

# The Position of Hindu-Balinese Women in Inheritance Law Pluralism: A Study of Supreme Court Decision Number 2824 K/PDT/2017

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## ABSTRACT

This article examines the position of Hindu-Balinese women in the context of pluralistic inheritance law in Indonesia, particularly from the perspective of the Civil Code and Balinese customary law. Through a study of Supreme Court Decision Number 2824 K/Pdt/2017, this article examines the extent to which the formal legal system provides protection for women's inheritance rights. The analysis shows that the Civil Code guarantees equality of inheritance rights without distinction of gender, while Balinese customary law still prioritizes the line of inheritance. Although the 2010 MUDP Decision has accommodated women's rights, the Supreme Court in its decision did not substantially acknowledge this development, thus demonstrating the weak support for gender justice in national legal pluralism.

**Keywords:** *Balinese Customary Inheritance, Women's Inheritance Rights, Legal Pluralism, Supreme Court Decision, Number 2824K/PDT/2017.*

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## 1. INTRODUCTION

Indonesia, as a country with a diversity of legal systems, recognizes various inheritance systems that apply within society. Inheritance law, particularly in Bali, regarding the position of Hindu-Balinese women, cannot be separated from the plural and complex reality of inheritance law in Indonesia. This understanding is based on the Indonesian Civil Code (KUHPerdara) as well as Balinese customary law [1].

The Civil Code conceptualizes inheritance as the transfer of rights and obligations from a deceased person to their surviving heirs. This concept emphasizes that without death, inheritance does not occur. Once a person dies, the rights and obligations they possessed are immediately transferred to their heirs [2]. Furthermore, the Civil Code stipulates that heirs can be individuals with blood relations, marital connections, or those appointed through a testament. The Civil Code also does not differentiate the status of heirs based on gender, time of birth, or place of birth. In other words, every heir is entitled to a share that is calculated mathematically and fairly, per capita, meaning each heir receives an equal portion if there is no special agreement or distribution. Moreover, for heirs *ab intestato* (those entitled to inherit based on blood or marital ties), there is a compulsory portion that cannot be violated, known as the *legitime portie* [3].

However, differences arise when inheritance is viewed through the lens of Balinese customary law, which generally adheres to a patrilineal principle, where lineage and inheritance rights are passed through the male line [4]. In terms of inheritance, this means that only male children are regarded as the primary heirs, while females are not recognized as heirs with equal rights to males. Thus, there is a fundamental difference between the Balinese customary legal system and the Civil Code in the basic principles of inheritance and the position of women as heirs [5].

In a condition of pluralistic legal applicability, ideally, citizens have the right to consistently choose under which legal system they will submit themselves. However, for Hindu-Balinese women,

this situation is often not easy and becomes increasingly complex when legal conflicts enter the judicial domain, such as in the case of the Supreme Court Decision No. 2824 K/Pdt/2017. In this case, three daughters who claimed their inheritance rights based on the 2010 Decision of the Majelis Ulama Desa Pakraman (MUDP) were rejected by the Panel of Judges on the grounds that the provision did not apply retroactively to the death of their father, which occurred before 2010. The Supreme Court Decision No. 2824 K/Pdt/2017 raises important questions regarding the consistency of protecting women's rights within the national legal system. Through the writing of this scholarly article, it is hoped that the study of this decision can provide a more comprehensive picture of the position of Hindu-Balinese women within the pluralism of inheritance law, particularly as derived in legal considerations at the Supreme Court level [6].

In various previous studies, the issue of women's position in Balinese customary inheritance law has been widely discussed in relation to gender inequality and the dynamics of customary law reform. For example, a study by [7] in the journal *Dictum* sharply highlighted how the Supreme Court, in Decision No. 2824 K/Pdt/2017, ignored the existence of the MUDP 2010 Decision and Supreme Court Jurisprudence No. 4766 K/Pdt/1998, which had previously recognized the inheritance rights of daughters in Bali. That study contributed an initial critique of the disconnection between the *judex facti*'s consideration and the final ruling at the cassation level. However, this current study differs from previous ones in that it not only describes the content of the decision but also seeks to critically analyze the legal position of the Supreme Court in the context of legal pluralism and the protection of women's rights. Based on these issues, the author is interested in writing a scholarly article entitled "The Position of Hindu-Balinese Women in the Pluralism of Inheritance Law in Bali: A Study of Supreme Court Decision No. 2824 K/Pdt/2017."

