

# RECONSTRUCT THE PARADIGM SHIFT OF INHERITANCE RIGHTS FOR BALINESE HINDU WOMEN

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**Abstract** - According to Balinese adat (customary) law, the sole inheritors are sons with *purusa* status, while daughters with *predana* status are not eligible to inherit. However, the idea of granting inheritance rights to Balinese Hindu women came to the fore, indicating a paradigm shift in the legal sense through the provision of a share of the property, or *gunakaya*, to their daughters as *jiwadana*, *tadtadan*, or *bekel*. The critical point is to reconstruct a paradigm shift by subordinating Balinese Hindu women's inheritance rights to women's emancipation, human rights, and gender equality.

**Keywords:** Balinese Hindu Women; Inheritance Rights; Reconstruction; Paradigm Shift.

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## INTRODUCTION

The Balinese *adat* community practices a patriarchal family system where children are born into their fathers' line, with their descendants descended exclusively from the male line. It was practiced by Balinese *adat* community members who required, among other things, that their sons not be adopted by another family, that the sons fulfill their obligations (*dharmaning*) as children, that they fulfill their *sidikara* (in the form of fulfilling their obligations and rights as a descendant), and that they pay respect to their ancestors and parents.<sup>1</sup>

The requirements shall be fulfilled by their sons since they are entitled to a *purusa* status and recognized as the successor of their descendants. The daughters may be appointed as *sentana rajeg* with *kaceburin* marriage to hold the right to inherit according to Balinese *adat* law.<sup>2</sup> After marriage, a daughter leaves her parent's family to join her husband's and is not accountable for her family obligations. As a result, according to Balinese *Adat* Law, daughters lack the status of heirs since they are not required to continue the descendant's obligations and rights, including obligations and rights to material and immaterial objects.

<sup>1</sup>Michel Picard, "Balinese religion in search of Recognition: From Agama Hindu Bali to Agama Hindu (1945-1965)," *Bijdragen tot de Taal, Land en Volkenkunde* 167, no. 4(2011): 485.

<sup>2</sup>I Nyoman Darma Putra, *A Literary Mirror Balinese Reflections on Modernity and Identity in the Twentieth Century* (Leiden: KITLV Press, 2011), 183-185.

The composition of the community inseparably influences inheritance *adat* law in Indonesia differs in the sense to whom the inheritance is given on the kinship system<sup>3</sup> of each customary/traditional community.<sup>4</sup> Inheritance *adat* law in Indonesia recognized three kinship systems, namely *patrilineal* kinship system, *matrilineal* kinship system, and parental kinship system<sup>5</sup>. As a result of the Balinese *adat* community adopting the patrilineal system, a family's descendants are drawn from the male line<sup>6</sup>. With the male lineage, the descent as the generation's successor is limited to sons, referred to in Balinese *adat* law as the *purusa* line. Thus, if a family does not have a son, the father will adopt a child (*meras pianak*) to sit alongside his biological child. Another option is to adopt a daughter as a *sentana rajeg*, in which the marriage is performed concurrently with the adoption, giving the daughter *purusa* (male) status and her husband *predana* (female) status. As a *sentana rajeg* with *purusa* status, this daughter is the generation's heir apparent.<sup>7</sup>

At the moment, most families in the *adat* community treat their children equally regardless of gender.<sup>8</sup> The treatment of sons and daughters is the same in caring for children and their education.<sup>9</sup> This situation is strengthened by the development of human rights issues and gender issues;<sup>10</sup> the equal position of sons and daughters is getting stronger, which also affects many members of the *adat* community in treating their children<sup>11</sup>. The issues of human rights and gender are also acceptable to most members of the *adat* community.<sup>12</sup> The Balinese *adat* community also apparently followed suit, marked by the growing tradition of giving *jiwadana* or *bekel* to a married daughter as capital in forming a new family with her husband. In connection with this development, the Main Council of Pakraman Village (MUDP) Bali Province issued Decree Number 01/Kep/Psm-3/MDP Bali/X/2010 dated October 15, 2010, concerning inheritance rights for women. The provisions contained in the MUDP Decree differ from the existing customs and apply in the *adat* law for the Balinese *adat* community, namely the provisions impose the same position for sons and daughters as heirs to the property after being deducted by a third as *duwe tengah*. The decree states that sons and daughters get inheritance rights in a ratio of 2: 1, namely *ategen* (*sepikul*/two parts) for sons and *asuun* (*sejunjung*/one part) for daughters.

While daughters do not inherit from their parents, they receive a share of their parent's assets. This gift from parents is commonly referred to as *jiwadana*, *bekel*, *tadtadan*, or other terms that vary according to local customs. *Jiwadana* is typically given before the parents' death or when the daughter attains *predana* status. The *jiwadana*, *bekel*, or *tadtadan* is given voluntarily by parents and is not obligatory, although adjusted to the parents' material capabilities. This gift is intended to enable her to begin a new life (forming a household) with her spouse, in which case the status of this property remains in the hands of the woman who brings the property into her marriage.

<sup>3</sup>Syamsuddin Muchtar, et.al., 2023, Handling Of Children Who Are Victims Of Exploitation And Violence: A Legal And Human Rights Study, *Russian Law Journal*, Volume XI, Iss, 1, 37-45, DOI: <https://doi.org/10.52783/rlj.v11i1.291>.

<sup>4</sup>Adriaan Bedner and Stijn van Huis, "The Return of the Native in Indonesian Law: Indigenous communities in Indonesian legislation", *Bijdragen tot de Taal, Land en Volkenkunde* 164, no. 2/3(2008): 170-171.

<sup>5</sup>Bagus Hermanto, 2017, *Dinamika Hukum Adat di Indonesia dalam Kajian Filsafat Hukum*, *Majalah ALSA LC Unud*, Issue 3 September: 17-20.

<sup>6</sup>Priambodo, B. B. (2018). Positioning adat law in the Indonesia's legal system: Historical discourse and current development on customary law. *Udayana Journal of Law and Culture*, 2(2), 140-164.

<sup>7</sup>Wayan P. Windia, *Hukum Adat Bali dalam Tanyajawab (Balinese Adat Law in Questions and Answers)* (Denpasar: Bali Shanti and Udayana University Press, 2013), 107.

