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Protection of Victims of Salah Pati under Balinese Customary Law and National Law

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A R T I C L E I N F O

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A B S T R A C T

This study examines the legal protection of victims of salah pati from the perspectives of Balinese customary law and Indonesian national law. In Balinese society, salah pati refers to unnatural or unexpected death, including death caused by homicide, violence, negligence, suicide, accidents, disasters, and other external circumstances. Such deaths are not merely legal events but also carry social and religious consequences related to the balance between the sekala and niskala dimensions of life. This study employs a normative juridical approach by examining customary legal principles, relevant traditional sources, and national legal regulations concerning victim protection. The analysis demonstrates that Balinese customary law emphasizes restorative-religious protection through purification rituals, customary obligations, community solidarity, and respect for the spiritual dignity of the deceased and the victim's family. Meanwhile, national law provides juridical protection through criminal accountability, restitution, compensation, civil remedies, and protection of victims and their heirs. The coexistence of these mechanisms reflects legal pluralism, in which customary and national legal systems perform complementary functions. Harmonizing both systems is therefore essential to establish comprehensive protection encompassing juridical, social, cultural, and spiritual dimensions

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INTRODUCTION

Indonesia is constitutionally established as a state based on the rule of law, as expressly provided in Article 1 paragraph (3) of the 1945 Constitution. This constitutional principle requires the state to guarantee legal protection for every citizen, including the protection of the right to life, security, and access to justice when individuals become victims of unlawful acts. Contemporary legal protection is increasingly oriented not only toward prosecuting and punishing offenders but also toward recognizing and restoring the rights and interests of victims. Accordingly, any form of unlawful conduct resulting in the loss of human life requires a legal response capable of balancing legal certainty, justice, and social benefit. This victim-oriented perspective is also reflected in the development of Indonesia's contemporary criminal justice framework.

Within Balinese society, the protection of human life cannot be understood exclusively through the framework of state law. It is also embedded in Balinese customary law (*hukum adat Bali*), which continues to function as a form of living law within customary communities. Balinese customary traditions recognize several categories of death, including *ulah pati*, *salah pati*, and *ngulah pati*, each carrying different religious, social, and customary consequences. Among these categories, *salah pati* refers broadly to unnatural or unexpected death, including death resulting from accidents, negligence, homicide, suicide, or other external causes. From the Balinese customary perspective, such death is not merely a legal event but may also be understood as a religious and communal event that affects the perceived balance between the *sekala* (material) and *niskala* (spiritual) dimensions of life. Consequently, particular customary and religious rituals may be required to restore social and spiritual harmony. The continuing role of adat law in Indonesian society illustrates the country's plural legal structure, in which state law and customary norms operate simultaneously within particular social contexts (Hamida, 2022).

The concept of *salah pati* is rooted in Balinese customary and religious traditions and is associated with sources such as the *Lontar Yama Purwa Tattwa*, *Lontar Purwa Bhumi Kamulan*, and customary decisions, including the 1961 Campuhan Ubud Great Assembly decision. These sources and customary practices provide references for addressing forms of unnatural death through particular purification rituals, including *prayascitta*, *guru piduka*, and other ceremonies determined according to the *dresta* of each customary village (*desa adat*). Such practices demonstrate that the resolution of *salah pati* involves a plural normative structure in which customary law, Hindu religious values, and state law may interact. However, the specific classification and ritual response are not necessarily identical across all customary villages because Balinese customary law develops according to local *awig-awig*, *pararem*, and *dresta*.

The development of Indonesian criminal law has simultaneously strengthened the legal position of victims. Law Number 31 of 2014, which amended Law Number 13 of 2006 on the Protection of Witnesses and Victims, provides a statutory framework for protecting victims and their families, including access to security protection, medical assistance, psychological rehabilitation, restitution, compensation under certain circumstances, and legal

assistance. Furthermore, Law Number 1 of 2023 on the Criminal Code represents an important transformation in Indonesian criminal law, including a greater recognition of community values and the role of living law within the national legal framework. The new Criminal Code formally recognizes customary criminal law within defined legal boundaries, while its implementation raises continuing questions concerning the relationship between customary norms, state authority, legal certainty, and human rights (Utama, 2021; Susanto et al., 2025).

