

## Conference Paper

# Legal Status of Balinese Women Who Commit Ninggal Kedaton Terbatas Marriage Against Guna Kaya Inheritance

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**Abstract.**

The Balinese customary law system uses a patrilineal kinship system with a majorate system. Thus, the heir is the *purusa* party, namely the male child. This is because in Balinese customary law, sons are considered to have a large burden of responsibility in the family and community customs and also have to bear the obligation to care for parents in their old age. However, in reality, many Balinese women, especially those who marry in a *ninggal kedaton terbatas*, still bear the burden of responsibility of the family of origin. Meanwhile, they as pradana parties do not have the right to inherit heirloom property in the Balinese customary inheritance system. This is not in line with the premise of liberal feminism theory, which states that women and men have the same position in all fields, including the right to inherit wealth. This research was conducted using normative research methods by examining secondary legal materials, namely journals, articles, and research results related to the subject matter, with a descriptive analysis approach. The results of this study found that Balinese customary inheritance property consists of heirloom property and wealthy use property. Based on the Decree of the Great Pesamuan III of the Main Assembly of the Balinese Pakraman Village No. 01/KEP/PSM-3/MDP/Bali/X/2010 section III in the field of Customary Law, Balinese women also have the right to inherit their parents' property on a limited basis.

**Keywords:** Bali, traditional inheritance, women

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## 1. INTRODUCTION

Inheritance in Balinese customary system cannot be separated from its relation to the kinship system prevailing in society. According to experts, the kinship system can be used to show the social structure of society. Inheritance in Balinese customary law is based on the amount of *swadharma* (responsibility) of the testator carried out by the heir concerned [1].

The patrilineal kinship system in Bali is commonly referred to as the “kepurusa/purusa” or male system [2]. In this system, a child’s relationship with his father’s family/relatives becomes the sole basis for his paternal arrangement. The family of the father, or the

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family of the male pancer (kepurusa) is the most important in his life, for example, it is the male pancer who inherits everything (goods, inheritance, etc.), the caste of the child follows the caste of his father. Children in this regard are sons and daughters who follow their father's caste/nationality, but only sons who later become the continuation of their father's descendants [2].

In the patrilineal system, it is explained that the position of men is higher than the position of women. Thus, many parents, especially Balinese people and also people outside Bali who adhere to the patrilineal system, expect more sons than daughters. The *ke purusa* system of boys' status is steady and hereditary, while the status of girls changes, because women after marriage follow their husbands and enter the husband's membership [3]. Balinese inheritance customary law determines that the heirs are sons or *sentana rajeg*, as well as adopted children. This is clearly and explicitly formulated in one of the *pawos* (articles) in the *awig-awig* of the *pakraman* village. Daughters only have the right to enjoy the property of their parents as long as they are not married, if they marry, then the right to enjoy becomes void [4]. The Constitution and also several laws and regulations clearly determine that every citizen is equal before the law. Thus, there is disharmony with state law and Balinese customary inheritance law. In addition, women sometimes still take their parents' jobs or fathers' jobs even though they have married outside the family [4].

This is not in line with the thinking of liberal feminism theory, which states that women and men have equal positions in all fields, including wealth. According to them, every human being has the capacity to think and act rationally, and so do women. The root of oppression and backwardness in women is because it is caused by women's own mistakes. Women must prepare themselves so that they can compete in the world within the framework of "free competition" and have an equal position with men [5].

In reality, girls are often sidelined in family activities, including girls not being allowed to interfere with the discussion of their parents' inheritance or other matters that occur in their family. Of course, in this case, it is a serious concern and must be reviewed so that it does not become a polemic in the community. In addition, girls are not given the right to inherit their parents' property, because girls are also entitled to a portion or one-third of their parents' wealth.

Based on the background described above, the purpose of this research is to answer the question about the legal status of Balinese women who commit *ninggal kedaton terbatas* marriage against *guna kaya* inheritance in the Balinese customary inheritance law system.

## 2. METHODOLOGY/ MATERIALS

This research was conducted using normative research methods. Normative research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand by examining secondary legal materials, namely journals, articles, and research results related to the subject matter of discussion, with a descriptive analysis approach that aims to explain the position of women on the provision of wealthy property.

## 3. RESULTS AND DISCUSSIONS

In Balinese inheritance principle only males that could perform as heirs in the family. If in certain circumstances, for example, the family does not have a son, then the heir will be the son of his nephew who is drawn straight line up or down in the kapurusa system. In terms of rights as children, men and women should have the same rights. But on the other hand, in the Balinese inheritance system women do not have the right to become heirs. Women only have the opportunity to receive inheritance (material), even then as a parent's policy and the amount is not much [6].

