



Bhineka Tunggal Ika as a Source of Politics and the Identity of Indonesian Culture in the Formation of Law

Gede Marhaendra Wija Atmaja^a, ^aFaculty of Law, Udayana University,
Email: nimaderuastiti@gmail.com, marhaendrawija@yahoo.com

The purpose of this study is to analyse Bhineka Tunggal Ika as a source of politics and cultural identity in the formation of law in Indonesia. In general, no one knows or even uses Bhineka Tunggal Ika as the source of legal formation. However, often the formation of law in Indonesia refers to the philosophical meaning of Bhineka Tunggal Ika. The research problems are as follows : 1) What are the markers of Bhineka Tunggal Ika in legal formation? 2) Why is Bhineka Tunggal Ika so important? 3) Does Bhineka Tunggal Ika contribute to the formation of customary law? This research was completed using qualitative methods. All data was collected directly or indirectly. Data acquisition was optimised through a literature study. All data was analysed qualitatively. The results showed that: 1) Bhineka Tunggal Ika can be a marker of Indonesian cultural identity in legal pluralism; 2) Bhineka Tunggal Ika, in the formation of state law, is considered relevant as a political source to accommodate customary law and religious law into state law; 3) Bhineka Tunggal Ika, as it relates to the identity of Indonesian national culture, has contributed to the formation of customary law in the midst of modern times.

Key words: *Politics, Identity of Indonesian Culture, Law, Indonesia.*

Introduction

Cultural identity is a reflection of social security (Pradana, 2019). Cultural identity is regulated in article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which deals with the cultural identity of traditional communities. The manifestation of a community's ongoing activities cannot be separated from the meaning of traditional cultural identity amid social development (Pradana, 2018b; Rai et.al, 2019). This provision



determines that 'Cultural identity and rights of traditional communities are respected in harmony with the times and civilisations (Swandi et.al., 2019; Ruspawati and Ruastiti, 2019). This emphasises the existence of multiculturalism, which respects the cultural identity of every traditional society in Indonesia. In essence, the 1945 Constitution adheres to the politics of multiculturalism, namely, the policy of the state to recognise the diversity of cultural communities (Atmaja, 2018).

In addition, the articles-of the 1945 Constitution, which indicate the politics of multiculturalism are seen in article 18B paragraph (1), article 18B paragraph (2), article 28I paragraph (3), article 28E paragraph (1), article 28I paragraph (1), article 29 paragraph (2), article 32 paragraph (1), and article 32 paragraph (2). Articles which-include the basis for recognition and respect for legal pluralism are article 18B paragraph (2) of the 1945 Constitution which gives direction for the recognition of customary law and article 28E paragraph (1), article 28I paragraph (1), and article 29 paragraph (2) which gives direction regarding the recognition of religious law. As a philosophical principle, this offers a direction for extending and forming meaning (Pradana, 2017). The meaning in multiculturalism also includes legal pluralism.

All of this is summarised in the slogan 'Bhineka Tunggal Ika' as stipulated in Article 36A of the 1945 Constitution, 'The State's symbol is Garuda Pancasila with the motto for Unity in Diversity' in the context of efforts to develop the state, namely to describe the unity and integrity of the nation and the Unitary State of the Republic of Indonesia (Atmaja, 2018). Unity and diversity can mean integrity as well as integration (Sutherland, 2018; Fitch, 2011; Ruastiti, 2019; Dyatmikawati and Ruastiti, 2020).

Culture can be a source of satisfaction for social relations (Tejayadi et.al., 2019). This paper seeks to understand Bhineka Tunggal Ika as a source of political and cultural identity of the Indonesian nation in the formation of law through the description of : (1) Bhineka Tunggal Ika as a mark of legal pluralism; (2) Accommodating customary law and religious law into state law; and (3) Development of the age of giving new spirit to customary law.