Nevertheless, a potential gap remains between the protection mechanisms provided by national law and the customary mechanisms used to address *salah pati*. In certain cases, communal attention may concentrate primarily on purification ceremonies and the restoration of spiritual balance, while the concrete legal interests of victims' families—such as access to justice, compensation, restitution, psychological assistance, and procedural protection—may receive comparatively less attention. Conversely, criminal proceedings may proceed independently from customary processes, creating uncertainty concerning the division of responsibilities and the relationship between state-based accountability and customary obligations. Recent scholarship on Balinese customary law likewise indicates that harmonization between customary and national legal systems remains an important challenge, particularly when different normative systems operate within the same social setting.

The modernization of Balinese society further complicates the issue. Traffic accidents, workplace accidents, acts of violence, social conflicts, and other forms of sudden death have increased the range of circumstances that may be interpreted within the customary concept of *salah pati*. These developments require a legal framework capable of accommodating customary values while simultaneously ensuring consistency with human rights, national criminal law, and contemporary principles of victim protection. The challenge is therefore not simply whether customary law should continue to exist, but how its social and religious functions can operate alongside national legal institutions without undermining legal certainty or fundamental rights.

From the perspective of legal pluralism, customary law and state law should not necessarily be viewed as mutually exclusive normative systems. Rather, their interaction can provide complementary mechanisms for achieving substantive justice. In the context of *salah pati*, Balinese customary law primarily addresses communal, cultural, and spiritual restoration, whereas national law provides formal mechanisms for determining criminal responsibility, protecting victims and their heirs, and providing legal remedies. Nevertheless, the interaction between the two systems requires clear boundaries and institutional coordination. Scholarship on the incorporation of *adat* into Indonesia's criminal justice system cautions that state recognition of living law may generate tensions if customary norms are excessively formalized or subordinated to state authority (Utama, 2021).

This study therefore examines the legal protection of victims of *salah pati* from the perspectives of Balinese customary law and Indonesian national law. It focuses on three principal questions: first, what forms of protection are available

to victims and their families under Balinese customary law and national law; second, what legal and practical challenges arise in implementing those forms of protection; and third, how can the two normative systems be harmonized to establish a comprehensive model of victim protection? The study argues that effective protection should not be limited to criminal accountability or ritual restoration alone. Rather, it should integrate juridical, social, cultural, and spiritual dimensions while respecting constitutional principles, human rights, and the living values of Balinese customary communities.

LITERATURE REVIEW

1. Balinese Customary Law and the Concept of *Salah Pati*

Balinese customary law constitutes a living normative system that regulates social relations, religious obligations, communal responsibilities, and mechanisms for maintaining harmony within customary communities. Unlike a purely state-centered conception of law, Balinese customary law is closely connected with religious beliefs and collective cultural practices. Its normative authority is expressed through *awig-awig*, *pararem*, *dresta*, customary decisions, and other forms of community-based regulation. Consequently, legal responses to social events in Bali frequently involve not only formal legal considerations but also religious and communal dimensions. This characteristic is important for understanding the treatment of unnatural death within Balinese society.

Within this normative framework, *salah pati* refers to a category of death that does not occur through an ordinary or natural process. The concept may encompass death resulting from homicide, physical violence, negligence, accidents, suicide, disasters, or other unexpected circumstances. The classification is not necessarily uniform among all *desa adat*, because customary norms are shaped by local *dresta*, *awig-awig*, and *pararem*. Nevertheless, the underlying principle is relatively consistent: an unnatural death may generate social and religious consequences requiring particular forms of customary and ritual response. The uploaded manuscript identifies *Lontar Yama Purwa Tattwa*, *Lontar Purwa Bhumi Kamulan*, and the 1961 Campuhan Ubud customary decision as important normative references in understanding the treatment of *salah pati*.

