

Subak Landscape Management as a Justice and Welfare Oriented World Cultural Heritage

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Abstract

This study aims to examine and analyze the juridical problems in the *subak* landscape management as a world cultural heritage. The juridical problems are related to the selection of *subak* landscape as a World Cultural Heritage. The conflicts are related to the regulations found in the Regional Government Regulation, Act on Cultural Heritage and Bali Governor's Regulations Number 32 Year 2010. There are philosophical problems which are related to the stipulation of *subak* landscape as a world cultural heritage. There are also juridical problems which are related to the juridical foundation, specifically the one set forth in the Regional Government Law. It regulates that this world heritage is managed by the central government. This will lead to negligence particularly over the aspects of philosophical values of *Tri Hita Karana*. UNESCO has confirmed that the foundation of *subak* is the philosophical values of *Tri Hita Karana*. However, philosophical and juridical problems surely have impacts on sociological problems and in the end they will have impacts on the aspects of justice and welfare of *subak* community. Even though *Tri Hita Karana* has been clearly stated as the foundation of *subak*, it seems that there is a sociological imbalance because the people feel that they no longer freely manage their lands that they have inherited from their ancestors. The appointment of *subak* landscape as a world cultural heritage gives benefits, but surely with challenges and threats, to the farmers. They have two choices all of which do not accommodate their interests, they have to either defend their fields or give up their rights to their rice fields. This study investigates legal norms aspect of this matter and therefore, it is classified into normative legal study. The norms that are the objects of the study include the constitution, laws, government regulations, regional regulations, and others. The approaches used in this study are statute approach and conceptual approach so as to know the consistency and accordance of one law with another law or one law with the Constitution.

Keywords: Harmonization of law, Regulation, Customary community rights, Natural resources

1. Introduction

Subak, as a traditional irrigation system in Bali, has existed for centuries. It is evident from various inscriptions, one of them is Sukawana Inscription 882 AD. In it there are a word "*huma*", which means wetland rice fields, and a word "*parlak*", which means dry land field (*tegalan*). From further development in the year 1071 AD and 1072 came a term "*kasuwakan*", which is stated in Pandak Badung Inscription and Klungkung Inscription which date back to 1072 AD (Bali Provincial Government, Culture Agency, 2014: I-1). The term "*kasuwakan*" gradually became *kasubakan* or *subak* (Paramartha & Dewi, 2015: 24). The development of *subak* system as an irrigation system that was under the influence of kings, caused it to carry out organizational activities as a customary institution. The activities were in accordance with the socio-cultural communities in the regions under the leadership of kings (Windia, 2006: 5).

During the Dutch East Indies, the existence of *subak*, in terms of formal juridical, was regulated in S. 1891: 97. It states that *subak* is "a collection of fields from the same water channel or from the same branch of a channel, obtaining water and an irrigation". From this formulation it is clear that *subak* is not seen as an organization or a group of people who have the same interests in the irrigation for their rice fields, but it is only seen as a collection of rice fields (Griadhi, 1993: 66). After the independence, *subak* was originally regulated in the Regional Regulation of Bali Province Number 2 Year 1972 about Regional Irrigation of Bali Province which was later replaced with the Regional Regulation of Bali Province Number 9 Year 2012 about *Subak*. These two regional regulations view *subak* as a water-using farmer organization as well as a traditional irrigation system (Suprpto, 2016: 169). As quoted by Hadi (without year: 5), Pitana argues that the meaning of *subak* can be seen from two perspectives, physical and social. Viewed from the physical perspective, *subak* is a stretch of rice fields with all their irrigation facilities while from the social perspective, *subak* is an autonomous water-using farmer organization.

Korn in Wirta Griadhi (1993: 66) also argues that *subak* is not only a collection of rice fields but also as an organization engaged in irrigation. Korn further points out that in relation to organizations engaged in irrigation, there are two types of irrigation board, namely: (1) big irrigation board, which is manifested in a *seke empelan* or a reservoir board; and (2) a smaller irrigation board, which is referred to as *seke telabah* or a group of water channels or *seke subak* or *subak* association.

From what was stated above, there seems to be a different perspective in viewing *subak*. Some consider

subak as a unit of rice fields that get water from one particular source, and some other consider *subak* as an organization of rice field owners or cultivators who have the same interests to an irrigation.

