

Re-examination of the Concept of Justice in the Inheritance System: A Study on Women's Inheritance in the Traditional Society of Bali in Lombok, West Nusa Tenggara, Indonesia

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Abstract

Due to Lombok's patrilineal kinship system, women are deprived of their rightful inheritance, and judicial settlements frequently exacerbate latent issues within families, causing discord. Therefore, to incorporate Hindu inheritance law and the system of customary inheritance law into the constellation of national inheritance law in the future, a regulatory model is required. The study uses the approach of invitation legislation, history, concepts, and cases, legal materials in the form of, the 1945 Constitution, human rights, weda scriptures, paswara 1900, MUDP, and court decisions. The results of re-examination of the judex factie court through various legal rules in Indonesia, judges in deciding inheritance cases are guided by normative rules. Future national inheritance law can incorporate the Balinese Lombok customary inheritance law system and Hindu inheritance law through an additive and evaluative regulatory model that strikes a balance between rights and obligations that are also tailored to the responsibilities fulfilled. For the inheritance system based on patrilineal descent to shift towards parental rights, there is a shift in the allocation of inheritance rights between men and women based on the original Balinese customary tradition 4: 1 with the re-examination of various Supreme Court decisions to 1:1. To ensure legal certainty in the Hindu inheritance system, unity is necessary. To address this phenomenon, a new idea is put forth that must be implemented in the form of a compilation of Hindu inheritance within the Presidential Instruction law, which would resemble the legal structure of the compilation of Islamic Law (KHI), specifically Presidential Instruction Number 1 of 1991.

Key Words: Bali; Inheritance; Justice; Society; System.

1. INTRODUCTION

Hindu inheritance laws and women have been the subject of a lot of discussion since the early of 20s century.¹ According to Hindu in Bali Customary Law,

¹ George Rankin, "Hindu Law To-Day," *J. Comp. Legis. & Int'l L.* 3d Ser. 27 (1945): 1. pp. 1-17, see also and P.K. Menon, 'Hindu Jurisprudence', in *The International Lawyer*, Vol. 9, no. 1 (1975), pp. 209-13

women are not protected as legal heirs. This is a result of the patrilineal kinship pattern that the Hindu community in Bali upholds.²

This practice not only occurs in the Hindu community in Indonesia but also in other parts of the world, such as India. Depriving women of a portion of the estate was one of the main features of Hindu laws.³ Hindu laws also made it challenging for women to own their property on their own.⁴ Hindu women in the Balinese community must abide by the norm, which presents them with a choice between their privileges and their loyalty to their families, communities, and culture.⁵

Due to their religious community's *sradha*, or belief in being a creation of God, the Balinese Hindu community in Indonesia has long prioritized that only sons are entitled to inherit this. As stated in the Hindu teachings, they are enumerated in a number of *slokas* and serve as social norms.⁶

The fundamental idea of an heir is found in *Manawa Dharmasastra* IX.04, which grants a man or father the right to inherit in principle. It is stated that an heir is primarily a parent (father) or male.⁷ An heir is defined as a father or a man, according to the traditional perspective that continues to heavily influence Balinese thought. This is predicated on the notion that, within the *Purusa* family system, the father serves as the family's head, provider, and owner of the property passed down from fathers in previous generations.⁸

In the Balinese inheritance system, sons are granted precedence based on a number of factors, including:

1. According to *Manawa Dharmasastra* I.11, the universe and its contents originated at this point. The *nityam sadasatmakam* of *yattaatkaranamawyakta tadwisrstah sa puruso loke brahmeti kirtyate*. This indicates: "He who is unreal, eternal, and unreal, real, created PURUSA from that origin."⁹ And has the title of Brahma. Furthermore, in *Manawadharmasatra* I.32 it is mentioned; "Dwidha krtwatmano deham ardhena puruso, bhawat adhenba nari tasym sa wirayama smrjat prabhuh" Which means: "God divides himself partly male and partly female (*ardhen nari*) he creates *wiraja* from the woman".¹⁰ According to the above *Sloka*, which is easily understood based on its tone, men and women are equally created as parents and caregivers; their distinction stems

² Ida Ayu Sadnyini, "Implementasi Keputusan MDP Bali Tahun 2010 Ke Dalam Awig-Awig Desa Pakraman Di Bali," *Jurnal Magister Hukum Udayana* 5, no. 3 (2016): 627–38.

³ Anantdeep Singh, "Women, Wealth and Law: Anglo-Hindu and Anglo-Islamic Inheritance Law in British India," *South Asia: Journal of South Asian Studies* 40, no. 1 (2017): 40–53, <https://doi.org/10.1080/00856401.2017.1258612>.

⁴ Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community*, vol. 22 (Cambridge University Press, 2013).

⁵ Achmad Fawaid and Busro Busro, "Contesting Religious Family Rights: Muslim and Hindu Women's Land Ownership in Java and Bali," *Islam Realitas: Journal of Islamic and Social Studies* 5, no. 2 (2019): 202–216.

⁶ Zakiatul Ulya, "Analisis Kedudukan Adat Dalam Hukum Waris Islam Dan Hindu Beserta Implikasinya," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 9, no. 1 (2019): 1–23, <https://doi.org/10.15642/alhukama.2019.9.1.1-23>.

⁷ Ida Ayu Aryani Kemenuh, "SUMBER HUKUM HINDU DALAM MANAWA DHARMASASTRA," *Purwadita: Jurnal Agama Dan Budaya* 1, no. 2 (2019): 37–43, <https://doi.org/10.55115/purwadita.v1i2.203>.

⁸ Gede Pudja, *Hukum Kewarisan Hindu Yang Diresepir Kedalam Hukum Adat Di Bali Dan Lombok* (CV. Yunasco, 1977).pp. 64

⁹ Gde Pudja and Tjokorda Rai Sudharta, "Manawa Dharmasastra Atau Weda Smrti," *Jakarta: CV. Felita Nursatama Lestari*, 2002. Pp.30

¹⁰ Pudja and Rai Sudharta.

only from the fact that men were created first, which accounts for their dominant role in Hindu society.

2. The fundamental tenet of Hinduism, a magical religion, is that only sons are capable of rescuing their predecessors' *"spirits of ancestors or their spirits later when they die."* Manawa Dharmasastra, chapter X.138, contains the following regulations: "Pumnamno narakadyas matraye te pitaram sutah, tasmad putra iti proktah swayamewa swayambhuwa." That translates to: *"Because the boy who will deliver pitara from hell is called Put, therefore he is called son by his birth".*¹¹

Thus, it is clear from the sloka above that it is one of the factors contributing to the fertile patrakhi culture in Hindu Balinese families, particularly in Lombok, which marginalizes women relative to men, particularly in family roles involving their private rights like inheritance. In Hindu society, inheritance is actually understood to include both material and immaterial rights and obligations. Men typically inherit in the form of obligations, such as performing panca yadnya, being responsible for maintaining the temple's continuity in the traditional village or banjar, pemerajan, which is god yadnya, performing human yadnya and pitra yadnya ceremonies for family members, and being responsible for maintaining their parents and sisters who are widowed, single, or still girls, as well as having children or successors. In addition, the duty to perform Panca Yadnya is an application of Hinduism's teachings because of the religion's sraddha, or core tenet, that people are born with these Tri Rina obligations that need to be paid.¹²

In light of this, it may be said that children's function as heirs within the family structure is crucial. Boys are seen as having greater significance than females in the patrilineal Hindu Balinese community.

When a family only has females and no sons, it becomes problematic. The child's status might then be changed to male under Hindu law.

In light of this, Hindu law respects the applicability of the purusa principle but does not preclude daughters from inheriting. As a result, it may permit the existence of joint heirs, or sons and daughters. Manawa Dharmasastra IX. 118

"Swebyom cebhyastu kanya bhyah pradabyurbhratarah prithak swastswadam caccaturbhagam patitah syuraditsawah" further reinforces this.

