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Reflection on Strengthening Hindu Law in the Era of Globalization

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Abstrac
The development of the times has made several shifts that occur in life, one of the concerns that arise about local wisdom that occurs in society regarding the flow of globalization and the dependence of culture in society. The existence of Hindu law in a dynamically applicable society. The problem raised in the writing of this journal is how does Hindu law exist in the era of globalization? The research method in this journal uses a normative method, the approach uses a legislative approach, the legal sources are primary sources and secondary sources, the technique of collecting legal materials, the study of documents and the analysis technique uses descriptive. Hindu law and customary law in the national legal system have not yet been compiled into positive law (ius constitutum), because they have not been established as formal laws and regulations in accordance with Law No. 12 of 2011 concerning the Establishment of Laws and Regulations.

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1. INTRODUCATION

The face of Indonesian law in today's reform era has not been able to position itself as a commander in creating legal certainty or in realizing justice for the wider community. This can be proven by the fact that there are still many feuds between State officials who are nota bene are the leaders of State institutions in this Republic, even they are people who are expected to be able to build, maintain, implement and enforce the law well for the sake of creating justice and people's welfare. It has not been lost in our memory that in the political arena of the State, in the last decade the feud actually occurred among members of the House of Representatives and even to the point of fighting, as well as between the KPK and the National Police law enforcers looking for mistakes that are often termed criminalization between institutions, including the controversial behavior of judges in law enforcement in court. Indonesian law is like a spider's web, only able to be an instrument to catch helpless little creatures, or like a sharp knife down and blunt upwards [1].

By looking at these conditions, the idea of reform in the field of law should be escorted by all State administrators and the community, in order to create a State that is able to protect its people in the framework of realizing a prosperous, just and prosperous society based on Pancasila and the 1945 Constitution. Therefore, efforts to build laws and the existence of an independent judiciary are a necessity in the State of Indonesia, because without an independent law and judiciary, it will be possible to abuse political power and oligarchic economic power. Thus, the realization of justice in a democratic country requires a commitment from law enforcers, the availability of community facilitators for access to the courts and a legal paradigm with a populist spirit.

In addition, an inevitability that has occurred and has even hit our country and the behavior of our nation is what is called globalization. The world has no borders, the flow of technology, capital, capital, goods and services has moved so freely. In this year 2015,

like it or not, like it or not, the nations in ASEAN have faced the agreement of *the Asean Economic Community* or often called the Asean Economic Community (AEC). In such a context, the existence of law in the State is no longer exclusive and discriminatory, but on the contrary it is able to provide a sense of security, comfort and justice for everyone who exists and does business in this country. One of the important concepts that can be used to increase resilience in all aspects of life in the face of the era of globalization is to strengthen local wisdom imbued with the religious laws of each community in the nation's society. Therefore, strengthening the existence of Hindu law is an important instrument in protecting and fortifying people's behavior in accordance with the norms and cultural values of the Indonesian nation, on the contrary, so that it is not eroded into free behavior without direction and even contrary to the values of Pancasila as the nation's view of life[2].

In a country of law, all forms of activities or actions of humans, society and the state must be based on the law. In more concrete conditions, it is often said that all component activities in the state must be based on the constitution or basic laws. On that basis, it is intended that all activities that occur in the state are not arbitrary between and inter people, society and the state. In the framework of the establishment of a state of law, the application of a rule and norm into the law including how the law is enforced in a concrete event, a political law is needed. Legal politics in a democratic country will try to provide wide opportunities for public participation to determine the desired pattern and content of the law. The Indonesian state based on Pancasila with the principle of kinship will have its own legal politics in accordance with the ideals of the law (*Legal idea*), which is contained in Pancasila and the 1945 Constitution.

There are 3 (three) levels of political policy legislation contained in the framework of the *rechtsidee paradigm*, namely:

1. In the political order, the goal of Indonesian law is the establishment of a democratic state of law.
2. In the social and economic order, legal politics aims to realize social justice for all Indonesian people.
3. In the normative order, legal politics aims to uphold justice and truth in every aspect of people's lives. These three goals are in a national legal order that is sourced from and based on Pancasila and the 1945 Constitution.

