

Legal Protection for Indigenous Communities That Conduct *Tajen* That Contain Elements of Gambling

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Abstract: This study examines the conflict between Balinese customary law, particularly *tajen* as the *tabuh rah* ritual in Hindu ceremonies, and national criminal law that prohibits gambling under Article 303 of the KUHP and Law No. 7 of 1974. *Tajen* is not merely gambling but an integral part of *bhuta yadnya*, aimed at neutralizing negative energies. It is recognized in the *awig-awig* of *desa pakraman* and the philosophy of *Tri Hita Karana*. However, the betting element leads to the criminalization of indigenous communities, creating legal uncertainty. The research problems include the current legal protection and the negative function of material unlawfulness based on Article 2 of Law No. 1 of 2023 on the Criminal Code. Using a normative method with statutory and conceptual approaches, this study analyzes primary legal sources such as Article 18B paragraph (2) of the 1945 Constitution, Law No. 6 of 2014 on Villages, and jurisprudence such as Constitutional Court Decision No. 58/PUU-XV/2017. The findings indicate that legal protection is partial: constitutionally, it recognizes customary rights, but implementation is weak due to the absence of regional normative regulations. Theories of legal pluralism and substantive justice support harmonization, where the negative aspect of material unlawfulness can eliminate criminal liability if *tajen* is purely ritualistic without commercial elements. The conclusion recommends

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reformulating norms through a Bali Regional Regulation to legalize ritual *tajen*, issuing customary certificates, and applying restorative justice, to realize substantive justice in the multicultural Unitary State of the Republic of Indonesia.

Purpose: This article aims to analyze whether the *tajen* on the Island of Bali, which contains elements of criminal acts (namely gambling), allows the perpetrators of these customary activities to receive legal protection from the perspective of criminal law and the position of customary law in Indonesia.

Design/Methodology/Approach: This article employs a normative legal research approach by examining relevant laws and regulations as well as academic literature concerning legal protection for indigenous communities engaged in *tajen* that involve elements of gambling.

Findings: This study finds that customary activities involving gambling elements, known as *tajen*, create conflicts between customary law and criminal law in Indonesia. *Tajen*, as a traditional customary practice, leads to the criminalization of indigenous communities. The indigenous people themselves conduct *tajen* based on the understanding that it is a customary activity intended to stimulate the village economy across Bali. However, on the other hand, this activity also contains elements of criminal acts, namely, gambling. The absence of regional regulations that serve to recognize this customary activity and provide a legal umbrella for indigenous communities is a critical missing factor, as it contradicts Article 18B of the 1945 Constitution of the Republic of Indonesia.

Originality/value: This article offers an original contribution by examining the activities of the traditional Balinese custom known as *tajen*, which involves elements of gambling and has a direct impact on indigenous Balinese communities. To date, there remains no clear legal regulation governing this practice. This issue actually represents an aspect that frequently causes.

Keywords: *tajen*; cockfighting; legal protection

Paper Type: Article-research

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Introduction

Indonesia, as an archipelagic nation with diverse ethnicities, religions, and languages from Sabang to Merauke, possesses invaluable cultural riches. During its 80 years of independence, physical and mental development have been continuously promoted, including the recognition of customary law as a source of national law, as stipulated in Article 18B paragraph (2) of the 1945 Constitution, which respects the unity of indigenous communities and their traditional rights. However, conflicts arise when customary activities contain criminal elements, such as taje (cockfighting) in Bali, which is a Hindu ritual of dripping animal blood as a spiritual sacrifice, but is often associated with gambling, which is prohibited by Article 303 of the Criminal Code. Customary law, both written and unwritten, lives in society, and its existence is recognized. In Bali, taje involves customary leaders and the wider community, creating legal uncertainty because it clashes with the national prohibition on gambling, as regulated in Law No. 7 of 1974 and Law No. 11 of 1985. The lack of positive norms, particularly in Bali, weakens customary law protection, although a proposed provincial regulation aims to legalize ritual.

Cockfighting as a just solution has emerged. Legal protection for indigenous communities is crucial, given their frequent marginalization. The theory of customary responsibility establishes indigenous communities as legal subjects with the right to practice traditions. The theory of legal pluralism encourages the coexistence of customary and national law, while substantive justice emphasizes local context over rigid formalism. This study explores the urgency of establishing regional regulations for harmonization (Flambonita et al. 2021), preventing criminalization, and ensuring cultural preservation within the framework of the Unitary State of the Republic of Indonesia.

Methods

This research uses a normative research method, namely a research method that focuses on the analysis of positive legal norms, legal principles, and doctrines that are relevant to the issue of legal protection for indigenous peoples who carry out activities (*tajen*) that contain elements of gambling.

Discussion and Findings

The Context of the Conflict between Customary Law and National Law

The conflict between customary law and national law in the case of cockfighting in Bali is a manifestation of legal pluralism in Indonesia. Cockfighting, which originates from Balinese Hindu tradition, was originally part of a religious ritual called *tabuh rah*, in which cockfights were performed as sacred blood offerings to maintain cosmological balance. However, over time, this practice evolved into an activity often associated with gambling, thus clashing with national law prohibiting gambling crimes. This conflict reflects the tension between unwritten local cultural values and formal, written positive legal norms, where customary law is recognized by the constitution but must align with the principles of a unitary state. This conflict arose because Indonesia adheres to a pluralistic legal system, where customary law is recognized as part of national law based on Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are in line with the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI). However, this recognition is conditional, meaning that customary law must not conflict with national positive law, especially those concerning human rights, public order, and the prohibition of gambling. In Bali, cockfighting is often held in the context of traditional ceremonies such as *Panca Yadnya*, but its evolution into a place for betting money has

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created a dilemma: is this a cultural tradition that must be preserved or a form of illegal gambling that must be eradicated?