That translates to: "To the sisters, the brothers will give some portion of their share each a quarter of his share, those who refuse will be ostracized".¹³

To make it clear from the sloka that unmarried daughters can receive a share, specifically one-fourth (1/4) of the proceeds from the acquisition of their son. Daughters who marry, on the other hand, are deemed excluded and do not qualify for inheritance, except for any property granted or gifted by the heir before or during their marriage.

¹¹ Pudja and Rai Sudharta..., pp. 364

¹² Tri rina tiga hutang manusia dalam kehidupan hutang pada tuhan sudah memberikan hidup, hutang pada leluhur orang tua berupa hutang budi, hutang pada guru spiritual.

¹³ Gede Pudja and Tjokorda Rai Sudhartha, "Manawa Dharmasatra Atau Weda Smerti Compendium Hukum Hindu," Jakarta: CV. Nitra Kencana Buana, 2002. Pp. 558

To make sure that only the son becomes the heir, the testator appoints the son of the male sibling if the testator has no descendants at all. All of these decisions must be made after careful consideration and agreement among the relatives.¹⁴

This view aligns with the Paswara Resident of Bali and Lombok 1900, which outlines the requirements for sentana appointment.¹⁵ In customary law communities, however, religious norms are frequently disregarded because Hinduism does not demand dual commitments. The Hindu inheritance law that has been construed according to each region's unique customs, or village mawacara and dese kalla patra, is the source of the customary inheritance law employed by the Balinese Hindu population in Lombok. The customary inheritance law is applied differently in each location according to the interpretation of the locals who get adaptations based on the circumstances and environment. For Hindu groups in Indonesia to continue using inheritance law that upholds legal plurality The inheritance laws of Indonesian Hindu communities are not unified or cohesive legally.

The realization of women's inheritance rights is hampered by regionally disparate interpretations of these rights. Thus, this study suggests that the principle of justice in Hindu inheritance law, which has been applied by the Balinese indigenous peoples on Lombok Island, should be reexamined in light of the above-mentioned Hindu communities on Bali Island, which form the basis for the protection of women's rights in Hindu inheritance law. This is in line with the development of jurisprudence in the fulfillment of women's inheritance rights, which is more embraced by the principle of justice, such as the change of the patrilineal principle to parental in the distribution of Islamic inheritance.

2. DISCUSSION AND ANALYSIS

2.1 The principles of Justice and their relation to women's inheritance rights

2.1.1 The development of the theory of justice in modern legal systems

Within the paradigm of legal meta-theory, the theory of justice is a subset of legal theory on legal aims, specifically benefit, certainty, and justice, at the level of legal philosophy.¹⁶ It is possible to control the balance of human interests in legal certainty, welfare, happiness, education, and other areas by determining the ideal value of justice. This is consistent with efforts to achieve justice as well as certainty, expediency, security, and welfare—the primary goals of the law. The concept of justice itself has two primary interpretations: formal and material. Formal justice requires that the law be applied universally, whereas material justice requires that the law be applied in conformity with the ideals of justice of society “.¹⁷

¹⁴ Hilman Hadikusuma, Op.Cit., hlm 70,

¹⁵ Gde Panetje, *Aneka Catatan Tentang Hukum Adat Bali, (No Title)* (Denpasar, Indonesia: Cet III CV Kayumas Agung, 2004). Pp.112

¹⁶ L J Van Apeldoorn, *Pengantar Ilmu Hukum, Terjemahan Oetarid Sadino, Jakarta, Pradnya Paramita*, 1993. Pp. 129.

¹⁷ E Fernando M Manullang, *Menggapai Hukum Berkeadilan* (Penerbit Buku Kompas, 2007). pp. 96.

According to the aforementioned viewpoint, it is normal for there to be differences to achieve justice in a multicultural society like Indonesian society, which is made up of many different ethnic groups, cultures, and religions. This is because different people in pluralistic societies have different goals in life. As a result, disparities in barriers brought forth by people's diverse aspirations must be kept to a minimum. The implementation of laws and regulations that uphold established cultural norms and can promote social fairness for all residents helps to minimize these hurdles.

2.1.2. Pancasila and Indonesian National Law

The recognition and protection of women's rights in the world's inheritance law system is based on the principle of equality derived from the principles of human rights. This principle can be found in various articles in national legislation, among others: 1945 Constitution Article 28 A-J in the Human Rights Chapter. The protection of human rights before the amendment of the 1945 Constitution of the Republic of Indonesia was regulated in the MPR Decree No. XVII/MPR/1998 on Human Rights stipulated on November 13, 1998. Still looking at women's rights in the concept of human rights, it is then regulated in Law No. 39/1999 on Human Rights.

Human rights are, in general, founded on the equality principle, which states that every individual has the right to be acknowledged as a human being with the ability to request and receive equal treatment and protection under the law following his or her human dignity. Everyone is entitled to reasonable protection and aid from an unbiased, objective court.

Therefore, women should enjoy the same rights as males in terms of inheritance, according to the principles and regulations of Law No. 39/1999 on Human Rights and the 1945 Constitution. We'll talk about this topic in more detail in the section that follows.

2.1.3 Hindu Law and Balinese Customary Law provide equal status for men and women.

Hinduism's supreme law, the Vedic scriptures, is separated into the Sruti and Smerti Vedas. Sruti Vedas are true broad teachings that incorporate formal laws and go into greater detail regarding the beginnings of life on Earth.¹⁸ In the meantime, the Smerti Vedas are technical texts that provide codifications of several issues found in the Sruti. It's a specialty with real explanations within. The explanation and interpretation of legal teachings, or dharma, collected by Bagawad Brghu into a single book titled Dharmastra / Manawa Dharmastra.¹⁹

The Hindu Law Code, known as Manawa Dharmastra, serves as a benchmark for judging the legal precepts that govern Lombok's Balinese customary law, which is construed as paswara 1900.²⁰ Regarding the list of Hindu legal standards about women's rights in the family and society, this is found in some Vedic slokas, among

¹⁸ Pudja and Rai Sudharta, "Manawa Dharmastra Atau Weda Smrti." Pp. 37-38.

¹⁹ Pudja and Rai Sudharta.

²⁰ Pudja and Rai Sudharta.

other places, in an attempt to determine that women in Hinduism play a significant role that is not gender biased:²¹

- a. Dharmasastra Manawa. I. The 32 states “*Dwidha krtwatmano dehan ardhena puruco bnawat ardhena nari tasyam sa wirayama smrjat prabhuh*”. It means “by dividing himself into part male and part female (ardha nari) he creates the wiraja of the woman”. The sloka’s meaning is that since God created both men and women from the same portion, they are complementary to one another rather than subservient to one another. Hinduism therefore declares that men and women are treated equally and have the same rights and responsibilities in life.
- b. The statement “*Prajanartha stryah srtah, Samthanartham ca manawah Tasmah saharano dharmah Srutao patnya sahaditah*” is found in Manawa Dharmasastra IX. 96. According to that translation, “God made men to be fathers and women to be mothers; the family unit was created to carry out religious teachings as outlined in the Vedic scriptures.” According to the sloka, women should have the same rights as men in the family since they are in the same position as men in carrying out the duty to uphold holy dharma.
- c. Manawa Dharmasastra III.56 states that: “*Yatra naryastu pujiyante ramante tatra dewatah, yatraitastu na pujiyante sarwastalah kriyah*”. The translation is “Where women are honored there the gods are pleased but where the family does not honor women then any holy ceremony performed is not meritorious”.
- d. According to Manawa Dharmasastra III.59, “*Tasmadeta sada puja, bhusanacca dana canaih, bhuti kamairnair nityam satkaresutsawesu ca*”. The literal meaning is “Therefore to bring about the welfare of the family one should always honor women on feast days by giving gifts of ornaments clothing and food”.
- e. Manawa Dharmasastra IX. 118, which states: “*Swebhyom gehhyastu kanya Bhyah pradadyurbhratarah prithak. Swatswadamcaccaturbhagam Patitah syuraditsawah*”. Translation: “The share for sisters, brothers will give some part of their share. Each one a quarter of his share. Those who refuse to give it will be locked up”.
- f. Manawa Dharmasastra, IX.132 states: “*Dauhitro hyakhilam Nikthama his son piturharet, Sa ewa dadyad dawn pindau Pitre mata maha yaca*” Translation: “The son of a woman who is elevated in status will actually receive also the inheritance of his father who has no son, he will organize tarpana for both his parents, his father, and his mother’s grandfather”.
- g. Manawa Dharmasastra IX.133 states; “*Pautra dauhitrayorloke Na wiceso sti dharmatah, Tayorhi mata pitarau Sambhuta tasya dehitah*”. Translation: “There is no difference between the son of a man and the son of a woman who is elevated in status, either concerning worldly matters or matters of sacred duty because for their father as well as their mother, both are born from the same body”.

