THE INHERITANCE RIGHT FOR ASTRA (ILLEGITIMATE) CHILDREN ACCORDING TO THE CUSTOMARY LAW IN BALI

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ABSTRACT

Promiscuity will bring legal consequences for women and children to be born, if it does not accompanied by a legitimate marriage ceremony. The legal consequence is about legal position or legal status of the child to be born. In general, under the prevailing legislation and awig-awig (traditional law) of Pakraman Village, a child has only legal status and right of inheritance from his mother or his grandfather from the line of his mother. The problem that arises is, how was inheritance rights of astra children under Balinese customary law? How was family responsibility towards the astra children who wereabandoned by his/her mother to marry? This legal research is included in empirical legal research, using primary and secondary data, with qualitative and arguative descriptive analysis. Astra children's inheritance right under customary law of Bali is limited to inherit from his mother only. If his/her mother married, the responsibility on the astra child lies on his/her mother’s father or the mother’s family. The responsibility is valid until the astra child passed.away, and pengabunan (cremation) ceremony should be performed.

Keywords: inheritance right, Astra children, Balinese Customary Law.

INTRODUCTION

BACKGROUND OF THE STUDY

Family legal status is commonly caused by marriage or blood relation. However, blood relation doesnot always lead to family legal status for the child, as in the case of child born out of wedlock or outside marriage. Child born out of wedlock has no legal relationship with his/ her biological father. On the contrary, not all family legal status is formed through blood relation, as in the case of adopted child (sentana peperasan). In general, adopted child do not always has blood relation with the adoptive parents. However, they sometimes have a very close blood relation. In the case of Astra child (Astrachild) in this study refers to the child born out of wedlock and the mother did not marry the biological father. Various ways can be taken to legitimize the status of the child such as by conducting keris marriage, so that the child will not to be called illegitimate child. The term used in Bali is bebinjat. This term is derived from the word bibi or ibu jahat (cruel aunt or mother). If the child born has relation people of high caste then the child is called astra child, if the child is adopted by the father of his/ her birth mother(grandparents) then the birth mother will have a status as his/ her sister. This is done to help the child obtain his/ her legal status, while the mother will maintain her status as a “single”. Thus, in the future the mother can enter into marriage as a single instead of widow. Naturally she is a mother who has given birth to a child, but legally there is no evidence indicating that she has had a child since the child has been adopted by her parents. This is done to protect the status of that mother as a woman (It can be done since the woman does not have a marriage certificate and child's birth certificate as a proof that she has legally given birth to a child.).

Adoption is a legal action. This legal action (adoption) will cause people who previously did not have family legal status to be legally related, just like the relationship between biological children with his/ her parent. The family legal status is also influenced by the family system adopted by a society. Hindu society in Bali adopts patrilineality or paternal system or better known as kepurusa or purusa (Gde Panetje, 1989) system. Kepurusa is a family system that prioritizes the lineage drawn from the father. This system brings consequences on marriage and inheritance status.

Kinship relationship (Gde Panetje, 1989) between a child and his/ her (legitimately) unmarried mother is the same with the kinship relationship between child with his/ her mother of legal marriage. Since, the family law system adopted by Hindu society in Bali is patrilineal system, in case there is no legitimate biological father, thus in some way the child fall into the line of his/ her mother’s fathers. However, but it does not automatically make the child receive inheritance from his/ her grandfather. An Astra child will only obtain his/ her inheritance rights from his/ her mother, as long as the mother is a sentana rajeg. If the mother is not a sentana rajeg and has no possessions, then the astra child has no right to inherit the property of his/ her grandfather.

In Balinese Customary Law, Astrachildren have the same meaning as the children born out of wedlock as cited in Law Number 1 Year 1974. According to Panetje, the definition of children born out of wedlock in Bali is divided into two, namely child born out of wedlock from a Sudra woman which is called as "bebinjat" or anak haram jadah (illegitimate child), while the child born out of wedlock from a Triwanga woman is called Astra. On the other hand, the rank of the children also distinguishes astra from bebinjat. Astra child is a child whose biological father is known while bebinjat is a child whose biological father is unknown. Korn (V.E. Korn, 1978), however, obscures the notion of bebinjat and astra.

