



## The Spirit of Bali Traditional Law in Development National Law in the Age of Globalization

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**Abstract** - The fact that we see that the development of law (legal substance, legal structure and legal culture) in our country is still running hobbled behind the dynamics of social and cultural life of society. This fact is one of the sources of the chaotic face of law in Indonesia. By looking at these conditions, the spirit of Balinese Customary Law in the development of National Law really needs to be initiated, studied, and developed. The law should be built in line with the socio-cultural structure of our own nation, but still be able to accommodate the dynamics of its socio-cultural life in this era of openness. Through that Balinese Customary Law will be able to contribute to the development of National Law.

**Keywords:** Balinese Customary Law, National Law.

### I. INTRODUCTION

Philosophical thoughts on law include, among others, issues around the nature and nature of law, the purpose of law, and the function of law is a very broad issue. There are those who think that the law is identical with the value of absolute universal justice, the law can be used by all nations and is eternal (the flow of natural law). Another opinion views the law as a manifestation of the tools/will of the state authorities/lawmakers because it must be obeyed, justice is considered to exist in these laws/regulations (Legal Positivism School). There is also a view that in fact the law is not made but is a reflection of the feelings of the people who grow together with the community, thus avoiding the possibility of a sharp difference between the law as a regulatory method and the values that live with the community (Historical School of Law). On the other hand, there are those who say that the law is the total values adopted by a particular society (Sociological School of Law). Furthermore, there are those who view that the law aims to provide benefits to the community and members of its community (Utilitarian School), the purpose of law according to this flow is benefit, namely the occurrence of an atmosphere that allows each individual to fight for interests in order to obtain happiness and to avoid distress. (Lili Rasjidi, 2003: 109-125).

All of these thoughts to some degree contain the truth but are not completely able to explain the overall nature of the multi-characteristic and multi-dimensional law. It is impossible to explain the law from one perspective alone. Thinking at the conceptual level will produce many different views according to the perspective used. Therefore, seeing the law concretely in this context is much more useful in generating grounded thoughts and conceptions and is practically capable of solving various problems that arise.

Related to this issue, Satjipto Raharjo said that the science of law is not an idea that is squeezed or pulled from the human (brain), but follows and is guided by the reality of the law that lies in society. Only based on this reality, humans rack their brains to face the reality, in this case take pictures and implement them. This is where he began to enter the science and theory of law as a language game. (Satjopto Rahardjo, 2004:20)

A very well-known thinker about the emphasis on the function and role of law in society is Roscoe Pound, with his theory "law as a tool of social engineering" (law as a tool to change society). Pound illustrates that the main task of legal thought is the task of social engineering. In many essays he tries to simplify and strengthen this task of social engineering by formulating and classifying social interests, the balance of which causes law to develop. While the basics of his approach remained unchanged, the interests in his works later changed.

The thought developed by Roscoe Pound also influenced Mochtar Kusumaatmaja's thinking about his belief that law is a tool for community renewal. Law can be the main factor that drives the modernization of society and changes in a direction that supports development. Mochtar Kusumaatmaja's thoughts were very influential in determining the direction of development and national legal policy (legal politics) in the New Order era.

National Law, which was built with the paradigm of positivism (modern legal theory), has shown its powerlessness in managing the life of the Indonesian nation. National law has not been able to provide a sense of justice, welfare, and happiness for all Indonesian people. National law built with the positivism paradigm tends to ignore local legal wisdom that is still alive and developing in people's lives, even though factually and contextually local legal wisdom has proven to be very effective in managing people's lives, sometimes even exceeding the effectiveness of government law.

By observing the incompetence and powerlessness of modern legal theory in managing the life of the Indonesian nation, the spirit of customary law norms (local law) as a social reality that is still being lived and implemented in the lives of people throughout Indonesia needs to be redefined, understood, explained, reconstructed, and interpreted its function and meaning in the development of national law in this era of globalization. So that national law can function better in supporting national development.