Along with the above view, quoting Gustav Radbuck's view, the main purpose of the law is to provide justice, certainty and benefits to society. But in reality, facts speak otherwise. With the naked eye, various cases disturb the sense of justice and place a discriminatory face of the law in its enforcement. On the other hand, Indonesian legal politics does not intend to form a state of power (*machtsstaat*) with a type of government or power that is oligarchy, absolute monarchy, authoritarian or totalitarian.Based on this concept of thinking, the author is interested in the title of this paper to describe the analysis of "Reflections on the Strengthening of Hindu Law in the Era of Globalization".

2. RESEARCH METHODS

This writing uses a normative method based on existing legislation.[3] The approach technique in this writing uses the legal and conceptual approach technique. Source Legal materials use primary legal materials and secondary legal materials. The collection technique is the study of documents using related legal literature and the analysis technique using descriptive[4].

3. DISCUSION

The position of a legal provision is determined by 2 (two) things, namely: *first*, the essence of legal provisions that can be sorted into legal principles and ordinary legal

provisions; *Second*, the country's legal and regulatory system. Furthermore, when viewed from its content, legal principles have a higher position when compared to ordinary law, because the content of ordinary law is a detailed elaboration of legal principles, more ready to be enforced, moreover the ordinary *law* has been stipulated in formal legal sources. However, the provisions of ordinary *law* must be subject to the content of legal principles.

Historically, legal provisions that once regulated the position and order of laws and regulations in Indonesia, such as MPRS Decree No. XX/MPRS/1966, were replaced by MPR Decree No. III/MPR/2000, (Abdul Latif and Hasbi Ali, 2010:43). Then in the reform era, it was regulated by Law No. 10 of 2004 which has been replaced by Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. The provisions of article 2 of this Law regulate Pancasila as the source of all sources of state law. Meanwhile, article 7 stipulates that the types and hierarchies of Laws and Regulations consist of:

Based on the perspective of the hierarchy of laws and regulations above, it is clear that Hindu Law and Customary Law which until now are in the form of religious norms have not been seen as a legal principle that has a position as the basis for the enactment of lower legal provisions, nor as ordinary legal provisions, because it has not yet become a formal law that is included in one of the hierarchy of laws and regulations above. The existing Hindu law has not been properly compiled and codified in a set of rules that are codified, systematic, detailed and applicable, positive and formal, so that they can be directly applied and have a legal effect, meaning that they have rights and obligations for those affected by the provisions of the law. From another perspective, it seems that Hindu law is still a collection of rules, religious norms and those who violate it tend to be subject to moral sanctions or social sanctions. Therefore, in order to become a set of core laws (not complementary) in the national legal system, a long struggle is needed through in-depth scrutiny through scientific research, then inventory Hindu laws that are in accordance with the development of society, from academics, Hindu scholars, PHDI, Regional Government (Bali), DPD and DPR.

In people's lives, there are always various kinds of norms that directly or indirectly affect the way people behave or act. In Indonesia, the norms that are still very felt are customary norms, religious norms, moral norms and state legal norms. Because Indonesia consists of various islands and ethnic groups, and there is the freedom of each resident to embrace their religion and worship according to their respective religions, moral norms, customary norms, religious norms exist and also apply differently from each other. So that moral norms, customary norms and religious norms only apply to certain communities. However, the enactment of a state legal norm is absolute, in the sense that every state legal norm applies to all people in the State of Indonesia, so it is said that moral norms, customary norms and religious norms have differences with state legal norms.

Conceptually, the principles of the State of Law can be expressed by a number of views of leading scholars in the field of law, such as:

1. F.J. Stahl formulated that the modern state of law must meet a minimum of 4 (four) conditions[5]:

a. The state must protect human rights;
b. There must be separation and division of power;
c. Government must be based on the law; and
d. There must be an administrative judiciary.

2. Paul Scholten

There are three main elements of a state of law, namely:

a. The recognition of human rights;
b. There is a separation of powers;
c. There is a government based on the law.

In Anglo-Saxon countries, generally the understanding of the rule of law follows the concept *of Rule of Law* from A.V. Dicey by prioritizing the main elements of *supremacy of law, equality before the law, and the constitution based on individual rights* In principle, the concept *of Rule of Law* and *Rechtsstaat*, have similarities, especially in the philosophical foundation based on liberalistic-individualism, the limitation of state power based *on wetmatig*, and the absolute separation between the state and religion. The difference between the two only concerns the existence of state administrative courts. In the concept of *rechtstaat*, the state administrative judiciary is made one of the main elements that stands alone from the general judiciary, while in the concept *of rule of law*, the existence of such a judiciary is considered unnecessary. This is related to the principle of *equality before the law* in the concept *of rule of law*, where officials and ordinary citizens are equal before the law, because they are equally subject to the general judiciary.