Muslim law describes that an illegitimate child is “filius nullius” which means a son of no one or a bastard (Shukla, 2017). Under Sunni Muslim law, the illegitimate child is entitled to inherit from the mother and her relations whether legitimate or illegitimate.
and they can inherit from him according to the Hanafi, Maliki, and shafi’i’s fiqh, the mother and her relatives inherit from an illegitimate person according to normal rules of succession (Aminu, 2015).

Based on the Court, illegitimate children including the children of adultery achieve the inheritance rights because they have a lineage to the biological fathers which is in fact are established by technology and science (Muhammad et.al, 2014).

Based on the research results, the factors that lead womanto give birth to a child outside marriage are (Sadnyini, 2015):

a. Her parent forbids her (the pregnant woman) from getting married to her lover,

b. Her lover died before their marriage took place,

c. Her lover get married to someone else,

d. No one admitted to be one impregnated the woman since she has more than one boyfriend.

From the four factors that lead woman to give birth to children outside marriage, the last factor is the worst factor. This phenomenon is mostly the result of sexual promiscuity in teens, which definitely involve both man and woman. However, unlike man, woman always become the one who is put under the negative light. One of the consequences from sexual promiscuity is that the women become pregnant. Pregnancy will bring great physical change for women. For instance, the size of their belly is getting bigger day by day. On the other hand, men will not experience this kind of condition. It will be a disaster for woman who got pregnant outside the marriage if the man is completely irresponsible. On the contrary, pregnancy is a blessing for a married couple.

Due to pregnancy outside of marriage, the society mostly will change their perspective on the women from positive to negative (statement above is a negative label to women) (Sadnyini, 2015) or in Balinese term from "luh luih" (Luuh luih means women who have respectable and honorable behavior, highly polite, whose words always make people happy, never lie, and never denounce others ) to "luh luw" (Luuh luw is the opposite of luih luih, including limitless interaction with some men, without considering the impacts). My God... The way they see women is so cruel. In most cases, it were not even their fault that they got pregnant, but because the man betrayed them. It is so unfair to direct the term luh luih to the women. Difference in treatment received by women and men in society is one of the discrimination experienced by woman.

Abu Bakar stated that Illegitimate Children should not be discriminated by the community due to the mistakes of its parents. As a matter of fact, the rights of IC in the aspects of religion, social and the law must be preserved based on the Islamic justice and universality (Abu Bakar, 2017).

In this study, there was no different between astraan and bebinjat. Nowadays, the term bebinjat is no longer used in Bali since this term considered violating the dignity of both the woman and the child born. The government today is intensively implementing women and children protection programs, including the protection of the dignity of child born out of wedlock. It is a common thing that the Astrachild is appointed as sentane (heir) by his/ her grandfather. Thus, the legal status of the astrachild becomes clearer. The responsibilities to protect, raise, educate, and conduct manusa yadnya ceremony for the child also become clearer. However, there are also some astrachildren who are unlucky. They were abandoned by their mother—their mother either dead or married to another man who is not the biological father. Who will take the responsibility to raise and take care of the child? How was the inheritance right of astra children according to Customary Law in Bali? Based on the above description, the author is interested to conduct a research entitled "The Inheritance Right for Astra Children according to the Customary Law in Bali ".

Based on the description of the problems that have been described above, it can be stated in the following research questions:
1. How was the development of customary law of inheritance in Bali?
2. How was the inheritance right of astra children under Balinese customary Law?

RESEARCH METHOD
This research is an empirical legal research (Darmawan, 2005), E. Jones calls it as non doctrinal research (Jones, 1962). This research was conducted in Bali so as to obtain the primary data of astra children. The data required in this research were qualitative data (J.Moleong, 1990). This research also used secondary data which consisted of primary and secondary law materials. The law material was used to find some regulations, theories or opinions that could support the research problems analysis. Law material was collected (Soekanto dan Sri Manzumi, 1990) using card system and through documentation. The documentation obtained was in the form of picture of Ngaben (Ngaben is a ceremony of cors burns for Hindus in Bali, this ceremony can be held greatly and cost hundreds of millions and also can be held simply which only cost around three million to fulfill the obligation and responsibility of ngaben.) ceremony of child born out of wedlock. The primary data was collection through in-depth interviews with family and elite indigenous people or elite interviewing (Putra Astiti, 1994). The researcher also participated in the death ceremony (pengabenu) of one of the astra children—direct observation (Sugiono, 2008). The analysis was done by qualitative and argumentative descriptive analysis.