Literature Review

In 'Code Mixing as a Form of Indonesian Identity Based on The Motto of Unity in Diversity' (2019), Fajar Muhammad Nugraha states that identity can be interpreted as equality or unity with others in certain fields. One's identity can be in the form of both personal identity and a wider social identity. Indonesian people who often mix signs are manifestations of the diverse identities of Indonesian people. The intermingling of identity signs in Indonesian people's daily lives is proof that Indonesian people can understand and communicate well with each other despite often complex differences. The relevance of this article to an article titled



‘Unity in Diversity as a Source of Politics and Cultural Identity of the Indonesian Nation in Legal Formation’ is in the main equation of the problems associated with unity in diversity. Specifically, the article titled ‘Code Mixing as a Form of Indonesian Identity Based on The Motto of Unity in Diversity’ analysed the form of mixing in Indonesian identity, while in the article titled ‘Unity in Diversity as a Source of Politics and Cultural Identity of the Indonesian Nation in Legal Formation’ analysed legal formations relating to Indonesian national cultural identity.

Bhugra and Becker (2005) stated that individuals who migrate engage in the process of adjusting their identity or self-concept to a new culture, which can often result in mental health issues. Mental illness is judged to be inseparable from the mental stress that is experienced until finally there is a loss of the practice of cultural norms, customs, religion, and social support systems. Complex interactions involving the migration process, loss of culture, cultural identity, cultural suitability along with biological, psychological and social factors play a major role as a cause of mental illness among migrants. There is a need for the participation of health practitioners who can harmonise aspects of mental stress with the cultural aspects that affect migrants and refugees in the population. There is a relationship between the results of research on migration, cultural bereavement and cultural identity with the results of the research on ‘Unity in Diversity as a Source of Politics and Cultural Identity of the Indonesian Nation In Law Formation’, in that there is a common focus of study, namely, cultural identity. In the results of the research on migration, cultural bereavement and cultural identity the problem of migration is analysed, while the results of research on ‘Unity in Diversity as a Source of Politics and Cultural Identity of the Indonesian Nation in Legal Formation’ does not analyse the problem of migration.

Jack and Lorbiecki (2007) identifies the complex and special relationship between the articulation of ‘Britishness’, corporate identity, and organisational and personal identity. This complexity shows the contradictory relationship between national and organisational identity, the characteristics of which are disjointed, discursive and affective. The results of this study are useful in the study of organisational identity, illuminating local discursive dynamics of identity construction at the individual, collective level and statements between the ontological role of discourse in structuring understanding and expression of organisational identity. Both articles express similarities in their examination of the main issues involved in various aspects of national identity, with the former analysing aspects of globalisation and the latter analysing political sources in the formation of law.

Kasnowiharjo (2016) states that there has been a setback in understanding Pancasila and Bhineka Tunggal Ika as the identity and ideology of the Indonesian people. Based on archaeological evidence, this should not have happened considering the diversity of ethnicity, religion, race, and customs that the Indonesian people have experienced and understood since



the heyday of the Majapahit kingdom. The phrase ‘Bhineka Tunggal Ika Tan Hanna Dharma Mangrwa’ in Kakawin Sutasoma has become a source of nationalism in fighting and ending colonialism. In connection to this, archaeology plays a central role in preserving the diversity of a physical cultural heritage that has the function of uniting all components of the Indonesian nation. There is a similarity in the study of unity in diversity in Kasnowiharjo’s article with the focus of this research, but this study did not include a focus on archaeological research.

Ortmann (2009) argues that since its independence in 1965, the Singapore government has tried to stimulate and promote nationalism in Singapore. In the 1980s, the Singapore government was concerned with the negative effects of materialism which had strengthened the economy. The alternative was to strengthen national identity in order to improve national conditions. Many Singaporeans recognise the difficulty in sustaining an identity in line with other Asian cultural traditions. At the same time, Singaporeans, on average, recognise a 'city-state' national identity. The relevance of Ortmann’s research to the research in this study is in the main issues which relate to politics. However, Ortmann’s study (2009) discusses national identity in Singapore while this research focuses on aspects of identity in Indonesian society.

Methodology

This research was conducted using qualitative research methods. This methodology is a way of obtaining descriptive data (Marshall and Rossman, 2016). Qualitative research methods are used to obtain quality data based on descriptions of a series of events in the formation of law in Indonesia.