The religious dimension of *salah pati* distinguishes it from a purely criminal-law conception of death. In Balinese Hindu understanding, death may affect the relationship between the individual, the family, the customary community, and the wider cosmological order. Ritual purification is therefore understood as a means of restoring harmony rather than as a substitute for criminal accountability. The practices associated with *prayascitta*, *guru piduka*, *panebusan*, and other forms of purification demonstrate that customary protection may operate through a restorative-religious framework. The primary concern is not simply determining who is legally guilty, but also restoring social and spiritual equilibrium and ensuring that the deceased receives appropriate ritual treatment.

The concept of *salah pati* also needs to be distinguished from the legal classification of a death under national criminal law. While customary law may classify a death according to its social and religious consequences, national criminal law determines criminal responsibility primarily through legally

defined elements of an offence, including intent, negligence, causation, and other statutory requirements. Therefore, *salah pati* should not automatically be regarded as an independent criminal offence. Rather, it constitutes a customary category that may coexist with different legal classifications under national law.

2. Living Law and Legal Pluralism in Indonesia

The relationship between customary law and state law is best understood through the concept of legal pluralism. Indonesia does not operate through a single homogeneous normative order. State legislation exists alongside customary norms, religious norms, and community-based rules that continue to influence social behaviour. In this context, *living law* refers to norms that acquire practical significance because they are recognized and followed within a community, rather than merely because they have been formally enacted by the state.

Recent scholarship emphasizes that the incorporation of customary law into Indonesia's national criminal law represents both an opportunity and a challenge. Utama (2021) argues that transforming *adat* into formally recognized "living law" can potentially weaken the dynamic character of customary law when state institutions attempt to define, codify, and control it. In this view, legal recognition may paradoxically produce greater state domination over customary normative orders.

This concern becomes particularly relevant following Law Number 1 of 2023 concerning the Indonesian Criminal Code. Article 2 formally recognizes the existence of customary criminal law as part of the national criminal-law framework. Recent scholarship interprets this development as an important movement toward legal pluralism, while simultaneously identifying potential jurisdictional conflicts and the risk that customary law may become subordinated to state-defined regulatory structures.

The literature therefore reveals two competing tendencies. The first regards recognition of *living law* as a mechanism for decolonizing Indonesian criminal law and acknowledging the social reality of customary communities. The second warns that formal incorporation may transform a flexible and community-based normative system into a state-controlled legal category. Recent research published in *Masalah-Masalah Hukum* similarly argues that the formal recognition of living law may simultaneously strengthen the visibility of customary norms and constrain indigenous autonomy through state-defined criteria and institutional procedures.

For the present study, this debate provides an important theoretical foundation. The protection of *salah pati* victims cannot be adequately explained through legal positivism alone because the customary response involves normative considerations that extend beyond written legislation. At the same time, customary mechanisms cannot replace the state's obligation to protect fundamental rights and establish legal accountability where criminal conduct has occurred. Legal pluralism therefore provides an analytical framework for examining how these different normative orders interact without assuming that one must completely displace the other.

3. Victim Protection in Contemporary Indonesian Law

Contemporary criminal justice increasingly recognizes that the interests of victims should form an integral part of the justice process. Victim protection encompasses more than the prosecution and punishment of offenders; it also includes access to justice, security, restitution, compensation, psychological support, and recognition of the legitimate interests of victims and their families. Within the Indonesian legal framework, Law Number 31 of 2014 provides an important statutory basis for strengthening the protection of witnesses and victims.

In cases involving death, the position of the victim requires particular consideration because the deceased can no longer exercise legal rights personally. Consequently, the protection of legitimate interests may extend to family members or heirs in accordance with applicable legislation. Where death results from a criminal act, national law provides mechanisms for establishing the responsibility of the perpetrator, while other legal mechanisms may address material and non-material losses suffered by the victim's family.

The new Criminal Code also reflects a broader understanding of criminal justice. Its orientation is not limited to retribution but includes considerations of restoring social balance, resolving conflict, and maintaining harmony within society. This orientation creates an important point of convergence with customary approaches that emphasize reconciliation and restoration. Recent studies of the 2023 Criminal Code identify restorative justice and living law as significant components of Indonesia's contemporary criminal-law transformation. However, these developments also require clear procedural safeguards to prevent inconsistent application and ensure compliance with human rights standards.