Apart from these different points of view, it is undeniable that *subak* is a high-value Balinese cultural heritage. *Subak*, which has existed until now, is a proof that it is one of the strong pillars that maintain Balinese culture in addition to traditional villages and sub villages, groups of *pemaksaan*, *seka*, and the people (Pitana & Putra, 2013: 162). However, current development and globalization begin to threaten the existence of *subak*. The threat, for example, is shown by rampant conversion of paddy fields and *subak* values that start to be forgotten. The Threats are behind the notion of the importance of preserving *subak* as a world cultural heritage. This motivation is also to avoid claims from other countries on Indonesian culture as happened to *batik* which was once claimed by Malaysia as their culture (Rani, 2014: 10)

Considering these threats, Bali Provincial Government through Central Government proposed *subak* to be recognized as a World Cultural Heritage to UNESCO (United Nations Educational, Scientific and Cultural Organization) in 2000. Finally, in 2012 *subak* landscape of Bali Province was recognized as a World Cultural Heritage site by UNESCO, listed in the *Decision Code: 36 COM 8B. 29. Outstanding Inscription on the World Heritage List Outstanding Universal Value, States Parties (1): Indonesia. Property (1): Cultural Landscape of Bali Province: The Subak System as a Manifestation of the Tri Hita Karana Philosophy. (WHC12 / 36.COM / 8B. [Http://whc.unesco.org/en/decisions/4797](http://whc.unesco.org/en/decisions/4797))*. It is more commonly known as Subak Cultural Landscape, (W. Sudarta, N. W Astiti, & P Budiastuti, 2015: 264).

Windia and Wiguna (2013: 205) state that *subak* is designated as a world cultural heritage by UNESCO because it has outstanding cultural values that are still alive today. Those values include the authenticity and universality, *subak* can be accepted by all segments of Balinese people. This status of *subak* landscape is expected to provide benefits, especially for local communities around the area of *subak*, and to provide a considerable contribution to the income of farmers as the main actors with the simplicity and uniqueness of its cultural customs that can attract tourists.

The inclusion of *subak* landscape in the world heritage list results in the management and protection of cultural heritage under the supervision of UNESCO. That means that the management must be carried out in accordance with the UNESCO's provisions, requirements, and managing procedures, which have been included in the Management Plan Document. It is standard document which is an inseparable part of the proposal document (Ministry of Education and Culture, Director General of Culture, 2014: 45).

Studies on the selection of *subak* as a world cultural heritage must be conducted because this selection can lead to certain positive and negatives impacts on the existence of *subak* itself and on the lives of its supporting communities. The title as the World Cultural Heritage is supposed to be something that the people are proud of and can benefit the people who support and maintain *subak*. However, a study conducted by Herawati shows the opposite. Not all *subak* communities can enjoy fair benefits from the establishment of *subak* as a World Cultural Heritage. Herawati conducted a study in Mangesta Village which has three *subak* ecosystems, namely *Subak Paselatan*, *Wangaya Betan* and *Piling*. In those areas, not all of the people feel the benefits of *subak* as a world cultural heritage (Herawati, 2015: 101).

The studies on this matter in Indonesia are inseparable from the philosophical foundation of law. It is the principle or consideration that the regulations formed take into account the principles of life, awareness and law ideals which include thoughts and philosophy of Indonesian nation and whose sources are the Five Principles (*Pancasila*) and the 1945 Constitution of the Republic of Indonesia. The principles start from the most basic principles to operational principles. The most basic constitutional principle can be seen in the Preamble of the 1945 Constitution of the Republic of Indonesia, Paragraph IV. Furthermore, the arrangement of World Cultural Heritage in Indonesia can be seen in Article 18B verse (2), 28 I verse (3), and Article 32 verse (1) of the 1945 Constitution of the Republic of Indonesia.

The law that is in a lower hierarchy than the 1945 Constitution of the Republic of Indonesia and related to the regulations of cultural heritage are among others: 1) Law of the Republic of Indonesia Number 23 Year 2014, regarding Regional Government (hereinafter abbreviated as UU Pemd); 2) Law of the Republic of Indonesia Number 11 Year 2010, regarding Cultural Heritage, Law Number 5 Year 2017 about the Advancement of Culture.

