

The Dynamics of Conflict in the Balinese Customary Inheritance to Enhance the Implementation of Customary Law in Indonesia

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Abstract. Customary law derives from the norms, religion, and principles that evolve within society. Balinese society is characterized by a strong adherence to tradition, culture, and customary law. The influence of globalization and advancements in science and technology is not necessarily disruptive to or transformative of the customs and traditions of the Balinese people. Within Balinese customary law, the position of men is given priority in matters of inheritance and family affairs. This leads to the issue of the dynamics of the position of Balinese women in Balinese customary inheritance law. To address this question, the research analysis utilizes a normative juridical research approach. The results of the study show In Indonesia, customary inheritance law, particularly in Bali, faces challenges due to modernization, leading to women resorting to civil law for inheritance issues. Despite this, Balinese women's rights as heirs remain recognized and preserved under Balinese customary inheritance law. This is supported by Decision Number 01/KEP/PSM-3/MDP Bali/X/2010 issued by the Pasamuhan Agung Majelis Utama Desa Pakraman Bali on October 15, 2010.

Keywords: Customary Inheritance Law, Balinese Customary Law, Inheritance

1 Introduction

Indonesia, a country with a vast territory, is characterized by diverse cultures, ethnicities, languages, and religions, as well as numerous islands, both large and small. The "culture" in the form of "customs and traditions" is an integral part of the dignified identity of the Indonesian nation, which then serves as the foundation for customary law systems.[1] Distinct customary practices or traditions in each region, involving customary law and indigenous communities, are found throughout the country. Furthermore, customary law is still applied in several regions today, with the aim of ensuring their continuity or existence in the present era.

Customary law is a living law, growing and evolving within society in accordance with the development of the community and the customary law area. Customary law, which exists within the life of Indonesia's ethnic groups, is very important to be understood and comprehended by law enforcement officials, legal advocates, and legal observers in applying laws that are suitable and fair for Indonesian society. This is to ensure that justice for all

Indonesian citizens can be fulfilled and not create inequalities within society. Therefore, the values of customary law must be preserved and respected by anyone within the customary law area. For example, one form of customary law is inheritance law.

Inheritance law is one of the laws existing within society and attracts attention from various parties. It also governs the interests of the general public, particularly those related to inherited wealth. According to inheritance law, in general, is the law that regulates the transfer of wealth left by a deceased person and its consequences for their heirs.[2] Inheritance law in Indonesia encompasses various forms and systems of inheritance. Such diversity arises due to the heterogeneous nature of Indonesian society and the geographical conditions of the Indonesian archipelago. This also allows each region to have diverse customs, cultures, and ethnicities. This condition undoubtedly creates implications and nuances in the dynamics of Indonesian social life, especially in the implementation of inheritance division.

The inheritance system in Indonesia is influenced by the kinship system practiced by ethnic communities. Broadly speaking, the kinship system in Indonesia is divided into three, namely patrilineal, matrilineal, and parental kinship systems. States that "the patrilineal kinship system is based on blood ties according to the Father's line. Therefore, the right to inheritance belongs to the sons. This is because sons are the ones who will become the next generation in the family. also states that "the matrilineal kinship system is fundamentally based on blood ties according to the Mother's line. This indicates that daughters play a more significant role and have full rights to their parents' inheritance. Additionally, daughters become the successors of the family lineage. Meanwhile, the parental kinship system does not prioritize lineage from either the Father or the Mother, but considers both paternal and maternal lines equally. Both daughters and sons have the same roles and positions in the inheritance division and lineage continuation. From these kinship systems, it is determined how family and societal arrangements are conducted by each kinship system.

In Bali, there are three applicable legal systems: Indonesian national law, Hindu religious law, and Balinese Customary Law. Concerning inheritance, Bali adheres to Balinese Customary Law with a patrilineal kinship system.[3] The patrilineal kinship system traces descent through the father's line, where only sons from the father's side have inheritance rights. Meanwhile, women are not heirs. The position of Balinese daughters in terms of inheritance is limited to enjoying the use of parental wealth as part of the family's shared assets, as long as they remain unmarried; however, this right ceases upon marriage.[4] Contradictions between the law in the books and the law in practice may arise due to the socio-cultural systems influencing Bali's inheritance practices.

