

## INTERPRETATION OF JUDGES IN REPRESENTING THE DYNAMICS OF RELIGION OF INDIGENOUS LEGAL INHERITANCE OF BALI

Lilik Mulyadi

*Puslitbang Mahkamah Agung RI  
lilikmulyadi@yahoo.com*

### Abstract

The interpretation of judges in responding to the dynamics of renewal of Balinese inheritance customary law is very dynamic accompanied by the development of justice, especially towards the dimensions of *kapurusa* as heirs. Originally, *kapurusa* was only a descendant of men from a male family and adopted sons, and then it expanded to include male status, and eventually included women as heirs. Judges interpreted based on the development of modern law, progressive law, just law with a philosophical and juridical basis starting with the Decision of the MUDP Bali Supreme Court Number 01/KEP/PSM-3/MDP Bali/X/2010 concerning Supreme Court III MUDP Results Bali.

*Penafsiran hakim dalam menyikapi dinamika pembaruan hukum adat waris Bali bersifat sangat dinamis mengiringi perkembangan keadilan khususnya terhadap dimensi kapurusa sebagai ahli waris. Semula kapurusa hanya keturunan laki-laki dari keluarga laki-laki dan anak angkat laki-laki, kemudian bertambah mencakup juga berstatus laki-laki, dan akhirnya meliputi juga perempuan sebagai ahli waris. Hakim melakukan penafsiran berdasarkan perkembangan hukum modern, hukum progresif, hukum yang berkeadilan dengan dasar filosofis dan yuridis bertitik tolak kepada Keputusan Pesamuan Agung MUDP Bali Nomor 01/KEP/PSM-3/MDP Bali/X/2010 tentang Hasil Pasamuban Agung III MUDP Bali.*

**Keywords:** Judge Interpretation, Customary Law of Inheritance Bali, Kapurusa.

## Introduction

Indigenous Law inheritance is a form of local wisdom. From the philosophical dimension, local wisdom can be interpreted as an empirical and pragmatic system of knowledge of indigenous people. Sunarmi mentions that local wisdom is knowledge developed by the ancestors in observing the environment around them.<sup>1</sup> Then making knowledge as part of culture, introducing and continuing from generation to generation. Some forms of traditional knowledge arise through stories, legends, songs, rituals, as well as local rules or laws. From the dimension of legal unification, until now the Indonesian people do not have a legally applicable inheritance law, even though the effort towards unification has long been carried out. Provisions of number 402 letter c sub 2 Stipulation of the Provisional People's Consultative Assembly of the Republic of Indonesia Number II/MPRS/1960 concerning the Outlines of the First Stage of National Planning Development Patterns In 1961-1969 on 3 December 1960, the need for legislation concerning inheritance based parental/bilateral principles. The main obstacle is the formation of national inheritance law because of the variety of socio-cultural conditions of the Indonesian people, such as the diversity of family systems adopted by the people of Indonesia.

Bali inheritance customary law according to Ayu Putu Nantri as a process of forwarding from the heir to the heirs about material goods and immaterial goods, which means that this continuation involves the continuation of rights and obligations.<sup>2</sup>

In general, inheritance in the customary law of Bali consists of four (four) aspects, namely *pewaris* or *waris* (heirs or heritage). Heirs are people who die, then leave inheritance to others (heirs). Heirs in general are traditionally a father, or a man. Such polarization of thought is based on the dimensions of the patrilineal family system of

---

<sup>1</sup> Sunarmi, "Mengelola Kearifan Lokal: Menuju Hukum Yang Berkeadilan Dalam Putusan Lembaga Adat", in *Spirit Hukum Didedikasikan untuk Purna Bakti 70 Tahun Prof. HJ. Rehngena Purba, SH, MS Guru Besar Fakultas Hukum USU Hakim Agung Republik Indonesia* (Jakarta: PT RajaGrafindo Persada, 2012), p. 28-29.

<sup>2</sup> Ayu Putu Nantri, *Kedudukan Ahli Waris Yang beralih Agama Menurut Hukum Adat Waris Bali Di Kabupaten Badung* (Denpasar: Laporan Penelitian Fakultas Hukum Universitas Udayana, 1982), p. 1.