The Provincial Government of Bali has issued various regional regulations relating to cultural heritage that include Regional Regulation of Bali Province Number 16 Year 2009 about Regional Spatial Planning of Bali Province (hereinafter referred to as RTRW Regional Regulation), Regional Regulation of Bali Province Number 4 Year 2014 about Conservation of Bali Cultural Heritage, and Bali Governor Regulation Number 32 Year 2010 about Bali Cultural Heritage Management Board. Decree of the Governor of Bali Number 11/03-H / HK /2014 about Coordination Forum for the Management of the World Heritage Cultural Landscape of Bali Province.

Subak landscape selection as a world cultural heritage, both based on UNESCO provisions and the Indonesian law (specifically the Regional Government Regulation, Act on Cultural Heritage and Governor Regulation), when closely examined, results in philosophical, juridical, and sociological problems. The problems

are the negligence over the customary law community's rights (*subak*) to manage the *subak* landscape as a world cultural heritage. The existence of these problems in *subak* management will be the focus of this study. This study will investigate whether the law that regulates the selection of *subak* landscape as a world cultural heritage has accommodated the values of justice and give benefits to the *subak* farmers communities.

The above problems will be examined through normative legal research by conducting statute approach, historical approach and conceptual approach. The statute approach is used to determine the consistency or conformity between a law and the Constitution, between one law and another law, and between a law and the regulations below it. Historical approach is used to see the history of the existence of *subak* from the royal period, the colonial period to the period of independence. Finally, the conceptual approach is used to explain the concepts whose conceptual definitions are not found in the law in this case the concept of *subak* as a world cultural heritage.

As a study of normative law, the main materials are legal materials which include primary legal materials and secondary legal materials. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 11 Year 2010 about Cultural Heritage known as Act on Cultural Heritage), Law of the Republic of Indonesia Number 23 Year 2014 concerning Regional Government. Law of the Republic of Indonesia Number 5 of 2017 about the Advancement of Culture, Regional Regulation of Bali Province Number 16 Year 2009 about Bali Province Spatial Planning, Regional Regulation of Bali Province Number 9 Year 2012 about *Subak*, Regional Regulation of Bali Province Number 4 Year 2014 about Preservation of Bali Cultural Heritage (hereinafter abbreviated as Regional Regulation of PWB), Bali Governor Regulation Number 32 Year 2010 about Bali Cultural Heritage Management Board, and Bali Governor Decree Number 11/03-H / HK / 2014 about Coordination Forum for the Management of the Landscape World Cultural Heritage of Bali Province.

The secondary legal materials used in this study are the legal materials that are relevant with *subak* as a world cultural heritage. Secondary legal materials come from publications about *subak* including legal text books, legal journals, and legal dictionaries. In addition, this study also uses relevant tertiary legal materials such as the Indonesian Language dictionary which is used to make grammatical interpretations of a term (Soekanto and Sri Mamudji, 1985: 41).

2. Literature Review

The Constitutional State that Prospers its People

The purpose of law is to prosper the people. This is supported by Thoman Aquinas in Violetta Simatupang, (2015: 69-70) who formulated that the purpose of law is nothing but to bring prosperity to the people in general. The government is given a mandate to guarantee its people to enjoy welfare. Welfare includes, among others justice, peace, peace of life, and guarantees for its citizens.

The constitutional state according to Tamanaha is a "*universal human good*", a "*cultural achievement of universal*", which revolves around three understanding groups: a) that the government is limited by law. In this understanding the constitutional state protects the public from the oppressions by the government, either in a communitarian manner or individually. The constitutional state also protects the community in a pluralistic state, especially for developing countries like Indonesia. The constitutional state will protect society from the transformation of a Western type into an Eastern society that has a different cosmology; b) the constitutional state is understood in formal legality. The constitutional state is understood as an invaluable thing (*supremely valuable good*), but it does not necessarily have universal humanitarian value (*universal human good*) either. One cannot think that regulations as the core of formal legality apply to all circumstances. Formal legality works well in the realm of social life, where neutrality is found. But formal legality becomes unproductive when faced with situations that require caution, judgment, compromise or decision making in a specific context. Rigid implementation or application of legal regulations can lead to alienation and destruction, if the law collides with the understanding of the surrounding community. This happens if the community holds the values of togetherness strongly and wants justice to be based on those values; c) arrangements based on the law (*rule of law*), not people (*rule of man*). This situation can be achieved when a balance can be met between the two, the point of which is self - control (*self-restraint*). (Satjipto Rahardjo, 2009: 86-87.)