In relation to customary inheritance law that places sons as the successors of inherited wealth, the focal point of this paper is the inheritance rights of women. In the present modern era, Balinese women increasingly prefer to resolve inheritance issues through Western law. This has resulted in changes in the societal environment that may disrupt customary law in the region itself. Therefore, this study focuses on the dynamics of women's position regarding inheritance in Balinese customary law. This research utilizes a normative juridical approach, employing conceptual and legislative regulation approaches. The types and sources of data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This paper is then presented descriptively.

2 Discussion

2.1 The Balinese Customary Inheritance Law System

Inheritance law is the legal framework governing the transfer of wealth (rights) from a deceased person to their heirs. The inheritance law system in Indonesia is divided into three: customary inheritance law, Islamic inheritance law, and inheritance law according to the Civil Code (hereinafter abbreviated as KUHPPerdata). The inheritance law system can be executed when it meets three main elements: the presence of the deceased, the presence of heirs, and the presence of inheritance assets.

Customary Inheritance Law is a set of legal rules that pertain to how tangible and intangible wealth is transferred from one generation to the next, spanning centuries. According to Soepomo, customary inheritance law encompasses regulations governing the process of descent and distribution of both tangible and intangible assets within a generation to their descendants.[5]

Various perspectives exist among legal experts regarding the scope or coverage of customary inheritance law. states that customary inheritance law encompasses rules related to the process of transferring and transferring material and immaterial wealth from one generation to another. On the other hand, specifies that customary inheritance law includes regulations governing the process of transmitting and transferring material assets and intangible assets from one individual (generation) to their descendants. [6]

Customary inheritance law emerges, grows, and develops within the spiritual atmosphere of customary law along with its customary legal community. The customary law, where they reside, habitat, and a place for "embracing" the customary legal community as the peak of generating rights and obligations in customary inheritance law. The logical consequence of this dimension can be inferred that customary law along with the customary legal community constitutes the principle and habitat for the existence of customary inheritance law.

Inheritance according to Balinese customary law differs from inheritance according to civil law. These differences are evident in their elements, principles, and substance. In civil inheritance law, the elements of inheritance consist of the deceased, the estate, and the heirs. Meanwhile, in Balinese customary inheritance law, the elements include the deceased, the heirs (warih/descendants), the estate, and the heirs (warih/descendants entitled to the inheritance). According to Balinese customary law, an heir (descendant) may not necessarily be an heir or someone entitled to the inheritance left by the deceased. Furthermore, the principles of inheritance according to Balinese customary law include principles of unity, dependence, collectivity, priority, and continuity.

Generally, the patrilineal kinship system is adhered to by the Balinese society in determining the inheritance pattern. The consequence of implementing this patrilineal system is that male children will become heirs and successors of the family. This was also articulated by stating that "the traditional Balinese society adopts the patrilineal kinship system or fatherhood, widely known in Balinese society as kapurusa or purusa.[4] Thus, in Balinese society, a purusa is responsible for continuing the lineage and has obligations to the family, ancestors, and society at large, both spiritually and materially, and becomes an heir. This means that the inheritance pattern in Balinese society is influenced by the patrilineal kinship system they adhere to. Consequently, in principle, female children in Balinese families do not have the status of heirs. However, the possibility for them to receive inheritance in material form from their parents is still open, as preparation in case they enter married life in the future.

According to the prevalent doctrine in Balinese inheritance, the emphasis is placed on the patrilineal line, commonly referred to in Hindu family law as "kapurusan," where the male

gender holds a dominant position compared to females. The rationale behind this is that men bear the burden of Dharma (duty), which includes worship and responsibility towards ancestors, followed by the right to inherit, use, maintain, and protect ancestral property. However, an alternative method is found in perpetuating their lineage, where a husband and wife with a single daughter strive to establish a "Sentana Rajeg". Through which the female party extricates the husband from the purusa bond. Consequently, the wife assumes the purusa role, while the husband occupies the pradana position both in religious and legal terms. The primary benefit is that the daughter assumes the position of sentana purusa, essentially becoming the successor of the family lineage.