DISCUSSION
The development of customary law of inheritance in Bali
Before discussing the development of customary law of inheritance, the author first would like to explain about the term itself since the customary law experts are yet to reach agreement of the terms. Some the term used are hukum waris adat, hukum kewarisan adat, and hukum adat waris (all have the same meaning). Customary law of inheritance was based on the principles arising from the flow of communal and concrete thought of Indonesian people. The author uses the term customary law of inheritance (hukum waris adat).
According to Soepomo, the customary law of inheritance is the customary law which contains the rules governing the process of passing on the tangible property and intangible property (inmateriele goederen) from one generation (generatie) to the next generation (the offsprings) (Soepomo, 2000). Wirjono Prodjidikoro states that inheritance is about how the rights and duties and also the wealth of the deceased will be passed to others (Wirjono Prodjidikoro).

Based on the opinion of the experts above, there are some important elements in the inheritance namely; testator, estate and importantly there should also be the heirs who will inherit the rights and obligations left to them. In this case, the law plays the role in governing how the inheritance will be passed from generation to generation. In the above explanation it was not stated whether the children are legitimate or illegitimate children.

In anthropology contexts law are not only state-made, but also included the folk law and self-regulation mechanism that function as a means of social control (legal order) (Rahardjo, 2006). Moore furthermore emphasize that law is the self-regulation of a semi autonomous social field. In this context, the study of law is not only limited to the legal system of the state, customary law, custom, or religious law. It is then expanded as the normative system in the form of self-regulating mechanisms (Nurjaya, 2007). Normatively, Hindu women in Bali are not the heiress of their parents or husbands which means they have no right to receive the inheritance. The dynamic customary laws caused changes in the law in society. Thus customary law is always up to date. Regarding the changes in the customary law, Astiti (2009) states that the changes in the customary law of inheritance in Bali can be done by taking micro and macro approaches. The micro approach is easier to do and could be done casuistically. In this case, the role of law enforcement officer including the leader of indigenous community is important. The macro approach can be done by modifying the system, for example by realizing the idea of establishing bilateral inheritance system as stated by Hazairin in Seminar Nasional I in Jakarta on March 11th, 1963. At that time he proposes the formation of national inheritance law which based on Pancasila which has not been realized up till now.

Ten years before Hazairin proposed the idea, State Court Decision No.20/ civil/ 1953 dated June 29th 1953 and Singaraja District Court Decision No. 41/ civil/ 1958, dated July 19th, 1958, had been made on the division of inheritance between the boys and girls which is based on rembat sesuhun principle. In that division, it was not clearly specified what kind of inheritance that could be shared with woman. Can the family heirloom be divided or it only limited to the community property (in Balinese language it is called guna kaya)? (Guna kayais the propert earned by the people (mother and father) during their marriage, not from the inheritance of their parents). This decision was not followed by any other judge as Jurisprudence.

As has been known, the customary law is a dynamic law. This nature ensures that there will be a change in the customary law of inheritance in Bali even though the change will happen slowly. This change brings new hope for the Hindu women in Bali, especially those who suffered due to get pregnant outside the marriage. The part of inheritance of the woman shall be granted to her out of wedlock child.

The amendment of the inheritance law has been formulated in the Pesamuan Agung III MUDP Bali No. 1/ Kep./ Psm-3/ MDP Bali/ X/ 2010, dated October 15th, 2010. In Pesamuan Agung it istated that the biological children (boys and girl) and adopted children (boys and girls) are have the right to their parents’ guna kaya, after deductedone third as the duwe tengah (joint property) owned by the child who take care of his parents until their death. After ngaben ceremony of their parents, the property will be recalculated with the other heirs. In this stage, the daughter has no rights in it. Thus, based on the MDP Bali Decision, the women in Bali have experienced the development in inheritance law. They who previously have no right to receive inheritance from their parents, now become the limited heirress of their parents’ guna kaya or community property. However, there is also limited to the inheritance received by the women. They do not have the right to inherit the family heirloom (Family heirloom is a valuable object owned by family for many years and its ownership can be tracked from grandfather, great-grandfather, till it untraceable).