²¹ I Gede Puja and Tjokaorda Rai Sudhartha, “Manawa Dharma Sastra (Manu Dharma Sastra) Atau Weda Smrti Compendium Hukum Hindu,” *Pustaka Mitra Jaya*. Jakarta 819 (2003).

According to the description of the inventory of Hindu legal norms that support women's inheritance rights given above, the process of inheritance can apply Hindu values as stated in Hindu teachings and compiled into several slokas mentioned above. As such, it can be used as a reference by Balinese indigenous people who identify as Hindus. This is a fresh interpretation of Hindu law's heirship rules, which now solely acknowledge men as heirs. This is a *sine qua non* of the patrilineal kinship structure that Hindus in Bali have adopted.

2.2 Women's Inheritance Rights under Hindu Law and Balinese Customary Law

2.2.1. Principles and sources of law in Hindu inheritance law and Balinese customary law

The sacred text and Hinduism are the ultimate sources of religious law. Hindus adhere to the Vedic writings as their supreme law, following all of its directives and prescriptions.

The *Sruti* and *Smerti* Vedas are the two books that make up the Vedic scriptures, which are considered the greatest laws in Hinduism. Formal and legitimate laws discussing the genesis of life in the world are found in the *Sruti* Vedas, which are broad teachings.²²

On the other hand, the *Smerti* Vedas are technical texts that codify the different issues raised in the *sruti*.²³ This specialization has real explanations within it. Bagawad Brghu gathered the interpretations and explanations of the realm of legal teachings (*dharma*) into a single book titled *Dharmasastra* / *Manawa Dharmasastra*. The Compendium of Hindu Law, also known as *Manawa Dharmasastra* (*Manu Dharma Sastra*) or *Weda Smerti*, serves as a benchmark and framework for evaluating legal concepts that pertain to Balinese customary law in Lombok, which is understood as *paswara* 1900.²⁴ In connection with the inventory of Hindu legal norms governing the existence of women's rights, in the family and society as an effort to find out that women in Hinduism have an important role that is not gender biased.

Given the above description of the inventory of Hindu legal norms that support women's inheritance rights, it is clear that the process of inheritance can apply Hindu values as stated in Hindu religious teachings and compiled into several slokas. As such, Balinese indigenous Hindus can use this inventory as a guide when inheriting property.

Based on these reasons and considerations, it may be concluded that the Hindu principles found in these slokas already incorporate gender equality and that there is no distinction made between men and women regarding who is the successor.

2.2.2. Jurisprudence on the existence of women in the Hindu inheritance system: Dehe Tue, Sentana Rajeg, and Women who Marry Out

The paradigm shift of community members and judges regarding the existence of girls leads to the realization of a sense of justice regarding women's inheritance rights. Even though this is a deviation from established inheritance law, this change

²² Pudja and Rai Sudharta, "Manawa Dharmasastra Atau Weda Smerti.", pp. 37-38.

²³ Pudja and Rai Sudharta.

²⁴ Pudja and Rai Sudharta. Pp. 37

provides better social improvement.²⁵ There are three categories for women who may inherit in the Hindu Community based on the Indonesian court jurisprudence that gave the rights to women: *dehe tue*, *sentana rajeg*, and the women marriage outside of their caste system.²⁶

Santana Rajeg is first and foremost a woman who has been given the title of successor (*putrika*). In essence, *putrika* in girls who go on to become *sentana rajeg* has been sovereign due to *pauman krama's purusa* (male status) as the familial lineage's heir.²⁷ When it comes to inheritance, daughters who were not initially heirs may inherit their parents' possessions due to the effect of the matriarchal style of marriage. *Putrika* are implied to have the same right as men to inherit assets and the *sangguh* (family shrine) in a manner suitable for men.²⁸ The matriarchal effect, which is connected to inheritance and enables girls who weren't meant to be heirs to inherit their parents' wealth, is brought about via marriage. The premise is that women should be able to inherit property and "*sangguh*"²⁹ in a manner suitable for men, just like men do.

There was three jurisprudence on the rights of "*sentana rajeg*", as follows:

- a. Denpasar High Court Decision No.13/PTD/1967 dated March 31, 1970 states that: the wife is the heir of her parents. If the wife dies, the husband only has the position of a male widow.
- b. Denpasar High Court Decision No.144/Pdt/1966 dated July 13, 1967. Similarly, when viewed from Denpasar High Court Decision No.81/PTD/1967 dated June 19, 1968, it states that if a woman is married *keceburin*, according to Balinese customary law, she is the heir of her parents and the family of her parents and the family of "*purusa*".
- c. Denpasar High Court Decision No.105/PTD/1972 dated July 22, 1972, determined that: A girl gains the legal status of a man and has the same inheritance rights as a man if she is made "*sentana rajeg* or *dikawin keceburin*."

Unmarried Girls are the second category (*Deha Tua*). *Deha* (the girl) is a single girl, and *deha tua* is a single girl who has never married in her lifetime.³⁰ The unmarried girl's case was derived from one that had happened in 1955, and until 2022, there was no case of a lawsuit about a girl with *Dehe tua* status and her inheritance rights in the Mataram District Court. To illustrate this point, the researcher selected a case from 1955—of which there are dozens in Bali—as an example in this debate. Two-thirds of the inheritance will go to the cassation plaintiff, Gusti Wayan Rai Serbi, and one-third will go to the widows of the cassation defendants, Gusti Ayu Renten and Gusti

²⁵ Soleman B Taneko, *Pokok-Pokok Studi Hukum Dalam Masyarakat* (PT. Raja Grafindo Persada, 1993). pp.69

²⁶ A A Mahendra, "Perkembangan Hukum Waris Janda Dan Anak Perempuan Dalam Masyarakat Bali," *Laporan Penelitian*, 1996., pp.44

²⁷ Ni Ketut Sari Adnyani, "Bentuk Perkawinan Matriarki Pada Masyarakat Hindu Bali Ditinjau Dari Perspektif Hukum Adat Dan Kesetaraan Gender," *Jurnal Ilmu Sosial Dan Humaniora* 5, no. 1 (2016), <https://doi.org/10.23887/jish-undiksha.v5i1.8284>.

²⁸ Adnyani.

²⁹ Tri Murthi Tatwa Gde Soeka, *Tempat Suci Untuk Memuja Tuhan Dan Manifestasinya Serta Leluhur Yang Telah Suci, Terletak Di Areal Hulu Rumah Tangga* (Denpasar: Kayu Mas, 1993).