Balinese society (*kapurusa/purusa*). In this system, the father is the head of the family, the breadwinner and the owner of the family property which is obtained from generation to generation. Therefore, the logical consequence of the kapurusa system in Balinese society gives a different treatment between boys and girls in the field of inheritance. This aspect of different treatment is based on the idea that the essence of inheritance in Balinese customary law creates a balance between rights (*swadikara*) and obligation (*swadharma*). In Balinese customary law, inheritance is inherited through the male line, so that all assets belong to men, while women are not property owners. Before marriage, a daughter becomes the property and responsibility of her father, and only when she is married is the property and responsibility of her husband.

Next aspect of inheritance is interpreted as descendants. Furthermore, I Wayan Windia said that inheritance is actually a responsibility, among others, towards *parahyangan* such as a holy place, *pawongan* at humanitarian activities in accordance with Balinese manners and responsibilities in the field in relation to the land (certificate).<sup>3</sup> The logical consequence is that heirs are defined as children or descendants who are entitled to inheritance. Before the independence of the Republic of Indonesia meant by Heirs were those who had blood relations with the Heir. The logical consequence is the understanding of Heirs is always correlated with blood relations. As a result, the widow is not an heir because she does not have blood relations with her husband. In Balinese inheritance customary law, the requirement as an heir is to have a blood relationship with the heir in accordance with the patrilineal line (*kapurusa/purusa*) which is the biological son (*anak sentana*), or a child who is male (*anak sentana rajeg*),<sup>4</sup> or non-blood children (*anak angkat*),<sup>5</sup> or children inherited from each

---

<sup>3</sup> An interview with a Professor of Customary Law and a Lecturer at the Law Faculty of Udayana University was conducted in Denpasar, on August 4, 2017.

<sup>4</sup> In the Balinese inheritance customary law, the term "male status" is used as juridical terminology, so that the heirs can be physically women, then by performing the ceremony of warancing or sentana rajeg/nyentana the status of the woman (predana) physically becomes status male (purusa) and has the right to inherit, and the male physically (husband) changes his status to woman (sentana luh) so that he is not entitled to inherit or not as heir.

<sup>5</sup> If the heir does not have any offspring at all, then it is possible for the testator to appoint the son of the male siblings as stipulated in Article 11 paragraph

husband and wife (stepchildren). If there are no *anak sentana*, *anak sentana rajeg*, *anak angkat* and stepchildren are opened for the possibility of replacing heir groups according to Hindu law. Therefore, girls only have the right to enjoy the inheritance of their parents or husband. These aspects and dimensions are parallel to the *Kitab Manawadharmastra* which determines that the heir is a descendant called one *pinda*, namely children who have a relationship of blood drawn by a line straight down and up. The three levels of the downward derivative of the heir and the three upper levels of the heir are declared one *pinda* as heirs with the right of virtue are the descendants of heirs drawn through the line of boys.

### **Shift and/or affirmation of the Kapurusa/Purusa System as a Renewal of the Indigenous Law of Waris Bali**

Balinese inheritance customary law adheres to the patrilineal system or kapurusa/purusa where boys are heirs. This was confirmed by the ratio of decidendi to the Decision of the Supreme Court of the Republic of Indonesia Number 200K/Sip/1955 dated December 3, 1955 stated that:

According to Balinese customary law, which has the right to inherit as heirs, only male descendants from male families and male adopted children. Therefore, Men Sardji as a sister was not the heir of the late Pan Sarning.

The same is true in the Decision of the Supreme Court of the Republic of Indonesia Number 3750K/Pdt/1991 dated June 29, 1993 where it was stated that:

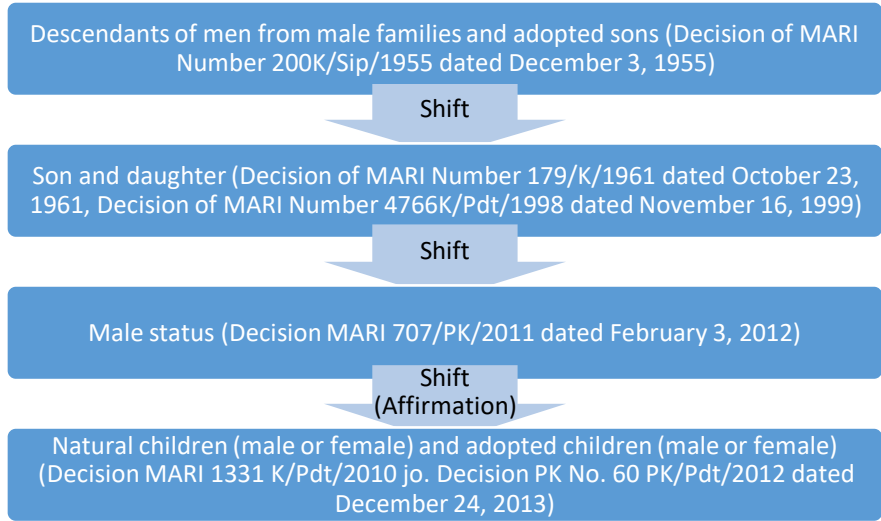
With the death of his father, who was then followed by his mother, the property rights of this land descended and were inherited by the heirs of the three sons mentioned above (*Sekehe Tiga*).