In addition, the constitutional system, which is one of the normative ideas of the state of law, has consequences that must follow four imperative principles of constitutionalism, namely: (1) All political power must be subject to the law. (2) There is a guarantee and protection of human rights. (3) A free and independent judiciary. (4) Public accountability, as the main joint of people's sovereignty. The rule of law is a normative idea to prevent or avoid arbitrariness and ensure *equality before the law*. In addition, the idea of the state based on law gives rise to the imperative that all political power must be subject to the law. The protection of human rights is a normative idea to guarantee the rights of the people as the ruling party. Indonesia as one of the ranks of modern states, today, especially after the reform in 1998, the concept of the state of law has been expressly stated in article 1 paragraph (3) of the 1945 Constitution, which states that the State of Indonesia is a state of law. The unequivocal statement about the concept of the state of law regulated in the body of the 1945 Constitution has the consequence that there is no longer an interpretation that the Indonesian state is not a state of law. In contrast to the 1945 Constitution before the 1998 reform, the concept of the state of law in Indonesia was regulated in the Explanation of the 1945 Constitution, which gave rise to many interpretations that the explanation did not have basic legal force when compared to the concept of the state of law regulated in the body of the 1945 Constitution. We still remember in the study of constitutional history, there is an interpretation that the Explanation of the 1945 Constitution is said to be a personal explanation from Mr. Soepomo. That's why the 1945 Constitution (amendment) no longer contains an explanation. Only then must the articles in the 1945 Constitution be derived back into laws and regulations that have a lower status[6].

Checks and balances are also normative ideas to avoid absolutism in the exercise of state power, and to ensure the running of democracy. Meanwhile, *rechterlijke controle* is a normative idea to avoid the imposition of the will by the strong against the weak, including between the ruling and the governed. Indonesia as one of the ranks of modern states, today, especially after the reform in 1998, the concept of the state of law has been expressly stated in article 1 paragraph (3) of the 1945 Constitution, which states that the State of Indonesia is a state of law. The unequivocal statement about the concept of the state of law regulated in the body of the 1945 Constitution has the consequence that there is no longer an interpretation that the Indonesian state is not a state of law. In contrast to the 1945 Constitution before the 1998 reform, the concept of the state of law in Indonesia was regulated in the Explanation of the 1945 Constitution, which gave rise to many interpretations that the explanation did not have basic legal force when compared to the concept of the state of law regulated in the body of the 1945 Constitution. We still remember in the study of constitutional history, there is an interpretation that the Explanation of the 1945 Constitution is said to be a personal explanation from Mr. Soepomo. That's why the 1945 Constitution (amendment) no longer contains an

explanation. Only then must the articles in the 1945 Constitution be derived back into laws and regulations that have a lower status.

In addition, by looking at the provisions regarding the structure of the legislation above, it seems to be in accordance with the theory of the level of legal norms of Hans Kelsen (*Stufentheorie*), which states that a legal norm is always based on and sourced from the norm above, but below the legal norm it also becomes the source and basis for the lower norm. Furthermore, Hans Nawiasky grouped the legal norms in a country into 4 major groups consisting of[7]:

1. *Staatsfundemantalnorm* (Fundamental Norm of the State)
2. *Staatsgrundgesetz* (Basic Rules of the State)
3. *Formell Gesetz* (Formal Law)
4. *Verordnung and Satzung Autonomy* (Implementing rules and autonomous rules)

Legislative politics is one of the sub-systems of the law. Politics regarding the procedures for formation related to the legal system and legal instruments used in the formation of laws and regulations. The politics of law application is related to the functions of government administration in the legal field. Law enforcement politics is related to the joints of the state system such as the state based on law.

Internally, there are 2 (two) main scopes of Legal Politics: (1) The politics of law formation, both regarding procedures and the content of laws and regulations, are policies related to the creation, update, and development of laws which include (i) policies for the formation of legislation, (ii) policies for the formation of jurisprudence laws, and policies on unwritten regulations; (2) The politics of law enforcement and enforcement are policies related to: (i) policies in the field of justice (litigation) and methods of legal settlement outside the court process (non-litigation), (ii) policies in the field of legal services (Abdul Latif and Hasbi Ali, 2010:164-165).