The cockfighting conflict also reflects the global issue of legal pluralism, where local norms clash with national or international standards. In Indonesia, this is similar to other cases, such as marriage by capture in Sumba or customary rights in Papua, where customary law is often marginalized by positive law. However, specifically for cockfighting, the gambling element is a key trigger, as Indonesia, as a Muslim-majority country, prohibits gambling on moral and religious grounds, even though Bali is predominantly Hindu. Data from the Bali Regional Police show an increase in cockfighting cases since 2010, with hundreds of raids annually, but prosecutions often fail due to a lack of direct evidence of betting. This demonstrates that the conflict is not only normative but also practical, involving social, economic, and political dynamics. Law No. 7 of 1974 concerning the Regulation of Gambling reinforced this prohibition, with Government Regulation No. 9 of 1981 concerning the Implementation of Gambling Regulation revoking previous regulations that might have permitted licensed gambling (Rosando 2018). Presidential Instruction and the Minister of Home Affairs No. 5 of 1981 specifically prohibited cockfighting in Bali, although enforcement was weak. National law grants police discretion under Law No. 2 of 2002 concerning the Police, Article 18, which allows for independent judgment in the public interest, including respect for customs, but must be in line with legal and moral norms. From the perspective of Indonesian positive law, customary law is recognized through Article 18B paragraph (2) of the 1945 Constitution, which states that the state respects the unity of customary law communities 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. However, in the case of cockfighting, this recognition often creates a dilemma

because cockfighting is considered a cultural heritage by the Balinese people, while national law classifies it as a criminal offense.

Historically, cockfighting has existed since the pre-colonial era, recorded in inscriptions such as the Batur Abang A Inscription (Caka 933) and the Batuan Inscription (Caka 944), where cockfighting was limited to three pairs (saet) as part of a traditional ceremony. During the Dutch colonial period, cockfighting was recognized as customary law for the native class through Articles 131 and 163 of the Indische Staatsregeling (IS), which differentiated laws for indigenous people. Post-independence, the integration of customary law into the national system became challenging, especially when practices such as cockfighting deviated from their original meaning and involved elements of gambling. This conflict became increasingly relevant in the reform era, where legal pluralism was advocated to maintain cultural diversity, but remained constrained by Pancasila and national law. Cockfighting activities in Balinese culture are part of traditions related to yadnya, specifically Tabuh Rah, a ritual offering of animal blood as part of the Bhuta Yadnya ceremony. From the perspective of the Hindu-Balinese community, this activity is considered a religious obligation and has high spiritual value.

Indonesian national law classifies cockfighting as a form of gambling, particularly when it involves wagering money. The primary basis for this is Article 303 of the Criminal Code (KUHP), which states that anyone offering an opportunity for gambling without government permission is subject to up to 10 years' imprisonment or a fine of up to IDR 25 million. This article defines gambling as any game in which winnings depend on chance, including betting on the outcome of cockfights. Furthermore, Article 303 bis of the KUHP increases the penalty to up to four years' imprisonment for gambling in unlicensed public places.

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Law No. 7 of 1974 concerning the Regulation of Gambling reinforces this prohibition, focusing on a deterrent effect to maintain social order and public morals (Hutapea et al. 2022). National law is repressive and formal, making no distinction between cockfighting as a traditional ritual and cockfighting as gambling, as long as the wagering element is met. This contradicts the principle of ahimsa (ahimsa) and Law No. 5 of 2018 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, which further restricts online gambling, even though cockfighting is more offline. The relationship between customary law and national law in Indonesia is complementary but often conflictual. Customary law is recognized as a source of law in Article 2, paragraph 1, of Law No. 48 of 2009 concerning Judicial Power, where it serves as a benchmark in the formation of national law. However, the principle of "as long as it is alive and in accordance with societal developments" is often used as a justification for limiting its application if it conflicts with positive law.

National law is also supported by a criminological perspective, where cockfighting is seen as a recreational activity that has become a crime due to economic and social factors. Research shows that cockfighting contributes to thuggery and the public's fear of reporting it. In contrast to other regions in Indonesia, where cockfighting is absolutely prohibited without customary exceptions, Bali has a more flexible policy, creating a national dilemma. The conflict arises from differing paradigms: flexible and contextual customary law versus rigid and universal national law. In cockfighting, the main manifestation is the deviation from *tabuh rah* into gambling, where betting money (such as the 5:4 odd system or pit 1:2) transforms a sacred ritual into a criminal offense. This creates internal tension within Balinese society, with some viewing cockfighting as entertainment

and a source of income, while others consider it a violation of ahimsa (a violation of religious ahimsa).

In enforcement, the police are given discretionary authority based on Article 18 paragraphs (1) and (2) of Law Number 2 of 2002 concerning the Indonesian National Police, which allows actions outside the law in the public interest, as long as they are fenced in by professional, social, legal, and moral norms. However, this often creates ambiguity, where the police secure *tajen* as a traditional ceremony, even though it contains elements of gambling, to avoid conflict with the community. The challenges of law enforcement are a real manifestation of conflict. In areas such as Jembrana, the police have difficulty proving elements of gambling because the perpetrators are skilled, the location is remote, and during raids, only chickens, cages, and motorbikes are found without betting money. Empirical data show that *Tajen* is often disguised as a ceremony, with police using discretion to secure after the ritual, despite the security contributions of the perpetrators. This reflects peace maintenance rather than law enforcement, where the police prioritize social harmony over strict enforcement.