---

(1) of the Peswara Rules October 13, 1900 (Regarding adoption or sentiments of violence) to determine, "If people belong to any caste who do not have sons, want to raise a child (squeeze *sentana*) then they must drop their choice of one of the closest family members in the male descent to the eighth degree."

However, the kapurusa system in several decisions of the Supreme Court of Indonesia has shifted and/or affirmed as can be seen in table 1 below.

**Table 1.** Shift and/or Affirmation of the Patrilineal System (Kapurusa/Purusa) Customary Law of the Inheritance of Bali



In the context table above, there is a shift from the patrilineal system (kapurusa/purusa) to the parental/bilateral system and/or affirmation of the patrilineal system (kapurusa/purusa) in Balinese inheritance customary law. This shift and/or affirmation is seen from the size or criteria used. If the measure is *awig-awig* written, the Balinese inheritance customary law has shifted from the patrilineal system (kapurusa/purusa) to the parental/bilateral system.<sup>6</sup> However, if the measure used is the principle of Balinese customary law, which is

<sup>6</sup> F.A. Liefrinck introduces the terminology of the awig-awig word. Then the terminology of the awig-awig word is juridical terminology since September 1969 in the Seminar in Bali organized by the Faculty of Law and Knowledge of the Udayana University in collaboration with the Regional Government of Bali and even now has a remembrance stipulated in several Pakraman Villages in Bali such as Awig of the villages of Pakraman Kedewatan, Awig-Awig of Banjar Delodpempatan Desa Adat Lukluk, and so on. See, Frederik Albert Liefrinck, *Bali en Lombok* (Amsterdam: J. H. de Bussy, 1927), p. 285.

patrilineal (kapurusa/purusa), then this dimension is only an affirmation of the patrilineal system (kapurusa/purusa).

The nature of the kapurusa/purusa system confirms that heirs are only to male offspring of male and male adoptive families (Decision of the Supreme Court of the Republic of Indonesia Number 200K/Sip/1955 dated December 3, 1955). Then shifted to the heirs were boys and girls (Decision of the Supreme Court of the Republic of Indonesia Number 179/K/1961 dated 23 October 1961, Decision of the Supreme Court of the Republic of Indonesia Number 4766K/Pdt/1998 dated 16 November 1999). Next shifted to the status of men (Decision of the Supreme Court of the Republic of Indonesia Number 707/PK/2011 dated February 3, 2012). The latest recent development of Balinese inheritance customary law in which both biological children (male or female) and adopted children (male or female) have the right to the wealth of their parents, after being reduced by one third as the middle *druwe* (shared assets),<sup>7</sup> which are controlled (not owned) by children who are guilty (continuing swadharma or responsibilities) of their parents (Decision of the Supreme Court of the Republic of Indonesia Number 1331 K/Pdt/2010 jo Decision of Judicial Review No. 60 PK/Pdt/2012 dated 24 December 2013).

### Application of Judges in Responding to the Dynamics of Customary Law of the *Waris* Bali

Law is basically made and enforced to bring about justice. The main purpose of the law is justice. Law enforcement must be oriented towards justice. Aristotle stated that justice would only be realized