In conjunction with the objectives of the constitutional state which prospers its people, we can see in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. The preamble of the 1945 Constitution of the Republic of Indonesia contains the highest law, i.e. first, protecting the entire Indonesian nation and entire Indonesian sovereign territory. This concept includes namely (1) protecting all Indonesian people, which means protecting all aspects of the nation's life which includes ideology, economy, social, culture, national's defense and security; (2), protecting all Indonesian sovereign territory which is covering aspects of the entire territory of the Republic of Indonesia both land, sea and air. Second, advancing public welfare is the purpose of law which is an *anima legis* (legal spirit) of the provisions of Article 33 of the 1945 Constitution NRI concerning National Economy and Social Welfare. (Rahardjo, 2009: 86-87.) This

philosophy reflects the meaning that the state plays an active role in carrying out the welfare of the country. The State of the Republic of Indonesia is designed as a welfare state, which is a government that is responsible for guaranteeing the standard of living for every citizen. The presence of a constitutional state in the management of *subak* landscape as a world cultural heritage site is expected to embody the value of justice for the community. It can further provide welfare for the people in general and the community around *subak* landscape areas in particular. Thus the mandate of the Preamble of the 1945 Constitution of the Republic of Indonesia, the fourth paragraph can be realized.

Utilitarianism Theory

Those who agree to this theory argue that the purpose of the law is solely to provide maximum benefit or happiness for as many people as possible. The handling is based on social philosophy that every citizen looks for happiness, and law is one of the means to reach it. One of the most radical figures of utilitarian was Jeremy Bentham (1748-1832), a philosopher, economist, jurist, and legal reformer, who had the ability to formulate the principle of utilitarianism into an ethical doctrine, known as *utilitarianism* or utility principle. That utilitarianism principle was stated by Bentham in his monumental work *"Introduction to the Principles of Morals and Legislations"* (1989). Bentham (in Sarjono, 2006: 34) further argues that the value of legal benefits functions as a tool to capture community phenomena or social reality, so that in the end it can provide benefits or utilitarianism to the community. Law was created to achieve happiness for the greatest part of society. Basically the principle of utilitarianism of Bentham is not only aiming at people's happiness, but also includes society as individuals. In this context, Bentham further stated

By utility that is meant by property in any object, it tends to produce benefits, advantages, pleasure, good, happiness, or to prevent the happening of mischief, pain, evil, or unwholesome parties whose interest is considered: if that party be the community in general, then the happiness of the community: if particular individual, then the happiness of individuals.

Bentham found that law was formed aiming at achieving happiness from the majority of society. Thus, Bentham's thought could accommodate legal protection for the community in personal and communal capacity.

Referring to utilitarianism philosophy, the management of *subak* landscape as a world cultural heritage site in Bali, can actually provide prosperity and benefit to the community. In this context, *subak* landscape management as a world cultural heritage, lawmakers must provide optimal protection and reinforcement to owners of cultural heritage, with their automatic rights. Thus, Jeremy Bentham's thoughts on *subak* landscape management as a world cultural heritage in Bali, can be used as a reference or foundation.

Justice Theory

Gustav Radbruch is a legal philosopher and a legal scholar from Germany (1878-1949) who taught three basic legal ideas. His legal purposes are identified by experts as legal objectives. The objectives of the law are justice, certainty and expediency. Radbruch describes the value of justice as the crown of every legal order. (Benard L Tanya, 2010: 129)

Radbruch put forward 3 (three) concepts of legal basis values that need to get attention from the implementation of law. What Radbruch put forward, by some experts is identified with the purpose of law, namely: a) value of legal justice, b) value of benefit, and c) certainty value, (in Widhi Handoko, 2014: 77). Furthermore, according to Radbruch, these three elements constitute legal objectives together, and priority principles are needed in determining the objectives of the law, where the first priority is always "justice", then "benefit", and the last is "legal certainty". Based on this, Radbruch always prioritizes justice when having to choose if it is faced with benefits and legal certainty. (Achmad Ali, 2002: 84)

Furthermore according to Radbruch, the law as the carrier of the value of justice becomes a measure for the fair or unfair legal system. Not only that the value of justice becomes the basis of the law as law. Thus, justice has a normative and constitutive nature for the law. It has a normative nature because it serves as a transcendental prerequisite that underlies every dignified positive law. It becomes a legal moral as well as a benchmark for a positive legal system. The positive law is dedicated to the justice. The nature of constitution must be preserved because justice must be an absolute element of law as law, because without justice, a rule does not deserve to be a law. (Benard L Tanya, 2010: 129-130).