The literature therefore suggests that victim protection should be understood as multidimensional. Formal legal accountability remains essential where an unlawful act has caused death, but justice may remain incomplete if the social, cultural, psychological, and spiritual consequences experienced by the victim's family are ignored. In the Balinese context, this broader understanding provides an analytical bridge between national victim-protection mechanisms and customary practices concerning *salah pati*.

4. Customary, Restorative, and Spiritual Dimensions of Protection

The customary response to *salah pati* demonstrates that protection can take a restorative form. In the manuscript under study, customary protection includes purification rituals, assistance from the *desa adat*, preservation of the dignity of the deceased, communal support for the bereaved family, and efforts to restore social and spiritual equilibrium. These mechanisms should not automatically be interpreted as punishment because their principal objective is restoration rather than retribution.

This restorative orientation has conceptual similarities with contemporary developments in criminal justice. Recent literature on Indonesia's legal reform identifies customary justice as a potential source of restorative practices because many customary mechanisms prioritize reconciliation,

restoration of relationships, and communal harmony rather than purely punitive responses. Nevertheless, restorative approaches require institutional safeguards so that reconciliation does not undermine the rights of victims or remove legitimate criminal accountability.

The spiritual dimension is particularly significant in the case of *salah pati*. Ritual purification is connected to the Balinese understanding of the relationship between *sekala* and *niskala*. From this perspective, the deceased is not treated merely as the object of a legal investigation but as a member of a religious and customary community whose death has consequences for collective harmony. The ritual response therefore functions as a form of cultural and spiritual protection. At the same time, such protection should be understood as complementary to, rather than a replacement for, formal legal remedies where a criminal offence has occurred.

5. Harmonization between Balinese Customary Law and National Law

The central issue emerging from the literature is therefore not whether Balinese customary law or national law should prevail absolutely, but how both normative systems can operate within their respective domains. The state has an obligation to ensure legal certainty, accountability, and protection of fundamental rights, whereas customary institutions contribute social legitimacy, cultural continuity, communal participation, and spiritual restoration.

Recent research on the harmonization of Balinese customary law and national law confirms that multiple legal systems continue to coexist in Bali. Customary norms expressed through *awig-awig* and community practices may operate alongside formal legislation and state institutions. Such coexistence requires mechanisms of coordination capable of preventing jurisdictional conflict while respecting the distinctive functions of each normative order.

The new Criminal Code intensifies the importance of this question because formal recognition of *living law* creates a constitutional and statutory basis for interaction between customary and state law. Nevertheless, contemporary scholarship warns that recognition alone does not guarantee genuine legal pluralism. Without clear institutional arrangements, customary law may either be ignored by state institutions or excessively absorbed into state structures.

For *salah pati*, harmonization should consequently follow a complementary model. Customary institutions should retain their legitimate role in addressing religious, social, and cultural consequences of unnatural death, while state institutions remain responsible for investigating possible criminal conduct, determining legal responsibility, and ensuring the rights of victims and their families. This approach avoids treating customary rituals as substitutes for criminal proceedings and avoids reducing customary practices to merely symbolic ceremonies.

6. Research Gap and Theoretical Position

Existing literature has substantially discussed Indonesian legal pluralism, the recognition of *adat* as *living law*, and the incorporation of

customary criminal law into the 2023 Criminal Code. Recent scholarship also examines the risks of state domination, jurisdictional conflict, and the need for restorative mechanisms. However, these studies generally address customary criminal law at a broad systemic level.

A more specific analytical gap remains concerning the protection of victims of *salah pati* as a distinctive category of unnatural death within Balinese customary law. The issue requires an examination not only of criminal responsibility but also of the relationship between ritual protection, customary solidarity, victim rights, and national legal remedies. The uploaded manuscript provides a foundation for this analysis by positioning *salah pati* at the intersection of Balinese customary law, Hindu religious values, and national law.

