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The nature of the Patrilineal System of Bali Indigenous Communities towards the legal position of women in instruction

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Abstract. This research is a normative juridical research by looking at the provisions in Balinese customary inheritance law. The essence of the patrilineal system of the Balinese indigenous people to the legal position of women is to place women in an inferior position. This condition has an impact on the position of women which causes gender inequality. Traditional inheritance in Bali is based on *swadharna* (obligations) and *swadikara* (rights). Men are placed as heirs because they have responsibilities both to their ancestors, parents, and in traditional communities. In its development, married daughters actually take over the responsibility for praying at the home of the family of origin and taking care of their parents, even holding a funeral ceremony for their parents, while boys live separately from their parents. The condition in which girls aren't entitled to inherit the assets of their parents is certainly unfair.

Keywords. patrilineal, indigenous, legal

Introduction

Balinese people still use customary inheritance law in the distribution of inheritance in their communities. The kinship system adopted is a patrilineal kinship system where the heirs are generally male. Regarding the inheritance system in this patrilineal kinship system, Elfrida R Gultom said as follows:

According to the patrilineal system, the men position is more prominent than women in inheritance distribution, so only the men will be the heirs. The heirs in patrilineal system consist of: first, son: all legitimate sons are entitled to inherit all properties and the amount of property is equally shared among them. If they have no son, only daughter and wife, the inheritance can still be used by the daughter and wife throughout life. Second, adopted children, his position is the same as a legitimate child, but the adopted child only becomes heir to the treasure with his adoptive parents and is not entitled to the heritage. Third, father, mother, and siblings of the heir can inherit altogether if there are no son and adopted children. Fourth, immediate family in no particular order if there are no the heirs. Fifth, indigenous communion, if there is no hers at all, then the inheritance is held by indigenous communion. (Gultom 2017)

Balinese customary law actually comes from Hinduism, where Hinduism is the majority religion adopted by Balinese indigenous peoples. Women or women in Hinduism are worshiped as Goddess. In Hinduism, women are glorified figures. Hinduism recognizes the

concept of Tri Murti, namely (Brahma, Vishnu, Shiva) which is presented in pairs or with their Sakti by carrying out their respective duties. This is a form of manifestation of God or Brahman itself. This is widely told in the Hindu Puranas.(Lestariani, Kadek 2021) Hindu religious teachings that glorify and glorify women are contradictory to Balinese customary law which discriminates against women.

Discrimination against women in inheritance law is basically not in accordance with the development of civilization which increasingly respects gender equality.(Surjono, Prasisca, and Sutikno 2015) Gender activists and feminists often speak out for the equal position of men and women, because in principle the law respects the value of fairness in the sense of being equal, regardless of gender differences. Gender equality is also known as gender justice. Gender equality is defined as a view that every human individual should receive equal treatment in the sense that it is not discriminated against and doesn't discriminate based on gender.(Zulfi 2021) This is because gender is essentially a natural thing that comes from God.(Amalia 2020) In Balinese customary inheritance law in the future, the principles of gender equality must be considered and applied. The purpose of this study is to find out the nature of the patrilineal system of the Balinese customary community towards the legal position of women.

Research Method

This research is a normative juridical research by looking at the provisions in Balinese customary inheritance law.(Michael 2019)

Inheritance System in Indigenous Peoples of Bali

Mastery of property ownership will meet the psychological needs, the need for security, the need for social life and the esteem and self-actualization of the owner. As a result, inheritance disputes often occur in Indonesia. Ownership of inheritance will make a person feel comfortable in living his life. The increase in inheritance disputes cannot be separated from the pluralism of inheritance law in Indonesia. Until now, there is no single field that is fully applied by the community, whether it is western inheritance law, customary inheritance law or Islamic law. This is due to the influence of the development of community life.