## **2 The Spirit of Balinese Customary Law in the Development of Legal Substance**

The spirit of Balinese Customary Law that has the potential to develop legal substance includes:

### **a. *Awig awig* Desa Adat**

In Hindu society in Indonesia, customary rules that are still alive and developing are imbued with Hindu law. For example, in the Hindu community in Bali, the rules used as guidelines in the life of traditional organizations such as Traditional Villages, Banjar Adat, Subak and other traditional organizations are known as *Awig-awig*. Besides the term *awig-awig*, other terms are also known such as *Sima*, *Dresta*, *Uger-uger*. In general, the term refers to an understanding of the rules or sets of rules that regulate social life in a traditional village or banjar adat, which is born from a feeling of justice and a sense of propriety in society in order to realize a harmonious relationship with God, fellow humans, and nature. environment. *Awig-awig* is made by indigenous villagers on the basis of deliberation and consensus. All these rules are essentially imbued with Hindu law.

*Awig-awig* in Bali comes from: Literature *dresta*, *Loka dresta*, *Desa dresta*, and *Purwa dresta*. *Dresta* literature is the basic or main rules derived from the norms of Hindu law in the form of a set of written legal principles that concern the interests of the people and are considered appropriate by the local community. For example, the legal principles contained in the *Sruti* and *Smrthi* books (*Manawa Dharmasastra*).

The contents of *awig-awig* are not the same from one traditional village to another, the form and content vary greatly, but essentially the main content of *awig-awig* traditional village is to contain:

- 1) The rules regarding human relations with God Almighty, which are formulated in the *Sukerta Tata Religion*
- 2) the rules regarding human relations with other humans/social environment of society, which are formulated in the *Sukerta Tata Pakraman/Pawongan*, and
- 3) the rules regarding human relations with their natural environment, which is formulated in the *Sukerta Tata Palemahan*.

The spirit of Hindu law in the customary village rules is evident from the rules governing religious life (*Sukerta Tata Agama*). This section deals with:

1. Dewa yadnya is a sacred sacrifice ceremony sincerely and sincerely addressed to God Almighty. This chapter deals with; Temples (sacred places) in the customary village area, ceremonies at each temple, the holder of each temple, and maintaining the security and preservation of the temple.
2. Rsi yadnya, which is a sincere sacrificial ceremony aimed at / presented to the priests. This chapter deals with the procedures for the appointment of priests, respect and protection of priests, the rights of a priest.
3. Pitra yadnya is a sacred sacrifice ceremony sincerely to the ancestors who have died. This chapter regulates: ceremonial procedures and mechanisms, obstacles or taboos for the bereaved family, Pengabenan (burning of bodies).
4. Manusa yadnya sacrificial ceremony sincerely aimed at fellow human beings. This chapter deals with: various ceremonies and the mechanism for carrying out ceremonies.
5. Bhuta yadnya is a sacred sacrifice ceremony sincerely aimed at Bhuta kala, including ceremonies on plants and animals. In this chapter, it is regulated about the types of ceremonies, the time of the ceremony and the mechanism of the ceremony. This chapter also regulates the series of Nyepi Day ceremonies.

If you look closely, the contents of the traditional village Awig-awig in Bali are full of Hindu legal norms. These rules have universal value, especially in regulating and preserving nature and culture. This can be seen from the part that regulates the relationship between humans and humans and the part that regulates the relationship between humans and their natural environment. Like Awig-awig, Tenganan Village is very effective as a guide for its residents to act and behave in preserving the forest and its communal life. Likewise, Awig-awig in other villages, such as Awig-awig in Petulu and Sangeh villages, are very functional and effective in preserving monkeys and storks. Until now the animals in the village can be protected and preserved. Seeing from the function of Awig-awig which has the potential to preserve culture and nature, therefore the value, universal meaning contained in the awig-awig can be transformed in the development of legal substance at a wider and or higher level, such as in Regional Regulations. . So that the rules contained in Awig-awig (local community rules) get protection from Regional Regulations (government regulations), so that the nature and culture of local communities as tourism commodities can be maintained and preserved.

#### *b. Bhisama*

Bhisama are orders, prohibitions, advices or advices issued by a priest and can also be by ancestors, which are truly considered sacred both physically and mentally, both in terms of knowledge and attitudes and daily behavior. -day. The orders, prohibitions and advices are expected to organize, and direct the behavior of the people. Bhisama was issued by the ancient kings, by the ancestors or by the Parisada (Supreme Council of Hindus). This Bhisama is strictly adhered to by Hindus, because in Bhisama usually contains very burdensome sanctions for those who violate it. The sanctions are in the form of curses that are considered very dangerous and are believed to be true.

The content of Bhisama varies greatly, for example; Bhisama Kesucian Pura by Parisada, contains the rules for development around the temple area or places that are considered sacred by Hindus. In the area of the temple's sanctity radius, there may only be buildings related to life and facilities for Hindus to carry out religious activities. In the Bhisama issued by Parisada, the spirit of Hindu Law that underlies the contents of Bhisama is very thick.