<sup>8</sup>Miss Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns", *Asian Journal of Law and Society* 5, no. 2(2018): 454, DOI: 10.1017/als.2018.9.

<sup>9</sup>Jean Connolly Carmalt, Rights and Place: Using Geography in Human Rights Work. *Human Rights Quarterly* 29, no. 1 (2007): 69-70. DOI: 10.1353/hrq.2007.0003.

<sup>10</sup>Alfred L. Brophy, "What should Inheritance Law Be? Reparations and Intergenerational Wealth Transfers", *Law and Literature*, 20, no. 2(2008): 197-198.

<sup>11</sup>Élodie Créteau & Natalia rostovtseva, The Concept of Commorientes in French and Russian Inheritance Law, 8(1) *Russian Law Journal* 4-24 (2020), DOI: <https://doi.org/10.17589/2309-8678-2020-8-1-4-24>.

<sup>9</sup>Nadirsyah Hosen, "Human Rights Provisions in the Second Amendment to the Indonesian Constitution from Shari'ah Perspective", *The Muslim World* 97, no. 2(2007): 207-209.

The issue of human rights has a positive impact<sup>13</sup> on the Balinese *adat* community paradigm<sup>14</sup>, especially in the fields of family law and inheritance law, even though *adat* law respects family, marriage, and inheritance from different perspectives. Some argue that it is based on equality<sup>15</sup>, while others argue that it is based on equity<sup>16</sup>, as a person will have rights and obligations based on their gender and social status.<sup>17</sup> Based on a human rights perspective, equal rights between sons and daughters through gender issues are acceptable to most indigenous peoples.<sup>18</sup> This reason protects women's rights based on legal reform revival after *reformasi* era<sup>19</sup>, especially the protection of human rights and gender equality<sup>20</sup> as regulated in statutory laws, including the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Indonesian Constitution), Law Number 39 of 1999 concerning Human Rights, Law Number 7 of 1984 concerning Ratification of CEDAW 1979, Law Number 11 of 2005 concerning Ratification of ICESCR 1966, and Law Number 12 of 2005 concerning Ratification of ICCPR 1966.<sup>21</sup>

The Main Council of *Pakraman* Village (MUDP) Bali through Decree Number 01/Kep/Psm-3/MDP Bali/X/2010 concerning Women's Inheritance Rights determines Balinese women also has inheritance rights. When we examine the MUDP Decree, we discover that it contains new provisions that depart from the customary law that typically governs Balinese *adat* communities. There are some similarities and differences between the seven points of this MUDP Decree and the *adat* law commonly applied in Bali. **First**, husbands and wives and brothers of husbands and his wife have the same position to ensure that the inheritance can be passed on to his children and grandchildren to maintain or preserve the immaterial inheritance. This provision can align with Balinese *adat* law, which generally applies. **Second**, during the marriage, the husband and wife have the same position as the wealth utility (assets obtained during the marital status). This provision can be in line with Balinese *adat* law, which generally applies. **Third**, biological children (sons and daughters) and adopted children (sons and daughters) who are not yet married have the same position as their parents' wealth for wealth. This provision is different from Balinese *adat* law, which generally applies. **Fourth**, biological children (sons and daughters), as well as adopted children (sons and daughters), have the right to the wealth of their parent's wealth, after deducting one third as *duwe tengah* (joint property), which is controlled (not owned) by the child who is *nguwubang* (continuing the *swadharma* or responsibility) of his parents. This provision is different from Balinese *adat* law, which generally applies. **Fifth**, children with *purusa* status are entitled to one share of the inheritance property, while those with *predana* status or limited *ninggal kedaton* are entitled to part or half of the inheritance assets received by children with *purusa* status. This provision is different from Balinese *adat* law, which generally applies. **Sixth**, in terms of the distribution of inheritance, a child who is still in the womb has the same rights as a child already born, as long as the fetus is still alive. It can be said that it is still in line with Balinese *adat* law, which is generally applied. **Seventh**, children who have full *ninggal*

<sup>13</sup> Ibrahim, M. (2022). The judicialisation of discrimination in the Indonesian constitutional court. *International Journal of Discrimination and the Law*, 22(2), 125-151.

<sup>14</sup> Bagus Hermanto, 2017, Perundang-undangan Madjapahit, *Majalah Konstitusi* Issue 128 October, 66-67.

<sup>15</sup> Diprose, R., McRae, D., & Hadiz, V. R. (2019). Two decades of reformasi in Indonesia: its illiberal turn. *Journal of Contemporary Asia*, 49(5), 691-712.

<sup>16</sup> Suartha, I. D. M., Martha, I. D. A. G. M., & Hermanto, B. (2021). Innovation based on balinese local genius shifting alternative legal concept: towards indonesia development acceleration. *Journal of Legal, Ethical and Regulatory Issues*, 24(7), 1-9.

<sup>17</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 80.

<sup>18</sup> Peter Burns, "Custom, that is before all law," in *The revival of tradition in Indonesian politics: The deployment of adat from colonialism to indigenism*, ed. Jamie S. Davidson and David Henley (London/New York: Routledge, 2007), 72-73.

<sup>19</sup> Hermanto, B., & Mas Aryani, N. (2021). Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice. *The Theory and Practice of Legislation*, 9(3), 425-450.

<sup>20</sup> Judiasih, Sonny D.; Rubiati, Betty; Yunitasari, Deviana; Salim, Elycia F.; and Safira, Levana (2020). Efforts to Eradicate Child Marriage Practices in Indonesia: Towards Sustainable Development Goals. *Journal of International Women's Studies*, 21(6): 136, 143.

<sup>21</sup> Irene Istiningasih Hadiprayitno, "Defensive Enforcement: Human Rights in Indonesia", *Human Rights Review* 11, no. 3(2010): 377-379. DOI: 10.1007/s12142-009-0143-1.

