

The Dynamics of Women's Position in Bali Customary Inheritance Law

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ABSTRACT

Balinese customary inheritance law refers to a patrilineal family system that follows the *kapuruasa* principle. In Bali, a woman is not an heir, but it is possible to become an heir if her parents have given her *purusa* status as *sentana rajeg*. The position of women according to Balinese customary law of inheritance has developed according to the situation in society. Initially, based on mere habit, Balinese women were not taken into account in terms of inheritance. The method used in this study is a normative juridical research type with a statutory and conceptual approach and uses primary and secondary legal materials supported by interviews with informants. The results of the study showed that after the *Paswara* 1900, Balinese Hindu women were determined as the party who received the inheritance, only in practice it did not take place according to the norm because the principles developed in people's lives as contained in the *awig-awig* were still the *limeusa* principle so that women who were *predana* did not get an inheritance. Furthermore, in the 2010 era, there was a breakthrough made by the *Majelis Utama Desa Pakraman* (MUDP) Bali with its Decree Number: 1/Kep./Psm-3/MDP.Bali/X/2010 stipulates the status of Balinese Hindu women as parties who have rights to *Gunakaya* property. His parents as limited heirs with half of the male share. In practice, it is also almost the same as in previous times. There. There are still obstacles because, in each traditional village, there is *awig-awig* which regulates inheritance based on *kapuruasa* principle.

Keywords: *Balinese Hindu women, Customary law of inheritance, Dynamics, Gender equality.*

1. INTRODUCTION

The term inheritance law (West) comes from the Dutch language, namely *erfrecht*. The regulation of inheritance law is contained in Article 830-1130 of the Civil Code and is placed in Book II regarding objects for the following reasons:

- a. Inheritance rights are identified with material rights as regulated in Article 528 of the Civil Code;
- b. Inheritance rights to obtain material rights, which are formulated in Article 584 of the Civil Code. (Rahman Syamsyudin, 2019: 127)

The placement of inheritance law in Book II of the Civil Code caused a reaction from legal experts that in inheritance law, there are not only legal aspects of objects but other legal aspects. However, it cannot be denied that inheritance law is included in property law. (Surini Ahlan Syarif and Nurul Elmiyah, 2006: 6)

Inheritance means everything related to inheritance. Inheritance in society's perception in general means the assets left by the heirs (parents or ancestors) to the next generation. According to Balinese customary law,

inheritance essentially means all *swadharna* (responsibility or obligation) both to the family and to the community (traditional village) and *swadikara* (rights), as well as *arta brana* (wealth) left by the heir to the heirs to the heirs. Which should be taken care of and passed on to the next generation of heirs. The word inheritance (Bali) comes from the word *warih*, which means urine or offspring. Balinese indigenous people. In the beginning, Balinese indigenous people were still confused about inheritance, and there was inheritance which meant children or descendants, it could also mean wealth left by someone who died, it could also mean heirs and even interpreted as a responsibility that must be carried out (Windia, 2019:117-118).

According to Hilman Hadikusuma, customary law of inheritance rules governing how inheritance or inheritance is passed on or divided from heirs to heirs and from generation to generation (Hilman Hadikusuma, 2014: 203).

The history of Balinese customary law in inheritance, which is regulated in writing, began during the Dutch colonial period in 1900. At that time, an

inheritance *Paswara* (regulation) was made by the Dutch colonial government, in this case, the Resident of Bali and Lombok (with Liefreynck as Resident), known as the Resident of Bali and Lombok *Paswara* 1900. Initially, *Paswara* 1900 was only applied to Balinese Hindu residents from Buleleng Regency, but in its development in 1915, *Paswara* was also applied to residents of South Bali. *Paswara* 1900 regulates two issues of customary law, namely inheritance and adoption. (Sukerti, 2020: 206). This means that since then, Balinese people have had regulations regarding inheritance, the position of women at that time was still not as heirs.

2. METHOD

The method used in this study is a normative juridical research type with a statutory and conceptual approach and uses primary and secondary legal materials supported by interviews with informants.

3. RESULT AND DISCUSSION

3.1 Responsibilities of Heirs according to Balinese Customary Law

Before looking at the heirs in Balinese customary law, it is better to convey the existence of customary law during state law. The ethicist's view that state law is the only normative rule that can genuinely be called law is based on the modern theory that draws a clear line between modern and pre-modern times. A national legal system characterizes the modern legal system, and the law is directly related to the state. However, according to Van Den Berg, it does not mean that state law can be dominant anytime and anywhere.

State law cannot always be viewed as entirely different from other normative rules, so it is impossible to compare because there is room for different possibilities. That is where there is space for legal pluralism (Keebet von Benda-Beckmann, 2005: 27-29).

The concept of legal pluralism refers to more than one legal system that is jointly located in the same social field. Sally Engle Merry (1988) says: generally defined as a situation in which two or more legal systems coexist in the same social field. Griffiths (1986) suggests: By legal pluralism, I mean the presence of more than one legal order (Ibid).

