

# CHAPTER I

## INTRODUCTION

### 1.1 Background of Final Report

Tradition or custom is a pattern of behavior that grows and develops in a community called a society that is done continuously. Not all behavioral patterns can be adopted into a tradition; only a few patterns of behavior that are common, formal or in accordance with the community. Because this pattern of behavior is embraced by a community and done repeatedly, then it has a normative and binding force. The people in a community will bind other people to accept and do the same thing as a belief that is valuable in the eyes of the society and it becomes a customary law eventually.

A customary law is a part of formal source of law as an *unstatutory* law which is unwritten in the legislative regulation. Its enforcement has punishment to the offender as the society's member of customary law. The punishment will be given by someone who is chosen by society as the leader of them.

Van Vollenhoven in Wignjodipoero (1968) states, "the customary law in the past was almost have differences material; The customary shows progress." In addition, he adds, "the customary law grows and develop continuously; The decisions create the customary law." Customary law that exists in the society does not conflict with the national law. Both customary and national law are the reflections of justice that were created for the community's advantage. Society

always grows along the advancement of technology and it is also followed by the development of customary law. Thus, a customary law is created based on the society needs.

Every region in Indonesia has different customary law, for instance, Javanese and Batakese customary law are different. This occurs due to the pluralism in Indonesia which has various cultures, ethnics, races, and religions and those influence the pattern of customary law. The one which is most influential is religion as a dogma from God. The dogma has acculturated and has been applied in every aspect of society, especially on civil issues. The civil issue is regulating personal relationship such as family, marriage, legacy, and agreement. Marriage and legacy are the privacy matters that have tight connection with customary law; it is reflected from the procedure of marriage execution based on customary law.

Marriage and legacy in Indonesia are regulated in the national law. It is officially stated in *Burgerlijk Wetboek Voor Indonesie (BW)/Kitab Undang-Undang Hukum (KUH)Perdata* which was adapted from Dutch custom as a formal codification since colonialism era. The more specific regulation about marriage can be seen in Law No.1 of 1974 (*Undang-Undang Negara Republik Indonesia Nomor 1 Tahun 1974*) Juncto. Government Regulation No. 9 of 1975 (*Peraturan Pemerintah Negara Republik Indonesia Nomor 9 Tahun 1975*).

Is it possible to apply both customary law and national law? Customary law has existed since long time ago before the national law, but the national law is

the highest source of law in Indonesia. Therefore, the application of both customary and national law refers to *Lex specialis derogate legi generali* which means that general regulation such as the national law will be put aside in its implementation over a specific regulation such as a customary law as long as they are not contradictory. It is also recognized in article 18 sub b of the Republic of Indonesia Constitution Year 1945 (*Undang-Undang Dasar Negara Republic Indonesia 1945*) as the legal reasoning concludes that “government recognized and honor the unity of customary law and the rights of them as long as still exist and appropriate with the development of society and the principle of Republic Indonesia which arranged in constitution”.

Bali whose population is mostly Hinduism is influenced by the law of Hindu in every aspect of society's life applying concept of *Tri Hita Karana*. The concept of *Tri Hita Karana* is used to establish stability in every aspect of society's life. *Tri Hita Karana* is divided into three concepts namely, the first is the relationship between person and another person, the second is the relationship between person and government, the third is the relationship between person and nature. The relationship between person and another person commonly regulates family matters including marriage and legacy matters.

The family system in Bali is bound by *Kawitan* as the result of *Majapahit* Kingdom influence. *Kawitan* comes from word “Wit” that means derivation; *Kawitan* is the shrine to worship the ancestors from a community of people who have similar blood line and clan. There are many names of *Kawitan* with many classifications in Bali depend on history of society's condition and ancestral

position at ancient time. If the ancestor shave position as the king, then the offspring will use the name and the degree of his ancestors. The establish of *Kawitan* is to remind the offspring that their ancestors are powerful, wise, dharma and authoritative, based on those system can be used as guideline and role model into themselves. The emergence of *Kawitan* is inseparable from family law because it is a ground form of family gatherings based on the similar blood line. Generally, the family system in Bali is patrilineal that is the blood line coming from father, but Tabanan Regency applies “*Nyentana*” marriage as matrilineal system or the blood line coming from mother. Both patrilineal and matrilineal influence the legacy system from the parents to the heirs after a marriage is done.

In this era, the application of *Nyentana* marriage is not only in Tabanan Regency, but also in the other regencies. It happens because the rapid development of society's life that causes the deviations of customary law to meet the needs of the community itself. The permeability of this system has been debated by scholars or experts in their field about the legitimacy of *Nyentana* system in Tabanan Regency or outside of that regency because *Nyentana* marriage has contradictionwith patrilineal system in Bali customary law. Considering that, the writer entitled the final report **The Legacy Law in *Nyentana* Marriage as the Exclusion in Bali Customary Law.**

## **1.2 Objectives of Final Report**

Thisfinal report is intended to inform about the form and ordinances of marriage especially *Nyentana* marriage in Bali customary law. Next, todescribe

the subject, object, ordinances, and the problems of legacy in *Nyentana* marriage in Bali customary law.

### **1.3 The Significances of Final Report**

There are three significances of this final report. First, it is expected that readers can gain more knowledge about the marriage and legacy system in Bali customary law especially *Nyentana* marriage. Second, it is expected to increase the readers awareness about the importance of a marriage and legacy system which produces rights and obligations as life cycle. Third, it is expected readers can increase their tolerance to the pluralistic culture in Indonesia and maintain the continuity of customary law.

### **1.4 Procedures of the Final Report**

The procedures of making the Final Report are divided into three, there are Pre-departure Training, On-Going Process, and Final Report and Examination.

#### **1.4.1 Pre-departure Training**

On Sunday, May 21<sup>th</sup>, 2018 there was the pre-departure training that was held by D-III English Program of University of Merdeka Malang located in room 305. The speaker was a graduate of D-III English Program of 2007, and recently the speaker is one of the tutor of the Enter (English Center) course. This pre-departure training was attended by all sixth semester students in D-III English Program who were ready to prepare the final report.

#### **1.4.2 On-Going Process**

On the process of writing Final Report, the writer was selecting and observing the resources material from book and the expert studies. The first time, the writer was confused after reading the resources material because the language in resources is complicated to understanding, so the writer did consult with lecturers who are experts in customary law in Law Faculty of University of Merdeka Malang. After a long period for reading and understanding the resources material, the writer composes a framework of thought.

#### **1.4.3 Final Report and Examination**

The writer consults the draft with advisor during finishing the final report. The writer tried to manage her time to working and doing final report. Finally, the writer was examined at the end of the final report writing period.