The explanation of the political scope of the law above, in fact, can only be distinguished but cannot be separated, because:

a. The success of a law and regulation depends on its implementation;
b. Decisions in the context of law enforcement are an instrument of control for the accuracy or deficiency of a law or regulation. The decision is an input for legal reform or improvement of legislation;
c. Law enforcement is a dynamite of laws and regulations.

Therefore, the politics of good law formation and enforcement must also be accompanied by the politics of human resource development, work and organization procedures as well as facilities and infrastructure. This tends to help determine the political success of the formation and enforcement of the law.

Furthermore, according to Abdul Latif and Hasbi Ali (2010:165-166), the pattern and political content of laws and regulations can be different due to several factors:

1. The political pattern of laws and regulations will basically reflect the most influential political thoughts and policies, for example, the doctrine of socialism will be different from capitalism in the economic field or the outlook on life based on Pancasila as in Indonesia.
2. The level of community development, such as strata in the field of socio-economic education and the level of homogeneity of individuals in society.
3. Global influence, such as regulations on copyright, trademarks, patents, human rights, workers' welfare, etc.
4. Foreign interventions, related to terrorism, the environment (*climate change*), *the world trade organization*, gender equality, etc.

Hindu law is interpreted as a rule or legal norm that governs its people in all areas of life, both those related to ethics, social, political, philosophy, culture, law and others, including regulating the relationship between humans and God (Surpha, 2005:15). Another opinion states that Hindu Law is a law that regulates the interests of human law (Hindus) in accordance with religion or dharma which is believed to be eternal truth because it is sourced from Rta. According to Pudja (1977:11), the laws in the Vedas are Rta and Dharma. Both Rta and Dharma both mean law in Hindu jurisprudence. Rta is a natural law that is eternal while Dharma is an earthly law, whether applied or not. Other terms of law in Hindu jurisprudence are Widhi, Drsta, Event, Religion, Wyawahara, Nitiswara, Rajaniti, Arthasastra, etc. Meanwhile, the meaning of Balinese Customary Law in the Balinese and Lombok communities is a complex of norms, both written and unwritten, containing commandments, abilities and prohibitions that govern the relationship between fellow humans, the relationship between humans and their natural environment and the relationship between humans and God.

Based on the conception of the above meaning, it seems that there is no difference in principle between Hindu Law and Customary Law (Bali), both regarding the substance and the scope of behavior that is regulated, because indeed in reality the behavior of the Balinese people (tribe) is influenced by Hindu religious teachings.

Regarding the sources of Hindu law, they are regulated in the Book of Manawa Dharmasastra II:6, in the form of: 1) *Sruti*, 2) *Smrti*, 3) *Precepts*, 4) *Events*, and 5) *Atmanastuti*. All the sacred literature of the Vedas is the first source of dharma, *Smrti* is the provisions, guidelines for implementation and teachings based on *Sruti*, *Sila* is the teaching of the behavior of civilized people, *Events* are customs that live in society and *Atmanastuti* is the satisfaction of every individual in accordance with Hindu religious values. The Balinese lifestyle (Balinese community) is very religious, with a very strong Hindu influence. The strong belief in religious values in the lives of Balinese people makes it difficult to identify which aspects of Balinese life originate from the culture, traditions or customs of indigenous Balinese and which aspects of life are influenced or sourced from religion. This also happens in the legal life of Balinese people. Without conducting in-depth research and assessment, it is very difficult to distinguish which rules are derived from customs (traditions, habits of the community) and which are derived from Hindu religious teachings. As is known, the purpose of the law and the concept of life of the Balinese people is to realize balance and harmony in the relationship between fellow humans, the environment and God which is called *the term tri hita karana* (Windia and Sudantra, 2006:10-11).

On the other hand, the concept of balance and harmony is recognized as a universal principle of life embraced in Indonesian society, as can be seen in customary law literature. Soepomo, an expert in Indonesian customary law, stated that the mindset of Indonesians is cosmos, meaning that they always seek balance with nature. The existence of the cosmos is always differentiated into the real world and the unreal (supernatural). These two realms cannot be separated but are a totality. Likewise, Ter Haar, stated that Indonesian people always think magically, which is the starting point of the possibility of directing magical power that comes from nature to be used as a magical decree in all human actions (B. Ter Haar, 1973).