*kedaton* are not entitled to inheritance but can be provided by their parents from wealth to be rich without harming their heirs. It can be said that they are still in line with Balinese *adat* law, which is generally applied.<sup>22</sup>

The issuance of MUDP Bali resulted in several changes or differences in the principle of inheritance in Balinese *adat* law, which is still in force. It would be very interesting to study whether the MUDP Decree shifted the paradigm of the Balinese *adat* community. This decision clearly demonstrates a shift in women's status, as the MUDP Decree provides equal inheritance rights for sons and daughters. It is clear from this decision that daughters who previously lacked inheritance rights under *adat* law will now receive an inheritance under the terms of this MUDP Decree, indicating that the change in inheritance status has been accepted. This is likely to have triggered a paradigm shift in the Balinese *adat* community's kinship system, which begins with the acquisition of a daughter's share of the inheritance. As such, this article is compiled by locating, examining, and analyzing the reconstruction of the Balinese *adat* community's paradigm shift toward the substance of the MUDP Decree, which grants future inheritance rights to daughters.

## 1. Research Method

This paper used micro-law research-based legal settlements, as explained by Mathias Siems, research classification to determine the originality of legal scientific works<sup>23</sup>, through this paper that is related to the use of coherence and consistency of legal material through interpretive legal theory, legal synthesis, or systemic approach<sup>24</sup>, using a legal history approach, as well as linking law to reality<sup>25</sup>, including various aspects that affect applicable law. The regulations at the constitutional level, legislation, and certain organic regulations, or local arrangements<sup>26</sup> connected to the inheritance rights in Indonesia<sup>27</sup> are examined and observed in depth in this study using a statutory method<sup>28</sup>. In connection to the hermeneutics on recent arrangements or living law aspects<sup>29</sup>, particularly interpretation of written arguments in the future arrangement of inheritance rights for Balinese women, the factual method is applied. This paper is also based on collecting qualitative data to strengthen arguments<sup>30</sup>.

## 2. Theoretical Framework: Inheritance Rights in the Balinese *adat* Community

Acceptance of inheritance rights from someone in the Balinese *adat* community would always be associated with obligations<sup>31</sup>. It means that the inherit-part will only fall into the hands of who will carry out the duties, and it continued as the descendants or as a successor to their parents and certain ancestors. The obligation in its intended form is primarily caring for parents who have been unable to work as they once did while being cared for by their parents as minors. The following obligation is to

<sup>22</sup>Ingrid Westendorp, "Personal Status Law and Women's Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu Women", *Journal of Human Rights Practice* 7, no. 3(2015): 443-444, DOI: <https://doi.org/10.1093/jhuman/huv013>.

<sup>23</sup>Andri Gunawan Wibisana, 'Writing in Law Journal: Idea, Structure, and Style', (2019) 49 *Jurnal Hukum dan Pembangunan*, 476-477, DOI:<http://dx.doi.org/10.21143/jhp.vol49.no2.2014>.

<sup>24</sup>Mathias M. Siems, 'Legal Originality' (2008) 28 *Oxford Journal of Legal Studies*, 148-152, 156-161, DOI: <https://doi.org/10.1098/ojls/gqm024>.

<sup>25</sup>Mathias M. Siems, 'The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert' (2009) 7 *Journal of Commonwealth Law and Legal Education* 6-8 DOI: <https://doi.org/10.1080/14760400903195090>.

<sup>26</sup>J. Holland and J. Webb, *Learning Legal Rules: A Students' Guide to Legal Method and Reasoning* (8th and, Oxford University Press, Clarendon-Oxford 2010) 124-31.

<sup>27</sup>Terry Hutchinson, 2002, *Researching and Writing in Law*, Law Book, Australia, h.35.

<sup>28</sup>Alf Ross, 1969, *On Law And Justice*, University Of California Press, Barkley & Los Angeles, h.111.

<sup>29</sup>Sudiarawan, K. A., Tanaya, P. E., & Hermanto, B. (2020). Discover the Legal Concept in the Sociological Study. *Substantive Justice International Journal of Law*, 3(1), 94-108.

<sup>30</sup>P. Langbroek, K. van den Bos, M. Milo, and W. van Rossum, 'Methodology of Legal Research: Challenges and Opportunities' (2017) 13 *Utrecht Law Review* 6.

<sup>31</sup>Bagus Hermanto, 2018, *Pluralisme Konstitusional dalam Pengakuan Kesatuan Masyarakat Hukum Adat di Bali*, *Majalah Konstitusi*, Issue 131 January, 62-63.



carry on the responsibilities of the ancestors as a descendant,<sup>32</sup> such as maintaining the places of worship (worshipping, temple, and so on) where *Ida Sang Hyang Widhi*/God Almighty shouts along with ancestors who have died and have been taken over (seated/placed) return to the origin and unite with *Ida Sang Hyang Widhi*/God Almighty in each of their worship places. Another obligation that must continue is to reward and meditate as *krama* (residents) that previously imposed on their parents.<sup>33</sup> After marrying their first child, the parent's role as clerics will be abdicated, along with their duties and rights. It surrendered to their married son to succeed him as a legitimate cleric<sup>34</sup>.

Daughters who receive this inheritance must be unmarried<sup>35</sup>. They receive a half share of her brother's inheritance (*ategen-asuun*), along with the responsibilities that must be fulfilled. It is imposed through women's tasks, such as making offerings during each ceremony associated with implementing *piodalan*. These women receive an inheritance and are required to perform physical labor (making offerings) to organize the ceremony because they are only women and are only subject to *sahan luh* (women's obligations) along with their brothers' wives. In contrast, *ayahan muani* (male obligations) remain with their brother. This demonstrates that the inheritance given to this daughter is also constrained by obligations imposed on her by her parents. If they marry out, their inheritance is returned to their brother on the grounds that the woman is no longer capable or appropriate to perform obligations in her parents' family as a result of marrying out and becoming a member of her husband's family.