Based on this background, the article will address two research questions: First, what is the position of Hindu-Balinese women in the inheritance law system according to the Civil Code and Balinese customary law? Second, how did the Supreme Court consider the inheritance rights of Hindu-Balinese women in Decision No. 2824 K/Pdt/2017. Through these two research questions, this article aims to present a systematic and in-depth novelty and original contribution to the academic discourse.

## 2. METHODS

This research focuses on examining a court decision as doctrinal research in the form of a document study. Furthermore, normative legal research is used with a statutory approach and a decision study approach. The primary legal sources used in this research include decisions. Meanwhile, secondary legal sources include academic literature, legal journals, textbooks, and relevant scientific articles, including previous studies of the decisions used. Tertiary legal materials include legal dictionaries and legal encyclopedias. Furthermore, the analysis is conducted qualitatively by outlining the legal considerations in the decision, linking them to the principles of national and customary law, and by referring to the theories of legal pluralism and gender justice. This research is descriptive-analytical, because it not only explains the content of the decision but also examines the legal arguments used by the Supreme Court in issuing the decision.

## 3. RESULTS AND DISCUSSION

### 3.1 The Position of Hindu-Balinese Women in the Inheritance Law System According to the Indonesian Civil Code (KUHPerdata) and Balinese Customary Law

The position of Hindu-Balinese women in inheritance matters cannot be separated from the plural and complex reality of inheritance law in Indonesia. The inheritance law system must be

viewed from various legal perspectives, including national regulations, customary law, and religious law.

First, at the national level, inheritance law is governed by the Indonesian Civil Code (KUHPerdata), specifically in Book Two, from Article 830 to Article 1130. Second is Islamic Inheritance Law, which states that inheritance rules refer to *Faraid*, derived from Islamic jurisprudence and codified in the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1 of 1991, which regulates inheritance in Book Two, from Article 171 to Article 214. Third, there is customary law, which lives and evolves within ethnic communities that adopt patrilineal, matrilineal, or bilateral kinship systems. In the context of inheritance law for Hindu-Balinese women, discussions typically refer to the KUHPerdata and Balinese customary law [8], [9].

Article 852 of the Civil Code (KUHPerdata) stipulates that:

“Children or their descendants, even those born from different marriages, inherit from their parents, grandparents, or other blood relatives in the direct ascending line, without distinction of gender or order of birth. They inherit equal parts per capita if they are all in the same degree of kinship to the deceased and entitled in their own right; they inherit per stirpes if they inherit as substitutes.”

This provision implies that both women and men have equal rights as heirs, entitled to a fair share of inheritance, reflecting gender equality in inheritance matters where women and men are equally entitled to receive inheritance from their parents without gender-based discrimination.

Furthermore, Articles 852 to 858 of the Civil Code classify heirs into four groups:

1. Group One: children and their descendants, as well as the surviving spouse;
2. Group Two: parents and full siblings;
3. Group Three: blood relatives in the ascending line of both father and mother (grandparents, great-grandparents, etc.);
4. Group Four: collateral relatives (uncles, aunts, cousins, up to the sixth degree).

J. Satrio emphasizes a principle of inheritance law in the Civil Code that stipulates:

“If there are heirs in a closer kinship group to the deceased, the right to inherit for those in more distant groups is excluded. Therefore, if the deceased had no descendants in a marriage, the entire inheritance belongs to the surviving spouse.”

The development of national inheritance law also cannot be separated from court decisions, both through Supreme Court rulings and Constitutional Court reviews. One significant decision is Constitutional Court Decision No. 46/PUU-VIII/2010, which reviewed the constitutionality of Article 43(1) of Law No. 1 of 1974 on Marriage. The Court ruled that:

“A child born outside of marriage still has a civil relationship with their mother and also with their father, if it can be scientifically or otherwise legally proven.”

This decision broadened the definition of a “legitimate child” and directly influenced the inheritance rights of children born out of wedlock, representing significant progress in protecting civil rights in the national inheritance system.

In addition, regarding protection of inheritance rights for women, the Supreme Court Decision No. 179 K/SIP/1961 serves as important jurisprudence affirming women’s equal status as heirs. In this case, the Court rejected customary law that denied daughters’ inheritance rights and asserted that in the name of justice and equality before the law, daughters have a right to inherit from their parents. This decision has often been used as a legal argument in customary inheritance disputes involving discrimination against women, demonstrating that jurisprudence can be a

powerful tool for promoting reform in customary legal values that no longer align with human rights principles.