The patrilineal kinship system (purusa) adhered to by Balinese Hindus results in only descendants with kapurusa status and family swadharma having relationships with parhyangan, pawongan, and palemahan. Consequently, only descendants with kapurusa status have swadikara rights to inheritance, while descendants with pradana status are unable to continue swadharma, thus equating them with ninggal kedaton.

The perspective of customary law communities towards inherited wealth is not merely considered solely in terms of its economic value, as in the individualistic and materialistic Western perspective. Instead, customary law communities view inherited wealth from a macrocosmic and microcosmic perspective as a holistic, unified, and comprehensive relationship between individuals/persons and others, with society, with nature, and with their deities. This conceptualization embodies a holistic, participatory, magical-religious aspect that is synonymous with the philosophical concept of harmony, balance, and consonance within the framework of Tri Hita Karana. [3]

Tri Hita Karana is a concept aimed at achieving perfect harmony known in Balinese society. The terminology of Tri Hita Karana is not specifically mentioned in Vedic verses. This concept arises from the teachings of Hinduism on how to relate humans to their surroundings and to their creator. In the concept of Tri Hita Karana, dimensions of Parhyangan, Pawongan, and Palemahan are regulated. Parhyangan represents a harmonious relationship between humans and the divine, where humans are expected to have a spiritual connection with God, and every activity is driven by a spirit of devotion to God. Humans realize their essence as atman or spiritual beings who must always be connected to their source, namely God. Pawongan represents the concept of harmonious relationships between humans, as fellow creations of God who have equal rights and obligations, fostering a universal brotherhood among human beings. Palemahan represents the concept of human relationships with nature, where humans are expected to have responsibilities towards nature in managing it, ensuring not only its utilization but also its conservation.

The logical consequence of the Tri Hita Karana concept is that the position and management of inherited wealth in customary law are not solely commercial, as is commonly thought in modern Westernized societies. Adhering to customary practices in indigenous communities correlates with their religiosity or religious law. As explained by the theory of *receptio in complexu* popularized by Lodewijstian van den Berg, it is asserted that unless proven otherwise, native law adheres to its religion, because embracing religion entails faithfully following its religious law. If a community adopts a particular religion, then its customary law becomes the law of the religion it adopts. Any deviations from the religious law embraced are considered exceptions or deviations from the received religious law in its entirety.

In Bali, the customary inheritance law system used is the mayorat system, where inheritance is transferred as a unified entity without division, with ownership rights bestowed upon specific children, for example, the eldest son. In the Balinese mayorat inheritance system, it is depicted that only one child inherits, namely the eldest son, who has the rights of use,

management, and full control over its proceeds, with the rights and responsibilities to care for and maintain his younger siblings.

2.2 The dynamics of women's status in Balinese customary inheritance law

Indonesian society is characterized by its diversity, encompassing various ethnicities, religions, races, and intergroup relations (SARA), which later unite under the Pancasila State unity since August 17, 1945. Customary inheritance law applies to native Indonesians. Inheritance law is a part of customary law. The implementation of customary inheritance law varies in different regions of Indonesia. For example, customary inheritance law in Bali, customary inheritance law in Minangkabau, customary inheritance law in Java, and customary inheritance law in Kalimantan.[7]

Customary inheritance law in Bali is influenced by the patrilineal kinship system. The patrilineal system is a kinship system that considers descent through the male line, which entails the transmission of inherited wealth. This means that inherited wealth is passed down to male descendants. Sometimes, daughters can also inherit. Women who marry into another family are referred to as *Sentana Rajeg*, meaning they change their status to that of a male in legal terms. Men in such marriages also change their legal status to that of a female. This change of status applies in customary law.[8] The prevailing marriage system in Bali is exogamous marriage, where a daughter marries and becomes a member of her husband's family, and children born from such marriages follow the father's lineage. Conversely, *nyentana* marriage operates oppositely, with men joining the women's family. Children born from such marriages follow the mother's lineage. The *nyentana* marriage system is one effort to maintain the implementation of the patrilineal system in Bali.