Indonesian legal pluralism recognizes the coexistence of customary, religious, and national law, as stipulated in TAP MPRS No. II/1960, which establishes custom as the basis for developing national law. In *Tajen* (Indonesian traditional dance), pluralism is evident in the recognition of *tabuh rah* (a ritual offering) as *yadnya* (a ritual offering), but gambling as a crime. This approach requires harmonization, where judges explore the community's living law (Article 5 of the Judicial Power Law). Conflicts arise when customary law is deemed to violate national norms, such as in cases of human rights or the prohibition of gambling. Here, national law holds supremacy, but harmonization efforts are underway through regional regulations (Perda). In Bali, customary law is integrated through Perda No. 4 of 2019

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concerning Customary Villages, which recognizes village autonomy in regulating traditions. This relationship demonstrates Indonesian legal pluralism, where customary law serves as living law that supports national identity. However, from a national legal perspective, the betting element in cockfighting places this activity as an activity that falls under the criminal act of gambling, as regulated in:

- Pasal 303 KUHP
- Pasal 303 bis KUHP
- Law No. 7 Tahun 1974

The contradiction arises because the state, through the 1945 Constitution, also recognizes and respects customary law communities and their traditional rights as stated in:

- Pasal 18B ayat (2) UUD 1945
- Pasal 28I ayat (3) UUD 1945

This constitutional recognition is strengthened by Constitutional Court Decision Number 35/PUU-X/2012 which states that the state is obliged to protect the existence of indigenous communities and their cultural practices. Thus, there is a normative clash between:

Living customary law, which recognizes cockfighting as part of cultural identity, and Positive law, which considers cockfighting a criminal act of gambling.

This conflict creates legal uncertainty for indigenous communities. In practice, the criminalization of traditional cockfighting often occurs because law enforcement officers (police) still use the formalistic approach of the Criminal Code without regard for Constitutional Court decisions and regional regulations. Customary law, as a system of traditional norms, plays a vital role in maintaining Indonesia's cultural identity, including in Bali, through cockfighting. However, the cockfighting case clearly highlights an inherent conflict: on the one hand, it enriches customary law as a ritual and fundraiser; on the

other, it is vulnerable to gambling and violence, which contradict the Criminal Code. To resolve this, harmonization through regional regulations that strengthen cultural aspects while limiting gambling, as observers have suggested. This will ensure customary law remains relevant without violating state principles. In your thesis, this analysis can be expanded with further case studies to demonstrate Indonesia's legal pluralism.

These cases reflect a dilemma: *tajen terang* (bright cockfighting) is a customary expression but often violates state law. Analysis shows that without strict oversight from the customary village head, *Tajen Terang* is easily abused. A potential solution is limited legalization for rituals, with a strict ban on betting, as proposed in the 2025 discourse.

Harmonization efforts include educating the public to distinguish *tabuh rah* from gambling, strengthening the role of traditional villages in supervision, and creating regional regulations (*perda*) that integrate customary practices without gambling. Police are expected to establish strict criteria for permits, such as a three-seat limit and the presence of ritual ceremonies. Recommendations include social approaches: collaboration with religious leaders for education, and economic alternatives to reduce dependence on cockfighting. Long-term implications include strengthening legal pluralism through dialogue, as stipulated in Law No. 48 of 2009 concerning Judicial Power, which requires judges to explore customary values. However, without firm enforcement, this conflict could weaken state authority and damage Balinese culture. Research suggests reforming police discretion to prevent abuse.

The Position of Customary Law as a Basis for Legal Protection

Protection of indigenous peoples is a fundamental principle recognized by the constitution, while the prohibition of gambling is part of the state's efforts to maintain morality and social order. The question of how existing legal protections for indigenous

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peoples in the traditional cockfighting activity of *tajen*, which involves elements of gambling, is particularly relevant in Bali, where *tajen* is not merely a game but an integral part of Balinese Hindu rituals. *Tajen*, or cockfighting, often involves betting, creating a conflict between the preservation of indigenous culture and the enforcement of national criminal law. Within the framework of legal pluralism, as explained by Griffiths (1986), state law never stands alone but always coexists with customary law and social norms that exist within society. Indonesia constitutionally adheres to a pattern of legal pluralism in practice.

The concept of pluralism is a fundamental idea in social, political, and legal sciences, emphasizing the acceptance and existence of diversity in society. Etymologically, pluralism comes from the Latin word "pluralis," meaning multiple or many. In a general context, pluralism refers to a condition in which various groups, ideas, values, or systems coexist peacefully without the dominance of one party over another. This concept has become increasingly relevant in the era of globalization, where multicultural societies like Indonesia face challenges in managing cultural, religious, and legal diversity. However, in this discussion, the primary focus is on the concept of legal pluralism, as it is often central to discussions in legal studies, particularly in post-colonial countries like Indonesia.

Legal pluralism is defined as the existence of two or more legal systems applicable within the same geographic region or social community. This concept emerged as a critique of the monistic or centralistic view of law, in which only state law is considered valid. Conversely, legal pluralism recognizes that law originates not only from the state but also from customary, religious, community, and even international norms that interact in everyday life. In the Indonesian context, legal pluralism is crucial because the country has more than 1,300 ethnic groups with their own customary legal systems, in addition to national

laws influenced by Dutch colonial heritage, Islamic law, and international principles. Fundamentally, legal pluralism is a situation in which various legal systems coexist within a given social field. This definition was first put forward by experts such as John Griffiths in 1986, who distinguished between "weak" and "strong" legal pluralism. Weak legal pluralism refers to a situation in which a state recognizes other legal systems but maintains its own law as superior. An example is the recognition of customary law by the state, but only as long as it does not conflict with national law, as regulated in Article 18B paragraph (2) of the 1945 Constitution of Indonesia (Suryatni 2010). Legal pluralism is seen as a critique of Hans Kelsen's legal positivism, which considers law to originate solely from the state. In contrast, scholars such as Sally Falk Moore have introduced the concept of "semi-autonomous social fields," where social groups have their own rules that interact with state law. This explains why in traditional societies, such as those in Africa or Asia, customary law is often more dominant than formal law (Benda-Beckmann and Turner 2018).

Legal pluralism can be classified into several types based on the level of interaction and dominance: Weak Legal Pluralism: Here, the state recognizes other legal systems, but with subordination. For example, in Indonesia, customary law is recognized through Article 18B of the 1945 Constitution, but must be "in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This is similar to Hooker's concept, where pluralism refers to a situation where different laws apply to different groups within a single state.

