

The Interpretation of Purusa and Pradana in Judicial Resolution Regarding Disputes on Heirloom in Bali

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Abstract

The concept of *purusa* and *pradana* in Hinduism and traditional life in Bali is meant to achieve the balance of peaceful life (*shanty*), reaching both worldly and spiritually happiness. On the other hand, disputes related to heirloom still exists, one of the cause of such disputes is the different understandings to the concept of *purusa* and *pradana*, whether in society or in judicial resolution made in the court. The different understanding of *purusa* and *pradana* in judicial resolution made in the court, has caused the violation of justice in society, not give the regulation certainly and the judicial judgment become useless in managing the existence and perpetuation of Balinese heirloom law according to Hinduism. Because of that, it needs the clarity and direction in the meaning of *purusa* and *pradana* in the inheritance that is understood by all ranks/all society classes in judicial resolution in the Court.

Keywords: *Purusa*, *Pradana*, Judicial Resolution, Custom Heirloom Dispute.

A. Introduction

Purusa and pradana concept in Hinduism and indigenous peoples in Bali aims to achieve balance in life which is *Santhi*/peaceful in spiritual and physical happiness. The terms purusa and pradana in Balinese dictionary¹ are termed as follows: "purusa means the families of the men and Pradana means the families of the women". Purusa and pradana in Bali customary inheritance law is always a consideration in determining who is entitled as an heir and that as the successor to the offspring of the male. However, the successor to a descendant or heir, not always are boys but there are also girls who were seated as purusa in a *Nyeburin* marriage and even in its development, there are times when men and women are equally serves as purusa in *Negen Dadual/Pada Gelahang/Mepanak Bareng* marriage.²

In the order of Balinese customary inheritance law, Purusa is understood as a principle of law based on the male lineage or paternal line (patrilineal). For example in Balinese customary inheritance law, inheritance law principle is classified in the principle of inheritance of the lineage of male/patrilineal. This principle was then used as the basis to classify Balinese customary inheritance law into patrilineal kinship system (male lineage). Similarly, in the Balinese customary marriage law (which is based on the Purusa line), classified in patrilineal marriage system, but what really happens is the get-out mating system and Nyeburin marriage.

Nevertheless dispute on heirloom is still rife. This heirloom disputes occur among others, because of the differences in the meanings of Purusa and Pradana in inheritance. The differences in the meanings of Purusa and Pradana occurred among the general public, academic groups, among legal professionals (lawyer, notary), the apparatus of government, prajuru (apparatus) of indigenous villages, as well as among the judges in court. For that we need a clear and definitive guidance regarding the meaning of purusa and pradana, which can be understood by all circles/all levels of society, as well as among legal professionals who need legal certainty about the operation. As Satjipto Rahardjo said that uncertainty, a hesitance on the positive law led a professional to be unable to calm and certain (determined) in applying the law.³

The judges' verdict is always expected to satisfy the justice as mandated in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 57). For that judges shall explore, and understand the values of law and justice in the society. Therefore, the theory that is used as a knife analysis is a theory of justice, expediency, legal certainty, *receptio in complexu* and *volkgeist* theory.

A primary issue in this study is to discuss the meaning of Purusa and Pradana as one of the concepts that exist in Bali customary inheritance law that became the substance/consideration of the judge in adjudicating a case of customary inheritance in court. Thus this dissertation research entitled "The Interpretation of Purusa And Pradana In Judicial Resolution Regarding Dispute on Heirloom in Bali", with concern on three issues: (1) What is the meaning of purusa and pradana according to the teachings of Hinduism and Balinese customary

¹ I Njoman Djendra, *Kamus Ideal Bahasa Bali*, (Denpasar: Yayasan Dharma Pura), 2009

² Judicial Resolution of Supreme Court Number 603 PK/Pdt/2012, dated 24 Desember 2013)

³ Satjipto Rahardjo, *Hukum dan Perilaku*, (Jakarta : Kompas Media Nusantara, 2009), p. 62.

inheritance law?, (2) How do judges interpret purusa and pradana in Judicial Resolution regarding the customary inheritance dispute in Bali? and (3) What is the implication of purusa and pradana interpretation in judicial resolution regarding to Balinese customary inheritance law in the future?

Discussion of these issues are expected to reformulate the meaning of purusa and pradana according to the teachings of Hinduism and Balinese traditional inheritance law. It is also intended to the application of the law by the judge in its decisions. Similarly to the tendency of judges practice in applying purusa and pradana in deciding cases in traditional Balinese inheritance disputes. This study is also analyzes the implications of the judge's ruling on the meaning of the existence of purusa and pradana in Balinese traditional inheritance law in the future. This research is also expected to seek input for shaping the Balinese inheritance law as a codified form, either *Awig-Awig*, *Paswara* or *Perarem*, that can be used as a guideline in Balinese inheritance law, that gives more in the sense of justice, certainty, and benefits to the lives of indigenous people in Bali, within the Unitary State of the Republic of Indonesia.

This study is academically expected to contribute in the development of legal science, particularly in defining purusa and pradana in the judge's decision regarding the customary inheritance disputes in Bali. Practically, this research can be used as a guideline, by common people, groups of academics, among legal professionals (lawyer, notary), the apparatus of government, prajuru (the apparatus) of indigenous villages, as well as among Judges in court, in resolving any dispute relating to the issue of indigenous inheritance in Bali.

B. Research Method

The type of research used in this dissertation is a normative legal research, using conceptual approach, historical approach, and case approach.