In Balinese society, inheritance assets (inheritance objects) are distinguished into two categories, namely ancestral assets (with magical-religious value) and/or tangible assets (with economic value). Similarly, among the heirs (inheritance subjects), two distinctions are made: *predana* heirs and/or *purusa* heirs. Why *predana* heirs, not women? This is because women are not always *predana*, and conversely, *purusa* are not always men.

The *purusa* system, which is adhered to by traditional Balinese society, is based on patrilineal kinship, meaning that only males have absolute authority within a family, while women, due to marriage which requires them to join their husband's family, are thereby excluded from their original family. Consequently, women in Balinese customary inheritance law are not considered, or simply put, Balinese women do not have inheritance rights unless they are designated as *Purusa*.

The customary inheritance division in Bali is based on the *puruse* rule, where inheritance rights are based on both patrilineal and matrilineal descent lines. However, the practice of inheritance division can vary between *banjars* (local administrative units), with some *banjars* applying different *awig-awigs* (local regulations). Balinese women often face conflicts in customary inheritance, where they find themselves under social pressure to adhere to traditions that exclude them from inheritance rights. In the midst of these conflicts, Balinese women begin to seek alternatives by using civil inheritance law, which provides broader legal protection for their rights. Factors driving the use of civil inheritance law by Balinese women include the desire for justice, encouragement from an increasingly open social environment, and awareness of their rights in the context of human rights.

The exclusion of women in the customary inheritance law system in Bali suggests that Balinese customary law treats Balinese women unfairly. This condition contrasts with Hinduism, the foundation of customary law in Bali, where the status of women in Hinduism is

highly esteemed and respected. Thus, in modern times, Balinese women increasingly choose to settle inheritance matters through civil inheritance law in accordance with the KUHPperdata.

Women in Bali are generally not positioned as heirs, either to their husband's property or their parents' property. This condition arises because men are seen as the bearers of obligations towards their parents, religion, and customary duties within the social fabric. Women in Bali can only enjoy inheritance from their husbands or parents, but they cannot own it. In the social structure of Balinese society, the position of men is indeed more dominant than that of women. This legal system with male dominance places women in a subordinate position. Therefore, this implies that Balinese customary law applies discrimination against women in terms of inheritance.

In essence, the position of women is also protected in the inheritance of Balinese customary law. This is because the position of women is as *purusa* or *sentana rajeg*. Women who become *sentana rajeg* have a position similar to that of a son. Furthermore, the position of women in Bali is strengthened by *Pasamuhan Agung III*.

During the *Pasamuhan Agung III* session of the Main Council of *Pakraman Village* in Bali, a decision was made regarding the rights of husbands, wives, and children to ancestral property and acquired assets. In this decision, it is stated that husbands, wives, and their brothers have equal positions in ensuring that ancestral property can be passed on to children and grandchildren to preserve or perpetuate non-material heritage. During marriage, husbands and wives also have equal positions regarding assets acquired during marriage. Biological and adopted children who are unmarried have equal status regarding the assets acquired by their parents. They are entitled to these assets after deducting one-third as common property, managed by the child continuing their parent's responsibilities. Children with the status of *kapurusa* are entitled to a portion of the inheritance, while those with the status of *pradana/ninggal kadaton* are only entitled to a portion or half of the inheritance received by children with the *kapurusa* status. In the distribution of inheritance, unborn children have the same rights as born children, as long as they are born alive. Adult children do not have inheritance rights but may receive provisions from their parents' assets without prejudicing the heirs.