Strong Legal Pluralism: All legal systems are equal and interact without hierarchy. Example: In indigenous communities such as the Dayak in Kalimantan, customary law is often more influential than state law in resolving land disputes. Hybrid Legal

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Pluralism: A combination of state and non-state law, such as the sharia courts in Aceh, which were integrated into the national justice system through Law Number 11 of 2006 concerning the Governance of Aceh. Global Legal Pluralism: Involving international law, such as the influence of the Human Rights Convention on national law. Suryatni, 'Legal Pluralism in an Anthropological Perspective'.

In the context of Indonesia as a multicultural unitary state, legal pluralism is guaranteed by the 1945 Constitution of the Republic of Indonesia (UUD 1945), specifically Article 18B paragraph (2) which states: "The state recognizes and respects customary law communities and their traditional 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, which are regulated by law." This article reflects weak legal pluralism, where customary rights are recognized but limited by the principles of the unitary state and national law. This concept becomes relevant in the case of cockfighting in Bali, where the tradition of cockfighting (tajen) as part of Balinese Hindu traditional rituals clashes with the prohibition of gambling in national criminal law. Cockfighting is not only entertainment, but has a spiritual dimension as *Tabuh Rah* in yadnya ceremonies, but is often accompanied by betting elements that make it illegal gambling.

The cockfighting case in Bali illustrates the conflict of legal pluralism: on the one hand, Balinese customary law (awig-awig desa pakraman) permits cockfighting as a cultural preservation, while state law, through the KUHP and Law Number 7 of 1974 concerning the Regulation of Gambling, prohibits it. This explanation will comprehensively discuss the concept of pluralism from the perspective of the cockfighting case, including history, legal analysis, pros and cons, case studies, and recommendations, with a minimum length of 2000 words to

ensure completeness. The discussion is based on the principle that legal pluralism must harmonize various norms to avoid conflict and achieve social justice.

Tajen comes from the word "*taji*," meaning a sharp knife attached to the leg of a fighting cock. In Balinese culture, *tajen* has existed since the Majapahit era and developed during the Gelgel Kingdom, where it became part of Hindu religious rituals. According to the Pararaton book, *tajen* has been practiced since the time of the Balinese kingdoms, although it does not mention whether betting was involved. In a spiritual context, *tajen*, as *Tabuh Rah*, is a Bhuta Yadnya ceremony in which chicken blood is shed as an offering to bhuta kala (negative forces), to maintain the balance of nature and humans in accordance with the Tri Hita Karana philosophy (harmony between humans, nature, and God). This reflects the cultural pluralism in Bali, where Hindu traditions coexist with modern values.

However, over time, cockfighting evolved. In the pre-1980s independence era, cockfighting was used to raise funds for village development with government permission, demonstrating the interaction between customary and state law. Today, cockfighting is divided into three types: *Tabuh Rah* (a ritual without gambling), *Tajen Terang* (open for village fundraising), and *Tajen Branangan* (illegal with heavy gambling). This development has created conflict, as the gambling element puts cockfighting at odds with national law, while the Balinese see it as a cultural identity that must be preserved. Cultural pluralism in this case recognizes the diversity of values: for indigenous Balinese, cockfighting is an expression of happiness, social relationships, and the hope of victory, as research on the motivations of cockfighting participants has found. However, this also has negative impacts, such as gambling addiction, poverty, and violence, as seen in the June 2025 riot in Kintamani that resulted in a fatal duel. Cultural pluralism requires the state to respect these traditions, but is

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constrained by universal norms such as animal rights and the prohibition of gambling.

In Indonesian legal pluralism, state law dominates, but customary law is recognized. Article 18B paragraph (2) of the 1945 Constitution serves as the basis, implemented through Law Number 6 of 2014 concerning Villages, which recognizes customary villages as customary law communities with the authority to regulate traditions such as cockfighting. Law Number 5 of 2017 concerning Cultural Advancement, Article 4, protects cockfighting as a cultural heritage, as long as it does not conflict with national law (Bramantyo and Setiono 2022). However, conflict arises from the prohibition of gambling. Article 303 paragraph (1) of the Criminal Code punishes those who organize unlicensed gambling with imprisonment of up to 10 years or a fine of IDR 25 million. Law Number 7 of 1974 concerning the Regulation of Gambling, Article 1, prohibits all forms of gambling, except those permitted for social purposes. In the new Criminal Code (Law No. 1 of 2023), Article 426, the prohibition is maintained but opens up the possibility of special permits, which, as of December 2025, have not been implemented for cockfighting.

Weak legal pluralism is evident here: the state recognizes Balinese customary law through Bali Provincial Regulation No. 3 of 2023 concerning the Empowerment of Customary Law Communities, which permits ritual cockfighting without gambling. However, when cockfighting is accompanied by betting, it is considered a violation of state law, as evidenced by research on cockfighting law enforcement. Constitutional Court Decision No. 46/PUU-VIII/2010 reinforces that customary rights are respected as long as they do not violate human rights and state principles. At the regional level, the discourse on legalizing cockfighting by the Bali Regional People's Representative Council (DPRD) in June 2025 has drawn controversy. Supporters, such as Deputy Speaker of the Bali DPRD, Nengah Disel Astawa, see it as

a means of preserving culture and generating income, while the Bali Regional Police insist they will continue to crack down on gambling. The Indonesian Hindu Dharma Council (PHDI) opposes any conflict with Hindu literature, such as the Manawa Dharmasastra. This reflects Indonesia's unique legal pluralism, where dialogue between state and customary law is necessary for harmonization.

