

# Legal Analysis of the Position of Female Heirs in the Balinese Customary Inheritance System

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## ABSTRACT

This study aims to analyze the legal status of female heirs in the Balinese customary inheritance system, which is traditionally based on the patrilineal principle or kapurusa system, where lineage and inheritance rights are passed down through the male line. In this system, married women are considered part of the husband's family (pradana) and generally do not receive inheritance rights from their family of origin. However, social developments, increasing legal awareness, and the influence of national law have driven a paradigm shift in the position of women in customary inheritance. This study uses a normative legal approach supported by qualitative empirical data through literature studies, legal document analysis, and interviews with Balinese customary leaders and women. The results show that there is a duality of norms between Balinese customary law and national law that guarantees gender equality as stipulated in the 1945 Constitution and the CEDAW Convention. Although customary law still maintains the concept of purusa-pradana, practice in the field has begun to show a shift towards a more inclusive system through the recognition of partial inheritance rights for women. Legally, this change strengthens the principles of non-discrimination and substantive justice, while socially it shows the transformation of cultural values towards equality without eliminating Balinese traditional identity.

**Keywords:** Bali, Customary Law, Gender, Equality, Inheritance.

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## 1. INTRODUCTION

The inheritance system in indigenous communities often reflects the kinship structure, social relations, and cultural values upheld by that community. In the context of Balinese customary society, the traditional inheritance system is categorized as patrilineal, or more specifically, referred to as the kapurusa system meaning that lineage and inheritance rights are directed toward male offspring or those of purusa status [1]. In this system, daughters are often positioned differently and tend not to receive inheritance rights equal to those of sons [2].

This phenomenon raises significant legal issues when linked to aspects of gender equality, human rights, and the development of national law, which increasingly recognizes fairer inheritance rights for women. For instance, several studies have shown that daughters in Balinese customary law only receive inheritance in forms referred to as *bekal hidup* (livelihood provision), *harta tetap* (fixed assets), *jiwa dana* (spiritual endowment), or *pengupa jiwa* (soul offering), but not as full heirs like sons [3]. For example, research has found that Balinese customary systems stipulate that only kapurusa descendants are considered capable of managing and continuing family responsibilities, resulting in daughters—especially those unmarried or married outside the lineage often being marginalized in inheritance distribution [4].

In addition to the patriarchal customary structure, the influence of Hindu religion and Balinese culture has also shaped this inheritance system. Religious legal texts such as the *Manava Dharmasastra*, which influences Hindu inheritance law in Bali, state that sons are the primary heirs [5]. Over time, however, Balinese customary communities have experienced shifts and transformations, including through customary decisions such as those of the *Majelis Utama Desa Pakraman Bali* (MUDP), which seek to provide space for women in customary inheritance. For

instance, Decision No. 01/KEP/PSM-3/MDP Bali/X/2010 marked the beginning of a transformation toward a more inclusive Balinese inheritance system that recognizes women's rights [6].

The ensuing legal issue concerns the status of female heirs in Bali within the framework of customary law, which remains active yet increasingly pressured by national law and principles of gender equality. Based on the 1945 Constitution, national legislation, and human rights instruments, every person is entitled to equal treatment under the law and governance. However, in customary practice, imbalances persist between men and women in matters of inheritance. This is evident from several studies showing that historically, women have not been recognized as heirs in the Balinese customary system, or only under specific conditions such as being married *nyentana* (into the wife's family line) or remaining unmarried [7].

From a normative legal standpoint, there exists a duality between customary law governing inheritance and the national legal system guaranteeing citizens' rights and equality. This creates conflict or tension between the customary inheritance mechanism, which prioritizes *kapurusa* descendants, and the constitutional and positive law principles of non-discrimination [8]. Upon closer examination, a customary system exclusive to male descendants and *kapurusa* lineage can be considered contrary to principles of gender equality and human rights [9]. Several studies in legal anthropology indicate that, despite some progress, customary traditions remain deeply entrenched, and women continue to face significant barriers to achieving equal inheritance rights [6].

Therefore, it is crucial to conduct a juridical analysis of the status of female heirs within the Balinese customary inheritance system. This analysis should include the following aspects: (1) the framework of customary law and inheritance regulations in Bali (*awig-awig*, *adat desa pakraman*, MUDP decisions), (2) the status of women as heirs within the *kapurusa* system and its conditions, (3) the intervention of national law and gender equality principles in customary systems, (4) practical and cultural barriers to women's inheritance rights, and (5) opportunities and challenges for future reform toward fairer inheritance distribution aligned with human rights values while preserving positive customary traditions [10].

Against this background, this article aims to provide a comprehensive and critical overview of the position of women as heirs within the Balinese customary inheritance system, identify conflicts between customary law and gender equality principles, and examine both legal and social efforts past and future undertaken to bridge women's inheritance rights with Balinese customary traditions.