In order to obtain primary data via qualitative research, observation techniques are used (Denzin and Lincoln, 2013). Careful observations were made of various events in the formation of law in Bali. Literature studies were carried out on literacy in law, and the humanities. In qualitative research, secondary data requires a literature study process (Biddle and Locke, 2007). All data obtained was analysed qualitatively.

Bhineka Tunggal Ika as a Mark of Legal Pluralism

Bhineka Tunggal Ika can be considered a marker of multiculturalism (Utami et al, 2016; Andarwati, 2017; Hambali and Gipayana, 2016; Purnami and Permana, 2019). Bhineka Tunggal Ika also functions as a marker of legal pluralism. Article 18B, paragraph (2) of the 1945 Constitution which provides directions for the recognition of customary law and determines that ‘The state recognise and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the



development of the community and the principles of the Unitary State of the Republic of Indonesia which has regulated in law '.

The concept of customary law community units in Article 18B, paragraph (2) of the 1945 Constitution is a compound form of customary law community unit. Indigenous and tribal peoples' unity is an organisation that includes interrelated elements, namely: a) the existence of people whose citizens have group feelings ; b) the existence of customary government institutions; c) the existence of property or custom objects; and d) the existence of customary law norms, and e) the existence of certain regions (Atmaja, 2016; Atmaja et.al., 2019).

One of the traditional rights of customary law community units includes a constitutional obligation for the state to recognise and respect people according to the customary law norms. Therefore, there is a directive from the Constitution to the state to provide recognition and respect even down to the protection and fulfillment of traditional rights of customary community in the enforcement of customary law. This shows the adoption of legal pluralism in the 1945 constitution.

Legal pluralism is also contained in article 28E, paragraph (1), article 28I, paragraph (1), and article 29, paragraph (2). From these -articles, we get an understanding that religious rights are human rights which cannot be reduced under any circumstances Being free to embrace religion and worship according to belief also means being free from pressure from other parties in embracing religion and worship including the freedom to practice their religious laws. Religious practices are manifested in activities for the worship of religious people and carried out continuously according to freedom of religious principles (Pradana et.al., 2016; Ruastiti and Pradana, 2020; Pradana and Pantiyasa, 2018; Arniati et.al., 2020). With regard to these human rights, there is a state obligation, as regulated in article 28I, paragraph (4) of the 1945 Constitution which states that 'Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government'. In addition to the 1945 Constitution, human rights are also regulated in Law of the Republic of Indonesia Number 39 of 1999 concerning human rights (Atmaja, 2018).

Reviewing human rights, the provisions in the 1945 Constitution in relation to article 50 of Law 39/1999 shows the state's obligation to recognise the validity of religious law and the conditions of each religion (Atmaja, 2018b). An important provision of note is article 50 of Law 39/1999, namely, 'Women who are adults or married have the right to carry out their own legal actions, unless otherwise specified by their religious law'. As evidenced discursively, unmarried women are entitled to protection from the family (Pradana, 2012).



Accommodating Indigenous Law and Religious Law in State Law

The sanctity of the temple received recognition by the state, in this case by the provincial government of Bali, as outlined in the Bali Regulation 16/2009. The important contents of Bali Regulation 16/2009 concerning the coverage of the holy place and the radius of sanctity are regulated in article 50, paragraph 2, 'The sanctuary area' as referred to in article 44, paragraph 1 letter b, is determined to refer to Bhisama PHDI 1994, with the following criteria: a) the sacred area around Sad Kahyangan Temple with a radius of at least 5,000 metres from the outer side of the temple wall; b) the holy area around the Dang Kahyangan Temple with a radius of at least 2,000 metres from the outside of the temple wall; and c) the sacred area around Pura Kahyangan Tiga and other temples.

Concerning the sanctity of the temple, it is not only found in the Bhisama Parisada regency and in the regional regulations but is also found in the area of customary law known as the coral reef. The customary law community of the Pecatu Adat Village, located in the Badung Regency region, questioned the existence of Bhisama on the purity of the temple which was integrated into the Bali Law 16/2009, since it was considered detrimental to the interests of the local customary law community. This issue has led to tensions between Bhisama's supporters regarding the sanctity of the temple and supporters of the coral reefs according to the customary law of the Pecatu Customary Village (Arniati, 2017).