The emphasis on duties placed on heirs emphasizes that certain obligations cannot be fulfilled by anyone other than their descendants. This obligation concerned customs and religion that were properly delegated to others, such as maintaining objections to temples and other holy places, conducting *panca yad* ceremonies within their propriety, and performing duties in the *mekrama desa* consistent with their *dadia* and *soroh*. Similarly, as the inheritor of his parent's property, the son has the right to continue his descendants, use a family name, use the disclaimer and other places of worship, use graves, and be a member of the *banjar*/village, and to any others.<sup>36</sup>

### 3. Results and Discussions: Acceptance of Inheritance Rights by Someone Associated with the Imposition of Obligations as a Generational Continuation

#### 3.1. Heirs for Sons who have Attained *Purusa* Status

Previously, the sole holder of inheritance rights from their parents was sons as *purusa*. This situation seems unfair. It considers that the daughters also need to be inherited since they do most of the family work such as doing house chores and making offerings.<sup>37</sup> The traditional Balinese community was unfamiliar with the institution of *nyeburin* marriage (marriage with a girl domiciled as *purusa*) because the *adat* community believed that the descendants had to have direct blood relations (gene attachment) with those who inherited it. This situation related to those who continued this descent was *purusa* statuses that were only sons. Whereas the daughter bears the *predana* status when they are later married out of her parents' family environment by leaving the duties in her parents' family. Sons with *purusa* status as descendants who will continue the generation, of course, will be burdened

<sup>32</sup>Sigrid Weigel, "Inheritance Law, Heritage, Heredity: European Perspectives", *Law and Literature* 20, no. 2(2008): 280.

<sup>33</sup>Carol Warren, "Adat in Balinese discourse and practice: Locating citizenship and the commonweal," in *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, ed. Jamie S. Davidson and David Henley (London/New York: Routledge, 2007), 172-173.

<sup>34</sup>IG Yusa, IK Wirawan, B Hermanto, 2019, *Penerimaan Masyarakat Hukum Adat atas Keluarnya Keputusan MUDP Bali Nomor 01/Kep/Psm-3/Mdp Bali/X/2010* (Studi Empiris di Kabupaten Gianyar, Bangli dan Klungkung), Proceedings International Conference on Science, Technology and Humanities 2018.

<sup>35</sup>Nuzhatf. Rizvi & Aarti Kalnawat (2022) *Lost Cultural Identities And The Dynamics Of Class Inpost-Colonial India: A Study Of Kiran Desai's, 'The Inheritance Of Loss'*, *Russian Law Journal*, Volume X, Issue1, 20-26.

<sup>36</sup>Bernard Lietaer and Stephen de Meulenaere, "Sustaining cultural vitality in a globalizing world: The Balinese example. *International Journal of Social Economics* 30, no. 9/10(2003): 971-972, 974, DOI: 10.1108/03068290310487531.

<sup>37</sup>Felice Batlan, "Engendering Legal History", *Law & Social Inquiry* 30, no. 4 (2005): 824-827, DOI: 10.1086/500179.

with the obligations and rights that previously existed for their parents, such as obligations to religion, ancestors, fathers, and in their *banjar*/village.<sup>38</sup>

The fundamental requirement for *purusa* or *predana* status was necessary. It was based on the understanding of Balinese *adat* law that a descendant can only be born from a single *somah* (channel), or in other words, a child can only be born from a single mother who has followed her husband's lead. As a result, he is automatically a descendant of his father. Similarly, if another family adopts a son, he will *mepamit* (leave) the original family to join the new family (new parents). It is similar to when a marriage is performed; the woman as the bride *mepamit* because she will marry outside her family of origin (her parents) to marry into her husband's family. The birth of a child in a Balinese *adat* family is considered a reincarnation (*punarbawa*) of his father's forefathers.

Similarly, he would reunite with his ancestors at the refuge/*merajung* to stop (stay) after his death. Things like this cannot be debated because they are a part of the Balinese *adat* community's religious teachings. It concludes that sons and daughters have the same rights and obligations when they are still members of their father's family. In general, sons and daughters descended from their fathers. However, if they leave their father's family and marry or adopt a child, they lose their *purusa* status.

More firmly, a son as a descendant is irreplaceable given the belief that the son is a rebirth (*punarbawa/punarbhava*), which means that the son is a reincarnation (soul) who is bound by karmic debt from previous incarnations and must reincarnate into the mortal world with certainty new physical bodies (humans, gods, animals, reptiles, or other body types) to enjoy or suffer the consequences of actions. As a result, an heir and his heir must have a genetic relationship<sup>39</sup>. In Balinese *adat* law, there was still an imbalance in the issue of inheritance, with daughters having fewer rights than sons. Daughters who marry out do not receive an inheritance share, whereas those who do not marry out can receive an inheritance but still follow the family policy to receive a share, even though a woman's actual task is physically more complex than a man's, such as making *banten* (offerings). As a result, his parents' property has a reasonable market value for the portion given to his daughter.

### 3.2. Daughters with *Predana* Status that Unbound to the Obligations of *Mesidikara*

Women may inherit if they have *purusa* status, specifically after given *sentana* status through a *nyeburin* marriage. There is a custom for daughters to be endowed with inheritance rights.<sup>40</sup> Giving daughters inheritance is reserved for daughters who do not conceive a child. The comparison of gifts between sons and daughters is *ategen* for sons and *asuun* for daughters, as her parents' family obligations also bound the unmarried daughter. *Ayahan luh* (obligated women) have physical and financial obligations, such as making *banten* (offerings) for religious ceremonies in their families and doing house chores. If she marries out, this inheritance must be returned to her brothers. It appeared as though the woman received the inherit-part if she remained in her parents' house and did not carry out. It can be concluded that the inherit-part is a gift subject to the obligations he must fulfill as a family member of his parents, which his brother can withdraw if the woman in question marries out, thereby absolving him of his parental responsibilities.

### 3.3. Daughters only Receive the *Bekel*

In prosperous families (those who possess wealth), the daughter who marries out is typically given *bekel*, *tadtadan*, or *jiwadana*. *Bekel/tadtadan/jiwadana* is given to daughters by their parents sincerely and voluntarily. *Bekel* or *tadtadan* was given as a marital gift at the daughter's marriage. While *jiwadana* is a treasure bestowed while the parents are still alive before marriage, it is classified as a grant. *Bekel* or *jiwadana* may be given by their parents as long as it does not detract from his brother's inheritance portion. As a result, this *jiwadana* or *bekel* is given with his brother's approval.

<sup>38</sup>Windia, W.P. and Sudantra, I.K. 2016. *Pengantar Hukum Adat Bali (Introduction of Balinese Adat Law)*. Denpasar: Swasta Nulus and Bali Shanti: 124-125.