³⁰ Ni Nyoman Sukerti, "Perkembangan Hak Perempuan Di Bidang Waris Dalam Hukum Adat Bali," *Masalah-Masalah Hukum* 40, no. 1 (2011): 86-92, <https://doi.org/10.14710/mmh.40.1.2011.86-92>.

Ayu Kompiang, according to the ruling of the Supreme Court cassation dated April 20, 1955, Neg/No 90 K/Sip/1952 about Gusti Ayu Wayan Rai (dehe tue).³¹

The Supreme Court decided to provide an inheritance to widows and women who are considered *dehe tua*, or spinsters, as additional heirs. Because the Supreme Court took customary law into account when making its ruling, it is proper.³² Customary law is dynamic, existing within society as a law. Balinese customary law specifically states that daughters are not heirs, both as *dehe* and old *dehe*. As long as they are not married as “*pengupa jiwa*,” daughters can benefit from their parent’s wealth; however, women who have already married or plan to marry may receive “*bekel*” in the form of “*jiwa dana* or *tetadan*,” along with other heirs.³³ They cannot, therefore, engage in any legal actions that would be construed as acts of ownership, such as mortgaging or selling, without the other heirs’ permission.

2.2.3. Hindu Inheritance Law in Hindu Communities in Lombok

According to Ve Kronn’s book on customary inheritance law, due to the variations in regional conventions, customary inheritance law for Balinese Hindus is the most challenging aspect of customary law. Because it is not simple to settle a case or an inheritance dispute, this is one of the causes that make it difficult for judges in Bali and Lombok to issue decisions about inheritance disputes.³⁴

The fact that distinct legal subjects—in this case, women as *Padmi* and *penawing* wives—as well as their differentially inherited offspring complicate the decision-making process for judges when it comes to inheritance disputes.³⁵ In a similar vein, certain families have particular privileges over the inheritance due to their commitments to the funeral service. The inheritance that the heirs inherit consists of both the obligations owed by the testator as well as the net residue of the inheritance that is inheritable.

Researchers can see that inheriting has value in this situation. The heirs are responsible for not just a variety of rights with monetary worth but also obligations that may also have monetary value, such as paying off the heir’s debts while they are still alive. It is assumed in the Balinese customs of Lombok that the heir’s debt results in the heir’s suffering globally, which affects the heir’s offspring and successors worldwide, who frequently face hardships. This is closely related to the *sradha* or belief of Hindus in the teaching of *karmaphala* law.³⁶

The Hindu Community in Lombok bases its decisions on two legal frameworks or tenets, specifically:

1. The teachings of religious law in question, Hindu religious law, are derived from *Manusmerti* or *Manawa Dharmasastra* and are transmitted through the *rontal*, which comprises the legal methods of moral order described in the *sesasna*, *purwadigama*,

³¹ Pudja and Rai Sudharta, “Manawa Dharmasastra Atau Weda Smrti.” Pp. 136-138

³² Tjok Istri Putra Astiti, Hak-Hak Wanita Bali dalam Hukum Adat Waris, dalam *Hukum dan Kemajuan Budaya*, Editor E.K.M Masinambow, Yayasan Obor Indonesia, Jakarta, 2003, p. 307

³³ Wayan P Windia, Ni Made Wiasti, and Ni Luh Arjani, *Pewarisan Perempuan Menurut Hukum Adat Bali* (Udayana University Press, 2012). Pp. 53.

³⁴ V E Korn, “Hukum Adat Bali (Het Adatrecht Van Bali),” *Jilid II*, 2017. pp.141

³⁵ Korn.

³⁶ Pudja, *Hukum Kewarisan Hindu Yang Diresepi Kedalam Hukum Adat Di Bali Dan Lombok*.cv Yunasco, Thn 1977

adigama, religion, siwasasana, manusasana, kuttaramanawa, sarassamuscaya, paswara, and silakrama. Kitab Manawa Dhramasastra Book IX on inheritance and the partition of the property contains the rules controlling inheritance. Judges frequently base their decisions on religious teachings regarding inheritance, namely the Hindu legal doctrine found in Book IX, Articles 104 through 220 of the Manawa Dharmasatra.

2. Customs or traditions that pertain to adhering to the values of Kalla Patra village³⁷, Desa mawacara, and Negara mawetata,³⁸ i.e., customs that direct the practice of inheritance in the Lombok Balinese community, are differentiated from those that exist outside of Hindu law through development or new ideas and customs that are part of Hinduism, as well as through new ideas developed by the judiciary and parisada.³⁹

The passages in the Manwa Dharmasasta book, which list numerous customary law products that have helped to recognize and protect the dignity of women's existence in family inheritance rights, serve as the foundation for Bali Lombok's customary law of inheritance. In Balinese customary law, the year 1900 is considered a turning point for inheritance since the Dutch colonial administration issued Paswara 1900, which marked the beginning of the resolution of inheritance disputes. It used to be challenging to locate sources on inheritance law, particularly when it came to women's rights. Women may get inheritances in the form of inherited property, known as *jiwadana* or *bebaktan*, as mentioned in Paswara 1900, even though their place in the inheritance hierarchy is unclear. As a result, starting in 1900, the implementation of inheritance was done under Paswara 1900 and *awig-awig desa pakraman*, both in written and unwritten forms.

The Paswara 1900 was created on October 13, 1900, and it contains a decree from the king of Bali and Lombok regarding inheritance law. Lieftrinck, who was a resident of Bali and Lombok at the time, along with *punggawa punggawa* and *pedanda-pedanda*, or Hindu priests, applied this decree initially to the Balinese Hindu population in Buleleng Regency. Later, the *raad kerta* court, which was once in Lombok, used the 1900 Paswara to settle inheritance disputes.⁴⁰ Since many people at the time were illiterate, the contents of this paswara could not be used to their fullest potential. As a result, the transmission of its contents is based on customs passed down from parents or ancestors—a practice known as *loka Tuna* in Balinese customary law—which is essentially based on parent-recounted stories and alters the meaning of inheriting.

In addition to this, the Hindu Balinese customary societies' inheritance transfer process sometimes results in disputes between spouses, mothers children, and siblings because one side is not satisfied, particularly when it comes to the distribution of assets

³⁷ *Desa kalla patra*, menyesuaikan dengan tempat waktu dan keadaan.

³⁸ *Desa mawacare Negara mawetate*, terkait dengan Negara atau wilayah memiliki cara tersendiri.

³⁹ Parisada adalah Parisada Hindu Dharma Indonesia merupakan majelis organisasi umat Hindu Indonesia yang mengurus kepentingan keagamaan maupun sosial. Terbentuknya atas kebutuhan yang lahir dari pertemuan wakil organisasi organisasi keagamaan yang ada dan fungsinya menetapkan bhisama. berupa mengambil keputusan di bidang keagamaan dalam hal ada perbedaan penafsiran ajaran agama dan atau dalam hal terdapat keragu-raguan mengenai masalah tersebut. serta memasyarakatkan ajaran veda, dalam bentuk bhisama dan keputusan-keputusan parisada.

⁴⁰ Pudja, *Hukum Kewarisan Hindu Yang Diresepih Kedalam Hukum Adat Di Bali Dan Lombok*. cv Yunasco, Thn 1977, p.39

in the form of land. This is because the land has extremely significant advantages for every person, but it is especially valuable to Hindu societies since it is perceived as both a location where living things can live and a place where the spirits of departed ancestors rest. In addition, land's ability to sustain life gives it economic value.

Since a society's marriage system is influenced by its kinship system, which in turn influences its inheritance system, inheritance law as it currently exists is strongly tied to family law.