The views expressed by Radbruch are still relevant today, because according to him the value of justice is the crown of every legal order. As a bearer of the value of justice, the law becomes a measurement of the fair or unfair part. Justice is normative, because it functions as a transcendental prerequisite that underlies every dignified positive law. It becomes a legal moral foundation and at the same time a benchmark for a positive legal system. The positive law is dedicated to the justice. Justice is constitutive, because justice must be an absolute element of the law. Without justice a rule does not deserve to be a law. Justice for Radbruch is more directed to *rechtsidee* or justice as a legal ideal. (Achmad Ali, 2002: 130).

3. Result and Discussion

As stated in the previous description, *subak* is an autonomous water using farmer organization. In the sense of *subak* as a traditional organization, *subak* can be seen as a functional customary law community unit. The qualification of *subak* as a functional customary law community unit is explicitly stated in the Decision of the Constitutional Court of the Republic of Indonesia Number 31 / PUU-V / 2007. In the Decision, the Constitutional Court stated that there were three groups of customary law community units, namely: (1) genealogical customary law community unit; (2) functional customary law community unit; and (3) territorial customary law community unit (Sudantra, 2016: 74)

By recognizing *subak* as a customary law community unit, the existence of *subak* is recognized and respected by the state as stated in Article 18B verse (2) of the 1945 Constitution of the Republic of Indonesia. More explicitly, Article 18B verse (2) states that: "The State recognizes and respects indigenous and tribal societies and their traditional rights insofar as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia regulated by law". Furthermore, the 1945 Constitution of the Republic of Indonesia also acknowledged that the traditional rights of indigenous peoples as part of human rights must receive protection, promotion, enforcement and fulfillment of the State. That is confirmed in Article 28I. Verse (3) Article 28I of the 1945 Constitution of 1945 stipulates that: "Cultural identity and rights of traditional communities are respected in line with the development of the era and civilization: / verse (4) asserts," Protection, advancement, enforcement and fulfillment of human rights are the state's responsibility, especially the government".

Philosophically the legal principles contained in the two articles in the 1945 Constitution of the Republic of Indonesia above are in accordance with the legal ideals contained in the Preamble of the 1945 Constitution of the Republic of Indonesia, namely respect for human values, human rights and cultural values. Thus, traditional *subak* rights are constitutional rights that must be recognized and respected and receive protection, control, enforcement and fulfillment from the state. The traditional rights of *subak* include the right to determine the institutional system and management system of *subak* as a Balinese cultural heritage which is then established as a world cultural heritage.

Article 281 verse (3) of the 1945 Constitution of the Republic of Indonesia also becomes a legal political basis for the protection of cultural identity and traditional rights of *subak*. In addition to Article 281, the legal political direction in the field of culture is also found in Article 32 verse (1) of the 1945 Constitution of the Republic of Indonesia), which determines that "the State advances Indonesian national culture in the middle of world civilization by guaranteeing people's freedom in maintaining and developing their cultural values. " Moving from the mandate of the above provisions, constitutionally, the state is obliged to take steps and efforts in striving to advance, and provide guarantees and protection of national culture and respect the traditional rights of indigenous peoples in managing the management of their cultural heritage. These steps and efforts, among others, are carried out by making arrangements for the management of *subak* as a world cultural heritage.

From the perspective of legal politics, the legal principles contained in the articles of the 1945 Constitution above are strong enough to be used as a direction for *subak* regulation as a world cultural heritage at the level of laws regulation below the Constitutions: Theoretically, laws regulation that regulates *subak* as a world cultural heritage must refer to the principles set out in 1945 Constitution of Republic of Indonesia. As stated in the norm hierarchy theory of Kelsen, the norm system in a country is in hierarchy. The lowest norms apply, sourced and based on higher norms. And so on, up to the highest norm called the basic norm (Bo'a, 2018: 34). Thus, the regulation of *subak* as cultural heritage must refer to the constitutional foundation.

In the level of legislation regulation that is lower than the 1945 Constitution of the Republic of Indonesia, legislation which relates to cultural heritage arrangement can be identified, as follows.