<sup>39</sup>Ndun, H. C., Suttor, S., & Widhiyaastuti, I. G. A. A. D. (2018). Does Customary Law Discriminate Balinese Women's Inheritance Rights?'. *Udayana Journal of Law and Culture*, 2(1), 97-114.

<sup>40</sup>Nayana Bose and Shreyasee Das, "Women's Inheritance Rights, Household Allocation, and Gender Bias", *The American Economic Review* 107, no. 5(2017): 150, DOI: 10.1257/aer.p20171128.

The intention is that it will not cause problems in the future. For low-income families, the provision of *jiwadana* is impossible due to financial constraints. Thus, granting *bekel/tadtadan/jiwadana* is not a duty but is based on the testator's (parent's) ability.

*Bekel/jiwadana* could have been given to daughters as long as the gift was derived from their parents' wealth. The ability resulting from the gift-part is derived from the parents' assets, not from their inheritance. Naturally, as a parent (especially if their life is prosperous), they will distribute all wealth to their children. However, this gift is not inherited; instead, she received *jiwadana*, *bekel*, or *tadtadan*, which are not subject to legal obligations toward her parents. Suppose the daughter who receives *jiwadana* or *bekel* performs duties for her parents. In that case, their participation constitutes a moral obligation (non-binding obligation) on the part of the child to her parents, such as providing financial assistance when her parents' family conducts a ceremony.

### 3.4. Inheritance Sharing is Family-based

The distribution of inherit-part is done in a familial manner, in the sense that they had never seen the distribution of inherit-part done in arithmetic. The inherit-part distribution is done in a family manner, as evidenced by the practice of parents as heirs making a *pedum pamong* (cuddled distribution) to their children who are domiciled as heirs.<sup>41</sup> It is given while the parents are still alive to their children as heirs who later become the generation's successors, and it aids in the distribution of inheritance following his parents' deaths by directly calculating the inherit-part that has mastered as an inheritance from their parents.

In other habits, the family distribution is very dependent on the severity of the burden of obligations that the heir must bear. The point is that heirs who have a higher duties burden will get a bigger share than other heirs.<sup>42</sup> Typically, the eldest child plays the largest role, as the eldest child is the primary continuation of his generation's continuity. It is applicable in *adat* law, where the existence of the right to receive the inheritance in its entirety or a substantial portion is referred to as "major rights" of an heir receiving an inheritance from his parents. As far as the respondents are aware, inherit-part distribution occurs within a family and not through arithmetic, as it is governed by Western or Islamic inheritance law.<sup>43</sup>

When a family distribution is made, the object's existence to be inherited is also considered. For example, heirs who inherit land on the side of the road will undoubtedly receive a smaller portion than heirs who inherit land located further away from the highway. Another example is the eldest child who has invested money in continuing his education to become a successful career and financial person. He will undoubtedly give up his father's inheritance to assist his younger siblings in achieving a higher educational level at the exact cost of those who live together and care for their parents. The division will not be done strictly according to the rules of arithmetic.<sup>44</sup> If there is disagreement in this division, the heirs can ask for assistance from the leader of the *adat* village to assist in the division.<sup>45</sup> The leader of the *adat* village (*Bendesa* or *Klian Dadia*) can act as a mediator to prevent a dispute between the heirs in the distribution of the inheritance parts.

### 3.5. Children who Hold *Ninggal kedaton* Status Does Not obtain an Inherit-Part

In Balinese *adat* law, a term known as *Ninggal kedaton* or *Ninggal Kedatuan* refers to someone relinquishing their status as a member of their original family. The term *ninggal kedaton* refers to a person who has come out as a member of his or her parents' family, accompanied by the freedom to

<sup>41</sup> Emy Susanti, "Women's Knowledge and the Role of Local Female Leaders in Ending the Practice of the Early Marriage of Daughters in Rural Communities of Indonesia", *Journal of International Women's Studies* 20, no. 9(2019): 13-15.

<sup>42</sup> Kyle McGee, "The Fragile Force of Law: Mediation, Stratification, and Law's Material Life", *Law, Culture and the Humanities* 11, no. 3 (2015): 487, DOI: 10.1177/1743872112447144.

<sup>43</sup> William R. Roff, "Customary Law, Islamic Law, and Colonial Authority: Three Contrasting Case Studies and their aftermath", *Islamic Studies* 49, no. 4(2010): 455-457.

<sup>44</sup> I Dewa Made Suartha, Hervina Puspitosari and Bagus Hermanto, 2020, "Reconstruction Communal Rights Registration in Encouraging Indonesia Environmental Protection", *International Journal of Advanced Science and Technology* 29, no. 3(s)(2020): 1280-1281.

<sup>45</sup> Brigitta Hauser-schäublin, "Land Donations and the Gift of Water on Temple Landlordism and Irrigation Agriculture in Pre-Colonial Bali", *Human Ecology* 39, no. 1(2011): 44-45, DOI: 10.1007/s10745-011-9388-9.



no longer fulfill family obligations. As a result of the *ninggal kedaton*, he/she no longer has the same inheritance rights as he/she did while still a member of his/her parents' family. The loss of the inheritance right results from the child's failure to fulfill his or her obligations as a family member of his or her parents.<sup>46</sup> According to the MUDP Decree, *ninggal kedaton* is classified into two, full and limited. A full *ninggal kedaton* refers to those unable to fulfill their parents' obligations, such as leaving religion. Thus, someone who has abandoned his parents' Hinduism religion will be unable to participate in religious and customary ceremonies as adopted by his parents because he no longer adheres to their Hinduism religion. Whereas the limited *ninggal kedaton* refers to the *ninggal kedaton* within certain parameters that allow a Hindu to carry out his self-service, such as women performing marriages; men performing marital/*nyeburin* marriages; a child adopted by another family (*peras sentana*); or someone who freely gave himself to another family (*makidihang raga*). The *ninggal kedaton* is classified as such when they cannot fulfill their obligations in the environment of their parent's family in the form of fathers, obligations that are both physical and material, both direct and sublime. It is directed upward (toward God and ancestors) and *ayahan ke teben* (toward the *Banjar*/village in which they lived).