The steps that had been taken are analytical normative approach to the law substance, then identify the research question to determine the discussion, detailing the sub-topics that later formed the basis for collecting legal materials, processing and analysing, and also as a basis to generate the systematics of the research result so that it becomes a product of legal research in a form of dissertation.

C. Discussion

1. The Meaning of Purusa and Pradana According to the Teachings of Hinduism and Balinese Customary Inheritance Law

Each behavior in society and in the lives of the indigenous community in Bali, is always guided by the installed values, which originated from a belief or faith. The belief or faith of Hindus in Bali which called *Srada* (principle of Hindu faith) namely: Believe in one God/*Ida Sang Hyang Widhi Wasa*, Believe on the existence of *Atman*/spirits, Believe on *Punarbhawa* or rebirth of the soul, Believe in the law of *Karma Phala*, and Belief in the existence of *Moksha* (those five *Srada* as mentioned is called by *Panca Srada*). That belief is manifested in the attitudes and activities of ceremonies (*yadnya*), which are the *manusia yadnya*, *Pitra yadnya*, *Dewa Yadnya*, *Rsi Yadnya*, and *Bhuta Yadnya* that called *Panca yadnya*. Based on the conviction, as mentioned above, offspring is very important in the family life of indigenous people in Bali. Heredity is expected to pass on the values and the obligation to conduct ceremonies (*yadnya*) as mentioned above. Thus, the main purpose of marriage according to Hinduism doctrine is to obtain offspring that *suputra*, that is children that respectful to parents, love living things, and devote to God.¹

The author agrees with Tjokorda Istri Putra Astiti who states that the purpose of forming a family according to Hinduism is to get a child, especially the *Suputra* one, a prime child of the principal. As mentioned in *Manawa Dharmasastra* (Hindu Law) IX. 137, namely through the offspring of male, the parents' life purpose is achieved, there is the implication that through son, grandson, and the son of grandson who is *Suputra*, the perfect life purpose can be achieved.² A *Suputra* descendant or child in a family is considered very important.

For Hindus in Bali, the heirloom left by the ancestor will be inherited by offspring who is *Purusa*, which went on and continue the rights and obligations of the ancestor. Thus, the heirloom left by the heir is not only formed as treasures but also obligations (*Swadharna*) that should be passed and continued by his heirs.

In the indigenous people in Bali, status or legal domicile of husband and wife, and the offspring/children born in the marriage, is determined by the form of the marriage. Judging on the mating system in Bali, it can be divided into 3 (three), namely:

1. *Keluar* Marriage (Mating out) is a marriage carried out between men and women, where the men serves as Purusa and the women serves as Pradana,
2. *Nyentana* Marriage (*Nyeburin* Marriage) is marriage carried out between men and women, where the men serves as Pradana and the women serves as Purusa,

¹ Ida Bagus Anom, *Perkawinan Menurut Adat Agama Hindu*, (Denpasar : CV.Kayumas Agung, 2010), p. 4.

² G. Pudja and Tjokorda Rai Sudharta, *Manawa Dharmacastra (Manu Dharma Sastra) or Weda Smrti Compendium Hukum Hindu*. Jakarta: Hanuman Sakti, 1995.

3. *Pada Gelahang/Negen Dadua* Marriage is a marriage carried out between men and women, which both are equally serves as purusa.

According to Tjokorda Istri Putra Astiti, inheritance according to the Balinese customary inheritance law includes the inheritance on the rights in form of material/trasures wealth as well as inheritance on liabilities which are customary and religious, such as inheritance of responsibilities and obligations to maintain and perform rituals in the worship site for the ancestors (*Sanggah*) and an inheritance of *Ayahan* (customary obligations) in the *Banjar*(rural community) and indigenous community.¹ Those belonging as heirs according to Balinese customary inheritance law as stated by Tjok Istri Putra Astiti are:

1. Every male in the relationship purusa during an uninterrupted right to receive an inheritance.
2. Each cemetery Rajeg during an uninterrupted right to receive an inheritance.

A son is cut off from his right to inherit the heirloom, among others, if:

1. Adopted by another family,
2. Mating out to be a Sentana Rajeg husband
 1. Religion/faith conversion,
 2. Disobedience the heir.

A Sentana Rajeg is interrupted to his right to inherit the heirloom, if:

1. Convert to another religion,
2. Do not carry out his obligations as a Sentana Rajeg, e.g if in the mating out he leaving his status as a Sentana Rajeg ".²

A *Putra*/descent is very important for Hindus. *Putra*/Descendant meant here is a child, that is the child/descendant of both male and female. A *Suputra Putra*/descendant is primary. Therefore, one of the most important objective of marriage is to give birth to a *Suputra* child/descendant, because through the *Suputra* child/descendant the inheritance process can run well and bring spiritual and physical happiness. The *Suputra* child/descendant is the one that will run and continue the obligations and liabilities, either as a child or liabilities as a successor.

The values mentioned above are embedded and had been embedded in the soul of the indigenous peoples in Bali. This is consistent with the *volkgeist* theory by Friedrich Karl Von Savigny, that the essence of a system is a reflection of the soul of the people who developed the law. All law is derived from the customs and beliefs and not from the legislators.³

What is being taught in religious teachings, which related in interpreting Purusa and Pradana, which is believed and conducted by every members of indigenous people in Bali in terms of religion, religious ceremonies, ethical life, and the life of habitual customs, then it can be said that the meaning of Purusa and Pradana is already received according to Hindu religion. However, if in the interpretation of Purusa and Pradana, which is believed and conducted by every member of indigenous people in Bali in terms of religion, religious ceremonies, ethical life, and the life of habitual customs has a change in meanings, from what is in the religious law and the applied rules, then it shows that the law is no longer intactly received but has been adjusted to the desires, demands and development of the concerned indigenous peoples.