---

<sup>7</sup> How to calculate the inheritance portion of each child according to two-thirds of the *guna kaya* property as in the following examples. *Example 1*, boy 1, daughter 2. Inheritance divided by 4 (2 + 2): 1 x 2 (portion of one boy) + 2 x 1 (portion of two girls) Boy can 1/2 inheritance, 1/4 women each. *Example 2*, boy 2, daughter 1 Inheritance divided by 5 (4 + 1): 2 x 2 (portion of two boys) + 1 x 1 (portion of one daughter) Boys each get 2/5, and daughter 1/5. *Example 3*, boys 3, daughters 4 inheritance divided by 10 (6 + 4): 3 x 2 (portion of three boys) + 4 x 1 (portion of four girls). So, each of the sons get 1/5, each girl gets 1/10. See, Ni Nengah Budawati, I Ketut Sudantra, Luh Putu Anggreni, Sita Thamar van Bemmelen, *Payung Hukum Adat untuk Keluarga Bali*, (Denpasar: Lembaga Bantuan Hukum Asosiasi Untuk Keadilan (LBH APIK) Bali dan Komunitas Untuk Indonesia Yang Adil dan Setara (KIAS), 2012), p. 26.

when the community obeyed the general rules that apply to it. Furthermore justice will be achieved if: first, someone obeys the prevailing legal norms, that the law must not be violated and the rule of law must be obeyed and, secondly, a person may not take more than his rights, so justice means equality of rights or equal. Equal or equality, means that the benchmark for justice is equal rights for everyone, what one community member receives and feels will be felt by other members of society

Plato explains justice is a virtue that contains harmony and balance that cannot be known or explained by rational argumentation.<sup>8</sup> The virtues can be divided into 4 (four), namely wisdom or wisdom, courage or determination, and discipline, and justice.<sup>9</sup> In principle, justice can provide happiness. Problems of pleasure or convenience, different or even conflicting between one person and another, ultimately justice is only a form of compromise.<sup>10</sup> Greek philosophers view justice as a continuous and constant goal to give everyone their rights. *Justice is the constan and continual purpose which gives to everyone his own.*<sup>11</sup>

In line with the above assertion of justice is a goal that is constant or continuous. Derrida also states that justice is a continuous search experience that requires fresh and new interpretations and continuous suspension as a feature of “cannot be decided”. Justice is always ahead of (beyond) the law, and provokes the law to always approach it. To approach it, it is not enough to just follow the rules, but need to do “fresh judgment”.<sup>12</sup> For Derrida, justice plays in legal and opposite areas that are legal, “*deconstruction take place in the place in the interval that separates the underconstructibility of justice from the deconstructibility*”. Justice is at the interval between legal and non-legal.<sup>13</sup> In the context of seeking

---

<sup>8</sup> Wolfgang Friedmann, *Legal Theory*, Fourth edition (London: Stevens and Son, 2006).

<sup>9</sup> Sudarsono, *Ilmu Filsafat: Suatu Pengantar* (Jakarta: Rineka Cipta, 2001), p. 271.

<sup>10</sup> Philipus M. Hadjon, *Perlindungan hukum bagi rakyat di Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara* (Surabaya: Bina Ilmu, 1987), p. 92.

<sup>11</sup> Munir Fuady, *Aliran Hukum Kritis: Paradigma Ketidakeberdayaan Hukum* (Bandung: Citra Aditya Bakti, 2003), p. 52.

<sup>12</sup> Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum* (Yogyakarta: Genta Publishing, 2011), p. 249.

<sup>13</sup> Widodo Dwi Putro, *Kritik Terhadap...*, p. 248.

justice outside the formal legal system, the law that lives in the community (customary law) is very instrumental in guiding the judges to find the right value of justice.

Fair law based on Pancasila according to Teguh Prasetyo is a formulation of justice that is carried out in Indonesian society, namely justice which emphasizes the balance between rights and obligations, namely the right to enjoy the results of development with the obligation of dharma to be devoted. Furthermore, it was emphasized that with this formulation of justice, the development of laws and legal systems based on Pancasila aims to mobilize all Indonesians throughout Indonesia, the aspirations and goals of the Indonesian people, the Indonesian people and individuals, the soul of individual freedom, honor and his property, the executor of development (the law which functions as a support for the development of modernization and overall development).

In the context of inheritance customary law in general and Balinese inheritance customary law in particular, justice appears in the context of heirs, heirs and inheritance. The dimensions of heirs, as the scope of this study, occur the dynamics of shifting that are based on the theory of justice, namely in the context of the patrilineal system (*kapurusa/purusa*) where only boys with the status of heirs shift to the dynamics of the parental system where both biological children male and female) and adopted children (male or female) have the right to their parents' soft assets, after being deducted by one third as middle *druwe* (shared assets), which are controlled (not owned) by children who are guilty (continuing *swadharma* or responsibility) of people old age. Likewise for inheritance where the child with *kapurusa* status is entitled to one part of the inheritance, while the status of *predana*/the death of the limited *Kedaton* is entitled to part or half of the inheritance received by a child with the status of *kapurusa*.