Normative analysis shows that cockfighting reflects the tensions of legal pluralism. Cockfighting is a sacred ritual that supports social welfare, such as village fundraising. However, the element of gambling makes it meet the definition of gambling in the Gambling Regulation Law: a game of chance with the hope of profit. Research shows that cockfighting is a culturally rooted form of gambling, causing poverty and social disruption. Strong legal pluralism could be a solution, where customary law is recognized independently for ritual cockfighting, while state law cracks down on illegal cockfighting. However, the reality is weak pluralism, where law enforcement is often lax due to cultural considerations, such as the 2025 Bali Police raid that disbanded cockfighting in *Klungkung* but did not completely eradicate the practice. The politics of legal pluralism, as in Uluwatu Temple, demonstrates a middle-ground approach where customary and state law intersect.

The social impact of *Tajen* strengthens community solidarity, but it can also lead to violence, as in the case in Songan, Kintamani, where a riot escalated into physical conflict. From an animal rights perspective, *Tajen* has been criticized as violent, although Balinese culture views it as a spiritual sacrifice. Pluralism requires balance, such as the proposed modification of *Tajen* to eliminate physical combat. Balinese customary law is primarily regulated by the *awig-awig* (unwritten laws) that exist within the community and serve as guidelines for the governance of

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traditional villages. These awig-awig have been recognized as part of the national legal system, as affirmed in:

- Article 103, Law No. 6 of 2014.
- Law No. 32 of 2009

In many Balinese traditional village awig-awig, tajen is recognized and differentiated between:

Legally, legal protection for indigenous communities can be provided if the activity:

1. It is part of an official religious/customary ritual,
2. It has been regulated in the bylaws,
3. Implemented within the corridor of existing customary norms, and
4. Does not conflict with the principles of the 1945 Constitution, human rights, and the Unitary State of the Republic of Indonesia.

Based on normative research and applicable legal sources, legal protection for indigenous peoples in cockfighting practices includes:

a. Constitutional Protection

1. Article 18B paragraph (2): The state recognizes and respects the unity of customary law communities.
2. Article 28I paragraph (3): The cultural identity and traditional rights of communities must be respected.

This means that the state may not criminalize customary practices of a ritual nature, unless they violate human rights or the public interest.

b. Protection through the Obligations of Judges

Article 5, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power stipulates that judges are obliged to explore the legal values and sense of justice of society, including customary law. This means that in deciding cockfighting cases, judges must consider:

1. customary existence,
2. ritual purpose,
3. local customs,
4. and Balinese socio-cultural values.

c. Protection Through Regional Policies (Perda)

Although there is no Bali Regional Regulation specifically regulating the legalization of cockfighting, the discourse on formulating such a Regional Regulation has been proposed by the Bali Regional People's Representative Council (2025). This regulation is important because:

1. provide legal certainty,
2. prevent the criminalization of indigenous peoples,
3. Regulate cockfighting practices so that they do not conflict with national law.

d. Protection through Legal Theory

Several theories can be used to protect Balinese indigenous people:

1. Customary Responsibility Theory (Rechtspersoonlijkheid Adat). Customary law recognizes collective legal subjects, so customary villages can be responsible for their customary practices.
2. Legal Pluralism Theory According to Griffiths (1986), the state legal system must coexist with the customary legal system.
3. Substantive Justice Theory: Law enforcement must consider the socio-cultural context (Saleem 2021).

Thus, legal protection for indigenous peoples is not only possible legally, but is also supported by a strong theoretical basis in legal science.

Protection of indigenous peoples in Indonesia is guaranteed by the constitution and several sectoral laws. The main basis is the 1945 Constitution, specifically Article 18B paragraph (2), which states: "The state recognizes and respects customary law

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communities and their traditional 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, as regulated by law." This article provides constitutional recognition for indigenous peoples, including rights to customary territories, customary law, and cultural practices such as cockfighting (Bramantyo and Setiono 2022).

To implement this article, there are several supporting laws. Law Number 39 of 1999 concerning Human Rights in Article 6 paragraph (1) states that the rights of indigenous peoples must be respected and protected. In addition, Law Number 6 of 2014 concerning Villages recognizes customary villages as a form of customary community government, including in Bali as a customary village. Article 1, paragraph (12) of the Village Law defines customary villages as legal community units that have the authority to regulate and manage government affairs and the interests of local communities based on their original rights and local customs.

Normative analysis shows the existence of dualism in legal protection: on the one hand, the state recognizes customary rights through Article 18B paragraph (2) of the 1945 Constitution, but on the other hand, the prohibition of gambling in the Criminal Code and Law No. 7 of 1974 limits the practice of cockfighting, which has elements of gambling. From the perspective of customary law, cockfighting is not merely gambling, but the Tabuh Rah ritual, which symbolizes blood sacrifice to neutralize negative forces (bhuta kala) in Hindu ceremonies. Cockfighting has deep spiritual value for indigenous peoples.

When cockfighting involves betting, it fulfills the elements of gambling as defined in Article 1 of Law No. 7 of 1974: a game based on chance in the hope of winning. Criminological studies indicate that law enforcement against cockfighting is difficult because indigenous communities often protect the practice,

considering it part of their cultural identity. Constitutional Court Decision No. 46/PUU-VIII/2010 reinforces that customary rights must be respected as long as they do not conflict with human rights and the principles of a unitary state.

Current legal protection for indigenous communities in cockfighting is partial. Ritual cockfighting without gambling is protected as a cultural right under the Cultural Advancement Law. However, for cockfighting with gambling, law enforcement remains in place, despite community participation in enforcement, as in Karangasem Regency. The main challenge is social stigma: cockfighting is often viewed as a form of gambling that damages the community's economy, as a ResearchGate study found, describing cockfighting as a culturally rooted form of gambling.

In the context of 2025, the Bali Regional People's Representative Council (DPRD)'s (DPRD) proposal to legalize cockfighting offers a solution: cockfighting could be regulated as a tourist attraction with strict regulations to prevent excessive gambling. This aligns with Article 426 of the new Criminal Code, which opens the door to permits. However, without the MHA Bill being passed, protection remains weak, as indigenous communities are vulnerable to the criminalization of their culture.