In the concept of legal pluralism, on the one hand, there is state law. On the other hand, people's law also grows and develops, not a state-made law, but a law born from a sense of people's statements, which consists of customary law, religious law, and law. Habit. Regarding the existence of the folk law system, Griffiths further stated: Legal pluralism is the fact, Legal centralism is the mythan ideal, a claim, an illusion, Legal pluralism is the social state of and it is a characteristic which can be predicted of a social group (Sulistiyowati Irianto, 2003: 67).

The ethical theory views the law as the maximum possible embodiment of justice in the social order. Hans Kelsen sees law solely for justice (Hans Kelsen, 1971: 12). While Aristotle, justice is divided into distributive justice and corrective or remedial justice (Friedman, 1990: 10). Distributive justice refers to distributing goods and services to everyone according to their position in society. In contrast, corrective (commutative) justice is justice to everyone equally regardless of their service or role in society.

Balinese customary law distinguishes the notion of inheritance from heirs, causing the emergence of differences in inheritance elements between civil (Western) law and elements of inheritance according to Balinese customary law. The elements of inheritance according to civil law consist of heirs, heirs, and inheritance. Meanwhile, according to Balinese customary law, the elements of inheritance consist of heirs, heirs, heirs, and inheritance (Windia, 2019: 118).

Heirs are people or previous generations who leave an inheritance to the next generation. Inheritance is all *swadharma* (responsibility) both to the family or to the community and *swadikara* (rights), as well as *arta brana* (wealth) left by the heir that should be taken care of and passed on to the heirs (next generation). Inheritance is assets and responsibilities in the form of mandatory work to create genuine or unreal peace (belief) from ancestors to their descendants. Inheritance means descendants or other family members within certain limits according to the *undagan* (upper and lower generations) and *lingsehan* (generations aside) families in order. Heirs are descendants or other family members within certain limits who have the right to inheritance (Windia, 2019: 119).

Based on this, it can be said that according to Balinese customary law, not all descendants (inheritance) are heirs. Descendants, including heirs, are only descendants carrying out and/or continuing all the *swadharma* (obligations) of the heir. *Swadharma* heirs are generally contained in every *awig-awig* traditional village in Bali, determined as follows:

Swadharmaning sang patut ngawarisin:

- (a). *Nerima saha ngutsahayang tatamiyan pahan saking keluhurannya, minakadi ngempon sanggah, pura dadya saha pangukarannya muwah neledinin ayah-ayahan pewaris;*
- (b). *Ngabenang pewaris saha upacara-upacara selanturnyane;*
- (c). *Nawuring hutang-hutang pewaris* (Awig-Awig Sengkidu, 2007: 68, 69).

The meaning of free is:

The heirs' obligations are:

- a. receive and manage the inheritance of the heirs, such as maintaining the worship studio and Pura dadya and performing the obligations properly;

- b. perform the beneficiary ceremony and subsequent ceremonies;
- c. pay the heirs' debts.

Similarly, what is contained in the Manual/Technical Preparation of Awig-Awig and Traditional Village Decrees published by the Bureau of Law and Human Rights of the Regional Secretariat of Bali Province in 2002, stipulates that:

Swadharmaning ahli waris patut:

- (a). *Nerima saha nguwasayang tetamian pahan kaluhurannya, mekadi ngerempon sanggah/merajan, pura saha pangupacarannya miwah ayah-ayahan pewaris;*
- (b). *Ngabenang pewaris saha nglanturang upacara-upacara pitra yadnya;*
- (c). *Naurin utang-utang pewaris manut pangelokika.*

The meaning of free is:

Responsibilities of the heirs:

- a. receive and manage their ancestral heritage, such as maintaining a worship studio, existing temples, and all their series of ceremonies or the obligations of the heirs;
- b. give the heir and carry out all the *pitra yadnya* ceremonies;
- c. pay the debts of the testator as appropriate.

Based on the sources and quotations above, it can be said that the responsibility of the heirs is not tiny and quite heavy because it includes many obligations ranging from maintaining the holy place with all its ceremonies, including mandatory work, performing ceremonies, and performing ritual ceremonies to worshiping ancestors and paying off all debts.

Descendants who have carried out *swadharma* properly have the right (*swadikara*) to the inheritance left by their parents or ancestors; this is called an heir. Thus, according to Balinese customary law, not every descendant (child born) can be called an heir. The heirs are only descendants (children) who carry out *swadharma* as Hindus properly towards their families and communities in traditional villages. Descendants who do not allow carrying out their responsibilities cannot be included as heirs, and their inheritance rights are void (Windia, 2019: 121)

3.2 The Development of the Position of Balinese Women in Inheritance

Since the past, the Balinese Hindu community has implemented an inheritance system that adheres to the limestone principle. This is inseparable from the family system of Balinese society, which adheres to the lineage of the male (father) side. This principle determines that the heirs are male descendants, while the women are not taken into account and are excluded as heirs because their marriage leaves their parents. This situation lasted until 1900 because since that year, the colonial government, especially the Residents of Bali and Lombok, issued a

regulation (*paswara*) on October 13, 1900, concerning "Inheritance Law Applicable to Balinese Hindu Residents from Buleleng Regency," known as *Paswara* 1900.