Parallel principles/customary law values inheritance in the "lap" of customary law are reasonable, harmonious and in harmony when inheritance customary law is born, grows, and develops in a mystical atmosphere of customary law along with its customary law communities. Therefore, inheritance customary law has a distinctive pattern that arises in the traditional nature of the Indonesian nation. Customary inheritance legal patterns are religious (*magisch-religious*), communal (*commuun*), concrete, and cash (*contingent handling*).



What is said to be fair in the process of inheritance is influenced by the nature of the mind and the joints of local indigenous social life. Likewise, what is felt to be fair or unfair, fair or unreasonable, good or bad, is influenced by the nature of the mind and local conditions, by religion and the circumstances of each environment. With this sense of justice, in customary inheritance law does not mean sharing ownership or use of inheritance which is equal in number or value, but which is in harmony and in proportion to the interests and equity.

The relation between the existences of the development of the value of justice in the traditional inheritance law community is confronted with the national legal system of the state. These aspects and factors remind van Vollenhoven's argument in 1905, which was enough to hamper the intention of colonial officials to subjugate the indigenous people to a law that was built according to the principles of Dutch legal justice. Although the draft *Idenburg* was finally accepted by parliament, the amendment of *Idenburg* had affirmed a policy that had been compromised, namely that unwritten public law (which at that time had been popularized as customary law) could only be replaced by European law when in its life every day the indigenous people really need that law.<sup>14</sup> With the argument of *Savignian, van Vollenhoven* emphasized that the needs of the indigenous population were very different from the legal needs of the Europeans and therefore the unilateral application of European law would cause the collapse of the indigenous order.

Friedrich Carl von Savigny explained that the codification of the law always brings with it negative effects, which inhibits the development of law. History continues, but the law has been established, so it is relatively difficult to stop history at a certain time. Moreover, to formulate a law in accordance with the soul of the nation (*volksgeist*/inner order), it needs to be investigated first, what is the spirit of the nation's soul, which are the beliefs of the nation that can be used as a basis for adequate legal order. If this is neglected, there will be a danger that there will be a gap between the soul of the nation and the law contained in the laws of the state. In the construction of the Indonesian legal system, Pancasila animates every

---

<sup>14</sup> Soetandyo Wignjosoebroto, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial-Politik dalam Perkembangan Hukum di Indonesia* (Jakarta: Rajawali Pers, 1994), p. 126.

written and unwritten legal system applied to ensure the realization of substantive justice for all Indonesian citizens.

As explained earlier that Balinese inheritance customary law has undergone a shifting dynamics from the patrilineal system (*kapurusa/purusa*) where only boys with the status of heirs shift to the dynamics of the parental system where both biological children (male or female) and adopted children (male or female) has the right to the wealth of his parents, after being reduced by one third as the middle *druwe* (shared assets), which is controlled (not owned) by the child who is *ngunwubang* (continuing *swadharma* or responsibility) of his parents. Likewise for inheritance where the child with *kapurusa* status is entitled to one part of the inheritance, while the status of *predana*/the death of the limited *Kedaton* is entitled to part or half of the inheritance received by a child with the status of *kapurusa*.

Reinterpretation of Balinese inheritance customary law regarding the position of heirs who changed some of the rules on the prevailing provisions reflecting the dynamics of their development. The dynamics issue must be understood and followed by judges at the District Courts both in Bali and other areas outside Bali where the residents or the Balinese community are located and want the inheritance law when a dispute occurs is resolved using Balinese inheritance customary law. As a basis for the judge's obligation to enforce law and justice in accordance with the development of values and a sense of justice that lives and develops in society.

The context of the judge's interpretation is very dynamic accompanied by the development of the value of justice from the developing Balinese customary law. Decision of the Supreme Court of the Republic of Indonesia Number 200/K/Sip/1955 dated December 3, 1955 stated that, "according to Balinese customary law which has the right to inherit as heirs, only descendants of men from the family of men and adopted sons". In further developments, the Balinese indigenous people open the idea that to become *purusa/kapurusa* can be given to men or women with male status and carry out their obligations so that girls can become heirs. As reflected in the decision of the Denpasar District Court Number 52/Pdt.G/2013/PN.DPS.