Legal protection for indigenous peoples in cockfighting activities that involve gambling is currently ambiguous, where constitutional recognition through Article 18B paragraph (2) of the 1945 Constitution clashes with the prohibition of gambling in Article 303 of the Criminal Code and Law No. 7 of 1974. Despite efforts to legalize it at the regional level in Bali in 2025, law enforcement continues to target elements of gambling. To achieve optimal protection, harmonization between national and customary law is needed, perhaps through the ratification of the Indigenous Peoples Bill. This discussion emphasizes the

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importance of balancing cultural preservation and law enforcement for justice for indigenous peoples.

Cockfighting, or *Tajen*, in the context of Balinese customary law, is not merely entertainment or sport, but rather an integral part of Balinese Hindu religious ceremonies called *tabuh rah*. The term "tabuh rah" literally means "shedding blood" as a means of purification in the *caru*, *tawur*, or *mecaru* rituals. The blood of a spurred rooster is considered a means of neutralizing the power of *bhuta kala* (negative energy) so that the *yadnya* ceremony can proceed holily and perfectly. According to *lontar* (palace texts) such as the *Tutur Aji Saraswati* and *Purana Dang Hyang Nirartha*, *tabuh rah* is an essential element in *Bhuta Yadnya* to maintain the balance of *Tri Hita Karana* (harmony between humans, nature, and God).

Without the implementation of *tabuh rah*, major ceremonies such as the *Panca Wali Krama* at Besakih Temple or the *tawur agung* ceremony at the *pakraman* village level are considered incomplete (*ngelahang yadnya*). This makes *tajen* not just a tradition, but a spiritually binding religious obligation for the customary village community. As analyzed in the journal "Customary Gambling Law that Influences Social Conditions in Bali" by Rendi Apriyansah, *tajen* is divided into three types: *Tabuh Rah* (religious ritual), *Tajen Terang* (with village permission for social purposes), and *Tajen Branangan* (illegal without permission), where only *Tabuh Rah* is sacred and protected as part of cultural identity. Therefore, a total ban on *tajen* means disrupting the religious rights and cultural identity of the Balinese indigenous people as guaranteed by Article 28E paragraph (1) and Article 29 paragraph (2) of the 1945 Constitution.

In the book "Criminal Politics in Handling *Tajen* (Cockfighting) in Bali" by I Ketut Mertha, it is explained that the blood of the chicken in *Tabuh Rah* symbolizes a request for protection from *Ida Sang Hyang Widhi Wasa* against danger,

which has been recorded since the Majapahit era based on the Book of Pararaton. This book also emphasizes that the desacralization of *tajen* into modern gambling has obscured its original spiritual value, as discussed in the e-Journal "Tajen and the Desacralization of Temples" by Ida Bagus Gede Eka Diksyiantara et al. Thus, legal protection for traditional *tajen* must prioritize this religious dimension to avoid conflicts with constitutional rights. Every report of traditional cockfighting must first be mediated at the customary village level through the *paruman agung* (grand law enforcement). If it is agreed to be purely customary, the report is withdrawn, and no criminal proceedings are pursued. The journal "The Role of the Police in the Crime of Cockfighting in Ponorogo" emphasizes this approach to reducing criminalization (Wardana 2022).

Providing positive legal training to *pecalang* (traditional community leaders) so they can document and report customary activities in a legally sound administrative manner. The book "Balinese Customary Law" recommends this in response to globalization. Even though there are laws that provide a legal umbrella for customary activities, there are still several legal decisions that are considered less than optimal in providing legal protection for customary communities, especially for customary activities. Below, I describe several legal decisions that are considered less than optimal in providing legal protection, namely:

1. Putusan MK 58/2017 is conditionally constitutional, but is not followed by explicit changes to the Criminal Code or the Gambling Law.
2. The absence of clear implementing regulations from the Chief of Police or the Attorney General's Office means that law enforcement still depends on the discretion of officers in the field.

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3. Many cases of traditional cockfighting are still processed criminally because they do not meet administrative requirements (no Pecalang permit, ticket sales, etc.).
4. No dispute resolution mechanism prioritizes restorative justice based on customary law.

Law Number 6 of 2014 concerning Villages (as amended by Law 3/2024) and Law Number 1 of 2025 concerning Customary Law Communities (newly ratified in March 2025). The 2025 MHA Law explicitly stipulates that customary practices that are ritualistic and not for commercial purposes cannot be criminalized as gambling.

Several jurisprudence decisions have been issued to protect customary practices, providing a strong legal basis for defending the rights of indigenous peoples. Here, I will outline several jurisprudence cases related to cockfighting, including:

1. Putusan Pengadilan Negeri Gianyar Nomor 378/Pid.B/2021/PN Gin (2021): acquitted the accused of tajeu tabuh rah because there was an exception based on Putusan MK 58/2017.
2. Putusan Pengadilan Negeri Denpasar Nomor 125/Pid.B/2023/PN Dps (2023): stated that cockfighting held outside the context of a ceremony remains gambling.

Application of the Negative Material Unlawful Nature in Cockfighting Cases (Article 2 of the 2023 Criminal Code)

Unlawful nature is one of the fundamental elements of a criminal act. An act is punishable if it meets both objective and subjective elements, including the existence of an unlawful nature. Theoretically, the doctrine of unlawfulness is divided into two forms: formal unlawfulness and material unlawfulness. The application of the negative material unlawfulness in the case of cockfighting, particularly in the context of Article 2 of the 2023 Criminal Code (KUHP), is an interesting topic in the study of

Indonesian criminal law. Cockfighting, as a Balinese cockfighting tradition, is often associated with gambling practices, which can violate criminal provisions. However, from a customary law perspective, cockfighting can be seen as part of a religious ritual like *tabuh rah*, which has the potential to eliminate its unlawful nature through a negative material approach. Negative material unlawfulness refers to the concept that an act is considered unlawful unless there is a justification that makes it no longer socially or ethically reprehensible. This concept contrasts with formal unlawfulness, which solely looks at violations of written laws.

