the application of this sanction is only a worst choice, which is suspected will cause a further impact other than often considered inhumane and not in line with the purpose of its formation. These characteristics indicate that the VCI is a community financial institution formed by a community unit, operating within the community area, serving environmental financial transactions or for the benefit of community members, to fulfill community goals [4]. I Nyoman Nurjaya argues that VCI in Bali are traditional institutions that are not merely socio-economic nuances, but also religious cultural patterns, related to the fulfillment and implementation of the obligations of the world of skala (real life realm) and niskala (unreal nature of life) [5].

Customary village is a community in the meaning of geography and other social binding elements, namely culture, social system, legal system, economic system, and other social bonds [6]. They also interact according to customary systems and are bound by a strong sense of identity. The challenge faced by the Village Credit Institution is the possibility of non-smooth repayment of loans, aka bad loans. This is also due to the lack of adequate human resources support in the management. So that it results in inaccurate and ignores the principle of prudence in providing loans to the people. This situation results from a lack of fluency in fulfilling obligations due to lack of ability in fulfilling their obligations [7].

The illustration of this condition has also occurred in the Village Credit Institution (VCI) in Bebetin Village, Sawan District, Buleleng Regency. Credit arrears at the VCI amounted to almost IDR 5 billion more, even credit arrears amounting to IDR. 3 billion which the borrowers of the people concerned do not fulfill their obligations so that they were subjected to customary sanctions in the form of "*kasepekang*". With the implementation of this form of sanction, it raises the pros and cons for the people in Bali, related to the imposition of the customary sanctions. In customary law there is no distinction between criminal and civil contexts. Along with this, the application of

customary sanctions is indeed effective in enforcing VCI management rules. But many people who consider the application of this sanction is only a worst choice, which is suspected, will cause a further impact other than often considered inhumane and not in line with the purpose of its formation [8].

## **2. Results and Discussion**

### **2.1. Criminal Aspects in the Management of Village Credit Institutions (VCI)**

Managers and employees or officers of VCI who act deviate from the applicable or negligent provisions in carrying out their duties, either directly or indirectly causing losses to the VCI, must compensate according to the provisions of the prevailing laws and regulations. In Article 25 of the Bali Provincial Regulation Number 8 of 2002 relating to investigations related to alleged criminal acts in the management of VCI, it is regulated as follows: Certain Civil Servants in the Provincial Government are given special authority as investigators to investigate criminal offenses against this Regional Regulation. Then the authorities of the Civil Servant Investigator referred to are: receiving, searching, collecting and researching information or reports regarding criminal offenses against this regulation, so that the information or report becomes complete and clear [9].

In carrying out the investigation, the investigator must pay attention to the provisions of the Criminal Procedure Code that are stipulated in the Criminal Procedure Code (KUHAP). The Investigator informs the commencement of the investigation and submits the results of the investigation to the public prosecutor through the investigation of officials of the Republic of Indonesia State Police in accordance with the provisions in Law Number 8 of 1981 concerning Criminal Procedure Law. There is a provision, in paragraph (1) states, VCI managers who act deviate from the applicable or negligent provisions in carrying out their obligations, either directly or indirectly causing harm to the VCI threatened with Criminal Custody for a maximum of 6 (six) months or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah). Then in paragraph (2) states that every person who misuses the name of the VCI is threatened with a maximum imprisonment of 6 (six) months or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

### **2.2. Form of Customary Sanctions in Balinese Customary Law.**

Actions that violate the rules of customary law and undermine peace, tranquility and disturb the balance of the cosmos in people's lives are known as customary cases. But in the literature of customary law customary cases as illegal acts are often referred to as the customary offense or customary violations. These terms are translations from the Dutch "*adat delicten recht*" [10]. In Balinese society, these terms are not commonly used terms among people. The terms commonly used are terms such as: wrong, *sisip* (doing wrong), sin, etc. In *awig-awig* (customary law), it is known as a technical term to refer to it, namely the term "*wicara*" (utterance) which contains meaning as a legal issue that must be resolved, both legal issues in the form of customary violations or legal issues in the form of disputes. Customary offenses known in Balinese society, both those listed in *awig-awig*, customary village and *paswara*, and in lontar (palm leaf manuscripts) the types are as follows: a). moral offense, b). offense concerning property, c) offense violates personal interests, d). Customary violations due to negligence or not carrying out

obligations, e) murder, 6). theft, f) discordant, g). adultery, etc. In customary criminal law, violations of customary law can be subject to customary sanctions. This customary sanction is given with the intention and purpose to restore the balance that is disturbed due to the existence of a customary violation. Customary sanctions in general are in the form of social sanctions, and more social sanctions in the form of mental and psychological burdens. The types of traditional sanctions that have existed and are known in Bali, among others, are as follows a). *danda*, b). *karampag*, c). *kasepekang*, d) *kanorayang*, etc.

### **2.3. Application of Customary Sanctions in VCI Management.**

Customary village is given full rights to take care of the internal affairs of the community. Management of internal affairs is regulated in the village provisions called *Awig-awig*. An *awig-awig* at least regulates: (a). Name and area of the village; (b). Legal basis and purpose; (c). Provisions on village planning; (d). Provisions on religious order; (e). Provisions on the order of human life; (f). Violations and sanctions; and (g). Reduction and addition of *awig-awig*.

In relation to the VCI, starting from determining the formation and management of the VCI even though it is also based on regional regulations, while the formation and arrangement of the management are based on *awig-awig* (customary law). Starting from the process of determining the candidates for management, the selection and determination of the management. The mechanisms and procedures in the entire process are arranged in *awig-awig*. Likewise, in terms of determining sanctions against customers and imposing sanctions. The existence of Regional Regulation on VCI No.3 of 2017 does not regulate sanctions on customers at all. The provisions contained in the Regional Regulation only regulate the provisions of sanctions against administrators who violate the law. There are no statutes and by-laws in the administration of VCIs. Therefore, as the basis for the implementation used is *awig-awig* customary law and *perarem* (agreement of villagers) [11].

Likewise, related to the management of the Bebetin VCI in the implementation of customary sanctions by managers in the form of "*kesepekang*" results the pros and cons. Even before the imposition of sanctions, a settlement must be carried out in advance based on the provisions in handling the settlement of bad debts. Various facilitation efforts have also been carried out by village officials. Considering in its application raises opinions and contradictions. Then in the end, through the implementation of the deliberation called "*Paruman Agung*" (great meeting) in Bebetin village, the provisions of the traditional sanctions *kasepekang* were changed to the term of customary sanctions *kejongkokan*. That is, the form of customary sanctions in the form of not getting services as villagers, including not being allowed to get loans at the LPD [8].

Based on the application of the customary sanction form, in reality all citizens who become customers who initially do not fulfill their obligations, are ultimately willing to fulfill their obligations even though the repayment is in instalments. Thus in applying a rule, it is necessary to strengthen through a legal culture. Because legal culture is the atmosphere of social thoughts and social forces that determine how the law is used, avoided, or misused. According to Lawrence M. Friedman, stated that "*without legal culture, the legal system is inert* [12].

## **3. Conclusion**

Based on the above explanation, the following conclusions are the form of the application of traditional sanctions “*kesepekang*” in the settlement of credit at the Credit Institution of Bebetin village in Buleleng Regency raises pros and cons. Because the form of traditional sanctions is considered inhumane and has not been in accordance with the present, even contrary to Law No. 39 of 2009. The second one is the legal consequences of the application of customary sanctions “*kasepekang*” in the settlement of loans at VCI Bebetin in Buleleng Regency do not give effect to the implementation of positive law.

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