

Evolution of Balinese Customary Inheritance: The Role and Status of Hindu Women in Inheritance Rights

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Abstract: Customary law originates from habits and actions that grow and develop within the customary community order, which are unwritten but adhered to and obeyed by customary law communities from generation to generation. Males can inherit, while females are not allowed to own inheritance. Females can only benefit from it as support without owning the inheritance. Based on the background discussed above, the following problems can be formulated: What is the current position of women in terms of inheritance in Bali? Moreover, What factors influence the shift in inheritance matters in Bali? The legal research methodology used is empirical juridical. The position of Hindu women in Balinese customary law can be inherited if they hold the status of “*sentana rajeg*” or “*purusa*”. If a Hindu woman holds the “*sentana rajeg*” status, she can become an heir. The factors influencing the position of Hindu women are the Denpasar High Court Decision Number 81/PTD/1976/Pdt, Denpasar High Court Decision Number 2/PTD/1979/Pdt, Supreme Court Decision Number 100/Sip/1967, and the Decision of the Third Pesamuhan Agung of the Main Assembly of Pakraman Villages in Bali (Number 01/KEP/PSM-3/MDP Bali/X/2010).

Keywords: position of Hindu women, inheritance system in Bali.

1. Introduction

The usual practices and behaviors that evolve and develop within the framework of indigenous communities give rise to customary law [1]. These customary practices and behaviors are not written down but observed and adhered to by communities that follow customary law from one generation to the next [2]. The community's enforcement and application of punishments if community members disobey these rules is a result of the ongoing evolution of these local customs. As a result, customary law is a collection of rules that control the behavior of indigenous people. These laws are often unwritten and involve punishments for those who violate them. The presence of customary law is widely acknowledged, as demonstrated by Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia, which was ratified in 1945 and states: The state respects the units of indigenous and tribal peoples along with their traditional rights as long as they remain in existence and are by the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law [3].

As long as the rules that are contained within customary law do not conflict with the laws that are already in place at the national level and are by the provisions of the Constitution of 1945 and Pancasila, this provision demonstrates that Indonesia is a legal state that respects the plurality of laws that are applicable in the country, including customary law. The state would acknowledge and respect the cohesiveness of communities that adhere to indigenous legal systems. This acknowledgment encompasses the customary rights that are held in Indonesia.

The indigenous community of Bali adheres to a significant inheritance system and a patrilineal kinship system [4]. There is a disparity in the places that males and females have in the inheritance system as a consequence of the patrilineal kinship system, which is a lineage system that originates from the male or father's side. It is more appropriate for the guy to hold a higher position than the female. Even though she is a biological kid born from a legal marriage, a daughter does not receive an inheritance. This is because when a daughter marries, she often follows her husband's lineage. Due to the fact that the majority of Balinese people subscribe to Hinduism, this inheritance system is affected by the concepts found in the *Manawa Dharmasastra*, which is one of the legal scriptures for Hindu devotees. From a practical standpoint, male offspring will be the ones to inherit heirs or property that has been inherited [5].

Because customary law in inheritance is prejudiced, problems and disputes about inheritance develop due to sentiments of jealousy and perceptions of unfairness in inheritance distribution. As a result of the patrilineal nature of the kinship system in Bali, daughters are regarded as being of lower status than boys. In the context of inheritance, males are seen as being of superior quality. Males have the right to inherit. However, females do not have this right. All that is required for females to profit from the inheritance for their livelihood is not possessing it.

2. Research Methods

In its simplest form, methodology is derived from the words “method” and “logy”. A method is a way of doing something systematically, whereas “logy” refers to a science founded on

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logical reasoning [6]. The science of carrying out a task methodically is referred to as methodology. The scientific approach of conducting research systematically is referred to as research methodology. The term “legal research methodology” refers to the branch of study that focuses on the systematic conduct of legal research. Empirical juridical study is the methodology that is utilized in legal research. In the field of law, empirical research is a type of research that examines how the law is applied to real-world situations, including persons, groups, and legal institutions. The execution of normative legal provisions in action on every individual legal event in society is known as empirical juridical legal research by legal scholars [7].

On the other hand, empiricism is a method of conducting legal research using empirical facts derived from human behavior. These facts can be verbal behavior gained through interviews or actual behavior observed through direct observation. Studying the actual situation in society, which is the process of finding facts connected to difficulties in the research, is the straightforward way this type of technique is carried out. The specification of this particular piece of legal writing research is descriptive-analytical research. This type of research seeks to create a picture as exact as possible of humans, conditions, and other symptoms or a study that seeks to solve problems by gathering, assembling, analyzing, and interpreting data.