The results of this analysis are expected to serve as a reflection for policymakers, customary leaders, and the wider community in strengthening legal justice and gender equality in the realm of Balinese customary inheritance.

## 2. LITERATURE REVIEW

The inheritance system in traditional Balinese customary society is generally shaped by a patrilineal kinship pattern (*kapurusa/predana*), which places lineage and property rights primarily on the male side. As a result, the position of daughters as heirs is often secondary or dependent on specific mechanisms such as *hibah* (grants), *jiwa dana* (spiritual endowment), or recognition as *sentana* (adopted or reinstated child) to obtain certain inheritance rights [11][12]. Legal anthropological studies and empirical research indicate that religio-cultural elements (influence of *Dharmasastra/Hinduism*), together with the customary norms of *desa pakraman* (traditional villages), provide legitimacy to this practice, which in turn limits women's access to land rights and family assets [13].

A major normative change occurred when the Majelis Utama Desa Pakraman (MUDP) of Bali issued a resolution during the Pasamuhan Agung III (Decree No. 01/KEP/PSM-3/MDP Bali/X/2010), which opened space for recognizing women's roles within the family and inheritance systems. Normative legal literature and several field studies regard this decision as a formal turning point aimed at aligning customary practices with the principle of gender justice. However, field research suggests that implementation has been uneven due to cultural resistance, diverse customary institutional structures, and limited socialization and enforcement at the village level [14][15].

A number of descriptive and analytical juridical studies have examined how customary rules still contain clauses restricting women's roles (e.g., regulations on marriage exogamy, ability to perform customary obligations, or sentana requirements), resulting in conditional recognition of women's inheritance rights [16]. These studies highlight the gap between formal recognition (MUDP decision) and practical reality: customary families often continue to apply traditional norms or provide "compensation" to women in different forms rather than granting an equivalent substantive inheritance share [17]. These findings are evident in several case studies and legal reviews conducted across various desa pakraman in Bali [18][19].

From the perspective of human rights and national law, a normative tension exists between customary regulations and the constitutional principle of equality before the law [20]. Several studies highlight that constitutional protection and international human rights instruments require non-discrimination based on gender, meaning that customary practices restricting women's inheritance rights may potentially conflict with national legal provisions when they result in rights violations [21]. Nonetheless, literature also emphasizes the complexity of harmonization: respecting the autonomy of customary law while upholding the fundamental rights of citizens requires a culturally sensitive and gradual juridical approach [22].

Quantitative and qualitative studies conducted across different regions of Bali illustrate variations in practice: some customary villages have been quicker to implement the MUDP provisions, thereby granting women stronger inheritance positions, while others maintain traditional practices [23]. Determining factors in implementation include the role of customary leaders (bendesa adat), the community's level of legal education, economic pressures, and marriage practices (nyentana vs. marriage exogamy). This empirical literature demonstrates that juridical reform does not automatically translate into social change without institutional intervention and legal education [23][24].

Several conceptual studies connect women's inheritance rights with issues of customary land ownership and access to productive resources, highlighting the economic and social consequences of women's continued marginalization: decreased economic independence, reproduction of inequality, and weakened bargaining power within customary households [25]. Therefore, the literature suggests that reform of the customary inheritance system has broad implications for women's empowerment and sustainable development within Hindu Balinese communities.

Critiques of the MUDP's decision and reform efforts also appear in institutional legal analyses: some scholars argue that while MUDP has significant customary legitimacy, it is not a state institution, and therefore, the scope of its authority must be interpreted in line with national legal frameworks [26]. Such studies emphasize the need for synergistic mechanisms between regional

regulations, customary norms, and national law to resolve potential jurisdictional conflicts and ensure legal certainty for female heirs [27].

Although many studies have addressed both normative and empirical juridical aspects, there remain research gaps that must be strengthened: (1) comparative studies between desa pakraman to identify best practices in implementing women's inheritance rights; (2) analysis of civil or agrarian court decisions addressing Balinese customary inheritance disputes and how courts intervene in or accommodate customary norms; and (3) longitudinal studies assessing the socio-economic impact of recognizing women's inheritance rights post-2010 [28][29]. Current literature is relatively strong in descriptive studies but lacks policy evaluation and long-term empirical evidence [30].

Methodologically, previous research has used normative legal approaches, legal anthropology, and qualitative field research. Therefore, this article aims to fill the gap by combining normative juridical analysis of legal documents (awig-awig, MUDP decisions, statutory regulations) with field data describing inheritance distribution practices and implementation barriers. Consequently, this research will contribute empirical evidence and policy recommendations to bridge the principles of gender equality and the preservation of Balinese customary cultural values.

