

Protection of Inheritance Rights for Balinese Men Who Convert to Another Religion

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Abstract

This study discussed how legal protection guarantees the inheritance rights of Balinese men who convert. The research method used a normative legal approach by utilizing primary, secondary, and tertiary legal materials. The research materials were analyzed prescriptively. The study shows that according to Balinese custom, a man will be recognized as an heir and has the right to receive inheritance if he has the same religion as the testator, such as Hinduism. Legally, a child who apostatizes from his religion, in this case, leaving the Balinese or Hindu religion, remains an heir. Article 830 of the Civil Code states that inheritance occurs due to death, and Article 838 of the Civil Code emphasizes that heirs are those who have legitimate blood relations. In essence, according to the Civil Code, inheritance can be given to heirs even though they have a different religion from the testator or even though the heir no longer follows customary law or his religion. Thus, the state provides a guarantee that Balinese men who have a different religion from the testator will still receive protection to receive a share of the inheritance according to the Civil Code.

Keywords: Balinese men; Heirs; Balinese customary inheritance law; Apostasy

1. Introduction

Genealogy and geography are the basis of customary kinship law in Indonesia. Genetic factors unite individuals based on their descent. There are legal systems based on maternal lineage (Matrilineal), paternal lineage (Patrilineal), or both (Parental). Members of a legal community are bound together by their shared relationship in the same territory, which is called the territorial element [1]. One example of a patrilineal system is applied in Balinese customary law society, where sons become heirs of their parents and must be Hindu. This shows that in Balinese customary inheritance, Hindu sons are considered heirs who are entitled to receive various inheritances from deceased parents.

Freedom to practice religious beliefs in Indonesia is regulated in Article 29 of the 1945 Constitution, which guarantees the right of every citizen to choose and practice a religion according to their wishes. However, freedom of religion for the community in the positive aspect of this freedom is not always without challenges. Sometimes, religious changes in the family can cause conflict, especially when a family member decides to convert, feeling that his rights are guaranteed by law. In the Balinese traditional community, the majority of the population is Hindu. However, it is possible that in a family in Bali, there are family members who do not follow the Hindu religion as practiced by their parents. This could be caused by a theological shift or different spiritual understandings among the family members. Thus, although Hinduism

dominates, religious freedom can create complex dynamics at the individual and family levels.

Indonesia, with its thousands of islands stretching far and wide, displays a diversity of tribes, religions, languages, and customs that are often different. However, there are also some elements of similarity. In addition, the provisions on inheritance in Indonesia reflect the various variations of customary law that are an important part of people's lives in various villages. In every corner of the village, group, or individual, customary norms are highly respected and are often considered unwritten laws that are obeyed and carried out by indigenous peoples. In everyday life in Indonesian society, these norms have become habits that underlie every series of lives of its citizens. There is a strong adherence to customary norms, which are recognized as unspoken laws. Thus, this diversity not only creates contrasts between groups of people but also illustrates the unique cultural richness and daily life in every corner of Indonesia.

Until now, the inheritance law system in Indonesia has been pluralistic, including the customary inheritance law system, the Islamic inheritance law system, and the Western inheritance law system (KUHPerdota). The existence of these three inheritance law systems makes inheritance law in Indonesia not yet integrated. This is influenced by the diversity of race, nationality, beliefs, traditions, and customs that vary in Indonesian society. As a result, society is subject to and complies with the inheritance laws that apply in their respective environments, resulting in a lack of legal consistency in general. Society is given the freedom to choose the inheritance law system that they want to apply according to their preferences and beliefs [2], [3].

According to previous research conducted by I Putu Andre Warsita, I Made Suwitra and I Ketut Sukadana on the Rights of Single Women to Inheritance in Balinese Customary Law, which concluded that even though women are not heirs according to Balinese customary inheritance law, they still have the right to receive a portion of the inheritance from their parents. In practice, this inheritance is referred to by several terms, such as *harta tetatadan*, *bekal hidup*, *pengupa jiwa*, and also called *jiwa dana* [4].

Research conducted by Miliarni Deida Navydien, Khesya Khusnul Fadhilah Utomo, and the results of research on women's inheritance rights in Balinese customary law show that, officially, women are not recognized as heirs. However, they still have the right to receive part of the inheritance from their parents. There are several ways to ensure that female children receive a share of the inheritance, such as through grants or gifts in the form of wedding gifts, known as *jiwa dana*, *tetadan*, or *bebaktan* [5].