The views as described above, then concreted in customary law norms. In the order of Balinese people's life, customary law norms, among others, can be found in customary regulations made by various customary institutions in Bali such as *Pakraman Village* (customary), *Banjar*, subak etc. The regulation in question is commonly referred to as *awig-awig*, which in essence is a set of legal rules that grow and develop in Balinese society, so that it can be said to be a living law (*the living law*). Some of the important aspects

formulated in it are actions that are required, allowed or prohibited such as the necessity of every village krama (Pakraman village member) to carry out *daddy* (obligations to the village), the ability of krama not to carry out *daddy* (obligation) for certain reasons (*Mapuangkid, Ngamp, Escape Father*, etc.), prohibition for medium people *Cuntaka* (dirty on a large scale) entering the sacred sanctuary, cutting down trees in the forest, herding four-legged pets in the shrine, etc. In the formulation, there are provisions of customary law that directly mention the sanctions and some do not, then discussed and decided through a suspension to be further determined as *Perarem*[8].

With the description as above, many people are of the view that the customary law that applies in Bali and Lombok is Hindu law. To ascertain the correctness of this view, further study is still needed, with in-depth research, whether the customary law that is alive and applicable to the Balinese people today is identical to Hindu law. Academics really need to be skeptical, doubting whether the formulation of provisions found in Hindu literature/books can be called Hindu law, considering that the basic concept of a legal norm contains elements of commands, abilities (encouragement), prohibitions and contains legal consequences, namely giving rise to a right and obligation. From this skepticism will be able to give birth to a sense of curiosity (*human inquiry*) to the existence of Hindu law.

In order to understand this concept, it seems that academics need to recall the theoretical debate on the relationship between customary law and religious law. *First* theory *receptio in complexu* from CF. Winter and Salomon were followed by LWC Van den Berg, who explained that the customary law that applies in a society is the religious law that is embraced by that society, because with the entry of a person into a certain religion, he fully accepts and submits to the religious law in question. *Second*theory *reception* from Snouck Hurgonje and Van Vollenhopen, who essentially stated that the law that lives for the Indonesian people, customary law regardless of the religion they adhere, religious law is absorbed inwards and applies as long as it is desired by customary law. So the understanding of this theory of customary law does not all accept the religious values embraced by the community, but in customary law there are only religious elements here and there[9].

To believe which theory applies in the relationship between Balinese customary law and Hindu law, an important and strategic step that must be taken first is to conduct a study of religious literature books that are seen as regulating or containing Hindu law. It is necessary to take steps to identify and inventory the values, principles and norms of Hindu law in it, then see how it relates to the Balinese customary law that is in force today (Windia and Sudantra, 2006:16).

In practice in the community, there are indeed a number of legal provisions that are sourced from Hindu literary books that have been accepted into customary law, or customary law linked to Hindu law such as *Kitab Adigama, Agama, Kutara Manawa, Purwagama, Manawa Swarga dan Manawa Dharmasastra*. It's just that the reception into customary law is not fully carried out, because not all the material in Hindu law is in accordance with the situation, conditions and needs of the communitySimilar information can also be found in the writing of the research team of the Faculty of Law, UNUD, in its research on the influence of Hinduism on Customary Criminal law in Bali pointed to the influence of Hindu law on the types of moral crimes, namely: *Lokika Sanggraha, Tonsil Sanggama, Gamia Gamana, Salah Krama, Drati KramaS and Wakparusia*. Meanwhile, other practices in the field of customary civil law, especially in the context of family law, which are the most widely received from the Book of *Religious weapons of faith*, such as a) provisions on patrilineal kinship (*Kapurusa*), b) provisions on sentana, c) provisions on marriage, d) provisions on the inheritance system, e) provisions on *stridhana* (*jiwadhana*) f) provisions on *gamya gamana*. In the Book *Adigama* What has been received so far into

customary law is in the form of provisions for customary crimes (delik) *Lokika Sanggaraha* in accordance with article 359 of the Book of *Adigama* which was enacted through Emergency Law No. 1 of 1951, as a consequence of the invalidity of the Judiciary *Kerta Council* and abolished the Swapraja government in Bali.