The above change in law is reviewed with the Progressive law, where Progressive law does not accept the law as an absolute and final institution, but it is determined by its ability to serve people according to the level of society development where the law applied. Law is always in the process. Law is an institution that continuously builds and modifies itself to achieve perfection. Perfection can be verified in some matters such as justice, welfare, and concern for the people.

According Satjipto Rahardjo the nature of law is that law as a process, law in the making. The law does not exist for the law itself, but for human. Therefore, law will be deemed useful when it can serve the people and society interests. If the law cannot fulfill its purpose, then law will only be a mere text. In this case, the main purpose of the law—as states by Gustav Radbruch— which is to provide certainty, justice, and usefulness cannot be achieved.

In connection with the law as process, it means that the law will never stops, but continues to develop along with the time to suit the society dynamics life. The inheritance law is also expected to develop so that the child born out of wedlock can also obtain the inheritance rights from his/her mother's family. Today, the change in inheritance law set out in the MDP Bali 2010 has placed women as limited heiress. Thus, this change has provided justice, certainty and benefits to the women's lives. This change is not final yet because law will always in the development process along with the time. The development of the times can be influenced by the education, economy, population, and technology development.

Alessia Valongo stated that the social, economic and political change of the traditional family has led to a positive convergence of the laws in the Europe with regards to the children born out of wedlock and the relationship with their parents (Valongo, 2015). Based on Jhon W. Ester, Modern American law and legislatures have refused to disregard the social environment in which they function, and have recognized in each illegitimate child a potential of acquiring a legal status of full legitimacy (W.Ester, 1961).
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Astra Children under the State Law

Based on Law Number 1 Year 1974 Article 42, a legitimate child is a child born in or as a result of a legal marriage. Section 112 of Indian Evidence Act, 1872 deals with the proof of legitimacy of children if they are born during wedlock or within certain period of the dissolution of marriage (Katari, 2017). In Article 43 paragraph (1) it istated that a child who is born out of wedlock have only civil relationship with his/ her mother. The child born out of wedlock is called as astra child in Balinese Customary Law. The position of the child mentioned in paragraph (1) above shall be further stipulated in a Government Regulation.

The content in article 43 paragraph (1) above has created legal uncertainty for the marital status and also the status of the child born. An unlawful marriage cannot be registered at the Civil Registry Office. The status of the child born of unlawful marriage will be contrary to the 1945 Constitution. In 1945 constitution of the Republic of Indonesia, Article 28B paragraph (1) states that, "Every person shall have the right to establish a family and to procreate based upon lawful marriage. Article 28B Paragraph (2) states that "Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination" and Article 28D Paragraph (1) states that, "Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law." Based on the aforementioned articles, there should be no discrimination in the application of legal norms to any person due to his or her marriage whether it lawful or unlawful.

Maria Farida Indrati, a constitutional judge, argues that in the legislation perspective, the difference in treatment toward children for certain causes which is absolutely not due to the actions of the children concerned can be categorized as a discriminatory act (Syahuri, 2013). The provision has closed the possibility for the children to have a civil relationship with their biological father. This is the risk of unregistered marriage. However, in reality the children also bear the consequence of the action done by their parents. If being called as a child who was born outside the wedlock could be considered as a sanction, state and religious law do not know the concept where children should also bear the sanctions for their parents’ sin/ mistake. According to the state law, the rights of the children who were born in a lawful or unlawful marriage should be fulfilled. The responsibility to the children remains as the responsibility of both the biological parents. The law should not show any discrimination either directly or indirectly (Lapian, 2012). It means that the objective of the law should not to discriminate. However, if the impact caused by the law is still discriminatory, then the provision can also be considered as discriminatory provision.