Actually, the shift from Patrilineal (*Kapurusa/Purusa*) in Balinese customary inheritance law is not the only dynamic that occurs in Indonesia. On the Decision of the Supreme Court of the Republic of

Indonesia Number 3123 K/Pdt/1984 dated 21 April 1986 the Supreme Court stipulates that the Plaintiffs (daughters) and Defendants (boys) are the legal heirs of the deceased *Amag-Seniah* and jointly entitled inherited the disputed paddy land which was the inheritance of his late father. This ruling was based on the consideration that in the Sasak Indigenous community in Lombok had undergone rapid changes and developments, various positions and the Sasak women had filled professions. Because traditional inheritance law is outdated and outdated, it is not in accordance with the needs of modern times, so it is not in accordance with the legal justice of the people concerned. Then based on the results of the University of Mataram Law School's 1979 research, it turned out that the Sasak Indigenous people in East Lombok had shifted values in the *Waris Adat Law* regarding the position of daughters, whose daughters were not heirs and were not entitled to inheritance, but only entitled to movable goods; jewelry alone (severance pay), has now evolved towards recognizing the position of a daughter as an heir who has the right to inherit the inheritance of her parents together with her brother.

In the perspective of the assessment of the occurrence of this shift, the Judge in the practice of justice (Decision Number 52/Pdt.G/2013/PN.DPS.) Not only improvised but he carefully cited and based his decision also with the MUDP Decree dated October 15, 2010 stating boys get 1 (one) part, while girls inherit  $\frac{1}{2}$  (one-half) from the share of boys, girls have the right to get  $\frac{1}{2}$  (one-half) on the basis that they can carry out the three responsibilities of the swadharma. The judge gave an interpretation and confirmed that the MUDP Decree dated October 15, 2010 was a development of modern law, progressive law, justice law, which led to national law that gave 1 equal right between men and women.

In connection with the existence of the decision of the Pakraman Main Assembly (MUDP) Supreme Court which contained a breakthrough in Balinese traditional inheritance law reformation, it should be questioned whether it would immediately become a pattern of steady behavior in society so that it became in concreto to be used as a guideline, handle and build revitalization of Balinese inheritance

customary law in the form of *awig-awig* Pakraman village.<sup>15</sup> For this reason, it is necessary to familiarize and internalize the Balinese indigenous people regarding the values contained in the MUDP decision. The logical consequence is that the MUDP decision will be used as a guideline and benchmark for judges in adjudicating inheritance cases in Balinese inheritance customary law, making it easier for judges to make legal discoveries to explore legal values that live in society.

Aspects and dimensions of decisions that are oriented to the patrilineal system (*kapurusa/purusa*) shifted into other parental systems are in accordance with the Supreme Court Decision Number 1331 K/Pdt/2010 where legitimacy is given that simultaneously both women and men can jointly become *kapurasa* (so that it is entitled to inheritance) through a process of marriage in the gutter. The judge was very aware of the development of Balinese customary inheritance law in providing solutions and alternative solutions to the people. In the case of a groomed marriage by a certain married couple, the

---

<sup>15</sup> In Bali the concept of the Village is known in the form of *Dinas Desa* (New Village) and *Adat Village* (Pakraman Village). The terminology of Indigenous Village in Perda Number 06 of 1986 was replaced by the term Pakraman Village as used in Bali Provincial Regulation Number 3 of 2001 concerning Pakraman Village meaning or understanding of the terms traditional village and pakraman village are the same. Both terms are still used in the life order of indigenous peoples in Bali. Thus, Pakraman village is an organization of Balinese Hindu society based on the unity of the residential area and the most fundamental religious religion for the pattern of relations and patterns of social interaction of the Balinese people. Pakraman village always consists of three elements, namely: (1) *parahyangan* elements, (2) *pawongan* elements, and (3) *palemahan* elements. These three elements are the elaboration of the philosophy of *tri hita karana* which later became the main basis of traditional village life. The philosophy of Tri Hita Karana basically teaches that the welfare of mankind in this world can be achieved only if humans succeed in realizing the harmonious relationship between humans and their God (*parahyangan*), humans and humans (*pawongan*), and humans with their environment (*palemahan*). In Pakraman village, the elements of *pawongan* are displayed in the form of a community unit called *krama desa* (villagers who are Hindus). *Palemahan* elements are displayed in the form of village areas, in the form of *ayahan* coral villages and or *guna kaya* reefs. The *parhyangan* element is shown in the form of a holy place as a place of worship together (*khayangan desa*) and religious activities based on Hinduism. Thus, Pakraman village is a village or traditional institution that is socio-religious and has an autonomous government based on its original rights. See, I Wayan Arka, *Desa Adat Sebagai Subyek Hukum Perjanjian* (Denpasar: Udayana University Press, 2016), p. 77-78.