From the perspective of legal theory, Lawrance M. Friedman explained that the legal system contains legal structures, legal substances and legal culture. First, the legal structure is a pattern that shows how the law is carried out according to its formal provisions. This structure shows how the courts, lawmakers and other bodies, the legal process runs and is carried out. Second, legal substance is the laws and regulations used by legal actors when carrying out acts and legal relationships. Third, legal culture is related to the legal culture of the community in the framework of law enforcement at the empirical level

In a legal system, laws that are made to be effective, should meet several requirements:

1. The law made must be permanent, not ad *hoc*;
2. The law must be known by the community because the community has an interest in being regulated;
3. Laws (legislation) must not contradict each other;
4. Non-retroactive;
5. The laws made must contain philosophical, juridical and sociological foundations;
6. Avoid changing too often;
7. The application of the law should pay attention to the legal culture;
8. The law should be made in writing by the agency authorized to make it,

By paying attention to the concept of the effectiveness of law enforcement as above, the following is explained the configuration of the legal system traditions in the world, which illustrates that the legal system in the world today is dominated by two popular legal traditions, namely *the civil law system* and *the common law system*. However, if examined more deeply, the legal tradition also recognizes the western legal tradition family (*western law family*), the eastern *law family* consisting of *the customary law system* and *the Islamic law system* and *the socialist law system*, (Wisnubroto, 2010:8-16).

This system is also known as the Continental European Law tradition, with a number of prominent features such as:

1. Legal development is more carried out by scientists.
2. Law is more of a manifestation of the policy of the holder of power in ordering society. In this case, the law is more of a social engineering, so that in its implementation, formal justice needs to be prioritized to enforce legal certainty.
3. The implementation of law lies in the concept of rules that are formulated in an abstract manner (containing only principles) as guidelines in resolving concrete cases. The concept of legal rules is developed systematically doctrinal and based on legislation made by the legislature.
4. Legal discovery is defined as the search for law in laws and regulations and the application of law through the method of interpretation. If there is a case/case that needs to be resolved, then the steps taken are whether there is a law or a regulation, and then applied to the concrete case according to the existing facts.
5. A system directed at the pursuit of justice. Justice is perceived with the concept contained in the legislation. If the application of the law has been in accordance with this concept, then it has automatically fulfilled justice.
6. The power to adjudicate is completely in the hands of the Judiciary (Judge).
7. Get to know the concept of distinguishing public law from private law, as well as the distinction between civil law and commercial law in principle.

This tradition is also often referred to as the Anglo Saxon legal tradition, with some of the following characteristics:

1. Law is developed by practitioners (*case law*) and procedural through case resolution in court. In spite of this tradition, in recent years there has also been a tradition of developing law through scientific studies at the Anglo Saxon State University.
2. Judge *made law* is the main source of law that, based on *the doctrine of precedent*, must be followed by other judges in deciding the same case (although recent developments in Anglo-Saxon countries have also developed laws derived from *acts* made by parliament.
3. The law accommodates the sense of justice of the community so that in its implementation substantial justice takes precedence over formal justice.
4. The rules are concrete and have led to the settlement of certain cases. The concept of rules is linked to the judge's decision and formulated in concrete content. Legislation is not absolute (not as the main source of law).
5. Legal discovery by judges can be interpreted as the formation and creation of law (not just the search and application of law). So in the application, the legal facts are sought first and then the legal provisions.
6. Law is more of a set of procedures designed to achieve a case resolution (justice is perceived as a demand of the parties or a demand of society). Justice is considered to have been achieved, if the application of the law is in accordance with the demands of all parties or society.
7. It does not recognize the distinction between public law and private law, as well as in the settlement of cases between individuals in the community and officials are settled in the same court.

In developing countries, they still uphold traditional values (customary order) and religious laws. However, because these countries such as Indonesia were once colonized by Europeans, the traditional legal tradition is no longer pure, and many of them have even become secular countries dominated by western law.

Traditional legal traditions place the customary law order dominated by customary law or unwritten law as the source of the law. Meanwhile, the religious law tradition refers to the most important source of law, namely the Holy Book with the method of interpretation. The settlement of a case or concrete case is carried out by indigenous peoples through customary leaders and is based on laws that apply to local communities from generation to generation, such as the density of Qadi in Islam and *Council of Kerta* led by the Pastor (*Pedanda*) for Hindus in Bali and Lombok during the Dutch colonial era.