Based on Eva Schlumpf research findings in The Legal Status of Children Born out of Wedlock in Morocco, as long as children born out of wedlock are treated differently than children born to a married couple and as long as sexual relationships outside of marriage remain a criminal offence, these children will be stigmatized and cannot be granted full legal rights. In the end, it is not a problem of religion or legislation but of the mentality. Morocco still has a lot of work to do – legally, socially, culturally and economically – in order to acknowledge illegitimate children and related issues. However, the developments of the past years have shown that Morocco is willing to do so and that it is on the right path (Schlumpf, 2016). It is similar in Florida, Supreme Court of Florida held a child is legitimate if born during a valid marriage. Paternity is different concept that cannot determine the legitimacy of a children (Rana Holz, 1999).

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In addition to state law, issues related to the child born out of wedlock are also governed by the customary law. Thus, the provision concerning the child born out of wedlock is considered as legal pluralism. Griffiths defines legal pluralism as a situation in which one or more legal systems can be applied at the same place and time (Simarmata, 2013). However, not all regions share the same view concerning children born out of the wedlock. According to Selvy Falk Moore (Simarmata, 2013) in addition to the state institutions or government as an institution that issued the rules, there are also other social organizations that also have rules which can be enforced, for examples, the indigenous peoples in some region.

In some areas such as Mentawai, Timor, Minahasa, and Ambon, women who get pregnant outside of the lawful marriage are considered normal. It even considered as normal as the mother who gave birth in wedlock (Muhammad, 2004). However, in some areas both the women who gave birth to children out of wedlock and the children born will received severe reprimand from their society. They could be expelled and not acknowledged as the part community. To prevent this, the man who impregnated the woman pregnant was forced to marry her. But if the man refuses, then the pregnant woman can be married to another man who was willing to marry her. This marriage is known as nikah tambelan, nikah semu or kawin darurat (emergency marriage) (Setiadi, 2009). If there was no man who was willing to marry her, then the woman would be married to keris, since it (Keris is a weapon made of iron with a number of indentation and very sharp tip. Keris is used as male symbol (purusa). Keris has intangible power for the owner and believed to bring for luck, safety, magic, and immune for the holder) was the symbol of a man (purusa).

Although several attempts have been done to make it possible for the child to be born into legal marriages, it does not remove the society’s negative feelings and view toward the child. This child is called “anak haram jadah (illegitimate son)” in Java whereas in Bali the child is called bebiningat (Bebiningat comes from the word bibi (other) njat means rude, so bebiningat means a child born by a rude mother or immoral woman), and the child acknowledged by his biological father is called “astra” (Panetje, 1989).

The legal status of an out-of-wedlock child (astra child or bebiningat) based on the Jurisprudence of Read Kerta in Denpasar, Decision dated June 9th, 1938 No.93/ Civil, grants a child born of a “forced” marriage with his/ her inheritance right of his/ her pancar wadu grandfather's inheritance (the mother's father). If in the future the astra child received recognition from the family of his/ her biological father, then he/ she will be recognized as the “member of his/ her father’s clan” as long as th astra child
does not demand to receive the inheritance from his/ her biological father. It is done purely to honor the ancestral spirit of his/ her biological father (Panetje, 1989).

The following are the awig-awig from some villages, among others:
Awig-awig of Pakraman Sesetan Village (Awig of Sesetan Customary Village, South Denpasar sub-district, Denpasar, year 2002), article 52 paragraph (4) states in case of unlawful married which result in the birth of a child, the child is not called behinjator astra, a panyangaskara (panyangaskara ceremony) is a kind of marriage ceremony to clean the body and soul of a child born outside marriage) ceremony should be held.

a. Awig-awig of Pakraman Kesiman Village, Article 65 paragraph (2) states that if there is a pregnant woman but no one acknowledge it, then a marriage ceremony should be held for the woman to clean her and the child to be born (Awig-Awig of Pakraman Kesiman Village, East Denpasar sub-district, Denpasar, year 2010).

b. Awig-awig of Pakraman Medahan Village Article 55 paragraph (2) states that there is an unlawful marriage until the child is born, then the child is not called babinjat atau astra child and panyangkara ceremony should be held (Awig-Awig of Pakraman Medahan Village, Blahbatuh sub-district, Gianyar regency, year 2009).