Developments have shown that the position of women, especially daughters, as heirs has begun to be considered by traditional figures in Bali. Decision Number 01/KEP/PSM-3/MDP Bali/X/2010 issued by the *Pasamuhan Agung Majelis Utama Desa Pakraman Bali* on October 15, 2010, grants inheritance rights to daughters with limited *ninggal kadaton* status. Those classified as having limited *ninggal kadaton* status have the potential to receive a share of the inheritance based on the principle of *ategen asuwun* (two to one), along with their siblings who have *purusa* status. The concept of limited *ninggal kadaton* refers to those who have passed away but still have certain limitations in fulfilling *swadharma* (religious duties) as followers of the Hindu religion. In the context of this Decision, those with limited *ninggal kadaton* status include women in ordinary marriages, men in *nyentana/nyeburin* marriages, individuals adopted as children (*kaperas sentana*) by other families according to Hindu teachings and Balinese customary law, as well as those who voluntarily surrender themselves (*makidihang raga*) to other families of their own volition.

Despite the provisions mentioned above, many Balinese women still resort to civil inheritance law to resolve inheritance issues. (Wayan P. Windia, 2017) However, inheritance according to Balinese customary law is not synonymous with dividing the inheritance of parents and ancestors by heirs, but rather involves the preservation, management, and continuation of *swadharma* (responsibility) and *swadikara* (rights) over the inheritance in various forms and qualities. [19]

If disputes over inheritance distribution are resolved according to customary inheritance law, then the applicable inheritance law should be the inheritance system of the respective regional customary law. However, many inheritance dispute resolutions do not go through customary law. For instance, in Supreme Court Decision Number 257 K/Pdt/2019, it was demonstrated that customary inheritance law in Bali in that case had shifted over time in the current era, where the mayorat system should apply in the inheritance distribution. However, the judge in resolving the customary inheritance dispute decided that the inheritance distribution should be done with an individual system where each heir receives their own share. Therefore, with such a judicial decision, it can be said that the application of customary inheritance law has undergone changes in recent years.

Subsequently, this is reinforced by the logical consequences of the dimensions of the heir, heir, and inheritance, thus the essence of Balinese customary inheritance law only applies to Balinese people who adhere to Hinduism, whether residing in Bali or outside Bali. Therefore, for Balinese people who convert religions (ninggal kedaton), it generally does not apply and they are not entitled to inherit under Balinese customary law. If the inheritance is given to the individual as a pure gift (jiwadana/hibah) because in Balinese customary law, an heir not only obtains rights but also religious obligations simultaneously.

3 Conclusion

Inheritance law in Indonesia encompasses three legal systems, one of which is customary inheritance law. Customary inheritance law is still applied in Bali to this day, influenced by the kinship system deeply rooted in Balinese culture. However, in the modern era, changes in customary law systems, especially in Bali, have been observed, particularly regarding inheritance for Balinese women. Essentially, Balinese customary inheritance law operates on a patrilineal kinship system, resulting in a focus on male heirs in Western customary inheritance law. Consequently, Balinese women feel disadvantaged and resort to civil law to settle their inheritance issues, leading to the gradual weakening and eventual oblivion of customary inheritance law.

The position of women in customary inheritance law has undergone significant changes, yet fundamentally, women's status as heirs remains valid in Balinese customary inheritance law. This is supported by Decision Number 01/KEP/PSM-3/MDP Bali/X/2010 issued by the Pasamuhan Agung Majelis Utama Desa Pakraman Bali on October 15, 2010. Therefore, it is appropriate for the Balinese Hindu community, both residing in Bali and elsewhere, to continue adhering to Balinese customary inheritance law as the primary rule in settling their inheritance issues. This is because women's rights are guaranteed and cultural preservation is ensured through compliance with and adherence to customary law, especially Balinese customary inheritance law.

Based on the statement above, there is a need for specific regulations regarding legal choices in inheritance. These legal choices are focused on the selection of law by the testator as an expression of their absolute right in inheritance. This is because the testator is the owner of the inherited property, so the applicable law is the one chosen by the testator. This regulation is expected to maintain the existence of the testator's legal rights.

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