The patrilineal kinship system that Balinese people in Lombok who practice Hinduism adhere to is based on the male line. This system is known as the “*kepurusa* or *purusa*” system in Balinese Hindu society, and it derives relationships from the male side. Problems or events occur in the Balinese Hindu population of Lombok as a result of their adherence to the patrilineal system. The foundation of the inheritance system in Hinduism's Balinese customary law culture is kinship, or family law. Based on blood links, kinship is known as one noble unity or *Kawitan*, and this serves as the basis for deciding inherited rights.

It can be inferred from observations and interviews that researchers did in several regencies and cities on Lombok Island that the heirs divide the inheritance by discussion guided by the parents' principles of *laras*, *rukun*, and *patut*.

The eldest son and his mother lead the family meeting if the parent or heir—in this example, the father—has passed away. Village officials, the village head, and *kelian banjar* should be invited as witnesses. This is crucial since enlisting the help of outside parties, such as village authorities, will bolster the evidence if a disagreement over the bequest is raised later on.

Following discussions on all matters pertaining to the inheritance, such as the duties of each successor, the nature of the inheritance, the kind and degree of fertility of the land, the land's economic worth, and so forth, the appropriate shares are decided upon.

Should the parents have a daughter, jewelry, and furniture for the home will be presented to her upon her marriage. In most cases, divided inheritance is passed down among the inheritors one by one or according to the rules of *laras*, *rukun*, and *patut*, which are headed by the parents. The oldest son leads the conversation if the parents are no longer living. Occasionally, witnesses such as the village head and the *kelian* of the village, or *banjar*, are also invited as witnesses.

Because the consensual discussion or guiding principle used during the distribution of inheritances complies with the rules outlined in the *Manawa Dharmasstra* book, namely in Articles 104 and 105 of Chapter IX. “*Urdhwam pituca mṛtusa sametya bhrūtarah samam, bhajeranpuitrikam anicasṭe hi jiwatoḥ*,” according to *Kitab Manawa Dharmasstra* (MD. IX. 104). Meaning: When a father and mother pass away, their siblings, who have united, may split their parents' belongings equally among them because they had no control over it when their parents were living.⁴¹

⁴¹ Puja and Sudhartha, “Manawa Dharma Sastra (Manu Dharma Sastra) Atau Weda Smrti Compedium Hukum Hindu.”

In light of this, it can be said that under article 104 of the MDS mentioned above and the inheritance customs observed in Lombok's Balinese Hindu society, the transfer of inheritance to the heir (son) occurs either after his parents pass away or, if it is possible, during their lifetime. In Bali's Hindu community, this temporary division can be accomplished through the application of the Pamong / Raksa pedom principle. Furthermore, it was discovered that there are three components to inheritance law: sons and parents as heirs, as well as tangible and intangible inherited assets like responsibilities to society and ancestors. This is an application of *Tri Hita Karana* and *Tri Rna*'s teachings.

2.3 Legal Model for the Protection of Women's Rights in Hindu Inheritance Law

2.3.1. Urgency and Foundation of a Legal Model for the Protection of Women's Rights in Hindu Inheritance Law

The impact of globalization, which is rapidly sweeping through Indonesia and other modern countries, has an effect on the mindset of the community along with the times. It appears that the view that only views men as property owners is slowly starting to shift, as there are many women in their position as wives who work outside the home and manage family property today.

In such circumstances, it is not unusual for women to make more money than men do, and it is also normal for women to bring property into marriages, either via their efforts or because their parents have left them property as an inheritance or sufficient income in the form of stipends.

Women have an economic role in the creation of family property as well. Whether they contribute financially as spouses or as mothers, their influence over the property will determine whether it is jointly owned by the father or the mother. In other words, women's contributions to the creation of family property will influence their control over it. Accordingly, the 1945 Constitution's Article 27 paragraph (1) states that the idea of equality for all citizens is acknowledged without exception.

The equal rights idea is recognized by national laws for men and women. However, prejudice and injustice against women are implemented in state affairs. Discord in Hindu society as a whole is influenced by the rift between *das sollen* and *das sein*, or the difference between expectations and reality, which arises in the Balinese Hindu community and causes animosity or divides within the family.

Therefore, fairness must be fulfilled in every aspect of society as the conceptual goal of law. This is consistent with John Rawls' theory of justice, which defines justice as "fairness" or "feasibility," denoting that each person may fulfill their function per their nature.⁴²

The ability to behave in a way that is acceptable and supported by others is referred to as fairness. A fair agreement, in Rawls' view, is when equal and free persons embrace and support one another without fear of coercion or other forms of pressure.⁴³

⁴² John Rawls, *Political Liberalism*, New York: Columbia University Press, 1996.

⁴³ Sunaryo, 2022, *Konsep Fairness John Rawls: Kritik dan Relevansinya*, Jurnal Konstitusi Vol 19. No. 1, p.1

This may be found in Hinduism in the idea of Tat twam Asi, which translates as “you are me, and I am you.” It is a concept of fairness and the egalitarian idea that all people are the same since they have atman, which is the tiny spark of Ida Sang Hyang Widhi Wasa. Therefore, everyone should be treated equally and without bias. Tatwamasi is a change from individualism to peaceful communal togetherness. Hinduism’s tat wam asi teachings instruct people to always coexist peacefully in their social surroundings by lending a hand to one another.

As a result, by putting the teachings of Tatwamasi into practice, justice for every member of society founded on religious principles becomes real justice and ought to be applied by all facets of society. Every new norm formation now has to consider the social conditions of society to realize the sociological purpose of law, which is expediency. This ensures that no community is marginalized and that social justice for all Indonesians, as stated in the fifth principle of Pancasila, can be realized.

Legally, in 2010, the Bali local government decided on issues about customary law regarding the status of Balinese women and the family and inheritance during the third grand meeting of the Bali Pakraman Village Council, which was held on October 15, 2010, at the Wiswashaba building of the Bali Governor’s office.

The right to inherit daughters in the MUDP decision has developed. So it can be said that the regulation of women’s inheritance rights with the issuance of the decision letter of the main assembly of Pakraman villages (MUDP) Bali No. 01/Kep/PSM-3/MDP Bali/X/2010 as explained by Professor of the Faculty of Law Udayana Wayan P Windia as follows:

“The Decree of Pasamuhan Agung III MUDP (Majelis Utama Desa Pakraman) Bali No.01/Kep/PSM-3/MDP Bali/X/2010, October 15, 2010, states that Balinese women are entitled to inheritance after 2010.” After deducting a third for heirlooms and preservation, Balinese women inherit half of the purusha. Balinese women can only be denied inheritance rights if they convert to a different religion. It is still possible to give a soul fund or make a voluntary provision if the parents are sincere. The legal principle of *Lex Posterior Derogat Legi Priori*, which states that “if there is a new rule to regulate the same object, then the old rule is no longer valid,” can therefore be applied to determine the legitimacy of this MUDP ruling. Since the goal of this principle is to avoid legal ambiguity, the Bali MUDP’s decision—which is already outlined in the Bali Provincial Regulation Number 3 of 2003 concerning Pakraman Village—can be used to determine the rules about Hindus’ customary inheritance rights in Bali.⁴⁴

2.3.2. Interaction of national law, religious law, and customary law in the legal framework of Hindu inheritance law protecting women’s rights.

Hindu law, specifically the *Receptio in Complexu* Theory, which was first presented by C.F. Winter and Salomon Keyzer (1823–1868) and later by L.W.C. van den Berg (1845–1927), is the source of customary law.⁴⁵ This argument states that Muslims in Java embrace the introduction of Islamic law comprehensively, making it binding on

⁴⁴ Lembaran Daerah Propinsi Bali Tahun 2001 Nomor 29 Seri D Nomor 29.