Research by Dewa Ayu Herlina Dewi on the position of heirs who change religions in Balinese customary inheritance law summarizes several important points as follows: 1. Heirs who change religions cannot carry out their obligations as heirs, both to their families and to the customary community. As a result, the inheritance relationship is severed, and the heirs are not entitled to inheritance. 2. However, heirs can still receive gifts from their parents as a form of affection, such as property that does not have religious magical value, or through grants [6].

Based on the three studies above, it can be concluded that the research written by the author is an original work because the author wants to state that Balinese citizens who change religions will still have inheritance rights even though they have a different

religion from the testator's parents because the heir has been guaranteed by the state and has been regulated by the state through existing regulations so that balance and justice are created. Based on the explanation above, a question can be formulated as follows: What legal protection guarantees the inheritance rights of Balinese men who change religions?

2. Research Methods

This normative legal research included analysis of legal principles, study of legal structures, examination of legal synchronization, tracing legal history, and comparative law. Also, the research applied the approach of legislation and customary law regulations. Data analysis was carried out using a qualitative descriptive method, which aims to describe the distribution of inheritance for Balinese men who have converted.

3. Results and Discussion

3.1. Customary Inheritance System Implemented in Bali

Indonesia, as a very diverse country, provides the greatest possible freedom to its people to live their lives according to their religious teachings and personal beliefs. This belief is considered a very personal matter, so every citizen has the right to practice their religion according to their own views and beliefs while still respecting the diversity that exists in this country, especially referring to national laws and customary laws that have been in effect since ancient times.

Although it is part of property law, inheritance law has a close relationship with family law because the laws and regulations governing inheritance are based on kinship and marriage ties. Thus, a combination of certain areas of Family Law and Property Law begins to form. Inheritance Law, according to Subekti and Tjitrosoedibio, "regulates what should happen to the assets of the deceased" [7]. In the context of customary law, an inheritance process is considered valid if three important elements are fulfilled, such as the existence of an heir, the presence of inherited assets, and the availability of heirs.

Testator can be defined as an individual who owns property during his life or after death, which can then be passed on in a divided or undivided state. According to Hilman Hadikusuma, inherited property, also known as inheritance, includes all forms of rights and obligations that transfer ownership or control to the heirs after the death of the testator [8]. He is a person who becomes an heir can be interpreted as an individual who has the right to inherit the inheritance of his/her testator. The heir has the right to continue ownership and control over the inheritance or have certain parts according to the division that has been determined among the heirs. In other words, the heir has full rights to receive and manage the parts that have been determined in the division of inheritance among them.

Therefore, discussing customary law is quite complicated because it discusses several interrelated and related issues in addition to one particular component. One of them is the chosen family structure will have an impact on customary law governing inheritance. In the Balinese patrilineal family system which is based on customary structure, the male lineage is considered the main candidate who has the right to become an heir. In the Balinese customary law system, inheritance is the right to continue to

fulfill the obligations left by the deceased heir in addition to the right to receive property from the heir (Udytama & Dianti, 2024).

Customary law sometimes follows the existence of a religion that is widely practiced in the area, such as Balinese customary law which is mostly oriented towards Hindu religious law. The male lineage, which plays the role of *purusa* to carry out rights and obligations and maintain the lineage, cannot be separated from the patrilineal family structure regulated by Balinese customary law. Children have a very important position in the concept of Balinese customary law, and the presence of children in a marriage can be interpreted as a hope for the couple to reconcile. The term "*nyupa*" refers to bad behavior carried out by their ancestors. Therefore, it is impossible to separate the kinship of children from the *niskala* elements that connect various Balinese customary rules [10].

3.2. Inheritance System According to Customary Law

The background of the existence of customary inheritance is due to the existence of kinship relations. In Indonesia, there are still three kinship systems that are adhered to: patrilineal, maternal, and parental. The existence of three kinship systems that are adhered to also has an effect on inheritance law [11]. Basically, inheritance in the three kinship systems refers to deliberation between families, but it is not uncommon for disputes to arise between relatives and the family giving the inheritance. The following is the inheritance distribution system according to Patrilineal, Matrilineal, and Parental customary law [11].

a) Patrilineal

In a society that adheres to a kinship system with a patrilineal system, according to which the right to inherit is given to male children or from the father's line. Examples are the Balinese and Batak communities.

b) Matrilineal

In a society that adheres to a matrilineal kinship system, according to the matrilineal system, the right to inherit as an heir is to trace the line of descent through the mother. An example is the Minangkabau community.

c) Parental

Inheritance, according to the parental system, is an inheritance that is drawn from the lineage of either the father or the mother. In the context of inheritance, there is no difference in rights between men and women, as is the case in the inheritance of traditional families in Java. This principle is entirely based on the inheritance law of both parties, both mother and father, involving husband, wife, and children, even if the child is married and lives a different life from his parents. The importance of knowing this inheritance law is that as long as they can still be reached, even adopted children are also included among the heirs who are entitled to receive a portion of the inheritance.