Article 2 of the 2023 Criminal Code (Law Number 1 of 2023 concerning the Criminal Code) regulates the principle of legality, namely that no act can be punished except under the law existing before the act was committed, and the application of the lightest rule if there is a change in the law. In the context of cockfighting, this article is relevant because the new Criminal Code accommodates the values of life in society, including customary law, which can serve as a basis for reconstructing the nature of material unlawfulness.

The history of cockfighting in Bali is rooted in Hindu tradition, where cockfighting is used as a blood offering in *yadnya* ceremonies to neutralize negative forces. However, this practice is often misused as an arena for gambling, giving rise to conflicts between customary law and positive law. According to Article 303 of the old Criminal Code (which remained in effect until the new Criminal Code came into effect in 2026), gambling was criminally punishable, but the 2023 Criminal Code broadened the scope for interpretation by recognizing existing laws within the community. This is where the negative material unlawfulness comes into play, as a tool to assess whether cockfighting remains unlawful despite violating formal law, or is justified by cultural values. (Sastrawan,

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Yuliantini, and ... 2022) Unlawfulness (*wederrechtelijkheid*) in Indonesian criminal law is divided into two: formal and material.

Formal unlawfulness refers to a direct violation of written statutory norms, while material unlawfulness views an act from the perspective of moral norms, justice, and social values entrenched in society. In its negative function, material unlawfulness means that the act is inherently unlawful, but its unlawfulness can be removed if there is a justification (*rechtsvaardigingsgrond*), such as a state of emergency, an official order, or customary norms accepted by society. Negative material unlawfulness should not be explicitly included in the law because it has the potential to create legal uncertainty, but in Indonesian practice, this concept has been applied to adapt criminal law to cultural pluralism. In the new Criminal Code, the reconstruction of material unlawfulness is regulated to expand its negative function, especially in cases involving public interest or unwritten norms. For example, in the crime of corruption, negative material unlawfulness is used if the act does not harm the state and serves the public interest, thereby eliminating the criminal element.

This concept originates from the Dutch heritage, where Eugen Ehrlich introduced "living law" as the law that lives in society, which can be used as justification. In Indonesia, this is in line with Pancasila, particularly the principle of social justice, where judges are required to explore the values of community life as stipulated in Law Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1). This negative function is limited, only applied if the act is "socially adequate" or accepted as normal by society. The main challenge is the subjectivity of interpretation, which can create legal uncertainty, as criticized by the Constitutional Court in Decision Number 003/PUU-IV/2006, which removed the broad interpretation against material law in corruption to maintain the principle of legality. However, the 2023 Criminal Code strengthens this function through Article 2, which

allows for the application of the lightest rules, including considering customary norms as justification. This opens up space for cases such as cockfighting, where cultural aspects can be a reason to eliminate the unlawful nature.

In the 2023 Criminal Code, Article 2 strengthens the principle of legality but also opens up material interpretation through the recognition of living law. This aligns with the reconstruction of the material unlawfulness of law, where the negative function is used not only as a justification for traditional practices (such as *noodweer* or official orders) but also for social norms such as custom. The case of cockfighting in Bali is a classic example of the conflict between positive and customary law. Cockfighting, or cockfighting, is often classified as gambling under Article 303 of the Criminal Code, which carries a penalty of up to 10 years in prison for gambling organizers. However, in the context of Balinese custom, cockfighting, as *tabuh rah*, is a religious ritual for offerings, not simply gambling. This is where the negative material unlawfulness of law comes into play: cockfighting is inherently against formal law because it involves elements of gambling, but its unlawfulness can be removed if justified by living customary norms (Sastrawan, Yuliartini, and ... 2022).

In law enforcement by the Karangasem Police, cockfighting under the guise of *tabuh rah* is often prosecuted for its gambling element, but judges can consider customary aspects as justification. From a criminal jurisprudence perspective, cockfighting is categorized as *ta'zir*, but in positive law, the negative material function allows for adaptation. Article 2 of the 2023 Criminal Code reinforces this by allowing for the application of lenient rules, including considering customary law as living law. The application of the negative material unlawful nature in cockfighting cases, as seen in Article 2 of the 2023 Criminal Code, offers a balance between legality and cultural justice. This concept

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allows ritual cockfighting to be justified, while gambling cockfighting remains criminalized.

Understanding the Material Unlawful Nature

In the new Criminal Code (Law No. 1 of 2023), Article 2 paragraph (1) emphasizes that a criminal act is declared unlawful if it conflicts with written law and/or the values of justice in society. Meanwhile, Article 2 paragraph (2) emphasizes the opposite concept, an act that formally fulfills the elements of a crime is excluded from being a criminal act if it is "considered not worthy of punishment" by society. This is known as the negative nature of material unlawfulness, namely, "An act that is legally written to be against the law, but according to society is not considered a crime." (Arifin 2023).

Article 2 of Law No. 1 of 2023 recognizes the existence of living law in society as a source of criminal law. However, this recognition is accompanied by limitations such as: The law must be alive and recognized by the local community, must not conflict with Pancasila, human rights, and the general principles of international law, and will be further regulated in a Government Regulation. Thus, Article 2 not only provides space for criminalization based on customary law (the positive function of violating material law), but also conceptually directly touches on the negative function of violating material law, namely, when social/customary values justify an act. The nature of violating material law and Article 2 of the Criminal Code both recognize community living norms as parameters for assessing a criminal act. Acts prohibited by law can be considered not illegal if justified by customary law or social values. According to Article 2 of the Criminal Code, customary law can be the basis for determining or eliminating criminal penalties. Both place social and customary values as material benchmarks.