c. Awig-awig of Panjer Customary Village, Article 70 states that if there is woman who got pregnant outside the marriage (Awig-Awig of Panjer Customary Village, East Denpasar sub-district, Denpasar, year 1988), she should be ask who was the man who impregnated her. If the man who impregnated her has been identified, then it is better to marry the pregnant woman to the man. In Article 73, it is states that the marriage is not possible the marriage and cleansing ceremony should be held. This ceremony is held to avoid the child to be born from being called behinjat. Thus, the woman and her child are still allowed to pray in Pura Kahyangan Tiga (Pura Kahyangan tiga is a place for praying to God in manifestation of Brahma (creator), Wisnu (preserver), and Ciwa (buster). The child born can be appointed as the grandchild by the grandfather or father of the child’s mother. By doing that, the child will have civil relationship with his/ her grandfather and may receive inheritance from his/her grandfather. If not, the child have only civil relationship with his/ her mother.

The Hindu community in Bali strongly upholds the values of sanctity (religious) (Artadi, 2006), thus any social disharmony in the society is always "closed" with certain ceremonies to restore of harmony. The ceremony is performed to respect the laws that are made based on the values lived and upheld by the society.

Based on the above description, the inheritance rights of astra child under the prevailing law as well as customary law is the same, he/ she only have civil relationship with his mother and his mother’s family. Regarding the position of the child born out of wedlock, a harmonization between the law of the state with customary law has been done. It is normatively proven in the legislation as well as awig-awig of customary village that govern the inheritance rights status of astra child, which is limited to the inheritance from his/ her mother or the mother's family—the mother’s father. In contrast, the Jurisprudence of 1938 states that astra child is to be the the heir of his/ her grandfather. However, based on MZee Mustafa study, the illegitimate child has no right to inheritance from his biological father, however, there is a room for them to have something which can support their life from the property of the natural deceased father, if a father wish to do so before his death (Mustafa Mzee, 2016).

Based on the Decision of MDP Bali in 2010 which put daughter as a limited heir, then the astra child of that woman will be the heir of the mother. If the mother got married, the inheritance of the mother will be passed to the astra child. Before 2010, women had not right to receive inheritance. Thus, the astra child fate was completely under his/her grandfather. If the grandfather has a son, then astra child will not get any share for sure. This painful experience is experienced by I Buruhan (58 years old, uneducated, unemployed due to blindness, Tabanan Regency, interviewed on April 5th, 2016) and IB Astro (60 years old, Works as a builder, Tabanan Regency, the Interview was conducted on Tuesday, April 5th, 2016). These two astra children have no inheritance since their mothers do not get married. They receive get a piece of land for a place to live, not as theirs but merely as a mercy.

Another case of astra child is that G. Ayu Sari (30 years old, private employees, Tabanan Regency, the interview was conducted on April 16th, 2016) who got pregnant and then married with keris. Sari’s child was then adopted by Sari’s father, and will be the heirs of her father. Based on the family agreement, Sari would get married and to be out. The child adoption is in accordance with the Government Regulation of the Republic of Indonesia Number 54 of 2007 on the Implementation of Adoption. The article states: "The adoption is done for the child’s best interest, which is carried on according to the local customs and laws and regulation. The same case is also experienced by Ni Wayan Sriash (23 years old, private employees, Tabanan Regency, the interview was conducted on Wednesday 16 April 2016.), Ni Siwi (30 years old, private employees, Tabanan Regency, the interview was conducted on Wednesday April 17th, 2016) dan I.G. Ayu Asri (32 years old, private employees, Tabanan Regency, the interview was conducted on Wednesday April 17th, 2016).

A different case was experienced by Ni Nengah Astini (38 years old, trading business, Tabanan Regency, the interview was conducted on April 17th, 2016) who married keris and gave birth to astrachild. A few months later, she married the biological father of her child. Keris marriage had to be done at the request of her parents. The purpose was that after Astini gave birth to her child, the child would be appointed as the heir of his grandfather.