This issue entered the domain of testing legislation under the law in the Supreme Court; the petition for examination was Bali Regulation 16/2009. After the trial, the Supreme Court issued Supreme Court Decision number 65 P / HUM / 2013. The decision rejected the petitioners' case, with the consideration that the regulations regarding zoning directions for holy sites in Bali 16/2009 did not contradict the basis for the formation of laws and regulations, because as a regulation containing indications of zoning directives, Bali Perda 16/2009 was still given the opportunity for each Regency / City government to further elaborate and detail the zoning regulations on the sanctuary area in the respective Regional Regulations / Cities while respecting the customary law and local wisdom of each Regency / City (PUMA 65 P / HUM / 2013). As part of collective wisdom on the zoning of certain regions, local wisdom is an indigenous advantage (Pradana and Parwati, 2017). Every zoning arrangement requires discretion and the application of legal rules.

This legal fact can be understood by borrowing the triangular model of legal pluralism as stated by Werner Menski (2006), namely, that there are three main types of laws created by society: through the state and through religion/ethics/morality. In turn, each of the elements is also plural in nature in that each element contains elements from the other two elements. Thus, at a deeper level of interest legal pluralism will be found and will then produce nine legal elements or components (Menski, 2006).



This means that without the influence of the other two elements, and the three religions/ethics/morality there is a Bhisama Pura located at number 33 which is also without any influence from the other two elements. Perda Bali 16/2016, in terms of three countries, is put at number 23 to indicate that, regarding the sacred area of Bali Perda 16/2016, it gets influence from other elements, namely from the triangular element of Religion/Ethics/Morality, in this case from Bhisama on the sanctity of temples. The Bali Regional Regulation 16/2016 does not reflect legal pluralism, but it reflects legal pluralism in the sense that it is influenced by the elements of religion (Atmaja et.al., 2017).

The existence of local regulations of each Regency/City that accommodate the traditional rights of indigenous and tribal peoples, including their traditional rights in regulating sanctuary areas in accordance with the Supreme Court's legal considerations as outlined in PUMA 65 P / HUM / 2013, will obtain regional policies regarding spatial planning in Bali that reflects the triangular aspect of legal pluralism, namely, the provincial regulations that accommodate Bhisama on Pura Purity and Regency/City regional regulations that accommodate customary law on coral reefs. Conventions can strengthen the basis of relational relations in power structures (Pradana, 2017a).

Age Development Gives New Spirit to the Establishment of Indigenous Law

The Balinese recognise the parahyangan, palemahan, and pawongan in their cultural traditions and customs as the realm of the causes of social happiness (Pradana and Arcana, 2020). Balinese customary law adheres to a patrilineal family system (kapurusa) which means that only kapurusa status offspring are considered to be able to take care of and carry on the family's responsibility (swadharma) both in relation to parahyangan (Hindu beliefs), pawongan (Hindus), and palemahan (environmental preservation nature in accordance with Hindu beliefs). Consequently, only descendants with the status of kapurusa or male Balinese masculine have self-ownership rights to inheritance, while it is not possible to continue swadharma for those with with pradana offspring status or female Balinese., It is equated with people who leave family responsibilities or death of the kedaton and are therefore considered not entitled to inheritance from the family (Sumarta, 2011).

Such customary laws and the consideration behind them as practiced by the Bali Pakraman Village Assembly (MDP Bali) are deemed incompatible with the reality and development of the community. The Main Assembly of the Pakraman Village in Bali, through Pasamuhan Agung III, decided on the position of husband, wife and children over heirlooms and riches. This is outlined in Decree Number 01 / KEP / PSM-3 / MDP Bali / X / 2010, among others as follows:



1. Children (male or female), as well as adopted children (male or female) are entitled to the parental property after deducting one third of the duwe tengah (joint property), which is controlled (not owned) by nguwubang children (continue parents' swadharma or responsibilities).
2. Children with kapurusa status are entitled to one part of an inheritance, while those with limited pradana/ninggal kedaton are entitled to part or half of the inheritance received by a child with kapurusa status.