Accordingly, this study positions *salah pati* within a legal-pluralist framework and proposes that victim protection should be conceptualized as integrative protection. Such protection encompasses four interconnected dimensions: juridical protection, through national legal mechanisms; social protection, through the involvement of the customary community; cultural protection, through recognition of Balinese customary norms; and spiritual protection, through appropriate religious and purification practices. This framework provides a basis for understanding how customary and national law can coexist while maintaining the dignity and rights of victims and their families.

METHODOLOGY

This study employs a normative legal research method with a qualitative juridical approach to examine the protection of victims of *salah pati* under Balinese customary law and Indonesian national law. This approach is appropriate because the research focuses on legal norms, principles, customary rules, and the interaction between state and non-state legal orders rather than on statistical measurement. Qualitative legal analysis enables legal texts and normative materials to be interpreted within their social and cultural contexts (Robinson, 2022).

The research uses statutory, conceptual, and legal-pluralism approaches. The statutory approach examines relevant provisions of the 1945 Constitution, Law Number 31 of 2014 on the Protection of Witnesses and Victims, Law Number 1 of 2023 on the Criminal Code, and other relevant legislation. The conceptual approach is used to analyze the concepts of *salah pati*, victim protection, *living law*, restorative justice, and legal pluralism. The legal-pluralism approach examines the interaction between Balinese customary law and national law in addressing unnatural death. This approach recognizes customary law as a dynamic normative order that interacts with other legal systems rather than existing in isolation (Pradhani, 2021).

The primary legal materials consist of legislation, relevant customary legal decisions, and Balinese customary sources, including *Lontar Yama Purwa Tattwa*, *Lontar Purwa Bhumi Kamulan*, and the 1961 Campuhan Ubud customary decision. Secondary materials include recent scholarly articles, books, and legal scholarship concerning customary law, victim protection, and legal pluralism.

The collected materials are analyzed qualitatively through identification, classification, interpretation, comparison, and synthesis. The analysis compares

customary and national legal mechanisms to formulate a harmonized model of victim protection encompassing juridical, social, cultural, and spiritual dimensions. Such an approach is consistent with contemporary legal-pluralism research emphasizing the need to examine the interaction between normative systems and the pursuit of legal certainty and substantive justice.

RESULTS

1. The Concept and Forms of *Salah Pati* in Balinese Customary Law

In Balinese customary law, *salah pati* refers generally to an unnatural or unexpected death that does not occur through an ordinary process of dying. The concept is embedded in a religious and communal understanding of death and cannot be reduced to a purely criminal or medical classification. An unnatural death may produce consequences not only for the deceased but also for the family and the wider customary community because it is traditionally associated with a disturbance of social and spiritual equilibrium. The uploaded manuscript identifies *Lontar Yama Purwa Tattwa*, *Lontar Purwa Bhumi Kamulan*, and the 1961 Campuhan Ubud customary decision as important references for understanding the customary treatment of unnatural death in Bali.

The classification of *salah pati*, however, is not completely uniform throughout Bali. The application of customary norms is influenced by *desa, kala, patra*, as well as the *awig-awig*, *pararem*, and *dresta* applicable within each *desa adat*. Consequently, a customary response to an unnatural death may differ between communities. What remains common is the perception that a sudden or unnatural death may require particular forms of religious purification and communal restoration. This characteristic demonstrates that Balinese customary law is dynamic rather than static, operating through locally recognized norms and practices.

Several forms of death may fall within the customary understanding of *salah pati*. These include death caused by intentional homicide, physical violence resulting in death, negligence, suicide, accidents, disasters, mass violence, and circumstances in which the cause of death has not initially been established. These categories do not necessarily correspond directly to criminal offences. Rather, they represent a customary classification that provides a framework for determining the social and religious consequences of an unnatural death.

Death caused by homicide represents the clearest example of an event that may simultaneously generate customary and criminal consequences. From the perspective of state law, intentional killing must be assessed according to the statutory elements of the relevant offence and the perpetrator's criminal responsibility. From the customary perspective, however, the death may also be regarded as disrupting communal harmony and requiring religious purification. The two approaches consequently address different dimensions of the same event: national law establishes criminal responsibility, whereas customary law addresses social and spiritual restoration.