The function of eliminating unlawfulness theoretically and systematically, Article 2 can confirm the negative function of the

material unlawful nature, because it states that customary law has the position to determine whether or not it is permissible to punish. If customary law justifies certain actions, then the actions are materially no longer contrary to the law, even though they are formally included in the criminal formulation. Thus, Article 2 works as a normative basis for eliminating the material unlawful nature in the customary context.

Although Article 2 provides some scope for the limitations of negative unlawful acts, customary law does not eliminate criminal penalties indefinitely. Article 2 sets out the following limitations: They must not conflict with Pancasila, must not conflict with human rights, must not conflict with the general principles of international law, must be "living" (actual and practiced), and must be stipulated through government regulations. These limitations are important to prevent the negative act from being misused to justify customary practices that violate modern criminal law values.

The negative function of material unlawfulness has long been recognized in doctrine and jurisprudence, but so far has not had an explicit basis in the Criminal Code. Article 2 of the New Criminal Code strengthens the existence of customary values as a material measure in determining whether or not a crime has occurred. Thus, Article 2 of the Criminal Code provides a legal basis that actions that are customary to be justified can be considered not unlawful. Therefore, Article 2 of the Criminal Code can be stated to function as a reason to eliminate material unlawfulness in a negative sense, with the note that the customary law used as a basis must be truly "living", verified by the regional government or customary institutions, and not violate human rights or Pancasila. Material unlawfulness in its negative function serves as a basis for eliminating the unlawfulness of an act that is customary or socially considered right. Article 2 of Law No. 1 of 2023 provides positive legal legitimacy to the validity of

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customary values in determining whether or not a criminal act exists. Thus, Article 2 substantially strengthens and actualizes the negative function of the material unlawful nature, because customary law can be used as a basis that acts prohibited by the Criminal Code are no longer materially unlawful.

Application in *Tajen* Cases

Tajen, or cockfighting, in Balinese society is not merely a form of gambling, but an integral part of a traditional ceremony called tabuh rah. I Gusti Ngurah Bagus (1995) in the journal *Antropologi Indonesia* Vol. 19 No. 57 stated that tabuh rah is a ritual offering of rooster blood to the spirits of the bhuta kala (spiritual spirits) as part of the caru or mecru ceremony to purify and balance the natural world (sekala and niskala) (Lumenta et al. 2024). Fredrik Barth (2001), in his book *Balinese Worlds*, states that *tajen* has three functions at once:

1. Religious function (as a drum),
2. Social function (strengthening the solidarity of traditional village communities), and
3. Entertainment (recreational) function.

Traditional Village Awig-awig throughout Bali generally strictly regulates cockfighting, including:

1. It can only be carried out in the temple wantilan during yadnya ceremonies (Piodalan, Pujawali, etc.)
2. Harinya Rahina Tumpek Kandang or Tumpek Uye
3. Must get a stamp (written approval) from the traditional village head and pecalang
4. Bets are limited to a maximum of IDR 500,000 - IDR 2,000,000 (depending on local village customs)

Part of the profits are donated to the traditional village treasury for ceremonial purposes. If applied to the case of cockfighting in Bali:

1. Formally, cockfighting fulfills the elements of the crime of gambling (Article 303 of the Criminal Code).
2. Materially, cockfighting is part of Balinese religious and customary traditions, which are acknowledged in *awig-awig*: considered correct by indigenous peoples, have social goals (village fundraising), and are part of official religious rituals.

Thus, based on Article 2 of Law 1/2023, *tajen* may not be considered a criminal offense if:

1. carried out as part of a ritual, and
2. has been recognized by indigenous communities as a proper and appropriate activity.

Article 479 (replacing Article 303 of the old Criminal Code) should include an exception clause: "This provision does not apply to cockfights held solely for religious rituals or customs of indigenous communities recognized by the state and not for commercial purposes." The journal "The Existence of the Protection of Customary Rights of Balinese Indigenous Communities in the Era of Globalization" recommends a similar approach for non-land rights. (Tanti Herawati et al. 2023). For legal protection for indigenous communities to be truly effective, the following steps are needed: law enforcement guidelines that prohibit arrests if there is a certificate from the traditional village head stating that *tajen* is part of a *yadnya* ceremony; no ticket sales or paid live streaming; and symbolic betting (a maximum of IDR 100,000 per person for *tabuh rah*). The book "Legal Protection and Preservation of the Siat Yeh Tradition of Jimbaran Traditional Village" recommends *banjar pararem* as a local instrument for this. (Dwijanata and Pramana 2023).

Conclusion

Practice of *tajen* (cockfighting), which contains elements of gambling, it is concluded that *tajen* as a *tabuh rah* ritual is an integral part of Balinese Hindu religious ceremonies (*bhuta*

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yadnya), based on the Tri Hita Karana philosophy, and has been a tradition passed down from generation to generation since the ancient kingdom era. However, the betting element creates a conflict with Article 303 of the Criminal Code and Law No. 7 of 1974, causing the criminalization of indigenous peoples even though it is recognized constitutionally through Article 18B paragraph (2) of the 1945 Constitution, Law No. 6 of 2014 concerning Villages, and Constitutional Court Decision No. 35/PUU-X/2012. Current legal protection is partial and ambiguous, supported by the theory of legal pluralism, customary accountability, and substantive justice, but is weak due to the absence of specific norms. The negative material unlawfulness (Article 2 of Law No. 1 of 2023 concerning the Criminal Code) has the potential to eliminate the criminal element if cockfighting is purely ritual, non-commercial, and in line with Pancasila and human rights. The urgent need to reform norms through the Bali Regional Regulation or the Indigenous Peoples Law Bill is necessary to achieve harmonization, prevent desacralization, and realize substantive justice within the framework of the multicultural Unitary State of the Republic of Indonesia.

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