3. Results and Discussion

Ter Haar (1960) thinks the term “customary inheritance law” refers to a collection of legal guidelines that govern the process of passing on money from one generation to the next, regardless of whether the wealth is tangible or intangible. The following are the three absolute elements of inheritance recognized by customary inheritance law: there is an inheritance or legacy; there is a testator who leaves the inheritance; and there are heirs who can continue to manage it or parties who can receive the inheritance.

The Patrilineal Kinship System, the Matrilineal Kinship System, and the Parental Kinship System are today’s customary inheritance systems. In the patrilineal kinship system, the male side of the family is used to determine the family’s lineage [9]. The male side, more often referred to as the father’s lineage, is regarded as heirs via this system. On the other hand, the female side is not considered heirs, resulting in daughters not inheriting from their dads. The bride is required to leave her family name and join the family of the husband in order to participate in this kinship system, known as the “bride price” marriage system. This system requires the groom’s side to pay the bride’s side for the marriage to occur. This leads to a consolidation of assets, including assets owned before marriage, initially owned, and jointly owned by the spouse [10].

A kinship system that is based on the mother’s side is known as the Matrilineal Kinship System [11]. In this system, the lineage is passed down through the mother, and all children, except sons, inherit land. Both the father’s and mother’s sides of the family are considered part of the kinship of both parties in the Parental Kinship System. This is because the lineage is

drawn from both sides of the family. Furthermore, this applies to their offspring, who are of similar standing in inheritance; hence, there is no differentiation between sons and daughters. According to the explanation above, the Patrilineal Kinship System is utilized in Bali, where males are placed in a more prominent role than females.

According to the Patrilineal Kinship System, marriages in Bali are conducted according to the bride price system, also known as “*pebaang*”. *Pebaang* is a type of offering that is given to the bride as a way of recognizing her acceptance into the family of the groom. This giving may be a set of garments or other symbols. Within the Indigenous population of Bali, there is a word known as “*kapurasa*”, whereas daughters transform when they follow their spouses. Consequently, daughters are not considered to be heirs in this context. In addition, heirs are responsible for not only the distribution of inheritance but also the continuation of the duties the testator undertook. The belief that sons are the true heirs, also known as “*sentana*”, is based on the belief that they continue all sorts of obligations to their parents, the community, and religion [4].

On the other hand, daughters still have the opportunity to obtain assets from their parents, but solely for their personal use. Whenever there are no men in the family lineage, daughters can inherit. It is possible for daughters to have the same legal standing as males (also known as *sentana rajeg*) [12]. Parents can adopt a *sentana rajeg* if they only have a daughter or if they have a single kid who is a daughter [13]. If a daughter is considered to have the status of *sentana rajeg* she will propose marriage to a man, and the man will leave his family lineage to become a member of the daughter’s circle of relatives.

- a. According to the decision number 81/PTD/1976/Pdt issued by the Denpasar High Court, the *sentana* by Balinese Customary Law is the heir of their adoptive parents. Therefore, for a daughter to inherit, she must perform the ritual known as *sentana rajeg* and select the *kaceburin* marital form.
- b. Decision Number 2/PTD/1979/Pdt of the High Court situated in Denpasar
- c. Supreme Court Decision Number 100/Sip/1967 emphasizes that society has grown and developed, namely in relation to the equality of rights and obligations between men and women. This is something that has been established in law, and it is possible for women or widows to be named as heirs.
- d. By the decision made by the Third Pesamuhan Agung of the Main Assembly of Pakraman Villages in Bali (Number 01/KEP/PSM-3/MDP Bali/X/2010)

4. Conclusion

It is possible to conclude that Hindu women’s position in Balinese customary law can be inherited if they possess the status of *sentana rajeg* or *purusa*. This conclusion can be reached based on the topic that was presented earlier. If a Hindu woman is able to achieve the position of *sentana rajeg*, she is eligible to inherit property. Nevertheless, if she does not possess the status of *sentana rajeg*, she can only acquire assets from her parents to sustain her survival. Several decisions, including the

Supreme Court Decision Number 100/Sip/1967, the Denpasar High Court Decision Number 81/PTD/1976/Pdt, the Denpasar High Court Decision Number 2/PTD/1979/Pdt, and the Decision of the Third Pesamuhan Agung of the Main Assembly of Pakraman Villages in Bali (Number 01/KEP/PSM-3/MDP Bali/X/2010), have had an impact on the position of Hindu women.

The Indigenous community ought to provide additional clarification regarding the position of Hindu women in matters pertaining to inheritance. This is necessary to ensure that the *sentana rajeg* inheritance status for women is applied consistently across all regions of Bali.

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