A similar distinction applies to deaths resulting from violence or negligence. An individual may die because of intentional physical assault, excessive violence, traffic accidents, workplace accidents, medical negligence, or

other forms of carelessness. Under national law, the existence of criminal liability depends upon the specific elements of the offence, including causation and the mental element required by law. Within Balinese customary law, however, the occurrence of an unnatural death may independently trigger customary obligations regardless of whether the state ultimately establishes criminal liability.

Suicide occupies a particularly sensitive position within this framework. The manuscript identifies suicide as a form of unnatural death that has historically received special attention in Balinese Hindu society. Traditional interpretations associate *ulah pati* with the premature termination of life and consequently prescribe particular religious treatment. At the same time, contemporary approaches increasingly recognize that suicide must also be examined through psychological, social, and human-rights perspectives rather than exclusively through religious condemnation.

Accidental death likewise demonstrates the multidimensional nature of *salah pati*. Death resulting from traffic accidents, drowning, electrocution, fire, structural collapse, or workplace accidents may have no identifiable criminal perpetrator. Nevertheless, customary communities may still regard the event as requiring purification because of its sudden and unnatural character. The customary response is therefore not necessarily dependent upon the existence of a criminal offence.

2. *Salah Pati* and the New Indonesian Criminal Code

The relationship between *salah pati* and national criminal law has become increasingly important following the enactment and implementation of Law Number 1 of 2023 concerning the Criminal Code. The statute was enacted on 2 January 2023 and became effective on 2 January 2026. It represents a major transformation of Indonesian criminal law and replaces the colonial-era Criminal Code framework.

One significant feature of the new Criminal Code is its recognition of the existence of law living within Indonesian communities. Article 2 provides a normative basis for the continued recognition of customary criminal law under specified conditions. The recognition is nevertheless subject to the values of Pancasila, the 1945 Constitution, human rights, and generally recognized legal principles. This formulation creates an important bridge between national criminal law and customary normative systems.

For the concept of *salah pati*, this development is significant but should not be interpreted as making *salah pati* itself a criminal offence. *Salah pati* is fundamentally a customary category concerning unnatural death. Criminal liability must still be established according to the elements of a legally recognized offence. Therefore, a death categorized as *salah pati* may correspond to homicide, negligent killing, another criminal offence, an accident without criminal liability, or suicide, depending on the facts of the case.

This distinction is essential for maintaining legal certainty. Customary classification may explain the social and religious consequences of death, but it cannot independently determine criminal guilt unless the relevant conduct satisfies the requirements of national criminal law. In this sense, customary law

and national law operate on different but potentially complementary normative levels.

Recent scholarship supports the view that the formal recognition of *living law* creates both opportunities and challenges. Sueni et al. (2025), for example, characterize the integration of customary criminal law into the 2023 Criminal Code as a form of potential "hybrid justice," while emphasizing the need to manage the interaction between customary and state institutions carefully. More recent scholarship similarly identifies the absence of sufficiently detailed implementing mechanisms as a potential source of legal uncertainty and inconsistent application of customary norms.

Thus, the implementation of the new Criminal Code should not be understood as replacing customary law. Instead, it creates a more explicit legal environment in which the relationship between state law and living customary norms must be clarified. For *salah pati*, this means that customary purification and communal processes may coexist with criminal investigation and judicial proceedings where the circumstances disclose a criminal offence.

3. Protection of *Salah Pati* Victims under Balinese Customary Law

Protection under Balinese customary law has a broader meaning than the protection of legal rights in the modern state-centered sense. It encompasses the preservation of dignity, restoration of social harmony, religious purification, communal solidarity, and appropriate treatment of the deceased. The manuscript describes this form of protection as essentially restorative-religious because its objective is to restore balance between the *sekala* and *niskala* dimensions of life.

The customary response may include *prayascitta*, *guru piduka*, *panebusan*, *pecaruan*, or other rituals depending on the *dresta* of the relevant customary village. These rituals should not automatically be interpreted as sanctions imposed upon the deceased or the family. Rather, they represent a religious mechanism through which the community seeks to restore equilibrium following an unnatural death.