### **1. The Spirit of Balinese Customary Law in the Development of the Legal Structure**

The spirit of Hindu law which has potential in the development of legal structures can be observed from the traditional institutions that carry out the rules in society. In the Hindu community in Bali, for example, there is an institution specifically tasked with implementing and enforcing the law. This institution is called Sabha Kertha (Village Judiciary Institution). This institution was formed with the intention of easing the duties of the Bendesa Adat,

especially in relation to customary cases that arose in the village. For example, problems between community members and other residents, or problems between community members and traditional villages or traditional banjars. Sabha Kertha members consist of community leaders who are considered to understand customary issues and customary law that applies in Bali in general. If the Traditional Village does not have a Sabha Kertha institution, then the duties of the judiciary are carried out by the Village Prajuru (village administrator) led by the Indigenous Bendesa.

The spirit of Hindu law that can be seen from this legal structure is that Hindus throughout the archipelago prefer to settle disputes by peaceful means, if possible mutual agreement is made between them. Traditional leaders in resolving disputes use these peaceful methods, this institution is more of a mediator between those in dispute, the approach used is a familial approach. In disputes, traditional elders try with all their efforts to resolve disputes or disputes by preventing them from entering into a dispute in the state court (Natansa, 2006).

The method of dispute resolution carried out in this traditional village is preferred by the community members rather than going to the state court. In general, Hindus have a reluctance to engage in a conflict or dispute openly. New cases will be brought to the district court if all efforts to make peace are not successful.

The spirit of Hindu law in traditional organizations/institutions such as Indigenous Villages, Banjar, Subak, Pecalang, Sabha Kertha, has great potential and has been empirically proven in enforcing customary rules, creating justice, maintaining security in their territories wisely and fairly. Therefore, the spirit of Hindu law has potential in the development of legal structures, especially in law enforcement in a wise and wise way, far from dishonest, arrogance, and violent attitudes.

### **3. The Spirit of Balinese Customary Law in the Development of Legal Culture**

The spirit of Hindu law that has the potential to develop legal culture can be seen from the values of Hindu religious teachings such as:

#### **a. *Tri Hita Karana***

Culture in Hindu society in Indonesia is a culture that is alive, internalized, developed and proud. Hindu culture in Indonesia which is imbued with Hinduism has a very basic function for the life of the Hindu community, especially in order to maintain harmonious relations between humans and their God, humans with each other and humans with their environment. This community life activity is oriented to the Tri Hita Karana philosophy.

The concept is that humans live according to their nature, always trying to achieve happiness. In fulfilling the demands of his life, humans are always dependent on other humans. Human life is above this world or nature, not in the clouds. Man's relationship with nature where he lives, creates a sense of love for his homeland. Nature contains the potential for life and livelihood for every living thing. If the emergence of humans and nature is returned to their first source, they will reach the Super Natural Power, namely God Almighty.

*Tri Hita Karana literally comes from the words Tri, Hita and Karana. Tri means three, hita means prosperous, good, happy, happy, sustainable, and karana means cause. So Tri Hita Karana means three elements which are the cause of the growth of goodness and prosperity. Thus Tri Hita Karana is a concept of welfare in the life of the Hindu community which consists of Parhyangan, Palemahan and Pawongan.*

The Parhyangan aspect concerns the relationship between humans and the spiritual environment as a reflection of human nature as homo religious beings. That is, creatures who have faith in the existence of supernatural or super natural powers, namely Ida Hyang Widhi Wasa / God Almighty. As an effort to achieve a prosperous life, humans always try to maintain a harmonious interaction with the spiritual environment which is expressed in the form of a religious system that includes religious emotions, religious facilities, and religious communities.

In Hindu culture in Indonesia, which is inspired by Hinduism, religious nuances are reflected in various aspects of people's lives. This indicates that almost no aspect of human life in totality is truly secular or profane, but always contains religious nuances as an expression of the balance of relations between humans and their spiritual environment.

The Pawongan aspect concerns the relationship between humans and humans or their social environment. A harmonious life has always been everyone's dream. This can only be achieved by harmonious cooperation with fellow human beings. These demands for cooperation are generally driven by the existence of uncertainty, limitations and scarcity of human resources so that social relations with others are a must.

