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# Juridical Review of the Position of Balinese Women in Inheritance from the Perspective of Balinese Customary Law

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**Abstract.** Women are legal subjects who are still subject to discriminatory treatment, one of which occurs in the case of inheritance as happened to women in Bali because the inheritance system in Bali uses a patrilineal system. In family law and inheritance where Hindu law emphasizes the rights and obligations of sons with purusha status. So that problems arise related to the position of Balinese women in inheritance matters. The formulation of the problem in this issue is: (1) What is the inheritance status of Balinese women in the perspective of Balinese customary law, and (2) What is the inheritance status of Balinese women in the perspective of Human Rights (HAM). This research is a doctrinal research using primary, secondary and tertiary legal materials. The technique of collecting legal materials is carried out by studying documents using a statue approach, a fact approach, and an analytical conceptual approach. The results of this research are: First, according to Balinese Customary Law, women can receive inheritance or become heirs as long as their marriage status is Purusha. However, in its development, Balinese women are entitled to inheritance based on the Keputusan Pesamuan Agung III MUDP Bali No. 01/Kep/PSM-3MDP Bali/X/2010, 15 October 2010. Second, the Law of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights and the Convention on The Elimination of All from Discrimination Against Women does not regulate whether or whether or not women are heirs or whether or not women are entitled to receive inheritance. So that in this case the determination of whether or not women, especially in Bali, to inherit is focused on the aspect of Balinese Customary Law as a form of recognition of the Customary Law Community Unit which is regulated in the Constitution.

**Keywords:** Women; inheritance; balinese customary law

## INTRODUCTION

Women, from a juridical perspective, are legal subjects who, until today, still face discriminatory treatment in several aspects of life. In fact, the government has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) and has also enacted several laws and regulations that provide protection for women (Sukerti & Ariani, 2014). Moreover, the Indonesian Constitution regulates the principle of equality before the law as stipulated in Article 27 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). However, within the customary communities in Bali, there remains a distinction between the position and role of women and men in Balinese customary law, which is still recognized today, since the state continues to highly respect the customs and traditions that exist in Indonesia. This is as stipulated in Article 18B paragraph (2) of the 1945 Constitution, which states that: "The state recognizes and respects units of customary law communities along with their traditional rights as long as they remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

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Based on the theory of Receptio in Complexu, it can be said that Balinese customary law, as applied in society, represents a comprehensive reflection of Hindu religious law (Pradnya, 2017). As a manifestation of this, there are the terms *purusha* (male) and *predhana* (female), which are commonly found in family law, marriage law, and inheritance law. Within Bali's patrilineal system, the position of men and women is clearly distinguished, particularly in terms of inheritance distribution. Inheritance in the conception of civil law is something passed down, whether in the form of property, good name, and others left behind by the deceased. In Balinese customary practice, inheritance is not limited to family property but also includes community rights, such as rights over *karang desa* land (village communal land) attached to one's status as a member of the village community, rights to use the *setra* (cemetery), and rights to worship at the *Pura Kahyangan Desa* (village temple) (Windia, & Sudantra, 2006).

In practice, a phenomenon often arises in Bali where discriminatory issues occur regarding inheritance, particularly against women. This is due to the inheritance system in Bali adhering to a patrilineal system, or a kinship system based on the paternal/male lineage (Windia, 1995). In family and inheritance law, Hindu law emphasizes more on the rights and obligations of sons, who hold *purusha* status. Thus, in matters of inheritance, *purusha* has a very significant role, since in traditional views that still strongly dominate Balinese society, heirs are male or *purusha*. This gives rise to problems concerning the position of Balinese women in inheritance matters. This paper, entitled The Inheritance Status of Balinese Women in the Perspective of Balinese Customary Law and Human Rights, will examine whether Balinese women are entitled to receive inheritance.

Based on the background explanation above, the research problems can be formulated as follows: What is the inheritance status of Balinese women from the perspective of Balinese customary law? And What is the inheritance status of Balinese women from the perspective of Human Rights?

## METHOD

This research employs the doctrinal research method (Marzuki, 2008). Doctrinal research is a type of study that produces a systematic explanation of legal norms governing a particular category of law, which in this case analyzes the relationship between legal norms, explains complex legal areas, and also provides a projection in the form of predictions regarding the future development of legal norms (*ius constituentum*).

This research also utilizes legal materials consisting of primary, secondary, and tertiary legal sources. The primary legal sources used are laws and regulations in force at both the national and local levels (Soekanto & Mamudji, 2007). In addition, this journal also employs secondary legal sources, including literature, journals, and scholarly works that are relevant to the issues under study (Soekanto & Mamudji, 2007). The tertiary legal sources used include dictionaries, which serve to translate foreign terms that require interpretation.