background is due to the fact that the bride and groom are not likely to choose one of the two existing forms of marriage, namely a regular marriage and a marriage. If they choose an ordinary marriage, the family of the woman must object, because this family will be left behind by the only daughter they have. If you choose a marriage, your family will also disagree, because this family will lose the only son you have. In an atmosphere like this they chose to hold a big marriage, an alternative form of marriage outside of two forms of marriage traditionally known by Balinese customary law.

However, in fact, the problems that arise are related to the *awig-awig* Pakraman village which regulates and recognizes the form of the marriage. There were doubts among the instructors or the Pakraman village leadership device to acknowledge the form of marriage in the wild. For these doubts, it has an impact on the completion of the administration of the marriage in the village of Pekraman. To prove that the couple in question is holding a marriage in a clash, the marriage certificate is accompanied by a family agreement known as the *mawarang* agreement, which affirms the responsibility or swadharma that must be carried out by the couple and their offspring after the family and the community or the Pakraman village.

## Conclusion

The judge was very dynamic in interpreting the dynamics of the renewal of the heirs of the Balinese customary law of inheritance. Originally, Kapurusa was only male offspring from male families and male adopted children, and then shifted to male status, and finally women as heirs. Interpretation of Judges is carried out in accordance with the development of modern law, progressive law, just law with a philosophical and juridical basis starting with the Decree of the MUDP Bali Supreme Court Number 01/KEP/PSM-3/MDP Bali/X/2010 concerning Supreme Court III MUDP Results Bali.

## Bibliography

- Arka, I Wayan, *Desa Adat Sebagai Subyek Hukum Perjanjian*, Denpasar: Udayana University Press, 2016.
- Budawati, Ni Nengah, I Ketut Sudantra, Luh Putu Anggreni, Sita Thamar van Bemmelen, *Payung Hukum Adat untuk Keluarga Bali*,

- Denpasar: Lembaga Bantuan Hukum Asosiasi Untuk Keadilan (LBH APIK) Bali dan Komunitas Untuk Indonesia Yang Adil dan Setara (KIAS), 2012.
- Friedmann, Wolfgang, *Legal Theory*, Fourth edition, London: Stevens and Son, 2006.
- Fuady, Munir, *Aliran Hukum Kritis: Paradigma Ketidakeberdayaan Hukum*, Bandung: Citra Aditya Bakti, 2003.
- Hadjon, Philipus M., *Perlindungan hukum bagi rakyat di Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*, Surabaya: Bina Ilmu, 1987.
- Interview with a Professor of Customary Law and a Lecturer at the Law Faculty of Udayana University was conducted in Denpasar, on August 4, 2017.
- Liefrinck, Frederik Albert, *Bali en Lombok*, Amsterdam: J.H. de Bussy, 1927.
- Nantri, Ayu Putu, *Kedudukan Ahli Waris Yang beralih Agama Menurut Hukum Adat Waris Bali Di Kabupaten Badung*, Denpasar: Laporan Penelitian Fakultas Hukum Universitas Udayana, 1982.
- Putro, Widodo Dwi, *Kritik Terhadap Paradigma Positivisme Hukum*, Yogyakarta: Genta Publishing, 2011.
- Sudarsono, *Ilmu Filsafat: Suatu Pengantar*, Jakarta: Rineka Cipta, 2001.
- Sunarmi, "Mengelola Kearifan Lokal: Menuju Hukum Yang Berkeadilan Dalam Putusan Lembaga Adat", in *Spirit Hukum Didedikasikan untuk Purna Bakti 70 Tahun Prof. HJ. Rehngena Purba, SH, MS Guru Besar Fakultas Hukum USU Hakim Agung Republik Indonesia*, Jakarta: PT RajaGrafindo Persada, 2012.
- Wignjosoebroto, Soetandyo, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial-Politik dalam Perkembangan Hukum di Indonesia*, Jakarta: Rajawali Pers, 1994.