

INHERITANCE RIGHTS OF WOMEN BASED ON CUSTOMARY LAW IN BALI

Putu Dyatmikawati

ABSTRACT

Hindu society in Bali still retaining a patrilineal culture in social life. There are differences in inheritance rights between men and women in patrilineal culture system. Women did not have any right to inherit from their parents. While the issue of equality, fairness, the right to inherit their parents and etc., urged the patrilineal culture is more flexible and gives the right to women to inherit property from their parents. The development of knowledge, the law and the influence of new paradigms that are present in society, pressing the old system order to be able to accept the development of society. The Assembly of Pakraman Village (Majelis Desa Pakraman) Bali No. III of 2010 has taken the initiative to give women the right to inherit, limited to joint property of her parents. This paper aims to analyze the development of customary law in Bali on, setting the women's right to inherit, because the constitution guarantees every citizen equal treatment before the law and society. By using the juridical research, will be examined how national laws and customary laws in Bali positioned the women, the right to inherit from their parents.

Keywords: Inheritance rights, Customary Law, Patrilineal

Introduction

Currently in Indonesia is still going on legal pluralism in the field of inheritance law. That is because Indonesia has not had a national inheritance laws that apply to all citizens. Ter Haar gives limitations on the customary law of inheritance as the rules of law relating to the process, which attracted the attention of the centuries is the process of forwarding and transitional material and immaterial wealth of descendants to the descendants. (Ter Haar, 1974, p. 231.) Inheritance according to Bushar Muhammad, a series of regulations governing the forwarding and transfer inheritance or legacy from one generation to another, either about things material and immaterial objects (Bushar Muhammad, 2004, p. 39).

Heir closely associated with kinship system adopted community. Balinese society (Hindu) adheres to patrilineal kinship system (Sudantra, sudiana & Narendra, 2011, p. 26), which positioned the boys as heir. Before the year 2010 Hindu women do not have a position as heir, since they strongly influence the paradigm patrilineal kinship in Bali.

Although legislation in Indonesia has been protecting the rights of women to discrimination, but in fact the Customary Law Balinese women have not got be protected in the heir. On October 15, 2010, inheritance law in customary law in Bali experienced a paradigm shift. Paradigm change based on changes in the dynamics that occur in the community, such as; the constitutional guarantee that everyone in the same position, gender issues as well as doctrines feminism that gives understanding to the community.

Customary Inheritance System in Indonesia

Indonesian society adheres to different religions and different beliefs, as well as the family system is different. Theoretically, the lineage can basically be classified into three kinship system, as follows:

- a. Kinship a patrilineal system. That is an interesting kinship system along the lines of the father lineage. This system is based on the position of men is more emphasized than the position of women, especially in terms of inheritance. For example: People Batak, Bali, Nias, Sumba, and others.
- b. Matrilineal Kinship Systems. That is an interesting kinship system according to matrilineal lineage. Based on this system of women more prominent position than the position of men in terms of inheritance. Example: Minangkabau society.
- c. Parental or Bilateral kinship system. That is an interesting kinship system based on the line lineage father and mother. Based on this system the position of men and women in terms of inheritance is balanced or equal. Example: Javanese society.

Of the three systems of kinship above, each of the system greatly affects in terms of the division of inheritance, because it determines who those entitled as heir, but this does not mean that the system treasure the same customs will apply system of inheritance law customary equally.

Elements of Inheritance of Customary Law in Bali

The customary law of inheritance linked with elements of inheritance, namely: the heir, inheritance, and heirs. In these aspects will understand the principles of customary law of inheritance that applies to all people of Bali. As for the elements of inheritance are as follows:

a. Heir

In the traditional view that is still strong to dominate the people of Bali, the heir is a father or a male. This understanding was the notion that in a patrilineal kinship system (*purusa*), the father is the head of household, breadwinner and the owner of the family property inherited by generations of fathers before. In this connection, the inheritance passed down through the male line so that all the treasures are the property of men, while women are not property owners. Her life under the responsibility of men. Before married, the daughter is the responsibility of his father, and after mating it is the responsibility of her husband.

In modern life, such a view is slowly starting to shift, because the mother is also works in addition to domestic activities at home with adequate income, so have contributed to the establishment of family treasures, especially in the form joint property (*gunakaya*). In addition there is also a woman who brings treasures into the marriage (*tetatan*), either because of his own efforts before mating or for granting their parents. Mother contribution to the formation of the family property will affect the control over such property so the family property is no longer just a "property" of the father, but also the property of the mother. Thus, the mother also is heir to. More accurate to say that the definition of the current heir is the person who left the inheritance of both men and women.

b. Inheritance

Essential elements for the inherited is existence of inheritance (property).

According to common definition, inheritances are something that are inherited, either property, good name, and others. In a more narrow sense, the inheritance is defined as goods in the form of property left by an heir. In Balinese customary law, inheritance not only in the form of tangible goods such as property belonging to the family, but also the form of the rights of society, such as the right to use village land (*karang desa*) attached to a person's status as a member of the village community (*krama desa pakraman*): right utilizing the graves belonged to the village (*setra*), praying in the *Kayangan Desa*, and others.