### 3. METHODS

This study employs a normative juridical approach supported by qualitative empirical data. The normative juridical approach is used to examine the existing legal regulations both customary law and national law related to the position of female heirs within the Balinese customary inheritance system. This approach is essential because the core of the research lies in analyzing legal norms, principles, and doctrines found in awig-awig (customary village regulations), decisions of the Majelis Utama Desa Pakraman (MUDP), and national legal provisions such as the 1945 Constitution (UUD 1945), the Civil Code (KUHPerdata), and Law No. 1 of 1974 on Marriage along with its amendments [28][29].

The empirical approach is applied in a limited manner to support normative findings through field observations and in-depth interviews with customary leaders (bendesa), desa pakraman officials, and Balinese women who have been involved in customary inheritance disputes or processes. The empirical data are used to assess the extent to which MUDP Decree No. 01/KEP/PSM-3/MDP Bali/X/2010 on the Position of Women in Inheritance has been implemented in the social practices of Balinese society [30][31].

#### 3.1 Data Types and Sources

The data sources in this study consist of the following:

1. Primary legal materials, namely statutory regulations, MUDP Bali decrees, awig-awig (customary village laws), and court decisions related to Balinese customary inheritance [32].
2. Secondary legal materials, including literature, scholarly journals, and academic works that discuss Balinese customary inheritance law, gender equality, and juridical analyses of MUDP decisions [33].
3. Tertiary legal materials, such as legal dictionaries, encyclopedias of customary law, and other supporting documents that help clarify terms or legal concepts related to Balinese customary law [34].

#### 3.2 Data collection technique

Data collection was carried out through several stages:

1. Literature study, conducted by reviewing written legal sources and previous research related to women's inheritance rights within the Balinese customary system, both from national and international publications [35].
2. Semi-structured interviews with key informants such as customary leaders, Hindu religious figures, and women involved in inheritance processes, to obtain empirical perspectives on the implementation of Balinese customary law.
3. Document analysis, conducted by examining *awig-awig* (village customary laws), MUDP decisions, and court rulings to understand the dynamics of customary law implementation within the juridical context.

### 3.3 Data Analysis Techniques

The collected data were analyzed using a descriptive qualitative analysis method consisting of three main stages:

1. Data reduction, which involves selecting information relevant to the research focus, particularly those describing the position of women in customary inheritance.
2. Legal classification and interpretation, which entails categorizing data based on customary and national legal norms to identify their differences, similarities, and points of convergence [36].
3. Juridical-comparative analysis, conducted by comparing the principles of Balinese customary law with the provisions of positive law and the principles of gender equality to determine areas of harmonization and normative conflict [30].

### 3.4 Analysis Approach

The approaches used in this study are the statutory approach, by examining both customary and national legal instruments governing inheritance [32], and the conceptual approach, by analyzing the concepts of *kapurusa*, *sentana*, and *predana* within the Balinese customary system and their relation to the principle of gender justice [31]. Through the combination of these approaches, this research is expected to produce a comprehensive understanding of the position of female heirs within the Balinese customary inheritance system and contribute to the development of gender-equitable customary law.

## 4. RESULTS AND DISCUSSION

### 4.1 Inheritance System in Balinese Customary Law

Balinese customary law is a legal system that originates from the traditional, religious, and social values of Balinese society. The main principle of Balinese customary inheritance law is based on a patrilineal system, which positions men as the successors of the family lineage (*purusa*), while women are considered part of their husband's family after marriage (*pradana*) [37][38]. In this system, rights to family inheritance are generally granted to sons, particularly the eldest son (*sentana rajeg*), who is responsible for performing customary ceremonies and maintaining the family temple (*pura keluarga*) [39]. Daughters, upon marriage, are regarded as having left their natal family's responsibilities and therefore do not receive inheritance rights from their parents [40].

However, social developments and increasing legal awareness among the Balinese people have begun to spark debates regarding the relevance of an inheritance system that discriminates against women. Some families have started to grant certain portions of property to their daughters as a form of respect and social justice [41]. This shift indicates a transformation of values from a patriarchal tradition toward a more egalitarian system [42].

### 4.2 Conflict between Balinese Customary Law and National Law

In the context of national law, Law No. 1 of 1974 on Marriage emphasizes that the rights and obligations of husband and wife are balanced, including in the ownership and inheritance of

property [43]. Similarly, Article 28D paragraphs (1) and (2) of the 1945 Constitution (UUD 1945) guarantees that every citizen has the right to equal treatment before the law, without gender discrimination [44].