In human nature, humans do have a tendency to maintain, foster and develop relationships between others by forming a community unit and occupying certain areas called communities. The Hindu community in Bali is called *Desa Pakraman*, the Hindu Kaharingan Community is called the Kaharingan Customary Council.

This conception is not only unique but has universal value for the life of the Hindu community, but also for the people on this earth. The values of *Tri Hita Karana* express patterns of harmonious and balanced relationships between humans and the spiritual, social and natural environment in order to achieve physical and spiritual well-being.

The concept of *Tri Hita Karana* is not only applied to life in the Traditional Village, but has also been institutionalized in units of life and other livelihoods. In the field of tourism, for example, the elements of *Tri Hita Karana* can be identified as follows: tourist areas and their infrastructure as elements of *palemahan*, tourism actors as elements of *pawongan* and a system of worship of *Dewi Laksmi* as elements of *parhyangan*. Thus, it is appropriate to say that the *Tri Hita Karana* conception is a potential in sustainable development.

#### **b. *Tri Kaya Parisudha***

Hindu communities throughout Indonesia always want a harmonious relationship between thoughts, words and actions or behavior. Hindus who are only good at thinking and speaking, but not smart in acting and behaving, they will be left behind. This realm of mind is based on the teachings of *Tri Kaya Parisudha*, *Tri* means three, *Kaya* means the basis of human behavior, and *parisudha* means what must be purified. So *Tri Kaya Parisudha* are three behaviors that must be purified, think right, say right, and behave right. With good thoughts, good words will arise so that good deeds can be realized.

From the *Tri Kaya Parisudha* arise ten kinds of self-control, namely: Three kinds based on the mind; 1) not wanting anything that is not *halal*, 2) not thinking badly of other people or creatures, 3) not denying the existence of the Law of *Karma Phala*. Four kinds based on words; 1) does not like to berate, 2) does not speak harshly to others, 3) does not slander, 4) does not break promises or words. Three kinds of control based on actions; 1) not torturing or killing other creatures, 2) not cheating on property, 3) not committing adultery.

#### **c. *Law of Karma Phala***

The law of *Karma Phala* is the law of cause and effect, action and reaction, the law of effort and result or fate. This law applies to the entire universe, animals, plants and humans. If this law is imposed on humans, the law is called the law of *karma*, if the law is imposed on nature it is called the law of *Rta*. This law governs the survival, motion and rotation of the universe. The stars scattered in the sky obeyed moving according to their orbits so that they did not collide with each other. The sun obediently shines according to its nature, so that the sea water evaporates into clouds, then falls into rain, finally following the river flow to the sea. All natural occurrences are governed by the perfect law of cause and effect. Likewise, the law of *karma* that governs human life, every action of a person must have a consequence, every movement must have a result.

In essence, God created this universe with the law of cause and effect, the law of action and reaction, therefore this universe is still in motion. The whole universe is an interdependent and inseparable unity. But people are bound and interdependent with one

another, no one is truly free. Like a machine, if one of the screws is loose or loose, it will affect the motion of the machine. If humans cut down and clear the forest arbitrarily then not only the forest will suffer. If the mouth is on strike, not only the legs are weak but also the brain is unable to think. This means that every action taken not only results in oneself but also on others.

In essence, all human actions or activities are carried out consciously or unconsciously, moreover what is done with a conscious mind is karma that will definitely bear fruit. People breathe, the heart beats, and dreams also include karma, although it is done subconsciously. If the heart stops beating the whole life of the body will be paralyzed. Even dreams have consequences in the mind, the joys and sorrows experienced in dreams are the fruit of karma. Besides, dreams also have consequences, because they can be interpreted and can have an impact on life. However, the meaning of karma in everyday practical sense is all thoughts, words and actions that are done.

There are three types of karma based on the time the karma was created and the time the karma phala was received, namely: 1) Prarabda Karma, which is actions that are done in the present life and the results are received at this time, 2) Kryamana karma, namely actions that are done now but the result will be received after death or in the afterlife, 3) Sancita karma, namely actions that are done now but the results will be accepted in the next life or birth.

The law of Karma Phala teaches humans to always be considerate and act according to their duties, not to be jealous of others because we are one unit of life, one breath by sucking air from the same air. Until now, the Balinese people still strongly believe in the law of karma phala, this conception is still firmly embedded in its function as a guide to the behavior of the Hindu community.