1. Law on the Advancement of Culture (Law of the Republic of Indonesia Number 5 Year 2017), Promulgated in Jakarta, on May 29, 2017, Gazette of the Republic of Indonesia Year 2017, Number 104. Article 4 which regulates Cultural Advancement aims at: a, developing noble values of national culture; b. enriching cultural diversity; c. strengthening identity; d. strengthening national unity and unitary, e. educating the life of the nation f. enhancing the image of the nation; g. embodying civil society; h. improving people's welfare; i. preserving the nation's cultural heritage; and i. influencing the direction of the world civilization development, so that culture becomes the direction of national development. The elaboration of the article in relation to the arrangements in *subak* landscape should be able to improve the welfare of *subak* farmers, while at the same time developing the noble values of the national culture.
2. The local Government Law (Law of the Republic of Indonesia Number 23 of 2014), in Article 9 (1), regulates the division of government affairs over: absolute government affairs, concurrent government affairs and general government affairs. Verse (3), concurrent government affairs as referred to in verse (1) are distinguished between central government affairs and provincial and regency / city government affairs. Verse (4) concurrent government affairs submitted to the regions form the basis for the

implementation of Regional Autonomy.

3. Act on Cultural Landscape (Republic of Indonesia Law, Number 11 of 2010), the regulation of cultural heritage can be drawn on its legal basis, namely, Article 32 (1) of the 1945 Constitution of the Republic of Indonesia, which mandates that "the State advances Indonesia's national culture in the middle of world civilization by guaranteeing people's freedom in maintaining and developing their cultural values "This provision can be interpreted as a guide in relation to culture. First, the definition of national culture is culture that lives, grows and develops in people's lives. Second, placing Indonesian national culture in the constellation of world civilization. Third, the state guarantees the freedom of the people in developing and maintaining their cultural values. Based on the mandate of this Constitution, that the Indonesian government is obliged to implement policies to promote culture as a whole for the greatest prosperity of the people. Article 2 Act on Cultural Heritage determines, preservation of Cultural Heritage is based on the principle: a. Pancasila; b. Unity in Diversity; c. Archipelago; d. Justice; e. Order and legal certainty; f. Benefits; g. Sustainability; h. Participation; and i. Transparency and accountability. The description of the principle in relation to the management of institutional arrangements can be seen in several UUCB provisions, including: Article 13 which determines: Cultural Heritage areas can only be owned and / or controlled by the state unless traditionally owned by customary law communities; Article 78 (1), Cultural Heritage Development is carried out by taking into account the principles of expediency, security, care, authenticity, and values attached to it.

The Provincial Government of Bali has issued various regional regulations relating to cultural heritage as a form of protection, as well as providing reinforcement of cultural functions. These regulations can be identified as follows

1. Bali Provincial Regulation No. 16 Year 2009 concerning the Bali Province Regional Spatial Plan (hereinafter referred to as RTRW Regional Regulation), in Article 1 number 6, defines *Tri Hita Karana* as the basis of the Hindu philosophy and the philosophy of life of the Balinese indigenous community containing three balanced and harmonious elements of relations between humans and God, human beings with each other, and humans with the natural environment, which is a source of prosperity, peace and happiness for human life.
2. Regional Regulation of Bali Province Number 9 Year 2012 concerning *Subak*. This regulation regulates *subak* as a component of Balinese culture whose main activities are regulating water use for irrigating rice fields and managing rice fields themselves. *Subak* is a traditional social organization in the field of water use and crop management for customary communities in Bali. *Subak* is a socio-agrarian, socio-religious, and socio-economic nature that continuously nurtures rice fields and its irrigation systems. This nature was born from the characteristics of *subak* as a social organization that has *parahyangan*, *pawongan*, and *palemahan* systems as a manifestation of *Tri Hita Karana* philosophy.
3. Regional Regulation of Bali Province Number 4 Year 2014 concerning the Preservation of Balinese Cultural Heritage (hereinafter abbreviated as Regional Regulation of PWB). Article 1 Verse 5 regulates that the preservation of Balinese cultural heritage is an activity of protection, maintenance, development and utilization of Balinese cultural heritage. Article 3 letter d. determines: Conservation includes "utilization " The explanation of this principle can be seen in article 17, which determines: Holders of tenure rights can utilize cultural heritage for religious, social, educational, scientific, technological, cultural and tourism purposes. Article 8 Verse (1), holders of tenure rights must provide appropriate protection to the cultural heritage that is under their control. Article 13 (2) determines that, in regulating the requirements and procedures of maintenance as referred to in paragraph (1), the Governor shall pay attention to legal rights, historical rights and cultural rights of the community.
4. Regulation of Bali Governor Number 32 Year 2010, Regarding the Management Board of Bali Cultural Heritage. In this Governor Regulation, it is more directed towards operational regulation and management of Balinese cultural heritage with the Organizational Structure and *Apparatus* of Board Management. Bali Governor's Decree Number 11/03-H / HK / 2014, concerning the Coordination Forum for the Management of Landscape World Heritage. This forum has the task of coordinating among various competent agencies with stakeholders through the division of roles and responsibilities in implementing the principles of managing the world cultural heritage of Bali Province