⁴⁵ JF Holleman, Van Vollenhoven on Adat Law, Netherlands, Martinus Nijhoff, 1981

the community as a whole. To put it another way, Islamic law applies to the native Muslim population. As long as it remains unproven”⁴⁶

This theory was primarily developed by Lodewijk Willem Christian Van Den Berg between 1845 and 1827. She states that for Muslims, Islamic law applies strictly since they have embraced Islam, even in situations where there may be difficulties.⁴⁷ This theory also applies to non-Hindus, i.e., Hindu law distinguishes non-Hindu individuals from Hindu ones, hence Hindu law is directly derived from Hindu law.

In plain terms, women’s rights are primarily violated by men, which means that women’s rights are discriminatory in their treatment of women. Though they may appear innocent, women are always subject to the law, whether it is Hindu or Islamic law.⁴⁸

2.3.3. In an attempt to achieve women’s equality, an integration model of Hindu and Balinese customary inheritance law

To determine heirs, Hindu inheritance law and customary inheritance law are integrated through alliance and legitimacy. Since inheritance practices in society are still pluralistic and cannot be unified under a single system of national inheritance law regulations, the diversity of inheritance law models that exist in Hindu society can serve as a model or source of information for future inheritance law regulations in Indonesia.

An adaptive integration model between Adat inheritance law and Hindu inheritance law that upholds the principle of proportionality between the rights and obligations accepted by the heir or heir’s descendants is one of the inheritance options in addition to following the model of Adat inheritance law and Hindu inheritance law.

Thus, the basis of the balance between the exercise of the right and the obligation received can be used as a reference in determining the amount of inheritance to be acquired by each of the heirs or the descendants of the legitimate heirs.

2.3.3.1. Principles of the Hindu Relationship System formulated in the Bali Customary Law.

Determining the basic principles of the family system in the indigenous people of Bali who are religious Hindu originated from the Hindu teachings called the term *kapurusa* or *purusa*.⁴⁹ According to the general principles that exist in the Hindu family system tends patrilineal⁵⁰, three basic principles are incorporated in the family systems that apply in the law of Bali or the system of *purusa*⁵¹:

1. The male, or paternal, line is used to trace the offspring. Legally speaking, only people descended from a single father or father are considered to be members of

⁴⁶ Otje Salman, “Rekonseptualisasi Hukum Adat Kontemporer: Telaah Kritis Terhadap Hukum Adat Sebagai Hukum Yang Hidup Dalam Masyarakat,” (*No Title*), 2002. pp. 75-76.

⁴⁷ Johan Frederick Holleman, *Van Vollenhoven on Indonesian Adat Law* (Springer, 1981).

⁴⁸ Tjok Rai Sudarta, *Manusia Hindu Dari Kandungan Sampai Perkawinan* (Yayasan Dharma Narada, Denpasar, 1997).

⁴⁹ V E Korn, “Hukum Adat Waris Bali (Het Adatrecht van Bali Bab-IX)” (Terjemahan I Gede Wayan Pangkat, FH & PM, Oenpasar: Universitas Udayana, 1971). pp. 59

⁵⁰ Bushar Muhammad, *Asas-Asas Hukum Adat Suatu Pengantar* (Pradnya Paramita, Jakarta, 2003).

⁵¹ Muhammad.

- a family, whether they are a huge family gathering around a parent or a maternal family made up of a father, mother, and child.
2. The bride is legally released from her original family, including her parents and siblings, and becomes a full member of her husband's family after marriage, which is a significant implementation of marriage in the purus family system.
 3. A kinsman, or relative, from their father's side exists for those who are born and are married, but there is no formal connection between them and their mothers' kinsmen.⁵²

According to customary law, the wife's original family no longer has a legal family membership relationship, but she still has a moral connection to them that upholds her rights and obligations as well as her duty to uphold the righteous duties of her husband's family.

When closely examined, the nyeburin marriage turns out to remain consistent with the parent family system because in these marriages the status of the wife is purusa. After all, it has been established as the sentana rajeg in her family. The newlyweds' marriage is better known as nyentana or nyaluk sentana, which is the marriage of the husband who follows the wife. In other words, the marriage form of nyetana appears to deviate from the purusa system that emphasizes that descent is continued by male or purusa descendants.⁵³

The Manava Dharmacastra (IX:127) contains the senate settlement. Sentana rajeg, sometimes known as daughters, are considered to be in the same position as sons, i.e., as heirs to their parents' property and successors to their offspring.⁵⁴

2.3.3.2 Combination of Bali Customary Inheritance Law Aspects in the Indonesian Legal System.

A legal system or a set of standards includes hereditary customary law. The inherited customary right, as a system, possesses the general characteristics of a whole system with multiple interconnected pieces that come together to form a structure.⁵⁵ In contrast, Lawrence Meir Friedman discusses the legal system in general terms, focusing on three aspects: the structure, substance, and legal culture.⁵⁶

There exists a strong correlation between these three components. The three components of the legal system are further explained by Lawrence Meir Friedman as a machine, with the culture of law serving as the fuel that decides what survives and what dies. This component has the effect of making the legal culture more urgent. Consequently, in the absence of a legal culture, the legal system is rendered impotent, like a lifeless fish submerged in a basket as opposed to a vibrant fish swimming in the ocean.⁵⁷

⁵² Wayan P Windia and Ketut Sudantra, "Pengantar Hukum Adat Bali," *Denpasar: Lembaga Dokumentasi Dan Publikasi Fakultas Hukum Universitas Udayana*, 2006, 115.

⁵³ Panetje, *Aneka Catatan Tentang Hukum Adat Bali*. Pp. 37.

⁵⁴ Windia and Sudantra, "Pengantar Hukum Adat Bali." pp. 526.

⁵⁵ Charles J G Sampford, "The Disorder of Law: A Critique of Legal Theory," 1989. pp. 12-13.

⁵⁶ W Friedman, "Lawrence. American Law: An Invaluable Guide to the Many Faces of the Law, and How It Affects Our Daily Lives" (New York: WW Norton & Company, 1984). pp.1-8.

⁵⁷ Friedman.

According to Kees Schu, who is cited by J.J.H. Bruggink from the viewpoint of the legal sociologist, the legal system is made up of three interconnected, somewhat autonomous (i.e., having identities that have distinct limits) components that can each be further described as follows:

- a. Essential element. The legal interpretation system is composed of guidelines, standards, and precepts. That is the “legal system” as defined by jurists. There are additional components for the legal sociologists.
- b. Operational component. This component is made up of all the institutions and organizations that have been set up under a legal framework. Among them is the (*ambtsdrager*), who operates inside a company or government agency.
- c. Factual element. This component consists of all the judgments and tangible actions made about the legal system, as made by both community members and officials.⁵⁸

The Bali people’s adherence to their laws and customs is closely tied to their religion. According to Lodewijstian van den Berg’s *receptio in complexu* theory, which explains, indigenous law follows its religion as long as it cannot be demonstrated to do otherwise because adhering to a religion entails abiding by its laws. What matters when someone adopts a certain religion is the law of that faith. When something is not in line with the law, it is seen as an exception to the rule or a deviation from it that has been *complexu gerecipeerd*, meaning it has been accepted in its entirety.

There are two main distinctions between Hindu law and Balinese customary law concerning women’s rights: heirs and the amount of the part that the heirs get. Men who have both social and biological *purusa* status are given precedence under Hindu law. In terms of familial status, sons (by birth) and only daughters are *purusa*. Contrarily, according to Balinese customary law, ladies whose status is promoted to boyhood are socially acceptable despite having brothers, while boys’ *purusa* status is caused by biological circumstances. According to Balinese customary law and Hindu law, the portion sizes for boys and girls are, respectively, 4:1 and 4: 2:1 (Paswara 19000) and 2: 1 (MUDP). Previously, women were only allowed to accept what they were prepared to do under Balinese Customary Law, which was based totally on custom or tradition.