The MDP decision is not a customary law of Bali. This is because MDP is not a pakraman village, or in the language of the constitution, it is not a customary law community unit. Article 15 Bali Province Regional Regulation No. 3/2001 concerning Desa Pakraman as amended by Bali Provincial Regulation No. 3/2003 concerning the amendment to Bali Province Regional Regulation No. 3/2001 concerning Pakraman Village stipulates that the formation of village assemblies pakraman (MDP) is selected by the pakraman village prajuru envoy (Article 15 of the Pakraman Village Regulation). Even so, MDP has the task of helping among other things, awig-awig (article 16 paragraph 1) of the Pakraman Village Regulation. This opens up the opportunity for the MDP Decree to affect the letters of the awig-awig pakraman village, that is, the MDP decree transformed into awig-awig pakraman village. This view is in line with legal considerations of Decision Number 69 / PDT / 2016 / PT. DPS, in essence, stating that the Great Samuhan Agung MUDP Decree does not necessarily apply as customary law, because it is not used as a basis for consideration of decision making. The legal considerations referred to are as follows :

Considering, that by listening carefully to the reasons stated in the Comparative Memory appeal / the original Defendant I mentioned, that the Comparator / Defendant I was originally the widow of the late I Wayan Sandia is the heir of the deceased. I Wayan Sandia on the inheritance of the Gunakaya inheritance which underlies the thought of the Decree of the Supreme Court III MUDP (Main Assembly of Pakraman Village) Bali on October 15, 2010, NO. 01 / KeP / Psm-3 / MDP Bali / X / 2010. After carefully studying the results of the Supreme Court III MUDP decision it revealed, among other things, in number 2 that during marriage, husband and wife have the same position on the property gunakayanya (assets obtained during marital status). The results of the Great Samuan Decree III MUDP which states that during marriage a husband and wife have the same position to use wealth worthy of respect. But in that decision, there is no mention of how the position or status of widows are to use property; as is known, the MUDP Great Super Decree is a guideline for Balinese who adhere to patrilineal customary law. In this case, the Great Samuhan Decree of MUDP is a guideline in revitalising Balinese Customary Law through the letters of awig-awig Pakraman Village since one of the functions of MUDP is to guide awig-awig Pakraman villages. Thus, it means that the MUDP Great Samuhan Decree does not necessarily become valid as customary law and the MUDP Great Samuhan decision requires socialisation to the



Pakraman village, as revealed by the expert testimony of Putu Sugi Ardana, S.H., M.H. and the expert testimony of Made Rimbawan, who was once the Chairperson of the Middle Council of the Pakraman Village of the Buleleng Regency which was given a trial at the hearing. In principle it can be concluded, the results of the Great Samuhan MUDP Decree can be carried out or followed when socialisation has been carried out on the adat law community of Pakraman Village. Thus, after being socialised, a village paruman (village meeting) will be followed because based on the decision No. 69 / PDT / 2016 / PT.DPS, it is stated that Balinese customary law recognises the Mawecara Village which will be stipulated in the Great Pesamuhan Desa Pakraman concerned.

There is another view, as seen in the legal considerations of Decision Number 52 / Pdt.G / 2013 / PN DPS. In essence, this decision accepts the MDP Bali Decree as a basis for making decisions. The legal considerations referred to are as follows :

1. Whereas based on the decision of the Bali Pakraman Village (MUDP) Main Assembly No.01 / Kep / Psm-3 / MDP Bali / X / 2010 dated October 15, 2010 regarding the results of the Great Supper III of the MUDP Bali it was decided that the inheritance rights of girls, that the daughter is entitled to $\frac{1}{2}$ purusa inheritance rights from the inheritance/inheritance of her parents;
2. Considering, that regarding the MUDP decision on October 15, 2010, stating that boys get 1 (one) share, while girls inherit $\frac{1}{2}$ (one-half) of the boys. That a girl has the right to get $\frac{1}{2}$ (one-half) on the basis that she can carry out the three responsibilities of swadarma.