The philosophical problems that result from the selection of *subak* landscape as a world cultural heritage are related to a juridical foundation specifically the Regional Government Law which stipulates that the management is in central government. It has caused disharmony particularly in the aspects of *Tri Hita Karana's* philosophical values. UNESCO establishes "*Cultural Landscape of Bali Province: The Subak System as a Manifestation of the Tri Hita Karana Philosophy*". UNESCO explicitly states that the foundation of *subak* is the philosophical values of *Tri Hita Karana*, which is the concept of a balanced relationship between human and God, human and other humans, and human and nature. This philosophy is the foundation of values for a framework of relationship as a mutually bound, mutually needed and interdependent entity among the

components of the *Tri Hita Karana*. Likewise, the provisions of the Bali Provincial Regulation Number 16 Year 2009 about Regional Spatial Planning (RTRW), Article 1 number 6 defines that *Tri Hita Karana* the basis of the Hindu philosophy and the philosophy of life of the Balinese customary people. Further, in Bali Provincial Regulation Number 9 Year 2012 about *Subak*. *Subak* is a socio-agrarian, socio-religious, and socio-economic nature that continuously nurtures rice fields and irrigation systems. This nature was born from the characteristics of *subak* as a social organization that has *parahyangan*, *pawongan*, and *palemahan* systems as the manifestation of the philosophy of *Tri Hita Karana*. They are the values that are used as guidance of harmony in order to be in accordance with the essence of the *Tri Hita Karana*.

The juridical problems found are disharmony in the regulations about cultural heritage between the Regional Government Law, Act on Cultural Heritage and Bali Governor Regulation Number 32 Year 2010 about the Board of Management of Balinese Cultural Heritage. Based on the Regional Government Law, in the Matrix I, letter V: Division of Government Affairs in Culture, number 7, determines: The management of national cultural heritage and world cultural heritage is the authority of central government. It is explicitly stated in this law that the authority to manage the World Cultural Heritage (WCH) is hold by the central government. Meanwhile Act on Cultural Heritage explicitly gives management authority to the Regional Government. This disharmony between the regulations has become increasingly prominent by looking at the Governor's Regulation Number 32 Year 2010 about the Management Board of Balinese Cultural Heritage. The disharmony between one law and another law under it causes norm conflicts making these juridical problems lead to legal uncertainty.

Philosophical and juridical problems can surely have impacts on sociological problems. This selection will be perceived as a source of social inequality in terms of management. Basically, *subak*, with its values that develop and are held by Balinese people, is managed by *subak* communities. *Subak* is inherited from generation to generation and managed with distinctive institutional systems and management systems.

A management system, with full authority with a well-maintained institutional system conducted by generations and with *awig-awig* or *subak perarem* (customary law), is necessary. This is to ensure order and peace in *subak* environment, especially in the implementation of water management and planting patterns. With this, it is hoped that a harmonious relationship among humans as well as between human and nature can be achieved. The environmental wisdom of religious-magical community is manifested in the legal products of local communities. The legal products, in legal anthropology optics, are called customary law, folk law, indigenous law, unwritten law or in Indonesia they are *adat* law/*adat recht* (Nurjaya, 2015: 14-15).

This type of people's law is a norm system that embodies the values, principles, structures, institutions, mechanisms, and religions that grow, develop and are adhered by the local communities (*subak*) in their function as the instrument that maintain regularity and order in the context of *Tri Hita Karana*. In anthropological approach, law is a cultural activity that functions as a social control, a means to maintain spiritual, social and ecological order in people's lives. From anthropological perspective, law is expressed in the norms that govern people's behavior in shared life and is an ideal form of community culture (Koentjaraningrat, 1981: 3), which reflects the wisdom of local communities in understanding the relationships between individuals, individuals and groups, groups and community groups, and communities and their natural environment.