3.3. Inheritance According to Balinese Customary Law

In Balinese society, the distribution of inheritance is still influenced by local customs and traditions. When someone who has inherited property dies, sometimes his

property has not been detailed to be given to his descendants. In some cases, the distribution of inheritance is carried out jointly by the family. Based on Balinese customary law, an heir is required to maintain balance and harmony between rights and obligations towards the family and customs. A child who is entitled as an heir will receive a portion of the inheritance of his parents [12].

As a recipient of inheritance from his parents, a child cannot avoid various responsibilities to maintain his status as an heir and protect his inheritance rights. One of the main responsibilities of a child towards the heir is *swadharma anak* or *putra sasana*, which includes obligations towards parents. A person's status as an heir is only recognized if they meet the requirements and carry out certain obligations. In the context of Balinese customary inheritance law, these requirements include being a male child from a legitimate marriage, either born or still in the womb, and following the same religion as the parents of the heir [13].

The obligations and responsibilities of an heir to the family, especially to the parents as the testator, are the main requirements that must be met so that they are entitled to receive a share of the inheritance. The guidelines in the preparation of *Awig-Awig*, which is Balinese customary law rooted in *catur dresta* and influenced by Hindu teachings in Bali, as well as the Decree of the Customary Village, emphasize that the obligations (*swadharmaning*) of the heirs include the continuation of the responsibilities that have been inherited by their ancestors. This includes obligations to religion, maintenance of holy places, implementation of *ngaben* ceremonies, and settlement of debts left by the testator. Thus, the obligations of heirs are not only limited to rights but also include the preservation of religious traditions and the care of sacred places, as well as active involvement in important traditional ceremonies. This shows that within the framework of Balinese customary law, the rights of heirs cannot be separated from the social and religious responsibilities that form the foundation for the sustainability of cultural values in Balinese society. An heir in Balinese custom is in the *kepurusan* system, where in this system, the male child is placed as the successor, and all obligations of the testator are transferred to him.

Many Balinese indigenous people still have misunderstandings regarding the meaning of *purusa* status. Most of them think that only male children or male descendants are entitled to *purusa* status. However, according to Dr. Anak Agung Istri Agung, S.H., M.Kn, this is an incorrect interpretation that *purusa* should not automatically be interpreted based on gender (male or paternal lineage). In the concept of *purusa* and *pradana* in Hinduism and Balinese customary law, there is no separation based on gender. This means that in the position of *purusa* or *pradana*, there is no distinction based on gender as the subject of the perpetrator in the system [14].

In terms of form, broad rights and obligations do not only cover the rights to control property, but also include the balance of obligations of the heirs to maintain the property. In addition, there are customary obligations that are carried out by the heirs and inherited by descendants. With the rights and obligations that will be carried out by the heirs, a close relationship is formed with religious elements, which can be realized when the heirs and the testator adhere to the same religion [15]

Conversion of religion by Balinese men as heirs causes changes in the beliefs and convictions held by the family. As a result, the spiritual relationship to continue the lineage cannot be maintained. For Balinese people, leaving religion is considered as leaving their obligations, which means losing their rights to relatives and family. When someone leaves religion, this also means giving up their responsibilities as successors to their descendants and is considered an act that is outside the home environment and customary traditions, which violates the principle of *swadharma*, successors to their descendants and religion. Therefore, the status of children as heirs in Balinese customary inheritance can be revoked, especially if they are considered disobedient to their ancestors or parents because they change religion [16]. Based on the explanation above, a Balinese boy who leaves the Hindu religion will not receive any inheritance from his parents.

3.4. Protection of Inheritance Rights for Balinese Men Who Convert

The law is made to create a working framework for society that functions for order and justice, therefore in the inheritance law that applies in Indonesia, Balinese men who convert must be protected for the sake of order and justice for all Indonesian people in accordance with the fifth principle of Pancasila, such as social justice for all Indonesian people. Thus, all rights owned by society must be upheld fairly.