The meanings of Purusa and Pradana in Balinese customary inheritance law, does not only related to inheritance, but more than that, which is intimately linked to all activities in life associated with the conviction to *Ida Sang Hyang Widhi Wasa* (God Almighty), all customary activities in term of religious, in community and in the lives of the indigenous community in Bali. Purusa and Pradana always be the base scale and measurement in attitude, well behavior, even in the lead of role or in the meaning of a life. The concept of Purusa and Pradana in Balinese customary inheritance law, is always be interpreted with the lineage of the male, which is reflected in the position of the person in a marriage and the form of marriage. A man serves as Purusa in ordinary marriage and *Negen Dadua* Marriage, but in *Nyeburin* marriage, the man serves as Pradana. Yet, in contrary a woman serves as Purusa in *Keceburin* marriage and *Negen Dadua* marriage, but in ordinary marriage, a woman serves as Pradana.

Receptio In Complexu Theory affirms: "The customs and the adat (law) in a class of society is the total reception of religion professed by the community " (that customary law in a class of society is the result of wholly acceptance to the religious law espoused by the groups of the society)".⁴

The essence of Receptio In complexu theory according to Soerojo Wignjodipoero, is: "As long as not otherwise provable according to this teaching, the law of the indigenous join his religion, as if religion were faithfully."

¹ Tjok istri Putra Astiti, *Pengaruh Hukum Adat Dan Program Keluarga Berencana Terhadap Nilai Anak Laki-Laki Dan Perempuan Pada Masyarakat Bali Yang Sedang Berubah*, Dissertation, Bogor: Institut Pertanian Bogor, p. 39.

² *Id.*

³ http://filkumania-vonsavigny.blogspot.com/2010_08_01_archive.html, accessed on 04 August 2013

⁴ Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, Bandung : Alfabeta, 2009, p. 30.

Based on the description as mentioned above, there are differences in the meanings of Purusa and Pradana concept in Hinduism with Balinese customary inheritance law. Hindu religion emphasises more on children who is *Suputra*, whereas in customary inheritance law emphasises more on the status/position of a person in a marriage. However, if explored further, in principle, Balinese customary law receiving Hinduism religious law but not absolute. Thus, based on the studies by author as mentioned before, then: Purusa in Hinduism doctrine is interpreted as descendants of man and/or woman/*Putrika* that *Suputra*, which run and pass his/her *Swadharma* as a *Kapurusa* descent. Pradana in Hinduism doctrine is interpreted as a descendant woman and/or man who is *Suputra*, who after the marriage is no longer run and pass his/her *Swadharma* as a *Kapurusa* descent, for having been married out and continue his/her *Swadharma* in the family of his/her spouse who serves as Purusa. Purusa in Balinese customary inheritance law is interpreted as son and/or daughter (*Sentana Rajeg*), which will inherit the rights and obligations of the heir. Pradana in Balinese customary inheritance law is defined as a male and/or female child/descendant who is *Ninggal Kedaton*/mating out and leave the rights and obligations of the abandoned heir

2. The Interpretation of Purusa and Pradana By Judges in Judicial Resolution on Customary Inheritance Dispute In Bali

Regarding to the meanings of Purusa and Pradana by judges in Judicial Resolution on regard to the dispute of customary inheritance in Bali, the authors analyzed 16 (sixteen) cases (disputes of inheritance) which had been decided by 42 (forty-two) judges in the first level (the District Court) and decisions to the level of the Supreme Court in a judicial review.

Based on the decisions of the judges in the 16 (sixteen) cases (inheritance disputes), as mentioned above, the authors found that the judges are diversified in interpreting Purusa and Pradana in Balinese customary inheritance disputes. The diversities are as follows:

- Some judges interpret in the same way, and some are different,
- Some judges interpret based on the description/information/public testimony, expert's testimony, which is believed to be able to reinforce the view of judges within the meaning of Purusa and Pradana,
- Some judges interpret based on the law of justice in the perspective of the judge,
- Some judges interpret based on the evidence submitted to it,
- Some judges interpret based on faith,
- Some judges interpret based on the testimony, evidence, conviction, consistence, and progressive development of the law,
- Some judges interpret based on the development of customary inheritance law which constituted on the Decision Of The Prime Council's General Assembly of Desa Pekaraman Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010 dated October 15, 2010 on the results of The Prime Council's III Great Assembly of of Desa Pekraman Bali ,

The author believes that fairness, certainty, and expediency on the verdict can be obtained by public, when judges have obtained same understanding, within the interpretation of Purusa and Pradana. When there is a dispute over inheritance, the basis of guidelines for judges in making decision should be:

1. The meaning of Purusa and Pradana in inheritance based on the teachings of Hinduism, which is always associated with the offspring/*Sentana* who is *Suputra* that capable of leading the spirits/souls of their ancestors to reach the nirvana. Everything was of course done by always doing good deeds, good for him, his descendants, spouse (husband/wife), his parents/parents-in-law during life, to parents at the time of death (with *Pengabenan* ceremonies), to the passed away parents/deceased and his ancestors, by always doing bhakti, by conducting worship/ceremonies to the ancestor by doing *Piodalan*, always keeping the family's name and its derivatives. Thus, the *Purusa* heirs will not only acquire the rights/heirloom left by the deceased or his ancestors but more important is the heir/*Sentana*/successor descent wil run and pass on obligations, as mentioned before. While the legacy left by the deceased, only serves to support all activities in order to fulfill its obligations and also to maintain the continuity of their offspring. In addition to continuing obligations, as mentioned above, the heirs/*Sentana*/successor descent are also obliged to pass on the obligations that others who had left by the deceased in respect of the obligations associated with *Pawongan* (maintaining the relationship between human beings) and *Palemahan* (keeping in touch with environment / nature around).
2. By understanding the meaning of Purusa and Pradana as described before, then in case of dispute, the judge will be able to hold deeper beneficiary and explore further, so that in taking the decision, it will be really customize it with customary law that remains valid, remains growing, and remains acceptable in the development of the indigenous peoples in Bali, and did not ignore the teachings of Hinduism.
3. The principle of inheritance. As for the principle of inheritance according to Balinese customary inheritance law is the principle of Godhead, self-control, voluntary agreement, deliberation and

consensus, harmony, fraternity, and common rights.

In deciding a case of inheritance dispute, judges must have a belief that steady and honest, be honest with himself and honest in making a legal decision. In his legal considerations, Judges need to really carefully consider what particular statements given by the parties, witnesses, the presented evidence, explore laws that grow and develop in the society at that time, namely the development of society that leads to the development of a better society.

Justice in Balinese customary inheritance law must be in accordance with justice that has been taught in Hindu doctrine that emphasizes the harmony and balance, of course with the advanced approval, consensus, and peace that had been made by the parties to the dispute. It turned out that the development of customary justice in inheritance in Bali is fair, if done by agreement, consensus, and based on a court decision, based on peace. Thus, the one applied and developed in the indigenous people in Bali, that in the case of inheritance, it can only be said to be fair if it can be reached by way of agreement, consensus, based on a court decision, and based on peace. Thus, justice in society is the one that went in accordance with the development and needs of the community at that time.

In customary law and in its development, legal certainty in inheritance is created if the inheritance was done, first of all in accordance with the habits of local indigenous peoples and can be accepted by the heirs, but later shifted that inheritance was done with the consent, consultation consensus, and by peace. In its development, inheritance is done by consent, consensus, based on peace, and based on court decisions.

Factors that influence and encourage the application of the meaning of Purusa and Pradana by judges, as the teachings of Hinduism and Balinese traditional inheritance law, as well as comply with the provisions of Article 5, paragraph 1 of Act No. 48 Year 2009 regarding Judicial Power, are as follows:

1. Judges understand the values contained in inheritance by Balinese religious and customary inheritance law, which is not only related to the rights and obligations to the property left by the heir to his successors, but the main one is the inheritance with regard to forwarding offspring, which will continue against the heir's obligations and liabilities left by the testator, to continue the worship *bakthi* to heaven, to maintain good relations with the folks/*Pawongan*, and *Palemahan*/environment/nature around them, so as to create a balance of life,
2. Judges apply the law/regulations which are still valid and still relevant in its decision, the law on judicial power, the teachings of Hinduism, and Balinese customary inheritance law which remain exist and in force in the community,
3. Judges implement and execute what is mandated by Pancasila, the Constitution of the Republic of Indonesia Year 1945, and the Law on Judicial Power,
4. The testimony of witnesses, the testimony of the concerned parties, the indigenous people themselves, traditional leaders, the priest that *muput upakara*/leads the ceremony, the testimony of a qualified legal expert in the field,
5. With reference to the jurisprudence brought towards the better development of customary inheritance law.

Factors that influence and encourage the application of the meaning of Purusa and Pradana judges, who did not apply the teachings of Hinduism and Bali as well as the customary inheritance law, and also did not comply with the provisions of Article 5, paragraph 1 of Law No. 48 Year 2009 regarding Judicial Power, are as follows:

1. Judge's Understanding
The ability of judges to understand, or either the inability of judges to understand, or either the inaccuracy of judge in his understanding in regard to the values contained in the inheritance that is based on religious law and Balinese inheritance custom, which is not only related to the rights and obligations to the property left by the heir to his heirs, but the the point is the inheritance with regard to forwarding offspring who will continue the obligations or liabilities left by the heir or to the heir to continue the worship *bakthi* to heaven, to maintain good relationship with the folks/*Pawongan*, and *Palemahan*, so as to create a balance in life,
2. Application by Judge
The judge did not apply, or the application that is not quite right against the law which are still valid and are still relevant in its decision, the law on judicial power, Balinese religious law and inheritance law which are still exist and in force in the community,
3. Judge's Consistency
Judge's inconsistency influences his decisions that are not as mandated by Pancasila, the 1945 Constitution, and the Law on Judicial Power,
4. Witnesses' Competence
Limited capacity and limited knowledge of the witnesses who confronted before him will result and impact misunderstood or imperfection interpretation, either the testimony of the concerned

parties, the indigenous people themselves, traditional leaders, the priest who is *muput upakara*/leads the ceremony, or expert testimony on law who is not qualified in his field.

5. Jurisprudence, whose existence is sometimes not taken into consideration in the judge's decision or the consideration is erred in interpreting the jurisprudence.

Judges who have good skills, judges who are able to apply in accordance with the principles, and judges who are consistent will produce a verdict that meet society's sense of justice, has legal certainty, as well as useful in the development and construction of law. Instead, judges who do not have good ability, in this case that is not able to apply in accordance with the principles, and judges who are not consistent would produce an unjust verdict, far from legal certainty, or may even also be useless for the development and construction of law.