The testator’s death determines many aspects of inheritance; nevertheless, limited inheritance can also occur while the testator’s parents or heir are living. This is stated in the following sloka: “The brothers (sons of the heir), having gathered together, may divide the inheritance (their parents’ property), for in reality they have no control over the property, after the death of the father and mother (MDS IX, 104).⁵⁹ According to this sloka, inheritance is not limited to being carried out after the heir passes away; it can also occur during the heir’s lifetime if both the heir and the owner of the inheritance so choose. This is because the heir or parents retain ownership of the property.

The main point is that neither Hindu law nor Balinese customary law recognizes women’s status (*predana*) as heirs when determining who is entitled to inherit property. Women can still be able to act as heirs, though, if they choose to become *purusas* and

⁵⁸ J J H Bruggink, “Refleksi Tentang Hukum, Alih Bahasa Arief Sidharta,” *Bandung: Citra Aditya*, 1999. pp. 140

⁵⁹ Pudja and Rai Sudharta, “Manawa Dharmasastra Atau Weda Smrti.” Pp. 526

undergo the legal ramifications of getting married as *nyentanas*. According to the author, heirs are seen in both Hinduism and Balinese tradition as the continuation of family duties, and both Hindu conventions and legislation based on *sloka*s or arrangements can be understood as exempting heirs from having to fulfill dual commitments. This concept can be used as justification for the patrilineal system's adoption under both Hindu law and Balinese customary law. Daughters can be granted rights to property inherited from their parents under the patriarchal system, but these rights have different ratios and the type of property awarded varies, such as joint property or *gunakaya* and *Tatadan* or *Jiwandana*. This is per both Hindu law and customary law.

In actuality, since Hindu religious law serves as the primary source of Balinese customary law and is applied by the *Kala Patra* and *Mawacara* villages, the concepts of Hindu inheritance law have been adaptively incorporated by customary inheritance law.

The Balinese customary law community sees inheritance as having elements of *scale* and *niskale*, namely between belief and reality, in addition to the economic value found in Western law, which is materialistic and individual. This theory of reception in *complexu* holds that Muslims apply Islamic lawfully because they have embraced Islam, despite some deviations in its implementation,⁶⁰ and Hindus in Bali apply full Hindu law. After all, they have embraced Hinduism. Customary law is recognized in society as a religious law that is followed by its adherents. As long as customary law has been purified or cleansed of any components that run counter to the interests of the Indonesian people and country, it remains valid. Customary laws that apply must serve the interests of the country. Therefore, it is necessary to eradicate localized traits that conflict with national goals.

In this situation, customary law is regarded as the body of law that exists within the community and is mandated by the legal system to serve as a guide for judges conducting legal discovery. Regarding Balinese inheritance law, which is reflected in some implementation rules both in the form of *awig awig* and suggested to be regulated in a regional regulation, Hindu law serves as the foundation for the Balinese community.

There is a relationship between Hindu Religious Law and Balinese Customary Law because the latter comes from Hindu Religious Literature, specifically the *Veda*, which is divided into three sections: *Sruti*, *Smerti*, and *Events*. It is within the last section that references custom. Hindu law recognizes the right to inherit, both materially and immaterially. In this instance, the material inheritance comes in the form of inherited land and other assets, whereas immaterial inheritance takes the form of duties placed on the heir to maintain the family's house of worship, such as *sangguh* or *merajan*, and to fulfill customs in traditional villages, such as the *Village Kahyangan*.⁶¹

Under the kinship system of the Balinese traditional community which follows the *purusa* or patrilineal line, it is imposed on sons. Heirs are children or descendants who receive inherited assets. In the context of Balinese customary inheritance law, the heirs are the patrilineal line (*kapurusa*/*purusa*), namely male children. In Balinese

⁶⁰ Pudja and Rai Sudharta.

⁶¹ Adnyani, "Bentuk Perkawinan Matriarki Pada Masyarakat Hindu Bali Ditinjau Dari Perspektif Hukum Adat Dan Kesetaraan Gender."

customary inheritance law, the term “male status” is used. The heir could be a woman physically, according to this interpretation of the law. However, through the *peperasan* ceremony, also known as *sentana rajeg/nyentana*, a woman’s status (*predana*) is physically changed to that of a man (*purusa*), with the right to inherit, and a physical man (husband) changes his status to that of a woman, with no right to inherit or as an heir. Property (*boedel*) from the heir’s fortune that will be bequeathed to the heirs is known as inheritance.

2.3.3.3. Alternatives to Realizing Equality in Women’s Inheritance Rights

Since equality is a universal value in human rights, equality, or equality between men and women, has become a demand for those rights. Therefore, it is appropriate that male and female offspring be granted an equal amount of rights as the heir’s descendants. Inheritance is a way for parents to show their love for their kids and ensure that there is no biological distinction between male and female offspring.⁶²

Since awarding inheritance to daughters is therefore frequently viewed by religious regulations as being strict, the author offers a breakthrough that upholds the principles of Hindu religious law and customary law while still allowing girls to inherit rights. These principles include:

1. Bequest

The heir may provide assets to daughters while still living by implementing the *Jiwandana* requirements under customary law, which include a gift model system. MDS.IX.104 provides the legal foundation for gift-giving, translating to say that the testator retains complete control over the estate. Because inheritance is meant to promote harmony and happiness, it is, therefore, acceptable for the heir to request that the bequest be divided while the heir is still living.

Paweweh is the term for the grant arrangement in the traditional Balinese Lombok custom. The grant/*paweweh* is subject to the requirement that the *Paweweh* be completed in cash and with clarity. The gift needs to be clear, which means that other heirs need to witness it, traditional ceremonies need to be performed, witnesses need to be present, and the primary heir/*purusa* needs to give their written approval. In terms of the specifications, the kind of thing that is formed or becomes the object, and the delivery method, cash or cash, refers to real or concrete following the nature of customary law. At that point, there is also a binding at the notary.

2. Raising girls’ status to the level of Purusa

Only if the heir consummates a *nyentana* marriage is this possible. A *suputer* child is defined in Hinduism as a child who is capable of rescuing his parents’ spirits from hell.⁶³ Therefore, according to Hindu law, a daughter’s status as a descendant of her parents is justified in *Manawadharmasastra IX Book. 127* which says, “*aputro nena widhine kurwita putrikam, yadpatyam bhawedasyam tanmama syat swadhakara.*” This implies that a man without a son can still make his daughter

⁶² Sukerti, “Perkembangan Hak Perempuan Di Bidang Waris Dalam Hukum Adat Bali.”

⁶³ Ni Nyoman Sukerti, 2006, *Sentana Rajeg Perubahan Status Perempuan Bali Menjadi Ahli Waris* Dalam Dra Ni Luh Arjani, I Nyoman Suparwa, I Ketut Sudantara (Eds), *Kembang Rampai Perempuan Bali*, CV Karya Sastra Denpasar, p. 162, n.d.

a designated daughter by telling her spouse that the daughter's son will conduct the ceremony of my funeral"...

As a result of this type of marriage, the guy who is *nyeburin* will take on the role of *predana*, or woman,⁶⁴ and the woman who currently holds the status of *sentana rajeg* will become *purusa*. In Bali, *sentana* child status is granted under Hindu religious law and customary law to produce *suputra* children or offspring to carry on the heir's (ancestor's) duty to worship the gods, who are the manifestation of the Almighty God, in the future.

3. By carrying out a *pade gelahang* or *gelahang* marriage together

If a family has both boys and girls as the sole children, it is still possible to give rights to the girls. This can be achieved by being married in a *pade gelahang* or *gelahang* together, as the main goal of this type of marriage is to prevent extinction or confusion within the family.