The concept of inheritance in Balinese customary law has a different meaning from inheritance in other terms, which has a more material nature and has a monetary value. The right to inherit owned by a woman in Bali is obtained by a daughter when appointed as an heir by someone or her own family with a customary status called *sentana rajeg*. Customary inheritance law essentially regulates the process of passing on or transferring inheritance from the heir to the heirs in a hereditary and sustainable manner. Balinese society itself adheres to the patrilineal family system in determining the form of inheritance. This patrilineal system is adopted, where sons will be the heirs and successors of the family. Boys become family heirs because they are considered capable of carrying out all forms of obligations in society, customs and religion [7].

In Balinese customary inheritance law, Balinese women get inheritance from their parents if their legal marital status is purusa with a marriage called nyeburin. Sentana Rajeg is a process of daughters who are confirmed to be the successors of purusa descendants and have the same and equal position as sons and are entitled to inherit the decisions made by parents or families to continue their descendants with the nyeburin marriage procession. The purpose of this marriage is to continue the descendants in the family [7].

According to Balinese customary inheritance law, a person who is confirmed as a *sentana rajeg* is entitled to be treated the same as his own biological child to the inheritance and vice versa the child loses his inheritance rights in his own family home and is obliged to organize the appropriate ceremonies performed in the new home and family. Consequently, a person who performs a *nyeburin* marriage is equated with a biological child so that the obligations they carry in the family are the same. Regarding the inheritance, it will be divided according to their share and obligations in a family. To be able to know all aspects of inheritance, an approach is taken with three main things, including [8]:

- (a) The first item is the heir;
- (b) The second subject is the property left by the testator;
- (c) The third point is the heir

Customary inheritance law essentially regulates the process of passing on or transferring inheritance from the testator to his heirs from generation to generation and continuously[9]. Balinese society itself adheres to the patrilineal family system in determining the form of inheritance. This patrilineal system is adopted, where sons will be the heirs and successors of the family. Boys become family heirs because they are considered capable of carrying out all forms of obligations in society, custom and religion.

The inheritance of the parents, which is held by the heir in this relationship, must not completely spend the inheritance because the inheritance will continue to be related. Because it is seen from the point of view of the rights of the heir, namely the parents, finally the inheritance must be used for an obligation to the parents by their children, namely the heirs with the responsibility of the children must burn the parents' *jezanah* if they have died. In this case, taking costs from the assets inherited or left behind. Meanwhile, in Balinese customary inheritance law, usually daughters who have married out will be given *jiwadana* or provisions for life according to the family's ability. Seeing the position of girls in this case gets a favor that provides a protection for the dignity of a woman. Therefore, by fighting for gender equality, in this case women are entitled to get the same rights as men and carry out obligations in accordance with the rights obtained [10].

Tetamian (heirloom property), which is in the form of property obtained due to hereditary inheritance which includes [8] :

1. Tetamian which cannot be divided, is property that has religious magical value, such as a family prayer place (*sanggah / merajan*), and others.

2. Tetamian which can be divided, namely inherited property that has no religious value, such as rice fields, fields, and others.

Tetamian or heirloom property is sometimes widely misused and even fought over incorrectly. In fact, heirloom property should be maintained and should not be sold by the sentana / descendants, where the heirloom property which is often called *due nak lingsir* by the Balinese people is an asset passed down from generation to generation [11].

Harta guna kaya itself is property that originates or is obtained during marriage, which comes from the work of parents, not from hereditary inheritance (tetamian). In the harta *guna kaya*, Hindu women are not entitled to inherit heirloom property, because the property is hereditary in accordance with the purusa (male) lineage, but daughters are entitled to inherit the *harta guna kaya* [12]. *Harta guna kaya* has a function as a measure of material wealth for the family, as well as a form of inheritance that can later be passed on to the heirs of the family.

The position of Balinese women after the issuance of the Decree of Pesamuhan Agung III MUDP Bali is a good thing to strengthen the Balinese customary inheritance law that has long been in effect in Balinese society, where the prevailing system discriminates against women for the right to inherit. This is often a polemic of pros and cons in the community, with the decision of Pesamuhan III MUDP Bali (Number 01/KEP/ PSM-3/MDP-BALI/X/2010) stating that the position of women in the family has the right to inherit or become heirs. Meanwhile, the distribution of inheritance for women can be done if women do not marry out or *ninggal kedaton* [3]. If the woman marries out (*ninggal kedaton terbatas*), which is *ninggal kedaton* but within certain limits it is still possible to carry out *swadharna* as Hindus, then her inheritance can also still be received and given by her parents. Because the nature of women does have to go out but in this case the daughter will never forget her obligation to participate in protecting her parents, and take care of her even though the woman has joined her husband's relatives[13].