The difference interpretation by judge can not be separated from/ as well as affected by the interpretation in the community, the apparatus of indigenous village, the related civil officials, even practitioners and experts in their testimony sometime explain something based on the knowledge of things that are not really understood for certain and often based own opinion and not based on the knowledge of Balinese inheritance law which is based on the teachings of Hinduism. Even the judges often give a different interpretation rather than to what has been described in the testimony of the witnesses, expert witnesses, or from the evidence presented before him. Therefore, it is needed by the community, that the judge must be those who is able to be a role model, and judges who adhere to what is stated in the Law on Judicial Power, with the principal of inheritance according to Balinese inheritance law, namely the principle of Godhead, self-control, voluntary agreement, deliberations-consensus, harmony, fraternity, and common rights.

Based on the description as mentioned before, within the meaning of Purusa and Pradana in the judge decision with regard to customary inheritance dispute in Bali, there are two different meanings in the judge's decision. First, the judge cut off as the teachings of Hinduism and Balinese traditional inheritance law as well as mandated in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, which provide reinforcement to the meaning of Purusa and Pradana. Second, the judge did not decide in accordance with the teachings of Hinduism and Balinese customary inheritance law, as well as do not meet the requirements as stated in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, neglecting and undermining the meaning of Purusa and Pradana.

Thus, from those 16 (sixteen) cases (inheritance disputes), the author concludes, it turns out that judges interpret different. Some judges interpret the meaning in accordance with the teachings of Hinduism, some judges interpret as in accordance to Balinese customary inheritance law, and some judges give different interpretations (not as in the teachings of Hinduism and Balinese traditional inheritance law).

The judicial resolutions, as in those forementioned 16 (sixteen) cases of inheritance disputes, with regard to the interpretation of judge to Purusa and Pradana in inheritance can be classified as follows:

1. There is a decision of judge which constitute that the Purusa descendants that entitled to inherit are:
 - a. Children/male offspring/purusa as heirs, namely:
 - Born children/male heir
 - The closest relatives/family as *kapurusa* heirs if the testator died in a state of *ceput/putung*
 - Based on a legally binding decision to the extent does not neglect the *dharma* as heir
 - b. Children female offspring/pradana as heirs, namely:
 - Has run/conduct the testator's obligations such are do *ngaben*, glorify the spirit of the deceased
 - Girls who received the "surrender" of the deceased during his lifetime, only entitled to inherit *Gunakaya/pengupa jiwa*/ (wealth) of from the surrendering as well bear the liabilities of the deceased
 - Children (female) of the deceased (in his first marriage) entitled to inherit wealth/*Gono gini* from his first marriage which brought into his second marriage.
 - c. The adopted son as *purusa* heir
2. There is judge decisions which constitute that some offsprings are not entitled to inherit as purusa, because of:
 - Neglect his/her *dharma* as heir,
 - Religion conversion,
 - Mating out,
3. There is a decision of judge who ruled that the Pradana descendants can not be entitled to inherit, but there is verdict sentenced that a *mulih dehe* offspring/child is entitled to inherit, but there is also a decision that sets a *mulih dehe* children can not be entitled to inherit.
4. There are decisions of judge that widow can be entitled to inherit, and also there are decisions that

- decide widow can not be entitled to inherit.
5. There are decisions of judge which decides that the right to a widow are as follows:
 - The widow is entitled to retain and enjoy the heirloom of her deceased husband,
 - If the husband is deceased, the widow is entitled to half of the wealth/*Gono gini*,
Yet there is also decisions of judge who ruled that the widow lose the rights to possess and enjoy the heirloom of the deceased,
 6. There are decisions of judge which decided that both male and female children/descendants inherit equally.
 - A daughter whose marital domicile is as a Purusa joint the heir along with her brother/son of the deceased,
 7. With regard to the validity of adoption, the decision made on judge's decisions are as follows:
 - The adoption is valid as long as it has met four requirements for the legality of the adoption,
 - The adoption is not valid if it does not obtain approval from the kapurusa family,
 - The adoption is not legitimate, because it does not meet the requirements for the legality of the adoption.

3. The Implication of *Purusa* and *Pradana* Interpretation In Judicial Resolution Regarding to Balinese Customary Inheritance Law In The Future

Based on 16 (sixteen) cases in dispute of inheritance, which is decided by 42 (forty-two) judges in the first level Court (the District Court) and the decision to the Supreme Court in a judicial review, then, basically there are two (2) implications generated, from the different interpretation by judges on the meaning of *purusa* and *pradana* in the decisions, namely:

- 1) Judges who do not understand the meaning of *purusa* and *pradana* in Balinese customary inheritance law could potentially have an impact on making a decision that does not provide legal certainty, it is not helpful, and does not meet the demands for social justice, and also is not in accordance with the Balinese customary inheritance law and Hinduism teaching in the field of inheritance as mandated in Article 5, paragraph 1 of Law No. 48 Year 2009 on Judicial Power. This is in contrary to the purpose of law which is ideal, as the opinion of Gustav Radbruch which stated that law is a cultural element that embodies the value in the concrete life of human, that is justice. Yet, as an ideal law, the law had to satisfy three aspects in order to function as an adequate law, they are the law as the embodiment of justice, be useful in the utility, and rewarding and providing legal certainty.
- 2) The panel of judges who understand the meaning of *purusa* and *pradana* in the Balinese customary inheritance law implicates to what was later decided to provide legal certainty, useful, and fulfilling the sense of justice, because in harmony and in accordance with Balinese customary inheritance law and based on Hinduism teaching that applied in field of inheritance as mandated by Article 5, paragraph 1 of Law No. 48 Year 2009 on Judicial Power.