Conversion by heirs causes changes in the beliefs and convictions held by the family. As a result, the spiritual connection to continue the lineage cannot be maintained. For Balinese people, leaving religion is considered as leaving their obligations, which means losing their rights to relatives and family. When someone leaves religion, this is also interpreted as leaving their responsibilities as the successor of the descendants and is considered an act of moving away from the home environment and customary traditions, which is contrary to the principle of *swadharma* as the successor of the descendants and religion [17]. Therefore, the status of a child as an heir in Balinese customary inheritance can be revoked, especially if they are considered disobedient to their ancestors or parents because they have changed their religion. Although customary regulations do not allow an heir to change religion, as an alternative, regulations regarding inheritance have been regulated in the Civil Code [18].

The general civil law system does not specifically regulate the substance or legal issues surrounding inheritance if the spouses are of different religions. However, Law Number 16 of 2019, which is an Amendment to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, includes provisions regarding interfaith marriage, joint property, and inheritance of children outside the family, which regulates inheritance issues between families with different religions [19]. Therefore, as citizens we must comply with the regulations that have been set by the government.

In order to protect the rights of citizens in terms of inheritance, the Indonesian state refers to the Civil Code Ab Intestato Inheritance, a person who receives an inheritance based on statutory regulations, and Testamentary inheritance, a person who receives an inheritance based on a will. According to the Civil Code, there are two ways to obtain an inheritance: First, heirs are entitled to receive an inheritance based on their own status, not because they replace their parents, and each heir will receive the same

portion. Second is an individual or group of people who inherit property by replacing other heirs (such as the testator's parents) who died before them [20].

Article 832 of the Civil Code states that the people who have the right to be heirs are family members of equal status, whether legitimate or not, and are recognized as such, as well as the husband or wife who is still alive, according to the order of the heirs' groups [21]. In line with Article 832 of the Civil Code, Article 830 states that inheritance occurs due to death, and basically, those who are entitled to be heirs are those who have legitimate blood relations. However, not all heirs are required to receive inheritance because, according to the Civil Code, some do not meet the requirements to obtain inheritance rights. Based on Article 838 of the Civil Code, which in essence states that in Civil Code Law, inheritance can be divided among heirs even though they have a different religion from the testator or the deceased person [22].

According to the provisions of Article 875 of the Civil Code, if someone dies and leaves a will, the will must be made in writing and accompanied by instructions. According to the provisions of Article 895 of the Civil Code, the heirs must be people of sound mind, meaning in a healthy physical and mental state. In addition, Article 919 of the Civil Code prohibits the reduction of the heir's share. In the Civil Code, the rights of men and women to their heirs are not explicitly stated in terms of distinction or birth order, but rather the rights of nuclear family members are prioritized over all other rights [23]. Even though the heirs and testators are of different religions, the will must still be carried out, even though there are rules that provide limitations on the will.

The children inheritance rights who have left Balinese customs or left the Hindu religion according to customary law are not entitled to be heirs, but according to Article 832 of the Civil Code, those who have the right to be heirs are blood relatives, both legitimate and born out of wedlock, as well as husbands or wives who are still alive, with this article even though the child has left the tradition of customs or the Hindu religion, the child can still be subject to the Civil Code because the child is an Indonesian citizen and must still be subject to state regulations in this case the Civil Code, because customary law may not conflict with state law and the state guarantees that a child who apostatizes is still an heir [24]. Balinese men who change religion will receive protection in the distribution of inheritance because, basically, Balinese men who change religion remain heirs according to the Civil Code as explained above, and the reason why they must be protected is so that justice and equality can be created for all Indonesian people.

4. Conclusions

Balinese men who convert to another religion in the Balinese customary system, the heirs must be of the same religion as the testator according to Balinese customary regulations. Therefore, Balinese men who convert to another religion from their parents are no longer heirs. When an heir converts to another religion, the heir is eliminated. However, the Civil Code provides protection by guaranteeing the rights of male children as heirs. This is explained in Article 832 of the Civil Code, which states that heirs consist of blood relatives, both legitimate and born out of wedlock, as well as the husband or wife who lives the longest. However, legally, a child who apostatizes from his religion in this case leaving the Balinese or Hindu religion remains an heir, even though there is

a shift in the religious aspect, the rights held by male children as heirs are still recognized and protected by law, thus ensuring the continuity of inheritance in the context of the family.

Meanwhile, Article 830 of the Civil Code stipulates that inheritance occurs due to death. Meanwhile, Article 838 of the Civil Code explains that heirs are individuals who have legitimate blood relations. In this context, the Civil Code states that inheritance can be distributed to heirs even if they have a different religion from the testator, or even if the heirs are outside of customary law or their religion. Thus, the state provides a guarantee that Balinese men, even though they have a different religion from the testator, will still receive protection in terms of their rights to obtain a share of inheritance in accordance with the provisions of the Civil Code.

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