[10] states that:

“The inheritance system in Balinese society adopts a patrilineal kinship system, also known as the *Purusa* or *Kapurusa* system, in which men hold a higher status than women due to lineage being traced through the father.”

The adoption of the patrilineal or *Kapurusa* system by customary law communities in Bali impacts marriage arrangements. This system gives sons a fixed status, while daughters' status shifts to their husband's family, so they are not counted as heirs. The patrilineal kinship system results in two marriage types:

1. Ordinary marriage (*kawin ke luar*), where the husband retains *Purusa* status and stays in his own family home;
2. *Nyentana* marriage, where the husband adopts *Pradana* status by moving into the wife's family.

In Balinese customary law, marriage is not only about inheritance division but also about preserving and continuing the obligations of the benefactor. Based on the *Purusa* kinship system, descendants or heirs with *Purusa* status are deemed more capable of preserving, managing, and continuing the *Swadharma* (obligations) of the benefactor because they “remain” in the family home, whereas those with *Pradana* status tend to “leave” the family home. Hence, the burden of family and community duties is placed primarily on the *Purusa*, not the *Pradana*.

However, this does not mean that someone with *Pradana* status (usually a woman) is free of obligations though their duties are lighter than those of a *Purusa*, they still have a right to the benefactor's property. If property is given by the parents, it is not classified as inheritance but rather as provision (*Bebaktan* or *Tetadan*).

Despite Balinese customary law generally placing women in a subordinate position in matters of inheritance, evolving social values and increasing openness to gender equality have led to reinterpretations of the role of Hindu-Balinese women in the family and their inheritance rights.

A concrete example of this shift can be seen in the Pasamuhan Agung III MUDP (now known as the Majelis Desa Adat) of Bali, which was formalized through MUDP Decision No. 01/Kep/Psm-3/MUDP Bali/X/2010 dated October 15, 2010. The decision stated that women whether as wives or sisters have equal roles in preserving family ancestral property to be passed down generationally. It also affirmed that:

“During the course of marriage, husband and wife have equal status regarding *Gunakaya* (joint property). Additionally, biological and adopted children who are unmarried, whether male or female, are equally entitled to the *Gunakaya* of their parents.”

Referring to these two legal systems, it is evident that national inheritance law and Balinese customary law differ significantly in how they view women's inheritance rights. Although there has been a normative shift in customary law towards accommodating gender equality, the implementation of such changes still faces significant challenges, particularly when tested in formal legal settings, as exemplified in Supreme Court Decision No. 2824 K/Pdt/2017.

### **3.2 Legal Considerations of the Supreme Court in Decision No. 2824 K/Pdt/2017 Regarding Inheritance Rights of Balinese Hindu Women**

This case originated from an inheritance dispute over two plots of land left by the late Wayan Wingsih in Bomo Village, Rogojampi Sub-district, Banyuwangi. In the marriage between Wayan Wingsih and I Wayan Nardo, four children were born: one son named I Gede Sadha (Plaintiff), and

three daughters, namely Made Sadhi Astuti, Nyoman Sarini, and Luh Gede Sawitri (the Defendants). After the death of their mother in 2001, I Gede Sadha claimed to be the sole heir based on the Balinese Hindu customary law system, which adheres to the *Purusa* (patrilineal) lineage. The Plaintiff argued that since his three sisters had married out and one had converted to another religion, they no longer had inheritance rights. On the other hand, the Defendants filed a counterclaim and argued that they were entitled to the inheritance based on the MUDP Bali Decision No. 01/Kep/Psm-3/MUDP Bali/X/2010, which recognizes women's inheritance rights in Balinese custom, as well as Supreme Court Decision No. 4766 K/Pdt/1998, which essentially affirmed that daughters also have inheritance rights. The Defendants also questioned the strict application of customary law, given that the disputed land was located in Banyuwangi, not Bali, and the local customary community had already experienced legal assimilation.

The Banyuwangi District Court, in its decision, rejected the Defendants' counterclaim. Although the panel of judges acknowledged the existence and content of the 2010 MUDP Decision, they concluded that the provision could not be applied retroactively since the inheritance occurred prior to 2010. This reasoning was upheld by the Surabaya High Court and eventually confirmed by the Supreme Court at the cassation level. In its considerations, the Supreme Court rejected the Defendants' objections by stating that "the concept of inheritance in Balinese/Hindu customs is *Swadarma* and *Swadikara*, meaning duties and rights, where the balance between the two is rooted in the *Purusa* or patrilineal line." Furthermore, the Supreme Court also stated that "daughters receive provisions from their parents when marrying or marrying out." This justification, in the author's view, is the core problem of the *a quo* decision [11], [12].