The law of Karma Phala is the law of action. Every action or karma must leave traces of actions in the form of results of actions or phala. If the act is carried out with good intentions or intentions, the results will be good, on the contrary if the act is based on bad intentions or intentions, the results of the actions will be bad for those who do it. No action is in vain, all will produce results from his actions, consciously or unconsciously.

Phala's law of karma as the law of cause and effect is a product that comes from humans themselves, since the beginning of their existence they have always worked with full accuracy without ever failing, because they always bind those who are still in a low level of consciousness, where the consequences arising from causes will act. as a new cause, which will lead to other consequences, and so on continuously (Maswinara, 1996)

Hindu society believes that the phala (result) of the karma (action) that a person does is not only received by himself, but also inherited by his descendants or descendants. The results of that action are not only accepted in his current life, but also in his life in the hereafter (afterlife), and in the life that will come after he is punarbhawa (born again).

#### **d. *Tat Twam Asi***

The conception of the mind of the Hindu community views the universe as a subject and object of life, personified like humans. The view that nature and its contents is an awareness and belief of the Hindu community that in essence humans are the same as all other creations of God Almighty. This awareness and belief is based on the philosophy of Tat Twam Asi.

The conception of Tat Twam Asi in Hindu society is derived from the teachings of the Hindu religion, namely Brahman atman aikyam. Brahman is God Almighty, the source of all that exists in the world. God is the origin of the soul and body of all beings. Atman are holy sparks from God that exist in every human being and other creatures as the substance that lives them. Therefore, one human being with another human being is the same (I am you), the difference only appears on the outside because the quality of each body in which the atman lives is different.

Basically this conception teaches that social life for every human being is absolutely necessary. Therefore, the essence of living in a society also means being willing to sacrifice some of their freedom. Because one person's freedom will be limited by the freedom of

others. This limitation of freedom is manifested by norms or a number of rules as guidelines and guidelines for social life. Sacrifice is something that is required by religion. In this case, this form of sacrifice is to respect, respect and serve every creature as God's creation. Tat Twam Asi is a reflection of universal love between people. Tat Twam Asi also means that he is me, this expression means that hurting others means hurting yourself, helping others means helping yourself, here there is a high value of solidarity.

The most important value of the conception of Tat Twam Asi is the value of social solidarity, because the function that is reflected both in the past, present and future is as a guide, organizer and builder of human beings to act and behave, to respect and respect each other among each other. This can be actualized in the social life of the Hindu community. Especially the association of life between human beings in social life. Therefore, in the Hindu community in the province of Bali, the motto "Sagilik saguluk, Salunglung sabayantaka" is known, a motto that reflects the ideals and desire to always live together in a state of joy and sorrow, facing all the challenges of life.

The concept of Tat Twam Asi is still firmly held by the Hindu community as a guide in the relationship between humans and humans. Hindus believe that if we love ourselves, love ourselves, that's how we should think, say and do to others. The real manifestation of the application of this concept in everyday life gives rise to several operational concepts in the life of the Hindu community in Bali, such as: ngoopin, mapitulung (gotong royong to help other people's work voluntarily without pay).

The values contained in Hindu religious teachings such as: Tri Kita Karana, Tri Kaya Parisudha, Law of karma Phala, Tat Twam Asi, Kala Patra Village, Rwa Bhinedha, are the spirit of Hindu law that underlies views, habits, ways of thinking, and acting. the behavior of the Hindu community in managing their lives in society. For example, the values contained in Tat Twam Asi and Tri Hita Karana are guided by the Hindu community in fostering harmonious relationships between humans and other humans. The values contained in the Law of Karma Phala which lead the Hindu community to obey the law, act according to duty, be considerate and not jealous. Therefore, the teachings of Hinduism in the form of these values have enormous potential and spirit in the development of legal culture.

#### **IV. CONCLUSION**

By seeing the powerlessness of Modern Law in overcoming the chaotic face of law in Indonesia, the spirit of Customary Law in the development of National Law really needs to be initiated, studied, and developed. The law should be built in line with the socio-cultural structure of our own nation, but still be able to accommodate the dynamics of its socio-cultural life in this era of openness. Philosophically, the norms of legal responsibility have similarities between customary law and the values aspired by national law based on Pancasila, namely the realization of the values of justice, benefit, welfare, and human happiness (the Indonesian nation). It is through this that the spirit of Balinese Customary Law will contribute to the development of national law.

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