If there is a share of the wealth that parents may give to their deceased children, the gift may only be in the form of food or funds and may be made only with the approval of the people's sons. Parents will distribute a portion of their fortune to those who *ninggal kedaton* as *bekel* or *jiwadana*. Additionally, giving to children who died should not detract from the portion that should be received by sons posing as heirs. Parents' gifts to their children who are *ninggalin kedaton* are made exclusively by those with excess assets. The fundamental principle in granting *bekel* or *jiwadana* to children who *ninggalin kedaton* is that the gift is not an "obligation" on the part of parents to give *bekel* or *jiwadana*, and receiving *bekel* or *jiwadana* is not a "right" of children who *ninggalin kedaton*<sup>47</sup>. Whether as an inheritance or as *bekel* and *jiwadana*, transferring wealth to his children is a family matter. It is distinct from the transfer/forwarding of assets derived from his ancestors' inheritance. In large families, the bond between assets and members is not as strong as an inheritance. To whom the wealth is passed on is irrelevant for a family as long as the individual concerned continues to fulfill his or her obligations (*ayah-ayahan* and *pepesan*) to his or her place. If he fails to carry out his responsibilities as a *dadia* resident, he is expelled or not invited to *mesidikara*. Thus, the division of wealth within a family is a matter for the internal family (*somah*), not the extended family, because the continuation/operation of inheritance is highly dependent on obligations (especially obligations to the objector/administrator of funds).

#### 4. Result and Discussion: The Reconstruction of Paradigm Shift and Acceptance of Inheritance Rights for Balinese Hindu Women

In hindsight, it is necessary to recognize that the primary goal of controlled change is not to destroy or eliminate the law<sup>48</sup>. It is not true that, as a result of changing times slowly and unconsciously, *adat* law will change on its own in the Balinese *adat* community. This change is necessary to reflect the nature of *adat* law as an unwritten (non-scriptum) system that is adaptable to changing times. As with legal positivism, *adat* law does not require intervention through various forms of formal regulation, because in the absence of formal rules, *adat* law will change in the sense of supporting a law that changes with the times.<sup>49</sup> It will occur continuously based on the situation, placement, and time (in the Balinese phrase called *desa kala patra*).

<sup>46</sup>Helen Creese, "Judicial Processes and Legal Authority in Pre-Colonial Bali", *Bijdragen tot de Taal, Land en Volkenkunde* 165, no. 4(2009): 530.

<sup>47</sup>I Gede Yusa, et.al., 2018, *Perubahan Hak Mewaris Perempuan Bali*, Swasta Nulus.

<sup>48</sup>Hermanto, B. (2022). Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia. *The Theory and Practice of Legislation*, 1-31.

<sup>49</sup>David Henley and Jamie S. Davidson, "In the Name of *Adat*: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia", *Modern Asian Studies*, 42, no. 4(2008): 816-819, 825-826, 835, 844, DOI: 10.1017/S0026749X07003083.



#### 4.1. Under Human Rights, that No Longer Distinguishes between Men and Women

The existing constitution and legislation emphasised that sons and daughters must receive the same treatment.<sup>50</sup> The same treatment is intended to eliminate discrimination between sons and daughters in a household.<sup>51</sup> Based on Balinese *adat* law, a daughter does not acquire inheritance from her parents, where she can only receive the *jiwadana* or work/donations and whose gift is based on the willingness of her parents and brothers. For this reason, women activists certainly see this matter as very unfair<sup>52</sup>, and therefore they strongly agree that there are rules that give inheritance to daughters.<sup>53</sup> The recognition of inherit-parts implies a compulsion to give a portion of one's wealth. As a matter of personal choice for the family in question, it determines who receives the inheritance, who transfers it to, and what the inheritance will provide. It differences like the treasury part from the inheritance holder from one generation to the prior generation. Of course, the difference is in providing an inheritance to his children.<sup>54</sup> For instance, in a family with only one daughter, the parents have no right to give their children property and thus relinquish all of their wealth to them. Of course, some of the assets should have been given to the only daughter, especially if the parents did not find a man willing to marry their only daughter in marriage or did not adopt a child (*meras pianak*). With this gift, it is inevitable that when the parents can no longer work and earn a living, these daughters will take care of it with love. To accomplish this, of course, will require discussion between the three parties involved, namely the husband and wife, the male and female parties' parents and families, and the female party's parents and family, to reach an agreement that is morally binding all parties.

#### 4.2. *Adat* Law is Unwritten Law

According to the research conducted, the *adat* law is unwritten or uncoded. Thus, *adat* law is subject to change in accordance over time. *Adat* law is not a man-made law; rather, *adat* law is a law that grows, develops, and dissipates naturally with the passage of time<sup>55</sup>. Changes in *adat* law can occur unintentionally, in which case *adat* law from the past has slightly different content than *adat* law today; similarly, *adat* law at the moment will differ from *adat* law in the future, as *adat* law constantly changes with the times. According to scholars such as Soepomo, Hazairin, and Soekanto, *adat* law is unwritten.<sup>56</sup>

*Adat* law is growing and developing following society development. It develops in harmony with its supporters' law sense or a propriety sense. Changes that occur will proceed in evolution without any conscious change. It means that the customary law will change according to the law sense and the propriety of the community supporting it.<sup>57</sup> This law sense and propriety changes with changing times are influenced by "place, time, and circumstances" (*desa kala patra*).

<sup>50</sup>I Gede Yusa, Bagus Hermanto, and Nyoman Mas Aryani, "No-Spouse Employment and the Problem of the Constitutional Court of Indonesia", *Journal of Advanced Research in Law and Economics* 11, no. 1(2020): 217-218, DOI: [https://doi.org/10.14505/jarle.v11.1\(47\).26](https://doi.org/10.14505/jarle.v11.1(47).26).

<sup>51</sup>Leya Cattleya, *Increasing Women's Political Participation and Strengthening Good Governance in Indonesia Program* (Oslo: the Norwegian Agency for Development Cooperation, 2010), 2-3.

<sup>52</sup>Yusa, I. G., & Dharmawan, N. K. S. (2018). The balinese traditional law instrument: A realism between the balance of cosmic and human rights context. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 5(3), 447-463.

<sup>53</sup>Catherine Renshaw, "Global or Regional?: Realizing Women's Rights in Southeast Asia", *Human Rights Quarterly* 39, no. 3(2017): 713-714, DOI: 10.1353/hrq.2017.0038.