All of these aspects actually contain Hindu spiritual values. However, with the selection of *subak* as a world cultural heritage, even though *Tri Hita Karana* is explicitly stated as the foundation of *subak*, it seems that there is a sociological disharmony because the people feel that they no longer independently manage their fields as the lands they inherited from their ancestors.

As previously mentioned, the inclusion of *subak* landscape in the world heritage list has resulted in the management and protection of cultural heritage under the supervision of UNESCO, then further regulated in state law. Consequently, this law applies to the local community (*subak*) and is showing a tendency to dominate local legal capacity in the form of customary law or *awig-awig* of *subak*. The *awig-awig*, then, is powerless and neglected in the management of *subak* landscape as a world cultural heritage, or the capacity of *awig-awig* becomes semi-autonomous when dealing with state law.

The example of state law dominance on the laws of local communities (Nurjaya, 2015: 17-18) that is connected with the arrangement of *subak* landscape as a world cultural heritage can at least cause crucial implications:

1. Negligence on the justice principles, democratization, public participation, legal pluralism, because the rights of life, politics, economy and social conditions of indigenous peoples are ignored, not empowered, because they are not given space in legal life in this country;
2. Indirectly, state policy and legal products are the causes of *subak* landscape damage, because the arrangement of *subak* landscape is directed at limiting the management of *subak* landscape to *subak* organizations;
3. Causing marginalization of the socio-cultural order of the local community (*subak*), because it is centrally regulated, determined, as desired by UNESCO and the government.

Determining the landscape of *subak* as a world cultural heritage in addition to bringing benefits, the

existence of challenges and threats will surely exist, one of them is the development of tourism sector with the promotion of agricultural culture with *subak* ecosystem with fascinating sceneries of rice fields, can have an impact on rapid land conversion. Sociologically, farmers are faced with two choices, all of which do not give partiality, defend the fields or give their rights of the fields they have up. In this case there will be an inner conflict if the farmer has to sell rice fields, moreover his rice fields are his ancestral heritage (heirloom rice fields). The other thing is that the local community possessing lands allocated for rice farming is also faced with a difficult situation because on one side, with the stipulation they cannot provide economically fair treatment of land owned by them in the area, such as selling, renting or utilizing for supporting their economic life. Restrictions on development in landscapes or sites should be able to maintain the extraordinary universal values of the region, while farmers and community members continue their livelihoods (Ministry of Education and Culture, 2013: 43). Furthermore, with the establishment of *subak* as a world cultural heritage, people no longer have flexibility in managing their fields, because they have to follow the management which is in accordance with the rules set by UNESCO. The problem raises important questions as to who exactly is the prosperity and the welfare for, because people do not enjoy the long-term survival of the *subak* landscape, and how will this rich heritage be maintained in the midst of changing conditions? The contradictory facts as described above, both in a juridical, sociological, and philosophical manner, indicate the negligence of customary law people's rights (*subak*) in the management of cultural heritage which in itself has an impact on justice and welfare aspects of theirs as *subak* community.

4. Conclusion

Juridical problem, in regulations concerning cultural heritage arrangements exist between the Regional Government Law, Act on Cultural Heritage and Bali Governor Regulation Number 32 of 2010 the Regional Government Law, in the I Matrix, letter V: Division of Government Affairs in Culture, number 7. Based on the provisions of the articles from these provisions both in the realm of legislation and in the lower provisions, it is clear the norm conflicts so that these juridical problems create legal uncertainty. Social inequality in management is felt as the impact of sociological problems that arise with the determination of the landscape of *subak* into world cultural heritage. With the establishment of *subak* as a world cultural heritage, even though it has been mentioned based on Tri Hita Karana, it seems that there is a sociological disharmony because people feel that they are no longer free to manage their fields as they inherited from their ancestors. The other thing is that the local community possessing lands allocated for rice farming is also faced with a difficult situation because on one side with this determination they cannot provide economically fair treatment of land owned by them in many areas such as selling, renting or utilizing for supporting their economic life. Restrictions on development within the landscape should be able to maintain the extraordinary universal values of the region, while farmers and community members continue to live their livelihoods. The contradictory facts as described above, both philosophical, juridical, sociological, show the negligence of customary law people's rights (*subak*) including their autonomy rights in the management of *subak* landscape as a cultural heritage, so that it can influence aspects of justice and benefit for themselves

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