Therefore, the Balinese customary inheritance system, which excludes women's inheritance rights, can be considered inconsistent with the principles of gender equality and substantive justice guaranteed by national law [45]. Several Supreme Court decisions have provided new direction regarding the position of women in customary inheritance. For instance, Supreme Court Decision No. 179/K/Sip/1961 affirms that unmarried Balinese women have the right to receive a share of inheritance from their parents' property [43]. This ruling serves as an important precedent (jurisprudence), recognizing the legal standing of women as legitimate heirs within Balinese customary law.

#### 4.3 Customary Law Views on Women as Heirs

In the perspective of traditional Balinese customary law, the concept of *purusa*–*pradana* plays a decisive role in determining an individual's inheritance rights [46]. The *purusa* (male) is regarded as the primary heir, as he is responsible for continuing the family lineage and fulfilling the family's spiritual obligations. Conversely, the *pradana* (female) is considered not to bear such responsibilities and therefore does not receive direct inheritance rights [47].

However, in practice, many families grant living gifts (*hibah*) to their daughters, such as land or houses, to ensure their welfare [48].

This concept has since undergone reinterpretation by Balinese customary leaders and legal scholars. They argue that customary values do not inherently reject equality, but rather emphasize a balance between rights and social responsibilities [39]. In the modern context, these values can be translated into proportional inheritance rights, instead of the complete exclusion of women from inheritance [49].

#### 4.4 Social Dynamics and Paradigm Change

Globalization and the increasing level of legal education among Balinese society have contributed to a shift in paradigm regarding the position of women in inheritance law [46]. Women now play an active role in customary activities, including temple management (*pura*) and family asset administration roles that were previously carried out exclusively by men.

In addition, the role of regional governments and customary institutions has helped facilitate dialogue on customary law reform to ensure alignment with gender justice principles [37]. For example, Bali Governor Regulation No. 97 of 2018 on the Implementation of Customary Values in Balinese Society recognizes the importance of equality and the protection of women in the execution of customary law [48].

These developments indicate the emergence of legal syncretism, in which customary values and national law mutually adapt to form a more inclusive legal order [39]. This adaptation does not imply the elimination of customary law; rather, it reflects an effort to harmonize it with universal principles of justice and human rights [50].

#### 4.5 Legal Implications for the Position of Women

A juridical analysis of the position of women in Balinese customary inheritance reveals three main implications:

1. Implications for Customary Law

The recognition of women's inheritance rights has encouraged changes within the structure of Balinese customary law. Customary institutions such as *desa pakraman* have begun revising their *awig-awig* (customary regulations) to be more adaptive to the principle of equality [21].

2. Implications for National Law

The acknowledgment of women's inheritance rights in customary practice strengthens the implementation of the principle of non-discrimination as stipulated in the 1945 Constitution and the CEDAW Convention, which Indonesia ratified through Law No. 7 of 1984 [22].

3. Implications for Society

These changes have significant social impacts, such as the increasing role of women in managing family assets and preserving traditions. Moreover, family relationships become more harmonious due to the sense of fairness in inheritance distribution [23].

#### 4.6 Theoretical Perspective: Customary Law and Gender Equality

From the perspective of legal pluralism theory, Indonesia's legal system consists of customary law, Islamic law, and national law, which coexist within society [24]. In this context, Balinese customary law must be viewed as an integral part of the national legal system, and therefore it must not contradict the principles of justice and equality established by the Constitution [25].

Furthermore, feminist legal theory emphasizes the importance of deconstructing patriarchal norms that place women in subordinate positions [26]. Thus, the analysis of Balinese customary inheritance law involves not only legal aspects but also a cultural reflection that needs to be gradually transformed [27].

#### 4.7 Evaluation of Court Decisions and Field Practices

Several inheritance cases in Bali demonstrate the application of adaptive justice principles, in which women are granted certain rights even if they are not formally recognized as heirs [28]. For instance, in an inheritance case in Tabanan Village, the family granted the daughter usufruct rights (right of use) over land, even though ownership remained under the male family line [29]. This reflects that Balinese customary law is dynamic and can be adjusted to align with evolving social justice values [30].

## CONCLUSION

Based on the above discussion, it can be concluded that:

1. Customarily, the Balinese inheritance system is still rooted in the *purusa-pradana* principle but is gradually shifting toward a more egalitarian model in response to social change.
2. Legally, the principle of gender equality provides a strong juridical foundation for revising discriminatory inheritance practices.
3. Juridically and sociologically, there is growing synergy between customary values and national law in establishing a fairer, more humanistic, and contextually relevant inheritance system.

Therefore, the reform of Balinese customary inheritance law should be pursued through an integrative approach, combining the noble values of tradition with universal principles of human rights and gender justice. This effort is expected to produce an inclusive, equitable, and culturally authentic inheritance model, reflecting Bali's identity as a society grounded in balance and social harmony.

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