<sup>54</sup>Susan Coutin, "Comment: The Violence of Being Not Quite There", *Law, Culture and the Humanities* 7, no. 3(2011): 457, DOI: 10.1177/1743872110388216.

<sup>55</sup>I Gede Yusa, Bagus Hermanto, Ni Ketut Ardani, 2021, Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan, Proceedings of the International Conference For Democracy and National Resilience (ICDNR 2021): Advances in Social Science, Education and Humanities Research, DOI: <https://doi.org/10.2991/assehr.k.211221.001>, 5-7.

<sup>56</sup>Franz Von Benda-Beckmann, "Riding or Killing the Centaur? Reflections on the identities of Legal Anthropology, *International Journal of Law in Context* 4, no. 2(2008): 89-92, DOI: 10.1017/S1744552308002012.

<sup>57</sup>Burns, P.J. 2007. Custom, that is before all law. In Davidson, J.S. and Henley, D. (eds), *The revival of tradition in Indonesian politics: The deployment of adat from colonialism to indigenism*, pp. 68-86. London/New York: Routledge Curzon: 114-115.

In this case, *adat* law cannot be applied in accordance with what is known about the formation of law<sup>58</sup>. *Adat* law will continue to exist, grow, and develop in lockstep with the lives of its supporters and will eventually lapse into oblivion once the supporting legal community ceases to believe it is the law. The belief that the existing *adat* law should be followed is based on the community's sense of propriety and harmony. It has a meaning deemed appropriate by the substance that the community follows. They believed that the law-substance that follows would guide and direct life in harmony.

Similarly, if an arrangement is deemed inappropriate or disrupts the harmonious life of the community, it will be abandoned, rendering the rules invalid as a result of the community's rejection<sup>59</sup>. This situation will resolve itself without the need for any force arrangements. The law exists not because it is made, but because it grows in society.

This research found that matters relating to changes in the law on indigenous and tribal peoples should not impose through written arrangements as are well known in state law.<sup>60</sup> Arrangements made following the positive-law of this country will not be followed as long as the regulations made do not fulfill the sense of law or legal beliefs and the propriety of society.<sup>61</sup>

Another example is "*ngerorod*/elopement marriages," which were initially carried out due to the women's lack of parental consent to marry but are now carried out because both parties agreed. Thus it shall be considered, oblivious to the fact that the motivations for this *ngerorod* marriage have shifted, from initial parental disagreement over caste differences to an agreement to marry solely to save money.<sup>62</sup> It was unnecessary to make written arrangements for parents' duties to give inherit-parts to their daughters. It relates to the protection of daughters in the same way that sons are treated. When it comes to their children's needs, parents provide education. Additionally, they provide their children during the marriage and other gifts based on the parents' ability, despite their daughters marrying outside their parents' family. Everything flows according to the development and progress of this era, but the *adat* law will always change if it is no longer consistent with the supportive community's sense of propriety and harmony. The MUDP Decree is unnecessary, as without such community decision-making, times will change<sup>63</sup>. The existence of such a decision has the potential to spark a community-wide debate.

#### 4.3. The Stronger Ties of *Somah* and Thinner Ties of Relatives

*Adat* law places a premium on community interests. It is examined how relatives influence the lives of its citizens. Between relatives (extended family) and *somah* (nuclear family), it can be seen in ball theory that as the relatives' role becomes more substantial, the *somah* role weakens, and vice versa, as the *somah* becomes stronger, the relatives' role weakens<sup>64</sup>.

At this time, the traditional Balinese community is experiencing increased interest in living life. The interests of relatives tend to wane as *somah* takes precedence (nuclear family). For instance, several families acted realistically by ceasing to prioritize the position or caste of their children's lives and allowing their sons and daughters to marry outside their caste. In this case, what matters most is how the child's future self-directs his life in forming a new family. Similarly, concerning the subject of this

<sup>58</sup> Hermanto, B. (2021, June). Discover Future Prospect of Indonesia Criminal Law Reform: Questioning Adat Criminal Law existence, Material and Formal Legislation, and Constitutional Court Decision Frameworks. In Paper was presented at International Seminar Udayana University and University of Melbourne (Vol. 17, pp. 1-20).

<sup>59</sup>IM Sarjana, IG Yusa, B Hermanto, IGY Arsawan, 2018, Kepatuhan Hukum Kesatuan Masyarakat Hukum Adat Tenganan Pagrisingan terhadap Perubahan Hak Mewaris Perempuan, Prosiding Seminar Nasional Sains dan Teknologi IV Tahun 2017 4 (Desember 2017), 149-153.

<sup>60</sup>Kaius Tuori, "The Disputed Roots of Legal Pluralism, *Law, Culture and the Humanities* 9, no. 2(2013): 345-346, DOI: 10.1177/1743872111412718. 330-351.

<sup>61</sup>Franz Von Benda-Beckmann and Keebet von Benda-Beckmann, "Myths and stereotypes about *adat* law: A reassessment of Van Vollenhoven in the light of current struggles over *adat* law in Indonesia", *Bijdragen tot de Taal, Land en Volkenkunde* 167, no. 2/3(2011): 168-169, 171, 175. 167-195.

<sup>62</sup>Howe, L. 2005. *The Changing World of Bali Religion*. Oxon: Routledge - Taylor & Francis Group: 112-113.

<sup>63</sup>IK Wirawan, IG Yusa, CIDWP Dewi, B Hermanto, 2018, Penerimaan Masyarakat Hukum Adat atas Keluarnya Keputusan MUDP Bali Nomor 01/Kep/Psm-3/Mdp Bali/X/2010 (Studi Empiris di Kabupaten Karangasem, Tabanan dan Buleleng), Prosiding Seminar Nasional Sains dan Teknologi IV Desember 2017 4 (Desember 2017), 189-195.

<sup>64</sup> Khosyi'ah, S., & Rusyana, A. Y. (2022). Inheritance settlement of descendants of children and siblings in Islamic law with local wisdom in Indonesia. *Cogent Social Sciences*, 8(1), 2126615.

study (inheritance), many families give a portion of their wealth to their daughters, or even equally, and prioritize children over relatives. It appears that *somah*'s interests are more important than those of relatives. Many ceremonies involving *adat* and religion are performed in their household, not in their original home, and are typically attended by their relatives or extended family, all of which are undoubtedly influenced by financial circumstances.