The role of the *desa adat* is particularly important. The customary community may assist the family in organizing funeral and purification ceremonies, facilitate compliance with *awig-awig* and *pararem*, maintain communal order, and provide social support. In this sense, customary protection extends beyond the physical treatment of the deceased and includes the protection of the surviving family from social exclusion, uncertainty, and stigma.

The 1961 Campuhan Ubud decision is particularly significant within the historical development of this customary framework because it provided guidance concerning the treatment of unnatural death and emphasized that persons who died unnaturally should nevertheless receive appropriate funeral treatment accompanied by prescribed purification procedures. The principle reflected in this customary development is important: an unnatural death does not eliminate the dignity of the deceased or the family's entitlement to conduct appropriate religious obligations.

This restorative orientation is consistent with broader scholarship concerning customary justice. Contemporary studies of Balinese customary institutions demonstrate that customary mechanisms remain socially relevant

because they are connected with communal legitimacy, deliberation, and local understandings of justice. Recent research also emphasizes that Balinese customary institutions continue to operate alongside formal state institutions, demonstrating the persistence of legal pluralism in practice.

4. Protection under Indonesian National Law

National law provides a different but complementary conception of victim protection. Its principal concerns are legal accountability, protection of fundamental rights, access to justice, and remedies for losses suffered by victims or their families. The constitutional basis is particularly important because the right to life constitutes a fundamental human right protected under the 1945 Constitution.

Law Number 31 of 2014, which amended Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, provides mechanisms for victim protection, including security protection, medical assistance, psychological rehabilitation, restitution, compensation in certain circumstances, and assistance during legal proceedings. Where the deceased cannot personally exercise these rights, the interests of eligible family members or heirs may become legally relevant in accordance with the applicable provisions.

Where *salah pati* results from homicide or another criminal act, the state has an obligation to investigate and prosecute the responsible person where the statutory requirements are satisfied. Where death results from negligence, the applicable legal framework depends upon the circumstances, including relevant provisions of the Criminal Code and sector-specific legislation. In addition, civil mechanisms may provide avenues for compensation where unlawful conduct and legally recognized losses can be established.

This distinction demonstrates that national protection is primarily juridical, while customary protection is more strongly social, cultural, and religious. The difference does not necessarily indicate incompatibility. Instead, it reveals the possibility of complementary protection. The family of a deceased person may simultaneously require criminal accountability, compensation, social support, and the opportunity to fulfil customary and religious obligations.

5. Legal Pluralism and the Harmonization of the Two Systems

The relationship between Balinese customary law and national law concerning *salah pati* can therefore be conceptualized through legal pluralism. The existence of multiple normative systems does not necessarily mean that one system must eliminate the other. Rather, different systems may perform different functions within the same social environment.

The state possesses authority to determine criminal responsibility and enforce national legislation. Customary institutions, meanwhile, retain an important role in regulating communal relations and fulfilling religious and cultural obligations. The challenge lies in establishing boundaries and mechanisms of coordination so that customary processes do not obstruct criminal justice and criminal proceedings do not unnecessarily undermine legitimate customary rights.

Recent research on the harmonization of Balinese customary law and national law demonstrates that legal pluralism remains a significant feature of Balinese society. However, harmonization is not automatically achieved merely because both systems are formally recognized. Differences in norms, institutional authority, and mechanisms of enforcement may produce uncertainty unless government institutions and customary authorities establish effective cooperation.

The new Criminal Code makes this issue even more relevant. Although Article 2 recognizes living law, recent studies indicate that formal recognition can create new questions concerning implementation, institutional competence, and the relationship between customary autonomy and state regulation. Junaidi and Susanto (2025), for example, identify the requirement for further governmental regulation as an important issue in the formalization of customary criminal law under the new Criminal Code.

Accordingly, the appropriate approach to *salah pati* is not legal replacement but legal complementarity. Customary law should address the religious, social, and cultural consequences of unnatural death, while national law should address criminal responsibility, procedural rights, and formal legal remedies. Where necessary, both institutions should communicate so that the customary process and state process do not produce contradictory outcomes.

6. Toward an Integrated Model of Victim Protection

Based on the foregoing analysis, the protection of *salah pati* victims should be developed through an integrated model consisting of four dimensions: juridical, social, cultural, and spiritual protection.