Errors in the interpretation of *purusa* and *pradana* will affect Balinese customary inheritance law which is based on the teachings of Hinduism, which then implies also to the existence, preservation, and sustainability of Balinese cultural values and inheritance law, as it related to the faith and belief of Hindus, including a conviction on the harmonization of the relationship of 3 (three) basic components in inheritance, which are the responsibility/*swadarma* of heirs/descendants who is *suputra* in forwarding kapurusa lineage, to continue all rights and obligations as a *kapurusa* descendant, and keep the lineage to become a *suputra* descendant.

With regard to the implication that could threaten the existence and preservation of the cultural values of indigenous people in Bali particularly in the field of Balinese customary inheritance law, we need a common understanding to the meaning of *purusa* and *pradana* in Balinese inheritance law, to avoid the difference in giving interpretation among judges, legal practitioners, village officials, officials of government bureaucracy, including the indigenous community itself and the apparatus of adat village (the *prajuru* of adat village). If judges do not understand the meaning of *purusa* and *pradana* as constituted in Balinese customary inheritance law which is based on the teachings of Hinduism, then they will definitely make decisions that do not provide legal certainty, give no benefits, and does not meet the demands for social justice. The meaning of sense of justice of the people must be found within the community itself, because the gravitation point that reflects the soul of the people (*Volkgeist*) are in community itself, as defined by Von Savigny in *Volkgeist* theory. Additionally, Eugen Ehrlich who introduces the theory of Living Law also says that the law was not made but grew and developed as a living law that grows and thrives within the community along with the development of society itself.

Justice in inheritance by Hinduism is a justice that based on and in accordance with the teachings of Hinduism, which is the basis of *dharma* to achieve prosperity, happiness, and perfection of life that is based on the teachings of Tri Hita Karana, because justice in inheritance is not only look at the status and position of a

person as purusa or pradana in families, therefore if there is dispute, the settlement is sought by agreement, deliberation and consensus, and peaceful resolution. Thus, the process of the search for justice by the means described above is not necessarily through the courts. Thus, in order to reinforce the notion of justice in the system of patrilineal kinship in the concept of purusa and pradana, it is not necessarily for the man to be rightfully decide everything related to inheritance, for the purpose of justice that would be achieved is "everything should be based on consultation and consensus among the member of the family".¹

The development of inheritance law in indigenous people in Bali become more democratic and fairly nuanced after the issuing of the Decree of The General Assembly of MUDP (*Majelis Utama Desa Pekraman*/Prime Council of Pekraman Village) of Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010 dated October 15, 2010 on "the Results of the General Assembly III of the Prime Council of Pekraman Village of Bali", which confirms the position on the equality of men and women in Balinese customary inheritance law. Then the inheritance can only be said to be fair, if it is reached by: agreement, consensus, based on peace, based on the Decision of The General Assembly of MUDP (*Majelis Utama Desa Pekraman*/Prime Council of Pekraman Village) of Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010, Date October 15, 2010 on the results of " the General Assembly III of the Prime Council of Pekraman Village of Bali" and the latter which is based on the court decision. Therefore, justice in society is a justice which is in accordance with the development and needs of the community at the time and in accordance with what was decided by the country's judicial institutions.

In customary law and in its development, legal certainty in inheritance is created if the inheritance was done: firstly, is in accordance with local customs of indigenous people and can be accepted by all heirs. Yet, then shifted that the inheritance must be done by the agreement, consensus, and peace. In its development today, the inheritance is done by consent, consensus, based on peace, based on the Decree of The General Assembly of MUDP (*Majelis Utama Desa Pekraman*/Prime Council of Pekraman Village) of Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010 dated October 15, 2010 concerning "the Results of the General Assembly III of the Prime Council of Pekraman Village of Bali" and/or in any other way based on court decisions. Thus, what was decided by judges in relation to the issues of the meaning of purusa and pradana by judges in customary inheritance dispute in Bali is incompatible with religion, customs, and needs of the community in its development, and it can be said that the decision is not trustworthy because the judge did not run anything as mandated by Judicial Power Law which constituted in the Act of the Republic of Indonesia No. 48 of 2009, in article 5, paragraph 1, which states that judges and constitutional judges shall explore, obey, and understand the values of law and justice in the society. Noting as well as consider justice for those who deserve.

Customary law in principle is the deliberation and consensus. The result of deliberation and consensus is a law that must be obeyed by the parties. This agreement is often carried out in any customary law addressing the issue in Bali. To determine how is the position of the parties in marriage (who can be placed as purusa or pradana) which is also based on an agreement between the two families of the bride, how the heirs will share all rights and obligations/responsibilities within the family and even then usually done with deliberation, how they manage to do all the obligations in society and community, and even then they are set by consensus. If everything that has been made to achieve results no agreement, then it will be reached by the applicable law. So if all matters pertaining to all activities of the customary law either in accordance to inheritance, marriage, the rights and obligations of the parties in marriage, or in life in the community and society, the deal represents a law that must be adhered to in practice for the parties, why did the judge in ignore or even deny its decision and does not respect the agreements that have been made by the concerning parties.