The Supreme Court explicitly stated that the Banyuwangi District Court had correctly applied the law, but at the same time provided an interpretation of Balinese customary inheritance law that leaned toward conservatism and contradicted the fact-finding judges' reasoning (*judex facti*). This difference in interpretation not only reflects inconsistency in legal reasoning but also disregards the evolution of customary law that has developed through official instruments of the customary community, namely the 2010 MUDP Bali Decision.

At the first level, the Banyuwangi District Court acknowledged the MUDP Decision as part of the evolution of Balinese customary law that is more accommodating of women's inheritance rights. This was shown through expert witness statements indicating that the decision was the result of a long deliberative process during the *Pasamuhan Agung III* and represented new social practices in Balinese customary society. According to this testimony, customary law had undergone conceptual changes, including the recognition of daughters who marry but continue to fulfill family obligations known as *limited Ninggal Kedaton* (*Ninggal Kedaton Terbatas*). This group was granted inheritance rights in a certain proportion, namely half of a *Purusa* heir's share, as regulated in the 2010 MUDP Decision. Nonetheless, the Banyuwangi District Court rejected the Defendants' counterclaim not because it rejected the principle of inheritance equality, but because it assessed that the 2010 MUDP Decision was not retroactive. Considering that the deceased passed away in 2001 before the MUDP Decision was issued the court ruled that the provisions could not apply to legal events that had already occurred. This reasoning followed the logic of expert testimony that emphasized marriage or death as the primary reference for determining the applicability of the MUDP Decision in specific cases.

Contrary to the Banyuwangi District Court's approach, which attempted to accommodate the presence of new legal values in custom, the Supreme Court showed no sensitivity to this transformation. In its ruling, the Court reaffirmed the traditional principle of Balinese customary inheritance law based on *Purusa* lineage, without providing interpretive space for the evolving social norms reflected in the 2010 MUDP Decision. Article 5(1) of the Judicial Authority Law stipulates that "judges are obliged to explore, follow, and understand the legal values and sense of justice that live within society." In this context, the MUDP Decision cannot be seen merely as an administrative policy but must be considered a manifestation of living law within the Balinese customary community.

The Court's refusal to use the MUDP Decision as a normative foundation in its considerations demonstrates a tendency toward a positivist and formalistic approach, prioritizing legal certainty in a narrow sense without acknowledging the ongoing social transformation and evolving customary norms. Moreover, several crucial elements of the *judex facti's* reasoning including recognition of the *limited Ninggal Kedaton* (*Ninggal Kedaton Terbatas*) concept and the expert witness testimony were not fully included in the Supreme Court's written decision. This omission risks distorting the legal facts and weakening the position of women in customary legal discourse, which is currently moving toward greater equality.

Therefore, the Supreme Court's legal reasoning in this case not only reveals methodological weaknesses in constructing legal arguments but also reflects the absence of commitment to renewing values of justice within customary communities. The Court missed a critical opportunity to bridge the plurality of legal systems in Indonesia with substantive justice values. Instead of strengthening the legal position of women within transforming customary communities, the decision reinforces the dominance of outdated customary constructs that are no longer fully relevant to evolving social realities.

## CONCLUSION



The position of Hindu-Balinese women in inheritance regulations under the Civil Code and Balinese customary law demonstrates fundamental differences. The Civil Code guarantees equal inheritance rights between men and women, while Balinese customary law, based on the *Purusa* (patrilineal) system, still places women in a subordinate position. Although there have been attempts at reinterpretation through the 2010 MUDP Decree, which recognizes women's inheritance rights, its implementation still faces challenges, particularly when tested in court, as demonstrated in the Supreme Court's legal considerations in Decision No. 2824 K/Pdt/2017. The *a quo* decision demonstrates a conservative approach and tends to ignore the development of Balinese customary law that is more inclusive of women's rights. The Court did not consider the MUDP Decree as Living Law, preferring instead a traditional interpretation of customary law. This reflects a failure to explore the values of justice that exist within society and a missed opportunity to strengthen gender equality within Indonesia's pluralistic legal system.

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