The division of inheritance is closely related to lineage. The principles of lineage mainly affect the determination of heirs and the share of inheritance that is inherited (both material and immaterial). In Indonesia, there are three main principles of kinship line, including:

1. Patrilineal, which gives rise to large family units, such as clans, clans, where each person always connects himself only to his father. Therefore, belonging to his father's clan, namely in a pure patrilineal system such as in the Batak land or where each person connects himself to his father or to his mother, depending on the form of marriage of his parents, and therefore belongs to his father's clan or to his mother. into his mother's clan, namely -in a shifting patrilineal system, such as in Lampung and Rejang;

2. Matrilineal, which also gives rise to large family units, such as clans, tribes, where each person always connects himself only to his mother or mother, and therefore belongs to the clan, tribe, mother; and

3. Bilateral/parental, which may give rise to large family units, such as tribe, clump, where each person relates himself in terms of descent to his mother or father.(Febriawanti and Mansur 2020)

The Balinese traditional community adheres to a patrilineal kinship system that causes only descendants to have the status of lime, *kapurusa* namely the position of men is more important than sisters who are considered to be able to take care of and carry on family responsibilities, both in relation to Hindu beliefs, Hindus, as well as to the preservation of the

natural environment in accordance with with Hindu beliefs. Based on this, in general, only male descendants have the right to inheritance. Meanwhile, descendants with *pradana* (female) status aren't able to carry on responsibilities, so they are equated with people who leave family responsibilities and are therefore considered not entitled to inheritance in the family.(Aprilianti 2018)

Balinese Traditional Inheritance Law and the Position of Women in Inheritance

The development of customary law and the condition of society in Bali began to experience a shift, especially for families who didn't have sons. To continue the family lineage, the status of the daughter in the family will be changed to a male, which is called *sentana rajeg*, this change in status is a form of shifting the rights of Balinese women in inheritance. The inheritance rights of Balinese women based on their status can be distinguished based on the position and status of the women, including:

A. Women as *Sentana Rajeg* in the inheritance system

In a family in Bali, especially a Hindu, not having a son is a big problem. As a way out of this problem, a customary rule was formed which became a solution for families who didn't have male offspring/*purusa*. In the practice that exists in the customary law community in Bali, the way that can be done to get *sentana purusa*, one of which is by appointing their own daughter as *purusha* status. A process in which a family with only daughters will change their daughter's status as *purusha* (a status usually carried by sons) which is called *sentana rajeg*. In the concept of Balinese customary law, *sentana rajeg* means a daughter whose status is confirmed or decided to become a *purusa* so that she has the status of an heir. In the Denpasar High Court Decision which has become jurisprudence, Decision No. 105/PTD/1972/Pdt. dated July 22, 1972 stipulates that: a female child obtains the legal status of a male if he is made a *sentana rajeg* or married to a *stagnation (keceburin)*. With this, women who have the status of *sentana rajeg* can become heirs of their families. This condition closes the opportunity for male lineages from large families to become heirs.

B. Unmarried Women in Inheritance System Women

Who aren't married in Balinese customary law are known as *Deha Tua*. Even though it has been regulated regarding women's inheritance rights in the Decree of the Supreme Council III of the Pakraman Village Main Assembly in 2010, it doesn't necessarily change the ingrained habits of Balinese society. The regulation regarding the inheritance rights of a *deha* and an old *deha* is still based on the old tradition where the old woman and the old woman don't have the right as heirs of their parents' property, and only have the right to enjoy the results of their parents' assets on a limited basis as long as they are still carrying out their *swadharma* to their family and friends his parents.(Karista Putri and Gordon Withnall 2018)

C. Women Married with Ordinary Marriage System in Inheritance System

In Balinese customary law, a woman who has married out is not an heir, but she can enjoy the inheritance from her parents, the transfer of the property is carried out by means of grants or gifts. A grant in the provisions of Article 1666 of the Civil Code A grant is an agreement in which the donor, in his lifetime, freely and irrevocably submits an object for the purposes of the recipient of the grant who receives the delivery.