After *Paswara* 1900, there was a change in the field of inheritance in the Hindu community in Bali, even though it only applied to Balinese Hindu residents from Buleleng Regency (North Bali). In 1915 *Paswara* 1900 was also applied to residents of South Bali. So the inheritance of the Balinese Hindu community before 1900 was only based on habits because there were no regulations governing inheritance that could be used as guidelines by the community (Sukerti, 2020: 204). Therefore, 1900 can be used as an essential milestone in inheritance for the Balinese Hindu community. From then on, the issue of inheritance began to appear transparent in writing.

Based on the provisions of Article 3 paragraph (2) *Paswara* 1900, it means that since the existence of this regulation, Balinese Hindu women have normatively started to be counted as heirs with half the share of men. Even though there are such regulations, what is practiced by the community is still the same as before. Namely, women still do not get a share of the inheritance. This is most likely the Balinese indigenous people are still accustomed to applying the *kapurusa* principle (only men are given inheritance because they carry responsibilities in the family and society).

Based on the quote from the *awig-awig* provision above, it is evident that according to Balinese customary law, women are not determined as parties who have the right to the inheritance of their parents unless the woman is located as a *sentana rajeg* (given legal status so that her position is equal to that of a son).

Along with the development of the times, there has been a new milestone in Balinese indigenous peoples, especially against Balinese Hindu women in the field of inheritance, namely the holding of the *Pesamuhan Agung* (a large meeting of a kind of congress), which was attended by all 1493 traditional villages in Bali which are the *Majelis Alit Desa Pakraman*. The Agung III, MUDP Bali congregation, resulted in a breakthrough, namely trying to update the Balinese customary law of inheritance, especially for Balinese Hindu women whose customary law system has been marginalized for years.

The Great *Pesamuhan Agung* stipulates the Decision of the Bali Provincial *Pakraman* Village Main Assembly (MUDP) Number: 1/Kep./Psm-3/MDP Bali//X/2010 Dated October 15, 2010, concerning the Great *Pesamuhan* III MUDP Bali results. An essential point of the Bali MUDP Decision, especially in the field of customary law, is the position of Balinese women in the family and inheritance, as stated in point 4 of the decision, which determines as follows: "Biological children (boys or girls) and adopted children (boys or girls) are entitled to the assets of their parents, after being deducted by one third as the *duwe Tengah* (joint property) controlled by children who

are *nguwubang* (continuing the responsibilities of their parents). In point 5, it is determined: "Children with the status of *lime* are entitled to one part of the inheritance, while those who are *predana* / live in limited *ninggal kedaton* are entitled to part or half of the part of the inheritance received by the *purusa*.

Based on the Bali MUDP decision above, it can be interpreted that normatively Balinese women are no longer marginalized because it has been determined to get half of the men's share, provided that the person concerned is still Hindu. If the Balinese woman changes her belief from Hinduism, she will be classified as a person who has left the full *ninggal Kedaton* so that her rights as heirs are nullified.

Although there has been a decision by MUDP Bali that places Balinese Hindu women as those who have rights to their parents' inheritance, it is also not easy in practice. Indigenous Balinese people are not easy to change the mindset that has been attached for years. In addition, Balinese Hindu women have a perspective that does not like to demand rights without carrying out the obligations and responsibilities. Based on the research results on several traditional village heads, the main reason for the non-optimal implementation of the MUDP Decision in the community is that the customary village *awig-awig* still regulates the distribution of inheritance based on *limeusa*, and the decision has not been socialized to the community.

4. CONCLUSION

The position of women according to traditional Balinese inheritance law has developed according to the situation in society. Initially, based on mere habit, Balinese women were not taken into account in terms of inheritance. After the *Paswara* 1900, Balinese Hindu women were determined as the party who received the inheritance, only in practice it did not take place according to the norm because the principles developed in people's lives as contained in the *awig-awig* were still the *limeusa* principle so that women who were *predana* did not get an inheritance. Furthermore, in the 2010 era, there was a breakthrough made by the Bali *Pakraman* Village Main Council (MUDP) through its Decree Number: 1/Kep./Psm-3/MDP.Bali/X/2010 establishes the status of Balinese Hindu women as parties who have rights to *Gunakaya* property. His parents as limited heirs with half of the male share. In practice, it is also almost the same as in previous times. There are still obstacles because, in each traditional village, there is *awig-awig* which regulates inheritance based on *kapurusa* principle.

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