The case of an astra child who was not adopted by the grandfather and then was later left by his mother who got married took place in Singaraja. The name of the astra child is I Putu Wenten. During his lifetime, he had no wife and offspring. He died at the age of approximately 70 years precisely on December 11th, 2015 and a small ngaben ceremony (nista) was held on December 12th, 2015 in the Funeral Home of Yayasan Pengayom Umat Hindu (YPUH) to save the costs. The deceased had no inheritance
from his grandfather and had no possessions. The ceremony was performed by members of his mother's family (Researchers participated in ngabeng ceremony of the deceased).

Legal criteria of customary law of inheritance in Bali is associated with the law of independent indigenous peoples and is associated with the values of Pancasila and the principles contained in the 1945 Constitution which leads to human rights values (Wisnajaya, 2010). Based on the theory of the role of law in society by William J. Chambliss and Robert B. Seidman (Seidman, 1971), the mechanism of law in the society is influenced by social power, law-making institutions and law enforcement. The performance of human rights regulations also depend on some factors namely, lawmaker, community leader and the law enforcement officers (Muladi, 2009).

Based on the aforementioned theory about the inheritance right of Astra child according to Balinese Customary Law, then what happened to I Putu Wenten was not fair. The injustice he suffered was because lawmakers and law enforcers have not made any change regarding the inheritance right of astra children. Despite the decision of MDP Bali in 2010, this decision has not yet been implemented in the awig-awig of Pakraman village in Bali. The condition is reviewed under Legal System theory from Lawrence M. Friedman (Friedman, 1969) that put the legal culture of the society as the top priority. If one hopes to enforce the laws in a society, then the legal culture of lawmakers, judges, and society must be changed to fit the society development. Therefore, the rules applied are guaranteed to be fair and impartial for humanity.

In the case of customary inheritance, then the indigenous ruler and leader should be fair (Soeknto, 2001), to maintain the harmonization of social relation pattern as the core of social process. The public will be satisfied if the society unification with the indigenous leader can be realized. It means that the leader can adjust to the development of society. The leaders should have courageous character, wise, fair, strongly uphold the truth, kind and profoundly humane. The leaders are also expected not to betray the decisions they have made. Thus, in broad sense, indigenous leaders are the law enforcement agents. They can be the lawmakers, law enforcement agents, and the pioneers of fair law development. This can be understood since as already known, some society in Indonesia are still dominated by the cosmic though. Thus, the indigenous leader or the customary law enforcement agents are expected to have the ability to keep in track with the society development, maintain the law of local wisdom, eliminate and remove laws that are out of date.

CONCLUSION
The Development of Customary Law of Inheritance in Bali
In Seminar Nasional I which was held on March 11th, 1963 in Jakarta, the formation of national inheritance law which based on Pancasila has been proposed. Based on State Court Decision No.20/ civil/ 1953 dated June 29th 1953 and Singaraja District Court Decision No. 41/ civil/ 1958, dated July 19th, 1958, decisions regarding the division of inheritance between the boys and girls which is based on rembat sesuhun principle has been made. (2:1). In Pesamuhan Agung III MUDP Bali No. 1/Kep./Psm-3/MDP Bali/X/2010, dated October 15th, 2010, it has been formulated that the biological children (boys and girls) and adopted children (boys and girls) are have the right to their parents’ guna kaya, after deducted one third as the duwe tengah (joint property). Based on the decision of MDP Bali, daughter will be appointed as the heirress of her parents’ guna kaya (community property). The development in the inheritance law was that woman who previously has no right to receive inheritance for her parents, now can be a limited heiress.

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Before 2010, woman had not right to receive inheritance so that the astra child was not count and had no inheritance right under the customary law. Based on the development of customary law of inheritance set out in decision of MDP Bali in 2010, woman was placed as limited heiress so that her astra child will be her heir. If the mother got married, the inheritance of the mother will be passed to the astra child.

Recommendation
The Decision of MDP Bali in 2010 needs to be continuously socialized and directly implemented into awig-awig of Pakraman village, so that women have the certainty of their inheritance rights status. If women have received their inheritance rights, then the inheritance rights will surely become their astra child as well.

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