The technique of collecting legal materials is carried out through document studies by tracing, reading, and taking notes of essential content from literature related to the research problem (Sudikni, 1983). This research also adopts several approaches to provide clarity in presenting the substance of scientific work. The approaches employed in this study include the statutory approach, the factual approach, and the analytical-conceptual approach (Marzuki, 2008).

## DISCUSSION

### The Conceptualism of *Purusha* and *Predhana* in the Context of Balinese Customary Law

In this regard, the scope of inheritance for Balinese women cannot be separated from the discussion of *purusha* and *predhana*, which are explicitly reflected in marriage law. This includes the forms of marriage (*kawin keluar* and *kawin nyeburin*), marriage ceremonies, as well as the rights and obligations of husband and wife after marriage. The status of *purusha* and *predhana* for a man or woman depends on the form of marriage undertaken.

Generally, the most common form of marriage among the Balinese is *kawin keluar*, which means that the bride leaves her family and joins the groom's family. In this case, the groom holds the status of *purusha*. However, in fewer cases, some Balinese practice *nyeburin* or *nyentana* marriage. A *nyeburin* or *nyentana* marriage is a form of marriage in which the groom leaves his family and joins the bride's family. In this case, the groom assumes the status of *predhana*. This form of marriage is carried out with the aim of continuing the *kapurusha* lineage within the bride's family, particularly when the family has no sons (Pradnya, 2017).

After marriage, both husband and wife are obliged to jointly maintain the *sanggah/pamerajan* (family shrine) and worship their ancestors, preserve kinship relations with relatives from the *purusha* side, continue their lineage, and inherit the property of their parents and ancestors in accordance with their status. They are also responsible for fulfilling obligations within the community and jointly performing the *pitra yadnya* (ritual offerings to ancestors) when their parents or grandparents pass away.

### **Inheritance Rights of Balinese Women from the Perspective of Balinese Customary Law and Human Rights**

With regard to Balinese customary inheritance law, several aspects must be fulfilled. An heir (*pewaris*) is a person who leaves behind inheritance. In this sense, the heir may be a child, parent, grandparent, or sibling. In other words, heirs are generally those in a direct upward lineage, such as parents or grandparents who pass away. Since Balinese society adheres to a patrilineal (*purusha*) kinship system, the heirs are those connected through the *purusha* line. Meanwhile, beneficiaries (*abli waris*) are individuals who receive inheritance from the deceased, also linked through the *purusha* lineage. According to Balinese customary law, a beneficiary does not only inherit rights but also the obligations of the deceased.

Inheritance in the form of rights includes ownership of property left by the deceased, such as movable assets (cars, motorcycles, money, jewelry) and immovable assets (land, houses, rice fields, temples). Inheritance in the form of obligations includes, among others, the duty to transfer the inherited property to the next generation, the duty to care for the deceased while still alive, to provide proper rites upon their death, and to worship them once they attain ancestral status at the *sanggah/pamerajan* or *pura kawitan*. In addition, a beneficiary is obliged to continue the social responsibilities (*ayahan*) of the deceased within the *banjar* (community association) or customary village, as well as to maintain social solidarity (*menyama braya*). These rights and obligations are carried out along the *purusha* lineage.

From the traditional perspective that still strongly influences Balinese society, inheritance rights belong to males (*purusha*) (Windia, & Sudantra, 2006), whether sons or daughter. Thus, women may only inherit if they hold *purusha* status, which occurs in the case of *nyeburin/nyentana* marriage. However, if a woman holds *predhana* status, she does not have inheritance rights either from her paternal family or her natal family. In modern practice, however, women with *predhana* status in their families may receive "grants" (*bibah*) from their parents in the form of material assets (houses, land, cars) but not immaterial assets such as the family shrine (*sanggah/kemulan*), customary duties (*ayahan*), or ritual obligations, provided the family is able to give such grants. Women in this context only fulfill customary obligations within their husband's family.

Along with societal developments and shifts in legal paradigms, the *Pesamuan Agung III/2010* (Grand Assembly of the MUDP, the Bali Customary Council) issued a decree concerning the position of husband and wife and children regarding ancestral property (*harta pusaka*) and jointly acquired property (*harta gunakaya*), including the inheritance rights of daughters (both biological and adopted). In brief, according to Prof. Dr. Wayan P. Windia, S.H., M.Si., an expert in customary law at the Faculty of Law, Udayana University, the decision of the *Pesamuan Agung III/2010* states (Hakim, 2012):

Since 2010, Balinese women are entitled to inheritance based on the Decree of the Keputusan Pesamuan Agung III MUDP Bali No. 01/Kep/PSM-3 MDP Bali/X/2010, 15 Oktober 2010, dated 15 October 2010. According to this decree, Balinese women receive half of the inheritance rights of a *purusha* heir, after deducting one-third for ancestral property and preservation interests. Only if Balinese women convert to another religion will they lose inheritance rights. However, if their parents consent, voluntary endowments (*jiwa dana*) or gifts remain possible.