The Pakraman Village Main Council sees the struggle of Balinese women in fighting for their rights as heirs getting the attention of traditional institutions in Bali, where in a Decree of the Bali Pakraman Village Main Council (MUDP Bali) No. 01/Kep/Psm-3/MDP Bali/X/2010 dated October 15, 2010, the assembly of traditional villages and pakraman villages tried to give rights to Balinese women in getting inheritance. In terms of liberal feminism theory, the granting of rights for women to inherit is a matter of individual reason and self-satisfaction and individual autonomy. The argumentation in the Decree of the Main Assembly of Pakraman Villages of Bali (MUDP Bali) No. 01/Kep/Psm-3/MDP

Bali/X/2010 is related to the idea that women can claim equality with men based on essential human morals.

In Section III: Customary Law, number 1 The Position of Balinese Women in the Family and Inheritance, elaborates as follows:

The patrilineal family system (*kapurusa*) adopted by the Balinese-Hindu people causes only descendants with *kapurusa* status to be considered able to take care of and continue the *swadharma* (responsibility) of the family, both in relation to *parahayangan* (Hindu beliefs), *pawongan* (Hindu people), and *palemahan* (preservation of the natural environment in accordance with Hindu beliefs).[14] Consequently, only descendants who have the status of *kapurusa* have *swadikara* (rights) to inheritance, while descendants who have the status of *pradana* (women), are unlikely to be able to continue *swadharma*, so they are equated with people who leave family responsibilities (*ninggal kedaton*), and are therefore considered not entitled to inheritance in the family. There are two types of *ninggal kedaton*, namely *ninggal kedaton terbatas* and *ninggal kedaton penuh*. Those who are called *ninggal kedaton* are :

- (a) People who are no longer Hindu.
- (b) *Pegat Mapianak*, was dismissed as a child by his parents,
- (c) *Ngumban*, leaving home for no apparent reason and not returning for a long period of time.
- (d) Women who marry normally.
- (e) Men who marry *nyentan* or *marry nyeburin*.
- (f) Being adopted by another family.
- (g) Voluntarily relinquishing ties of kinship with family and giving oneself to others (*maiddyang raga/makidihan raga*).

A woman who has *ninggal kedaton terbatas* no longer has the obligation to take care of her parents, but even so morally a woman even though she has married out still carries out her obligations as a child to her parents. In its development, the reality in society shows that people who are *ninggal kedaton* but within a certain limit are still able to carry out *swadharma* as Hindus (*ninggal kedaton terbatas*), and there is also the reality of people who are *ninggal kedaton* who absolutely no longer allow them to carry out *swadhrama* as Hindus (*ninggal kedaton penuh*). Those who are categorized as *ninggal kedaton penuh*, are not entitled to inheritance at all, while those with *ninggal kedaton terbatas* are still possible to get inheritance based on the principle of *ategen asuwun* (two against one), with her brother who has the status of *purusa*. *Ninggal*

*kedaton terbatas* is *ninggal kedaton* but within certain limits it is still possible to carry out *swadharma* as Hindus [15]. Those who are classified as *ninggal kedaton terbatas* are as follows:

- i. Women who enter into a common-law marriage,
- ii. Men who perform *nyentana/nyeburin* marriages,
- iii. Has been adopted (*kaperas sentana*) by another family in accordance with Hinduism and Balinese customary law,
- iv. Surrendering oneself (*makidihang raga*) to another family of one's own free will.

#### 4. CONCLUSION AND RECOMMENDATION

Based on the results of the research, the decision of Pesamuhan III MUDP Bali (Number 01/KEP/ PSM-3/MDP-BALI/X/2010), determine the legal status of a woman who marry *ninggal kedaton terbatas* as an heir, limited only to the marital assets of both parents based on the principle *ategen asuwun* (two against one) with a male heir in his family. However, to be implemented properly, this decision still needs to be regulated further into the customary rules of each village in Bali.

Recomendation given to the local government to issue regional regulations regarding the obligations of each traditional village in Bali to put the Decision of Pesamuhan III MUDP Bali (Number 01/KEP/ PSM-3/MDP-BALI/X/2010) into the customary rules of each village in Bali, namely *Awig-Awig* and/or *Perarem*, so that it can be implemented properly in the customary society.

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