Judges must understand the importance of legal certainty regarding the position someone as purusa and pradana in a marriage. Because not only decide the validity of the marriage, but the position of husband and wife in marriage (as purusa and pradana) is also very important, because it will affect the issue of inheritance, devotional worship to the ancestors and the continue of obligations in the family and society. Decisions of judges which are different, inconsistent, and disobey the principle will injure the sense of justice of indigenous peoples in Bali, which is in inheritance that based on the system of Balinese customary law and Hinduism religious law that still valid and acceptable in the lives of indigenous people of Bali as a tradition/local genius/local wisdom. The verdict is also contrary to the spirit and principles of Balinese customary inheritance law itself. Inheritance in Balinese customary inheritance law, as well as written in *manusmerti*/book of Hindu law, stated that a person who serves as the heir is a child who is suputra and able to maintain his lineage and run/resume his *swadarma*. Heirs as mentioned above, is entitled to inherit all the possessions of the testator and obliged to keep any liabilities left by the deceased/testator or obligations/responsibilities towards *parahyangan*, *pawongan*, and *palemahan*.

The decisions by judges is also influenced by the ability of the judge in digging, obey, follow, and understand the values of law and justice in the society. The verdict is not consistent, sometimes also be indirectly affected by the lack of understanding by the witnesses presented during the trial, including the public at large and

¹ Rasyid Ariman M., *Hukum Waris Adat Dalam Yurisprudensi*, (Jakarta: Ghalia Indonesia, 1988), p.11.

the apparatus of the traditional village (*kelian*, customary *bendesa*), regarding the meaning of purusa and pradana in Balinese customary inheritance law. If it goes wrong in the interpretation, then the influence and implications will be bad against the inheritance system itself as well as affect badly for the preservation and sustainability of Balinese culture that has been inherited from generation to generation. According to the author the interpretation of purusa and pradana are closely related to the issue of *sekala* and *niskala*, *sradha* and *bhakti* as well as the attachments or links to the spiritual between the heirs to the deceased, ancestor of worship, rights and obligations, as well as the issue of inheritance heir which is always associated with the issue of offspring and the purusa offspring which runs *sradha* and *bhakti* as a *suputra* child.

The essence of *bhakti* as *suputra* children is getting the deepest meaning of the intrinsic value of a person which is based on the Law of Karma (*karma phala*), said by Wayan Putu Windia: Hindus believe the Karmaphala Law. Karmaphala consists of two words, *karma* means action, and *phala* means fruits (result or reward). So, *karmaphala* means the result of one's actions. Good deeds will bring good results (*chubakarma*) and bad deeds will bring bad results anyway (*achubakarma*).¹ Do good things as much and as good as that can be done, that is what is taught in the Hindu religion for children/descendants who behave *suputra* and will enjoy the happiness of life from birth to the time when Hyang Widhi calls for the afterlife. Decisions of the judges are different, inconsistent and contrary to the spirit and principles of inheritance based on customary inheritance law and the teachings of Hinduism, bring to the implications on the meaning of purusa and pradana that does not fit affects the religious beliefs and attempts to preserve the Balinese cultural values and customary inheritance law. Prolonged dispute on Customary inheritance may implicate to the extinction of the meaning of purusa and pradana in Balinese customary inheritance system. But conversely, a good understanding on the meaning of purusa and pradana in Balinese customary inheritance law system will maintain its existence for the preservation of the values of the customary inheritance law based on the teachings of Hinduism. This is because the system of inheritance law is adopted for indigenous people in Bali to receive the teachings of Hinduism, which is reflected in the teachings of purusa and pradana, which is a concrete manifestation on the theory of reception (*receptio in complexu*) that introduced by van den Berg and later elaborated by Snouck become a reception theory.

From the 16 (sixteen) cases (inheritance disputes), as forementioned, there is a verdict that is in accordance with the teachings of Hinduism and Balinese traditional inheritance law, as well as mandated in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 on Judicial Power. This ruling meets the demands for social justice, beneficial, and provide legal certainty, implicates provide reinforcement, maintain and sustain the existence and preservation of the values of Balinese inheritance law and Hindu religion, while the court decision is not in accordance with the teachings of Hinduism and Balinese customary inheritance law, and does not meet the requirements as mandated in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, does not meet the demands for social justice, not beneficial, and does not provide legal certainty, so that the decision ignores and undermines the meaning of purusa and pradana which implies threaten the existence and preservation of the values of Balinese inheritance law and Hindu religion.

Thus, the authors conclude the implications within the interpretation of purusa and pradana in the verdict against Balinese customary inheritance law in the future, there are two (2) implications thereof. First, judge's decision that follows the mandate of Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, tend to interpret Purusa and pradana in accordance with the laws of Hinduism and Balinese customary inheritance law, implicates that it provide reinforcement and maintain the sustainability/existence and the preservation of the values of Balinese inheritance law, while judge's decision that does not to follow the mandate is Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, tend to interpret Purusa and pradana as different to the laws in Hindu religion and Balinese customary inheritance law, implies a weakening to Balinese customary inheritance law which could threaten the survival/existence and preservation of the values of Balinese customary inheritance law.

D. Conclusion

Thus it can be concluded that:

1. Purusa and pradana according to the teachings of Hinduism and Balinese customary inheritance law, are interpreted as follows:
 - Purusa in Hindu doctrine is interpreted as the male and/or female/putrika descendants that *suputra*, that run and pass his/her *swadarma* as a *kapurusa* descent. Pradana in Hindu doctrine is interpreted as a male and/or female descendant that *suputra*, who is after his/her marriage, he/she is no longer running and continue his/her *swadarma* as a *kapurusa* descent, having been matrin out and continue the *swadarma* with his/her spouse who serves as purusa.

¹ Windia Wayan, *Meluruskan Awig-Awig Yang Bengkok*, (Denpasar: PT. BP, 1994), p.72.