Justice in customary law (*cutomary law*) lies in the concept of balance in a broad sense, including the microcosm and macrocosm, external and inward), so it is relative. Sanctions are not punishment, but rather as a means or condition to restore or restore balance. The conditions for restoring the balance are determined by indigenous peoples. This is in line with the characteristics of the Balinese indigenous people, where customary law and religious law (Hindu) seem to be integrated, that customs are imbued with Hindu values. Meanwhile, justice in Islamic law is somewhat different, namely absolute because it has been regulated in detail in the Holy Book (Qur'an) which is the Revelation of Allah. This tradition is corroborated by Van Den Berg's findings with the theory *Reception Complexu* that customary law can be applied if it has adapted to religious law.

National legal politics through the 1999 GBHN, the direction of legal policy as regulated in Chapter IV letter A number 2, states that "Organizing a comprehensive and integrated national legal system by recognizing and respecting religious and customary law and reforming colonial heritage legislation and discriminatory national laws, including

gender injustice and its incompatibility with the demands of reform through a legislative program". Furthermore, Law Number 25 of 2000 concerning the National Development Program states that so far the enforcement of the rule of law has been degraded. This condition is due to the many laws and regulations made by the past government that do not reflect the aspirations of the community and the needs of development that are based on religious law and customary law[10].

From the two provisions of the legislation above, it appears that religious law and customary law are positioned as the basis for Indonesia's legal development in the future. This means that in the context of building Hindu and customary law, it will be very important in the development of national law. Moreover, the mandate of GBHN emphasizes that the development of national law is intended to uphold justice, truth and order in the Indonesian legal state based on Pancasila and the 1945 Constitution. The development of national laws is directed to increase legal awareness, ensure legal enforcement, service and certainty and realize a national legal system that serves the national interest.[11].

Hindu law is believed by its people to contain eternal truth (*Sanatana Dharma*), therefore the existence of Hindu law in the national legal system is a necessity. In Hindu religious teachings, there is a conception that mandates everyone's obligation to their country with the concept of Dharma Negara and the obligation of a person to carry out his religious teachings with the concept of Dharma Agama. The true concept teaches loyalty and obedience, obedience and respect for all state regulations and religious teachings. All of them are directed towards achieving a peaceful and just life both physically and mentally.

Thus, the contribution of Hindu law and customary law in the development of national law will be able to strengthen the mandate of GBHN, namely upholding justice, truth and order in the Indonesian legal state based on Pancasila and the 1945 Constitution[12], so that in turn legal awareness is created, ensuring legal enforcement, service and certainty and realizing a national legal system that serves the national interest. Until now, the existence of Hindu law, which can mostly be seen in the form of religious norms, in the reality of Balinese people's life has had a positive influence on the level of compliance, both to customary law and to state laws and regulations. Although since 1951 the *Raad Kerta customary court* has been abolished, it does not mean that Hindu law has just disappeared. Values, rules, and norms of Hindu law sourced from Hindu literature books, some of which have been accepted into Balinese customary law as legal norms that are still alive in the midst of Balinese people's lives. The provision that was received is certainly a provision that is in accordance with the sense of justice of the community and the development of Balinese society today.

When viewed from the perspective of legal norm theory, Hindu legal norms cannot be categorized as *ordinary law* , let alone as *extra ordinary law*, because until now Hindu law has not been compiled into positive law (*ius constitutum*) and has not been included in the state of legislative order in Indonesia according to Law No. 12 of 2011. Hindu law is still categorized as *ius constituemdum* (law of ideals) which then requires the determination of the legislature as a law, which is sourced from religious norms as a norm that is still alive and accepted by society. At least, in the implementation of the law enforcement system in Indonesia, Hindu legal norms (moreover) that have been accepted into the customary laws of Bali and Lombok can still be enforced in accordance with article I of the Transitional Rules of the 1945 Constitution (amendment). As an indicator, it can be seen from the provisions of Hindu law that have been accepted into customary law, the customary delik *Lokika Sanggraha, Wakparusia, Gamia gamana* have been adopted into the draft of the National Code (Criminal) to later be determined as a positive criminal law of the State of Indonesia. In addition, in order to anticipate the legal vacuum, Law No. 48 of 2009

concerning Judicial Power article 27 paragraph (1) stipulates that "Judges as law and justice enforcers, are obliged to explore, follow and understand living laws". Thus, there is actually an obligation for judges to explore, follow and understand the legal values that live in society in the framework of providing substantive justice.