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Thus, it can be concluded that Balinese women have limited inheritance rights, as recognized since the issuance of the Keputusan Pesamuan Agung III MUDP Bali No. 01/Kep/PSM-3MDP Bali/X/2010 on October 15, 2010.

From the perspective of Human Rights, human rights are inherent rights that stem from the nature and existence of human beings as creations of God, which must be respected, upheld, and protected by the state, law, government, and all individuals for the sake of dignity and humanity. Women's rights are fundamental and are recognized in Law No. 39 Year 1999 on Human Rights (hereinafter referred to as the Human Rights Law) as well as in CEDAW with respect to social and cultural rights. However, the Human Rights Law primarily emphasizes women's political rights, such as the right to vote, the right to choose nationality for women married to foreigners, the right to education, employment, marriage, health, and legal protection as regulated in Articles 46 to 51. There remains a normative gap regarding women's position as heirs, resulting in ambiguity under national legislation as to whether women are entitled to inherit.

CEDAW explicitly obliges states to reform their legislation by (Maryam, 2012):

- Incorporating the principle of equality between men and women in their constitutions;
- Enacting appropriate legislation, including sanctions where necessary, to prohibit discrimination;
- Enforcing legal protection through competent national courts;
- Ensuring that government officials and state institutions act in accordance with their obligations;
- Enacting legislation to eliminate discrimination by individuals, organizations, or enterprises;
- Amending or abolishing discriminatory laws, regulations, customs, and practices;
- Repealing all discriminatory penal provisions.

Accordingly, the state is obliged under CEDAW to ensure equality between men and women in its constitution and to amend laws, customs, and practices that discriminate against women. At the national level, Indonesian inheritance law is pluralistic, being regulated under civil law, Islamic law, and customary law. Each system provides different rules on inheritance, many of which are patriarchal and discriminatory toward women. The patriarchal inheritance system, widely practiced across Indonesia and passed down for generations, often excludes women entirely from inheritance (Emong, 2006).

This situation contradicts the fundamental principle of gender equality under human rights. Beyond inheritance, patriarchal systems often deny women access to education, as some parents still hold primitive views that daughters need not attend school. This not only violates inheritance rights but also the right to education. Such practices clearly contravene Article 28I paragraph (2) of the 1945 Constitution, which affirms that: "Every person shall have the right to be free from discriminatory treatment on any grounds whatsoever and shall have the right to protection against such discriminatory treatment." Furthermore, Article 28I paragraph (4) of the Constitution obliges the state and government to respect, promote, enforce, and fulfill human rights.

At the same time, Article 18B paragraph (2) of the 1945 Constitution recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. This article clearly emphasizes the need for the state to guide customary communities to align their traditional rights with societal developments, particularly gender equality. Similarly, Article 6 of Law No. 11 Year 2005 on the Ratification of the International Covenant on Economic, Social, and Cultural Rights expressly stipulates the principle of equal rights between men and women.

Therefore, with regard to women's inheritance rights, it can be concluded that national legislation in Indonesia has not yet comprehensively regulated whether women are entitled to inherit. It is not easy to unify the pluralistic legal systems of diverse customary communities into a single statutory framework. Consequently, the recognition of women's inheritance rights from a human rights perspective is not yet fully optimized, as the paradigm shift largely depends on societal awareness and acceptance of gender equality.

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## CONCLUSION

Based on the above discussion, the conclusions can be drawn as follows:

From the perspective of Balinese Customary Law, women may receive inheritance or become heirs insofar as their marital status is classified as purusha. However, in its development, Balinese women are entitled to inheritance based on the Decree of Pesamuan Agung III MUDP Bali No. 01/Kep/PSM-3MDP Bali/X/2010, dated October 15, 2010.

The Law of the Republic of Indonesia No. 39 of 1999 on Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women do not specifically regulate whether women may act as heirs or have the right to receive inheritance, resulting in a legal vacuum. Therefore, in this context, the determination of whether Balinese women may inherit is focused on the aspect of Balinese Customary Law as a form of recognition of the Indigenous Legal Community Units as regulated in the Constitution.

It would be more appropriate for the regulation concerning whether Balinese women are entitled to become heirs or to receive inheritance to be left to their respective customary laws, as it is not easy to unify legal pluralism into a single national statutory framework, particularly with regard to customary laws in each region.

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