- Purusa in Balinese customary inheritance law is interpreted as son and/or daughter (*Sentana Rajeg*), which will inherit the rights and obligations of the testator. Pradana in Balinese customary inheritance law is defined as a male and/or female child/descendant who is *ninggal kedaton*/mating out and leave the rights and obligations of the abandoned heir.
- 2. The interpretation of purusa and pradana by judges in a court decision regarding the dispute on customary inheritance in Bali is diversified. Some judges interpret the meaning in accordance with the teachings of Hinduism, some judges interpret the meaning in accordance to the customary law, and some judges give different meanings (not as in religious teachings or customary law).
- 3. The Implication of the meaning of purusa and pradana in judge's decision to the future of Balinese customary inheritance law, there are two (2) implications thereof. First, judge's decisions that follow the mandate of Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, that tends to interpret Purusa and pradana in accordance with the laws of Hinduism and Balinese inheritance law, implicates to provide reinforcement and maintain the sustainability/existence and preservation of the values of Balinese inheritance law, while judge's decisions that do not follow the mandate in Article 5, paragraph 1 of the Act of the Republic of Indonesia No. 48 Year 2009 regarding Judicial Power, tends to interpret Purusa and pradana different from Hindu religious law and Balinese customary inheritance law, implies a weakening of Balinese customary inheritance law which could threaten the survival/existence and preservation of the values of Balinese customary inheritance law.

E. Recommendation

Based on the conclusions, as mentioned above, the author recommends:

1. Court Judges are recommended to do further study to improve his/her intellectual competence and professionalism by considering legal obligations as mandated by Article 5, paragraph (1) of Act No. 48 Year 2009 regarding Judicial Power, especially in examining and deciding cases regarding disputes on customary law, to explore, and comprehend the values of law and justice in the society. This is necessary to improve the competence of the state's role.
2. The judges who will decide cases based on customary laws of inheritance are need to be improved through a variety of additional education in order to maintain the position and function of the judiciary as a body of case resolver that rests on the principle of legal pluralism as a principle that embraced by the Constitution in order to guarantee the constitutional rights according to the society's sense of justice which guaranteed by the Constitution. Thus disparity in judge's decision can be avoided.
3. The need for immediate and thorough socialization by academics, the Prime Council of Pekraman Village (MUDP/*Majelis Utama Desa Pekraman*), the local government with the support of the Central Government to indigenous communities about the meaning of purusa and pradana in Balinese customary inheritance law, so that there will be no more conflict, and there will be no more difference meaning among judges, practitioners, village officials, bureaucratic officials, and relevant officials in particular, and among the community itself. Thus, the improvement and adjustment of regulations/*awig awig* relating to inheritance and the heirs that exist within each group of indigenous people/indigenous villages in Bali should be done immediately, which adapts to the needs and development of a better society and need to be socialized immediately. The Decree of The General Assembly of MUDP (*Majelis Utama Desa Pekraman*/Prime Council of Pekraman Village) of Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010 dated October 15, 2010 concerning "the Results of the General Assembly III of the Prime Council of Pekraman Village of Bali" should be effective immediately for the entire Balinese indigenous communities which are Hindus. However the Decision of The General Assembly of MUDP 2010 in the future still needs to be revised for it will be regulate more complete and better, in regard to inheritance that accommodate all interests, both heirs/children who are still in the womb, both sons/daughters as the heir, the male and female heirs, both biological children and adopted children as heirs, the widow/widower without children/*putung* as heirs, widow/widower with stepchildren as heir, and the childless/*putung* as heir who is inherited by the closest family/relatives. Based on the above matters, there should be compatibility between customary law and religious law which means that customary law receiving the religious law (this means adhering to the theory of *receptio in complexu*). Therefore, customs authorities should understand customary law and religious law so that there is no contradiction between those two.
4. This research still needs to be developed further so that more research needs to be conducted either by the author or other researchers.

REFERENCES

Books

- G. Pudja and Tjokorda Rai Sudharta, *Manawa Dharmacastra (Manu Dharma Sastra) atau Weda Smrti Compendium Hukum Hindu*. Jakarta: Hanuman Sakti, 1995.
- I Njoman Djendra, *Kamus Ideal Bahasa Bali*, Denpasar: Yayasan Dharma Pura, 2009.
- Ida Bagus Anom, *Perkawinan Menurut Adat Agama Hindu*, Denpasar: CV. Kayumas Agung, 2009.
- Rasyid Ariman M., *Hukum Waris Adat Dalam Yurisprudensi*, Jakarta: Ghalia Indonesia, 1988.
- Satjipto Rahardjo, *Hukum dan Perilaku*, Jakarta: Kompas Media Nusantara, 2009.
- Tjok. Istri Putra Astiti, *Pengaruh Hukum Adat Dan Program Keluarga Berencana Terhadap Nilai Anak Laki-Laki Dan Perempuan Pada Masyarakat Bali Yang Sedang Berubah*, Disertasi, Bogor: Institut Pertanian Bogor, 1994.
- Wayan P. Windia, *Meluruskan Awig-Awig Yang Bengkok*, Denpasar: PT. Bali Pos, 1994.

Legislations

- The Constitution of the Republic of Indonesia Year 1945
- Act No.48 Year 2009 on Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157).
- The Decree of The General Assembly of MUDP (*Majelis Utama Desa Pekraman/Prime Council of Pekraman Village*) of Bali No. 01 / KEP / PSM-3 / MDP Bali / X / 2010 dated October 15, 2010 on "the Results of the General Assembly III of the Prime Council of Pekraman Village of Bali"