With the advancement of information and communication technology instruments that we are feeling together today, the world is getting smaller, the distance is getting shorter and all information can be received by anyone without censorship. In the reality of global life, we really feel the impacts that occur, both negative and positive. This is a law of nature (*Rta*) which is indisputable and in the teachings of Hindu law, the people of Bali and Lombok have become familiar with the concept of *Duality* Namely RWA Bhineda: *sekala-niskala, sakral-profan, luan-teben, bhuana agung-bhuana alit, suci-leteh, kiwa-tengen*, etc., where the concept is an inseparable unit.There are many positive impacts that we can see from the progress of globalization: commitment, loyalty, quality, discipline, respect for time, creativity, innovation, positive thinking, cooperation (solidity), effectiveness-efficiency, legal certainty, etc. Meanwhile, the negative impact of freedom of access to global information is the deterioration of the nation's behavior, ethics and morals.

Based on the various consequences as a result of global influences as mentioned above, the relevance of Hindu law in the framework of fortifying the Hindu community to win the competition for life and decline (*degradation)* morals, it is very necessary to be revitalized and reflected in a national positive law as well as in social institutions, customary law. Therefore, it is necessary to conduct an in-depth study of the values of Hindu teachings, including Hindu law, which are still relevant and which are no longer relevant to the development of the current era.Hindu law as part of the value of Hindu religious teachings, contains universal values about the teachings of truth (*Dharma*), the essence of life, balance, togetherness towards a peaceful and harmonious life order, which is often called the concept of *Truth, Sivam, beautiful*. Some of the Hindu laws that are sourced from religious law books, such as: Manawadharmasastra (Manu Dharmasastra), Religious Law Chess Book: Religious Law Book, Adi Religious Law, Purwa Agama Law and Kutara Agama Law, have been reflected in Balinese customary law such as: *lokika sanggraha, drati krama, gamia gamana, mamitra ngalang, salah krama, wakparusya*. Types of sanctions in Balinese customary law: *Sangaskara Danda, Maprayaschita, Matirta Gamana* for pastors who have made mistakes. In addition, customary offenses such as: *Lokika Sanggraha, Wakparusya, Gather Kebo and Gamia-gamana* has been reflected in Indonesia's draft positive criminal law.

In addition, there are several types of customary crimes of morality in the people of Sasak, Lombok (Widnyana, 2013: 130-135), there are several types such as:

1. *Muger*; An indecent act committed by an adult man against an adult girl/woman by hugging, holding so that the woman or her family is embarrassed.
2. *Bekekaruh*; sexual intercourse committed by a man with a woman/girl outside of a valid marriage.
3. *Bero*; namely marriages carried out in families that are still in too close blood relations and between the couple there is a prohibition on marriage.
4. *Caution*; the act of a person or several people entering land belonging to others illegally or in an unlawful way with the intention of gaining profits.
5. *Salaq acts*; The act of hugging a girl is done consensually, but in public.
6. *Ngambis*; customary crimes that are lighter than *Muger*.

Some of the dynamism of Hindu life in the global era that must be continuously improved is in the form of: the principle of hard work (Bhagavadgita), the principle of appreciation for initiative and creativity (Sarasamuscaya (82) and Manawadharma sastra

(XI :I, 4), the principle of respecting time (Sarasamuscaya), the principle of cooperation (Yajur Veda and Reg Veda).

4.CONCULUSION

Based on the exposure and analysis as described above, the following conclusions can be drawn:

Hindu legal norms sourced from the scriptures and some Hindu literature have been received into the Balinese customary law, Lombok, which is used as a legal instrument to regulate the life of the Balinese people (tribe) in the context of *Tri Hita Karana* in order to realize a righteous and prosperous society. The existence of Hindu law, which can be mostly seen in the form of religious norms, has had a positive influence on the level of community compliance, both to customary law and to state laws and regulations. Hindu law and customary law in the national legal system have not yet been compiled into positive law (*ius constitutum*), because they have not been established as formal laws and regulations in accordance with Law No. 12 of 2011 concerning the Establishment of Laws and Regulations.

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