First, juridical protection requires effective investigation, fair criminal proceedings, legal assistance, restitution or compensation where legally available, and recognition of the legitimate interests of the victim's family. This dimension is primarily the responsibility of state institutions.

Second, social protection requires the active involvement of the *desa adat* and the wider community. Families experiencing unnatural death may face emotional, social, and financial difficulties. Customary solidarity can therefore function as an important support mechanism.

Third, cultural protection requires respect for *awig-awig*, *pararem*, *dresta*, and legitimate customary practices. Recognition of cultural identity is particularly important because the treatment of death in Bali cannot be separated from religious and communal traditions.

Fourth, spiritual protection involves appropriate purification and funeral rituals. Such practices provide religious meaning and assist the community and family in restoring the perceived balance between *sekala* and *niskala*. They should, however, be understood as complementary to formal legal protection rather than as alternatives to criminal accountability.

An integrated model therefore places the deceased and the surviving family at the center of protection while recognizing the different institutional functions of the state and customary community. Such an approach is consistent with contemporary discussions of hybrid justice, in which customary and state

mechanisms may interact while maintaining their respective normative foundations.

7. Analytical Implication

The central finding of this discussion is that *salah pati* should not be treated solely as a category of criminal death or solely as a religious event. It represents a legal-cultural phenomenon situated at the intersection of customary law, Hindu religious values, community solidarity, and national criminal law. The customary classification explains the social and spiritual significance of unnatural death, while national law determines whether criminal responsibility exists and what legal remedies are available.

This distinction is particularly important after the implementation of Law Number 1 of 2023 in 2026. The recognition of living law creates greater space for customary norms within the national legal framework, but such recognition must remain consistent with constitutional principles, human rights, and legal certainty.

Consequently, the protection of *salah pati* victims should be understood as a form of substantive justice that combines state-based legal remedies with legitimate customary mechanisms. The ultimate objective is not to subordinate customary law to national law or to allow customary law to displace state law, but to establish a coordinated legal relationship in which each system contributes according to its proper function. Such harmonization can provide protection that is not merely procedural, but also socially meaningful, culturally legitimate, and spiritually responsive.

In this framework, Balinese customary law contributes the dimensions of communal solidarity, cultural continuity, and spiritual restoration, whereas national law guarantees legal certainty, accountability, human-rights protection, and access to formal remedies. Their complementary operation provides a more comprehensive response to unnatural death and strengthens the protection of victims and their families within Indonesia's plural legal system.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The protection of victims of *salah pati* in Bali demonstrates the coexistence of Balinese customary law and Indonesian national law within a plural legal order. Balinese customary law understands *salah pati* as an unnatural form of death carrying social, cultural, and spiritual consequences. Its protective mechanisms emphasize communal solidarity, respect for the deceased, customary obligations, and religious purification intended to restore harmony between the *sekala* and *niskala* dimensions. Meanwhile, national law focuses on legal accountability, protection of fundamental rights, access to justice, and legal remedies for victims and their families.

The two systems should not be regarded as mutually exclusive. Customary mechanisms cannot replace criminal accountability where a criminal offence has occurred, while formal legal proceedings should not prevent families

from fulfilling legitimate customary and religious obligations. The recognition of *living law* in the new Indonesian Criminal Code further demonstrates the relevance of customary norms within the national legal framework. However, effective implementation requires clear boundaries and coordination to maintain legal certainty, human rights, and respect for customary autonomy.

Recommendations

First, state institutions and *desa adat* should develop a coordinated mechanism for handling *salah pati* cases, particularly where customary and criminal processes operate simultaneously. Second, customary institutions should strengthen community-based assistance to families of victims while preventing stigma and ensuring that customary practices remain consistent with fundamental rights. Third, law-enforcement institutions should recognize the cultural and religious dimensions of *salah pati* without allowing customary procedures to obstruct legitimate criminal investigations. Finally, further research should examine empirical practices across different *desa adat* to identify variations in customary treatment and develop a more context-sensitive model of legal harmonization.

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