#### 4.4. The Increasingly Thinning of Ties to the Traditional Community

According to the research conducted, the validity of *adat* law for an individual is highly dependent on their attachment to the traditional community, in the sense of whether they are a member of the traditional community or not. If he is not a member of a particular traditional community, he is under no obligation to follow the customary law applicable to that community.

To understand the applicable *adat* law, one must first understand the *adat* community (*rechtsgemeenschap*) in which the *adat* law is applied, which implies that *adat* law does not exist outside of the traditional community which it is enforced, in the sense that those who are members of the traditional community are bound by all of the traditional community's rules, specifically *adat* law. The issue is whether, if they leave the traditional community, they will still be subject to the *adat* law as applied to the traditional community to which they previously belonged. If they violate the rules governing legal procedure that applied to them before joining as a member, the traditional community has or does not have the authority to impose *adat* sanctions against them. The traditional community's laws no longer bind those who have emerged from the traditional community. Similarly, the sanctions will be imposed on themselves if an act applies to the *adat* law recognized by the traditional community since there is no possibility of causing a disturbance of balance by considering this matter.

With the development of the current-underway era, someone may resign from his fellowship. Of course, they would no longer be bound by the fellowship's rules. Thus, whether they will leave an inheritance to his daughter or to a child who has converted to Hinduism, they can do so without regard for the rights of other parties.

#### 4.5. Practical Thinking that Leaves Old Habits

The issue of legal compliance in *adat* law can be distinguished from compliance with *adat* law as ordered by community leaders, compliance with *adat* law as required by the social environment<sup>65</sup>, and compliance with *adat* law as perceived as comparable or fair by the public<sup>66</sup>. Even though *adat* law is a living document, it is not always a matter of customary law being a just law<sup>67</sup>; instead, the issue of justice is returned to certain parties; for instance, the matter considered just by community leaders may be deemed unnecessary by citizens.<sup>68</sup> The traditional environment's view of what constitutes a fair matter is unnecessarily referred to as the fair by community leaders. Justice is "the just" that is capable of balancing the interests of society and individual interests, whether the implemented *adat* law can be considered fair during its development. According to the research, there has been practical thinking in applying *adat* law as a result of contemporary developments and life competition in Bali.

The social conditions in Bali have changed significantly as a result of development influence and the passage of time, to the point where the current situation is markedly different from previous eras. We can imagine the Bali condition with the calm and peace of living in the 1960s era, which, when compared to the current situation, which is bustling with business, was, of course, altering the traditional Balinese community's pattern of life, particularly for those who live in urban areas.<sup>69</sup>


<sup>65</sup> Gultom, E. R. (2017). Development of women position in the patrilineal inheritance of Indonesian society. *Jurnal Dinamika Hukum*, 17(2), 194-202.

<sup>66</sup> Judiasih, S. D., & Fakhriah, E. L. (2018). Inheritance law system: Considering the pluralism of customary law in Indonesia. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, 5(2), 315-330.

<sup>67</sup> Irianto, S. (2004). Competition and interaction between state law and customary law in the court room: a study of inheritance cases in Indonesia. *The Journal of Legal Pluralism and Unofficial Law*, 36(49), 91-112.

<sup>68</sup> Jan Michiel Otto, "Rule of Law, *Adat* Law and Sharia: 1901, 2001, and Monitoring the Next Phase", *Hague Journal on the Rule of Law* 1, no. 1(2009): 16, DOI: 10.1017/S1876404509000153.

<sup>69</sup> Scott A. Johnsen, "Outside Points of View in the Construction of Balinese Ethnicity and Religion", *The Australian Journal of Anthropology* 19, no. 3(2008): 314-315, DOI: 10.1111/j.1835-9310.2008.tb00356.x.



Bali's current situation is quite different from the island before the 1960s. The distinction is due to Bali's openness as a tourism destination, which affects the infiltration of diverse influences into people's lives. Economic development, technology, and communication, which cannot be avoided in this global era, affect life in the traditional Balinese community directly or indirectly. The changes in Balinese people who were previously inhabited by traditional agrarian societies resulted in industrial society and have also resulted in a shift away from collaborative thinking toward individual thought and all-around practical thinking. It also affects the community's social life, as evidenced by practical methods of performing ceremonies associated with customs and religion. It can be seen in the Hinduism ceremonies performed in large groups, such as *ngaben*, *meukur*, *mesangih* (tooth filling), and others. In this instance, it was feared that these ceremonies would dilute the noble values passed down from their ancestors.

### CONCLUSION

There are five major points on the acceptance of inheritance rights for someone related to the imposition of obligations as a continuation of generation: heirs are only for sons with *purusa* status, daughters with *predana* status are unbound by *mesidikara* obligations, daughters receive only *bekel*, inheritance was shared with family members, and children with *ninggal kedaton* status do not receive an inherit-part.

In the future, perspectives on how Balinese *adat* law will be enforced in the face of community development will indirectly alter the sense of law in the implementation of *adat* law itself due to the following factors: the fact that *adat* law is an unwritten law, the strengthening of *somah* ties and the thinning of kin ties, the diminishing relationship with the traditional community, and the existence of practical thinking that abandons old habits.

There is no need for special arrangements such as the MUDP Decree when directing the community toward gender equality. This is because *adat* law is an unwritten law distinct from the state-enacted positive law. *Adat* law will develop, change, or cease to be followed by the community automatically in response to the development of the supporting community's legal feelings regarding the placement, situation, and circumstances associated with the era's development. If the family wishes to emphasize that a daughter must also give a portion of her parent's wealth, this does not need to be regulated in the obligation to provide inheritance through their effort in giving the definite share according to arithmetic proportion. Most parents have given their daughters their share of the assets in the form of *jiwadana*, *bekel*, or *tadtadan*; however, the inherit-part is determined by the financial ability of the existing parents. Finally, there must be a shared understanding that customary law is an unwritten law. As a result, *adat* law will evolve organically in response to the development of the supporting community. It is difficult to impose change or uniformity in the regulation of customary fields since each *adat* community has its own *folksgeist*.


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