Tangible heritage property of the family of the source can be classified as follows:

- (1) *Harta Pusaka (Tetamian)* in the form of wealth due to inheritance from generation to generation. Including:
 - (a) *Tetamian*, the property cannot be divided, is treasures that has magical religious values, such as family worship place (*sangguh/merajan*), and others.
 - (b) *Tetamian* that can be shared, that the estate has no religious value, such as fields, fields, and others.
- (2) *Tetatan*, the treasures brought by each husband and wife in marriage, both acquired on his own (*sekaya*), or grant (*jihadana*).
- (3) *Gunakaya*, the treasures acquired by the spouses during the marriage took place.

c. Heirs.

Heirs are those who receive an inheritance.

Regarding the heirs, in customary law known existence classification heir by virtue staple lines and staple line replacement. The subject line is a line primacy of law that determines the sequence of primacy among sects family heir with the understanding that the group which one takes precedence over the other groups. Substitute staple line is a line of laws aimed to determine who among the group of certain virtues, appearing as the beneficiary. In determining the heir by virtue staple lines and line replacement, this should be considered carefully prevailing kinship system.

By virtue staple lines, then those who have blood relations was divided into those groups, namely:

- (1) The group's first virtue is a descendant of the heir.
- (2) The second group is the parent virtue heir.
- (3) The third group is the primacy of the heir to the brothers and their descendants.
- (4) The group's fourth virtue is the heir grandparents, and etc.

New Paradigm of Inheritance in Bali

Inheritance law in customary law in Bali experienced a paradigm shift. Paradigm change based on changes in the dynamics that occur in the community, such as; the constitutional guarantee that everyone in the same position, gender issues as well as doctrines feminism that gives understanding to the community. The attitude and behavior of the parents in looking at daughters, the advancement of education of the community (parents), and increasing family economy (Sukerti & Ariani, 2014).

When a person is treated unfairly, because of differences in gender (Windia & Wiguna, 2013, p. 92), race, religion and belief, political orientation, physical condition, or other characteristics, is the main basis of discrimination. Anti-discrimination is one of the positive influences that give the position of women in inheritance. Based on Law No. 39 Year 1999 on Human Rights Article 1 point 3, "discrimination is any limitation, harassment or expulsion which is directly or indirectly based on human differences on the basis of religion, race, ethnic group, class, social status, economic status, gender, language, political belief, which resulted in the reduction, distortion or elimination of recognition, implementation or use of the human rights and fundamental freedoms in life both individually and collectively in the political, economic, legal, social, cultural and other aspects of life."

Legal guarantees in Indonesia about the discriminatory treatment set out in the 1945 Constitution Article 28 letter I, paragraph 2, which reads "everyone is entitled to be free from discriminatory treatment on any basis and the right to protection against treatment that is discriminative it." From the wording of the article Indonesia has trying to implement freedom from discriminatory treatment.

In fact, in a patriarchal society, the position of the man considered to be higher than women. The position of a wife or a woman just as a representative of the husband or male. Even in matrilineal society itself, although it is clear that the line drawn from the maternal lineage, women are still regarded as individual who cannot stand alone. In the normal course the more dominant is the role of men.

Equality before the law is one of the most important principles of modern law which participated affects this new paradigm. This principle became one of the doctrines of the Rule of Law which also influences the developing countries like Indonesia. Legislation Indonesia adopted this principle since the colonial period. The principle of equality before the law is an important principle in the state law, the state recognizes and protects the human rights of every individual, without distinction of status or the other, so that everyone has the right to be treated equally before the law.

Everyone has equal status before the law. In the Constitution of the Republic of Indonesia Year 1945 (1945) in paragraph 4 explained, "Indonesia protect all the people of Indonesia." Also in the contents of the 1945 Constitution, Article 27 subsection (1) which states that "all citizens have equal status in law and government and shall abide by the law and the government, without exception." It is clear that the Indonesian people are protected by the State without any differences in every Indonesian.

In addition to the 1945 Constitution, equality before the law are also regulated in Law Number 39 Year 1999 on Human Rights in Article 1 paragraph 1, Article 3, paragraph 2, and article 5, paragraph 1 of the articles is mentioned that: Article 1, point 1, "Human Rights is a set of rights attached to nature and human existence as a creature of God Almighty and is a gift from her must be respected, upheld and protected by the state, law, government and everyone for the respect and protection of human dignity. "Article 3, paragraph 2," everyone has the right to recognition, security, protection and fair legal treatment and to have legal certainty and equal treatment before the law. "Article 5, paragraph 1," every person is recognized as a human person entitled by and obtain equal treatment and protection in accordance with the dignity of humanity in front of the law." It is clear that Indonesia was trying to protect Indonesian citizens without any difference of treatment before the law. Indonesia tried to treat equal citizens before the law, without discrimination on the background of every citizen. The effects of the national law, affecting the paradigm of indigenous people to make adjustments.