4. Girls can inherit in the form of polarized schooling or inheritance in the form of other forms. Girls who receive a high degree of education are likely to inherit the ability to eventually raise their family's standard of life through higher education.

3. CONCLUSION

There will be a shift in the distribution of inheritance rights between men and women based on Balinese traditional traditions, which were originally 4:1 with the re-examination of several Supreme Court decisions to 1:1 so that the inheritance system based on patrilineal shifted towards parental. This can be achieved by implementing an adaptive and evaluative regulatory model for integrating the Hindu inheritance law and Bali Lombok traditional inheritance law system in the national inheritance law constellation in the future. The advancement of science and the interpretation of Balinese customary law has made it possible for female heirs to acquire equal rights in several ways, including the heir's ability to grant daughters property in the form of provisions (*jiwandana*). To ensure legal clarity in the Hindu inheritance system, unity is necessary concerning inheritance matters. Beginning with this phenomenon, a novel concept is put forth that must come to pass in the shape of a Hindu inheritance law compilation in the style of a presidential instruction or presidential instruction that resembles a compiled legislation. Presidential Instruction Number 1 of 1991, or Islamic Law (KHI).

REFERENCES

- Adnyani, Ni Ketut Sari. "Bentuk Perkawinan Matriarki Pada Masyarakat Hindu Bali Ditinjau Dari Perspektif Hukum Adat Dan Kesetaraan Gender." *Jurnal Ilmu Sosial Dan Humaniora* 5, no. 1 (2016). <https://doi.org/10.23887/jish-undiksha.v5i1.8284>.
- Apeldoorn, L J Van. *Pengantar Ilmu Hukum, Terjemahan Oetarid Sadino*. Jakarta, Pradnya Paramita, 1993.

⁶⁴ Pudja and Rai Sudharta, "Manawa Dharmasastra Atau Weda Smrti." pp. 51

- Bruggink, J J H. "Refleksi Tentang Hukum, Alih Bahasa Arief Sidharta." *Bandung: Citra Aditya*, 1999.
- Fawaid, Achmad, and Busro Busro. "Contesting Religious Family Rights: Muslim and Hindu Women's Land Ownership in Java and Bali." *Islam Realitas: Journal of Islamic and Social Studies* 5, no. 2 (2019): 202–16.
- Friedman, W. "Lawrence. American Law: An Invaluable Guide to the Many Faces of the Law, and How It Affects Our Daily Lives." New York: WW Norton & Company, 1984.
- Gde Soeka, Tri Murthi Tatwa. *Tempat Suci Untuk Memuja Tuhan Dan Manifestasinya Serta Leluhur Yang Telah Suci, Terletak Di Areal Hulu Rumah Tangga.*, Denpasar: Kayu Mas, 1993.
- Holleman, Johan Frederick. *Van Vollenhoven on Indonesian Adat Law*. Springer, 1981.
- Kemenuh, Ida Ayu Aryani. "SUMBER HUKUM HINDU DALAM MANAWA DHARMASASTRA." *Purwadita: Jurnal Agama Dan Budaya* 1, no. 2 (2019): 37–43. <https://doi.org/10.55115/purwadita.v1i2.203>.
- Korn, V E. "Hukum Adat Bali (Het Adatrecht Van Bali)." *Jilid II*, 2017.
- . "Hukum Adat Waris Bali (Het Adatrecht van Bali Bab-IX')." *Terjemahan I Gede Wayan Pangkat, FH & PM*, Oenpasar: Universitas Udayana, 1971.
- Mahendra, A A. "Perkembangan Hukum Waris Janda Dan Anak Perempuan Dalam Masyarakat Bali." *Laporan Penelitian*, 1996.
- Manullang, E Fernando M. *Menggapai Hukum Berkeadilan*. Penerbit Buku Kompas, 2007.
- Muhammad, Bushar. *Asas-Asas Hukum Adat Suatu Pengantar*. Pradnya Paramita, Jakarta, 2003.
- Newbiggin, Eleanor. *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community*. Vol. 22. Cambridge University Press, 2013.
- Ni Nyoman Sukerti, 2006, *Sentana Rajeg Perubahan Status Perempuan Bali Menjadi Ahli Waris* Dalam Dra Ni Luh Arjani, I Nyoman Suparwa, I Ketut Sudantara (Eds), *Kembang Rampai Perempuan Bali*, CV Karya Sastra Denpasar, p. 162, n.d.
- Panetje, Gde. *Aneka Catatan Tentang Hukum Adat Bali. (No Title)*. Denpasar, Indonesia: Cet III CV Kayumas Agung, 2004.
- Pudja, Gde, and Tjokorda Rai Sudharta. "Manawa Dharmasastra Atau Weda Smrti." *Jakarta: CV. Felita Nursatama Lestari*, 2002.
- Pudja, Gede. *Hukum Kewarisan Hindu Yang Diresepir Kedalam Hukum Adat Di Bali Dan Lombok*. CV. Yunasco, 1977.
- Pudja, Gede, and Tjokorda Rai Sudhartha. "Manawa Dharmasatra Atau Weda Smerti Compedium Hukum Hindu." *Jakarta: CV. Nitra Kencana Buana*, 2002.
- Puja, I Gede, and Tjokaorda Rai Sudhartha. "Manawa Dharma Sastra (Manu Dharma Sastra) Atau Weda SmrtiCompedium Hukum Hindu." *Pustaka Mitra Jaya. Jakarta* 819 (2003).

- Rankin, George. "Hindu Law To-Day." *J. Comp. Legis. & Int'l L.* 3d Ser. 27 (1945): 1.
- Sadnyini, Ida Ayu. "Implementasi Keputusan MDP Bali Tahun 2010 Ke Dalam Awig-Awig Desa Pakraman Di Bali." *Jurnal Magister Hukum Udayana* 5, no. 3 (2016): 627–38.
- Salman, Otje. "Rekonseptualisasi Hukum Adat Kontemporer: Telaah Kritis Terhadap Hukum Adat Sebagai Hukum Yang Hidup Dalam Masyarakat." (*No Title*), 2002.
- Sampford, Charles J G. "The Disorder of Law: A Critique of Legal Theory," 1989.
- Singh, Anantdeep. "Women, Wealth and Law: Anglo-Hindu and Anglo-Islamic Inheritance Law in British India." *South Asia: Journal of South Asian Studies* 40, no. 1 (2017): 40–53. <https://doi.org/10.1080/00856401.2017.1258612>.
- Sudarta, Tjok Rai. *Manusia Hindu Dari Kandungan Sampai Perkawinan*. Yayasan Dharma Narada, Denpasar, 1997.
- Sukerti, Ni Nyoman. "Perkembangan Hak Perempuan Di Bidang Waris Dalam Hukum Adat Bali." *Masalah-Masalah Hukum* 40, no. 1 (2011): 86–92. <https://doi.org/10.14710/mmh.40.1.2011.86-92>.
- Taneko, Soleman B. *Pokok-Pokok Studi Hukum Dalam Masyarakat*. PT. Raja Grafindo Persada, 1993.
- Ulya, Zakiatul. "Analisis Kedudukan Adat Dalam Hukum Waris Islam Dan Hindu Beserta Implikasinya." *AL-HUKAMA': The Indonesian Journal of Islamic Family Law* 9, no. 1 (2019): 1–23. <https://doi.org/10.15642/alhukama.2019.9.1.1-23>.
- Windia, Wayan P, and Ketut Sudantra. "Pengantar Hukum Adat Bali." *Denpasar: Lembaga Dokumentasi Dan Publikasi Fakultas Hukum Universitas Udayana*, 2006, 115.
- Windia, Wayan P, Ni Made Wiasti, and Ni Luh Arjani. *Pewarisan Perempuan Menurut Hukum Adat Bali*. Udayana University Press, 2012.