D. The Position of the Widow in the Inheritance System

To find out the inheritance rights of a widow according to Balinese customary law, it must be known in advance the form of marriage carried out before the woman becomes a widow. The marriage system will affect the status of the widow in her inheritance rights. In an ordinary marriage, a widow will remain in the predana position where as a result of her marriage the woman will leave her girl's house, and enter her husband's family. By having left her girl's house, the woman will automatically lose her rights as a child of her girl's family, including losing her right to inherit her parents' assets. It will be different if it is because of the sincerity and willingness of the family to give the soul of the fund or a sign to the woman who will marry out as a cost and provision for her life at her husband's house later. Regarding the position of the widow as heir is related to the widow caused by the death of her husband, and for some reason the widow doesn't return to her girl's house or what is called *mulih deha*. The main reason a widow doesn't return to her girl's house is usually because of the interests of her children and taking care of her husband's inheritance for the benefit of her children who will later become heirs of her deceased husband's inheritance.

The provisions in Balinese customary law (Christine Ndun, Suttor, and Dike Widhiyaastuti 2018) on inheritance rights for widows whose husbands die will intersect with national civil law, which even Balinese customary law itself gives 50% rights to joint assets when a divorce occurs. Article 832 of the Civil Code stipulates that "According to the law, those who are entitled to become heirs are blood relatives, both legal according to the law and outside of marriage, and the husband or wife who has lived the longest." The provisions of the law of inheritance in the Civil Code stipulates that the closer blood relatives exclude or close the more distant relatives. These blood families are arranged in groups known as the Heirs Group consisting of Groups I, II, III and IV, which are measured according to the closeness of blood relationship to the heir, where the closer group closes the more distant group, as follows:

1. Category I: husband/wife who has lived the longest and their children/descendants (Article 852 of the Civil Code).
2. Group II: parents and siblings of the heir.
3. Group III: Family in a straight line up after the father and mother of the heir.
4. Group IV: Uncles and aunts of heirs from both the father and mother side, descendants of uncles and aunts up to the sixth degree are counted from the heirs, brothers from grandfather and grandmother and their descendants, up to the sixth degree are counted from the heirs.

Although under customary law, a widow doesn't have the right to inherit from her husband's wealth. However, in some jurisprudence it is stated that the widow has the right to inherit her husband's assets, it can be seen in the following court decisions:

1. In the Supreme Court Decision No. 302K/Sip/1960, dated November 2, 1960 which states that: The widow is the heir
2. Based on the Denpasar High Court Decision No. 228/PDT/1966/Pdt dated November 7, 1967, it was decided that: A widow is the heir of her husband who dies if she doesn't leave children.
3. Bangli District Court Decision No.1/Pdt/G/1984/PN Bangli dated 21 May 1984, High Court Decision No.128/Pdt/1984/PT Dps dated 30 October 1984 which was later upheld by Supreme Court Decision No.746/ K/Pdt/1985 dated February 27, 1986, it can be concluded that: Widows are entitled to rich assets in a *serambat sesuun* (2:1) two parts for heirs and one part for widows.

The social conditions that occur in Balinese indigenous peoples (Astara 2019) that place men in a superior place compared to women show discrimination against women which is

legitimized in Balinese customary law. Whereas in the teachings of Hinduism, namely the Manawa Dharmasastra Scripture Chapter III Sloka 58, it is stated that for any family who doesn't respect women, the family will surely fall apart. A house where women aren't properly respected, expresses a curse, the family will be completely destroyed, as if destroyed by a supernatural power.(Whedariyadnya 2000)

Conclusion

The essence of the patrilineal system of the Balinese indigenous people to the legal position of women is to place women in an inferior position. This condition has an impact on the position of women which causes gender inequality. Traditional inheritance in Bali is based on *swadharma* (obligations) and *swadikara* (rights). Men are placed as heirs because they have responsibilities both to their ancestors, parents, and in traditional communities. In its development, married daughters actually take over the responsibility for praying at the home of the family of origin and taking care of their parents, even holding a funeral ceremony for their parents, while boys live separately from their parents. The condition in which girls aren't entitled to inherit the assets of their parents is certainly unfair.

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