The panel of judges is of the opinion that the MUDP decision on October 15, 2010 is a development of modern law, progressive law and just law which leads to national law giving equal rights between men and women, so that on the basis of calculation the panel of judges concluded that the Decision of the Denpasar District Court dated March 15, 2010 No. 52 / Pdt.G / 2013 / PN, the DPS, which is used as the basis for declaring the Plaintiff as an heir, is reasonable. This treatise takes the viewpoint of the MDP Decree as transferrable to an awig-awig pakraman village. It was then that awig-awig pakraman village as a form of Balinese customary law gained influence from the concept of gender equality.

The influence of the concept and rules of gender equality as a product of the times of the customary law is a necessity, considering that customary law has a dynamic character. As stated in Sulistyowati Irianto, customary law, in the context of new conceptual developments and realities that are developing at the moment, cannot be isolated from its relationship to other laws, such as state law, religious law, customary law, and even international law (Sulistyowati, 2004). Furthermore, it is stated that in the interrelation, interaction and mutual influence between various legal systems, their nature is to compete with each other, reject each other or conversely, they can also strengthen each other. This is the latest legal pluralism



concept. Changes have indeed taken place as a result of the dissemination of global women's human rights and thanks to the introduction of international legal instruments, as well as national legal products and policies (Wulan, 2012).

Women's human rights are the same as everyone else's human rights, which in various international treaties, conventions, and declarations on human rights confirms that the content of the obligation to eliminate discrimination over gender differences has become one of the inherent missions in the achievement of gender equality (Wulan, 2012). The meaning, state law and international law regarding human rights (specifically, women's rights and gender equality) have an impact on policymakers at MUDP that underlies Decree Number 01 / KEP / PSM-3 / MDP Bali / X / 2010, specifically number III, Customary Law Field, paragraph i. concerning the position of Balinese women in family and inheritance (Atmaja, 2018c). It can then influence the awig-awig pakraman village regarding the position of Balinese-Hindu women in the family and heirs. So, in terms of the development of the era, namely the existence of thoughts and legal principles regarding gender equality, both in national law and in international law, this can provide new enthusiasm for customary law (which manifests in awig-awig pakraman village), namely the existence of customary laws that accommodate gender equality. This is because there is creativity in production which contributes to the socio-cultural spirit of the age (Pradana, 2018; Pradana, 2018a; Ruastiti et.al., 2018).

Conclusion

In the 1945 Constitution, Bhineka Tunggal Ika is referred to as Indonesian National Cultural Identity. In the history of the Indonesian constitution, Bhineka Tunggal Ika has contributed as an identity as well as a political source for the unity of various ethnic groups in Indonesia.

Bhineka Tunggal Ika as a political source, as well as the cultural identity of the Indonesian nation, can be observed in the formation of law. The reflective form of Bhineka Tunggal Ika in the formation of national law should properly accommodate the problem of pluralism, with respect to the diversity of elements of customary law, religious law and international law. In the formation of law as a legal reference in Indonesia, Bhineka Tunggal Ika has contributed in the preparation of article 18B, paragraph 2, article 28E, paragraph 1, article 28I, paragraph 1, article 29, paragraph 2 of the 1945 Constitution, article 28I, paragraph 4 of the 1945 Constitution, article 28I, paragraph 4 of the 1945 Constitution and article 50 of Law No. 39, 1999. In the local context in Bali, several cases of legal formation which are related to Bhineka Tunggal Ika have succeeded in harmonising various elements of diversity, including:

First, in the case of temple sanctity radius, state law (in this case the Bali Provincial Regulation Number 16 of 2009 concerning spatial planning (RTRW)) has accredited the Bhisama Pura, which is a product of Parisada Hindu Dharma (this can be called a law



originating from religion Hindu). On the other hand, there is a Supreme Court Decision Number 65 P / HUM / 2013 which imposes an obligation on Regencies/Cities in Bali to accommodate customary law on coral that exists in the customary law communities of Pakraman villages in each Regency/City.

Second, in the case of the position of Balinese women in the family and inheritance, the MDP Bali Decree can be read as being influenced by the concepts and principles of gender equality which are a product of the times. The decision of the MDP Bali can affect the substance of customary law that manifests in the awig-awig pakraman village, bearing in mind that MDP Bali has to help the awig-awig pakraman village. If that happens, then the customary law of Bali can show its dynamic nature, according to the development of Indonesian society and the times.

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