Inheritance Rights of Balinese Women Based on *Pesamuhan Agung III*

Until now, Indonesia has not had inheritance laws that apply nationally. The main difficulty for the creation the national inheritance law is due to cultural diversity of the people of Indonesia, such as the diversity of family system adopted in Indonesian society. In the absence of inheritance laws that apply nationally, then the inheritance laws that apply to the Balinese are Balinese Customary Law.

Before 2010, the Hindu woman does not have a position as heir (gender discrimination in inheritance). This is due to the Hindu community adheres to patrilineal kinship system, which position the male is very high (superior), while women are in an inferior position, resulting in inequality or discrimination in inheritance laws.

Although legislation in Indonesia has been protecting the rights of women to discrimination, but in fact the Customary Law Balinese women have not got be protected in the heir. This is because the Hindu community in Bali adheres to patrilineal kinship system. In the development of the Assembly Pakraman (MDP) Bali No. III of 2010 has taken the initiative to give women the right to inherit the extent of joint property of his parents. If the parents do not have the joint property but has only inherited property (inheritance), then in such circumstances the woman would not inherit from their parents.

On October 15, 2010 in The *Pesamuhan Agung III* (Decision of Pakraman Bali Supreme Assembly (MUDP) Bali No. 01/KEP/PSM-3/MDP Bali/X/ 2010, dated October 15, 2010, the *Pesamuhan Agung III* MUDP Bali) at one point of decision, positioning girls as heir together with the boys. MDP decision to eliminate discrimination and inequality in inheritance. Decision *Pesamuhan Bali Agung III* MDP is a breakthrough for customary law of inheritance. Finally one of the MDP decision point positioning daughters as heirs together boys.

The Decision MDP Bali No. III of 2010 Part III: Sector Customary Law Concerning the position of Women in Family and Inheritance embraced by the Bali-Hindu causes only the descendants of the status of men (*kapurusa*) which are supposed to take care of and continue the responsibility (*Swadharna*) family, both in relation to god (*parahyangan*), Community (*pawongan*) and Environment (*palemahan*) (Dyatmikawati, 2013, p. 115).

Consequently only descendant who is a male (*kapurusa*) has the right (*swadikara*) of inheritance, while the descendants of the status of women (*pradana*), may not be able to continue the the responsibility (*Swadharna*), thus equated with people leaving family responsibilities (*ninggal kedaton*), and therefore is not considered a right to inherit the family.

In its development, the reality in the community show that there are people who leave family responsibility but to a certain extent, it is still possible to assume responsibility (*Swadharna*) as a Hindu (left limited liability), and there were also the reality of people leaving full responsibility, and not enables longer run responsibilities as Hindu (*ninggal kedaton penuh*). They are categorized *ninggal kedaton penuh*, no right at all to inherit, while those who leave the responsibility is limited it is possible got inherited property is based on the principle of two to one (*ategen-asuun*).

They are classified as leaving limited liability (*ninggal kedaton terbatas*) are as follows:

- a. Women who enter into marriage (common marriage).
- b. Men who enter into marriage status as women/*Predana* (*nyentana/nyeburin*)
- c. Been adopted (*kaperas sentana*) by another family in accordance with Hindu religious and customary law Bali.

- d. Gave him/her self (*makidihang raga*) to other families of their own accord.

Based on the facts above, the Pasamuhan Agung III decided on the positions of husband, wife, and children to inheritance and property obtained during the marriage (*Gunakaya*) as follows:

- a. The husband and wife and the husband's brother and his wife, have the same position in an attempt to ensure that the inheritance can be passed on to children and grandchildren to maintain or preserve the immaterial heritage.
- b. During the marriage, the husband and wife have same position for wealth acquired during the marriage status (*Gunakaya*).
- c. Biological child (male or female) as well as the adopted child (male or female) who are unmarried, have basically the same position for wealth acquired during the marital status of their parents (*Gunakaya*).
- d. Biological child (male or female) as well as the adopted child (male or female) is entitled to the assets acquired during the marital status of the parents (*guna kaya*), after deducting one-third as joint matrimonial property (*duwe tengah*), controlled (not owned) by children who went on the responsibility of parents (*nguwubang*).
- e. Child- male status (*kapurusa*) is entitled to one part of the inheritance, while the status of women (*pradana /ninggal kedaton terbatas*) which leaves limited liability, has the right to some or half of the inheritance received by a child who is a male status (*kapurusa*).
- f. In the case of inheritance, an unborn child has the same rights as children who are already born, as long as he was born alive.
- g. Children who leave full responsibility (*ninggal kedaton penuh*) is not entitled to inheritance, but can be given provision (life fund) by the parents of the property obtained during the marriage (*jiwa dana*) without harming the heirs.

Conclusion

It can be concluded that, a paradigm shift towards a system inherited based on customary law Bali. Since October 15, 2010 by The Assembly General III, women are entitled to inheritance. Balinese women receive half of the inheritance rights of men after the 1/3 cut to inheritance and preservation purposes. Legal changes implemented by MDP Bali, will have binding force if it has been transformed into *awig-awig*, as binding customary law of indigenous peoples in Bali.

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Putu Dyatmikawati
Lecturer Faculty of Law
University of Dwijendra, Denpasar, Bali, Indonesia