

Legal Protection of the Inheritance Rights of a Sons Who Follow Their Mother in Mulih Daha in Inheritance of Balinese Customary Law



Wanda Shicilya¹, Putu Ayu Sriasih Wesna², I Wayan Kartika Jaya Utama³

¹Mahasiswa Program Pasca Sarjana Universitas Kenotariatan Warmadewa, Bali, Indonesia.

^{2,3}Lecturer of Postgraduate Program of Kenotariatan Warmadewa University, Bali, Indonesia.

ABSTRACT: Balinese customary law adheres to a patrilineal kinship system, where sons as purusa have primary rights in inheritance. However, in some cases, there are sons who follow their mothers mulih daha (return to their original homes), so they have the potential to lose their inheritance rights. This study examines the legal position of sons who follow their mothers mulih daha and legal protection of their inheritance rights, especially in cases of unilateral control by their father's purusa family. This study uses an empirical method with a sociological and anthropological approach, and was conducted in Pemogan Traditional Village and Pemecutan Traditional Village. Data were obtained through interviews, document studies, and qualitative analysis. The results of the research conducted in Pemogan Traditional Village and Pemecutan Traditional Village showed that a son who follows his mother back to his position as a purusa in his late father's family is related to his swadharma and swadikara in his late father's family and the legal protection that can be given to the son regarding the inheritance controlled by the purusa family is by holding a deliberation between the families and if there is no agreement then the customary leader can become a party when mediating between the two parties, but if both methods fail then they can ask for help from the Bali Traditional Village Council (MDA).

KEYWORDS: Inheritance Rights, Boys, Mulih Daha, Balinese Customary Law, Legal Protection.

I. INTRODUCTION

Purusa is a kinship system adopted in Balinese customary law, which is a system that makes men the main heirs in the family who are obliged to manage all inherited property in the form of property and heirlooms from previous ancestors, with the aim of maintaining the harmony of the extended family. However, in practice there are still many men who lose their status as purusa due to several factors, as experienced by one of the interviewees whose purusa status is unclear because since childhood he followed his mother mulih daha. *Mulih Daha* itself is a process where a woman returns to her home of origin due to several factors, including divorce, the death of her marriage partner, and other factors. When the mother of the boy *mulih daha* the child was still underage and still needed the love of his mother so that from the results of a joint agreement with the extended family of *purusa* and *pradana*, the custody of the child was in his mother, but not long after the father of the child died, making the child an heir to his parents' inheritance. The legal aspects of inheritance also play an important role in this conflict. In Indonesia, inheritance laws are often influenced by religious and customary norms, which can vary from region to region. Beyond the legal and economic aspects, unilateral control of inheritance also has a significant emotional impact. Children who feel ignored or disrespected in the inheritance process can experience stress, depression and other mental health issues. This is further complicated when there is pressure from the family to follow unfair traditional norms. Every child has a dignity that should be upheld; and every child born should have their rights without asking for them. These rights are basic rights that are inherently human, universal and enduring. Therefore, they must be protected, respected, defended, and must not be ignored. In the 1945 Constitution of the Republic of Indonesia in Chapter X on Human Rights, Article 28 A stipulates:

"Every person has the right to live and to defend his or her life and livelihood."

If human rights are rights that every human being gets as a consequence of being born as a human being, then all the rights attached to them must be respected. In accordance with the provisions of the Convention on the Rights of the Child, which was approved by the UN General Assembly on November 20, 1989 and entered into force as international law on September 2, 1990,

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and has been ratified by the Indonesian government through Presidential Decree No. 36 of 1990 on August 25, 1990; it is stated that in this Convention the principles of child protection have been established, namely:

- 1) Active protection;
- 2) Nondiscrimination;
- 3) The best interest of the child;
- 4) The right to life, survival and development; and 5) Respect for the views of the child.

II. RESEARCH PROBLEM

This research aims to examine and analyze the inheritance process of sons who follow their mothers mulih daha in Balinese customary law inheritance, in order to evaluate the causes and consequences arising from the unilateral control of inherited property by the family of the deceased father. Based on the background described above, the researcher formulates 2 (two) problems, namely: how is the position of a son who follows his mother mulih daha, and how is the legal protection of a son who follows his mother mulih daha against inheritance property controlled unilaterally by the purusa family?

III. RESEARCH METHODS

The research methodology used in this research consists of empirical research types that examine the law not as a social norm, but as a social symptom, namely the law in reality in social life. Which has the aim of finding concepts about the process of law and the process of working law in society. So that the problem approach used in this research is a sociological approach, and an anthropological approach. The data sources used in this research are: primary data in the form of data directly obtained from the community by conducting interviews or distributing questionnaires, then secondary data sourced from legal materials consisting of laws, Majelis Desa Adat (MDA) Bali Province, and awig-awig Desa Adat. Then the data collection techniques used in this research are interview techniques and document studies. And in this study, the research location was conducted in Pemogan Traditional Village and Pemecutan Traditional Village. Which data analysis used in this study uses more qualitative data analysis techniques.

IV. DISCUSSION:

A. The Body of A Boy Who Follows His Mother's *Mulih Daha*.

Marriage in Indonesia has meaning as a physical and mental bond between a man and a woman to form a happy and eternal family. Marriage also serves to provide status and role for someone who is recognized and legitimized by society, especially for Balinese Hindu society, marriage is a sacred and holy relationship between men and women in carrying out their dharma service as a complete human being. This means that, ideally, marriage will be considered legal and legal legally and customarily if approved by the bride and groom, approved and witnessed by the families of both parties, and witnessed in *niskala* and carried out through a procession of traditional ceremonies. This sacred and holy relationship must be based on love to realize *swadarma* manusia lan swadarmaning pianak (human obligation to continue life and the obligation of a child). However, not all marriages can run normally in accordance with what they expect. This is because one of the parties is unable to carry out their obligations as they should. In addition to the breakup of a marriage due to the death of one of the parties, those who are still alive are called *balu*. If the breakup of a marriage is due to divorce then they are called *sapihan* (widower or widow) this means that there are no losers and winners. The occurrence of divorce should be avoided, however in reality in Balinese society there are still many cases of divorce. The elucidation of Article 39 paragraph (2) of Law Number 1 Year 1974 concerning Marriage, determines that the reasons that can be used as a basis for divorce are:

- a. One of the parties commits adultery or becomes a drunkard, junkie, gambler and so on that is difficult to cure;
- b. One of the parties leaves the other for 2 (two) consecutive years without the permission of the other party and without valid reasons or for other reasons beyond his/her will;
- c. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
- d. One of the parties commits cruelty or serious maltreatment that endangers the other party;
- e. One of the parties gets a disability or illness that causes him/her to be unable to fulfill his/her obligations as husband/wife;
- f. There is a continuous conflict between husband and wife. There are continuous disputes and quarrels between husband and wife and there is no hope that they will live together again.

From the divorce of both parents, there are many parties who are harmed, especially children, children will lose a sense of security and comfort in the house due to the lack of complete family members at home, so that children tend to seek a sense of security and *nayamn* outside the home. Divorce also results in the status of children becoming unclear in inheritance, because in Balinese

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customary law the son is *purusa* in the family and if he decides to leave his *purusa* status because he follows his mother *mulih daha* then his position as an heir in his late father's family will be broken. Balinese customary law recognizes *Swadharma* (obligations) and *Swadikara* (rights), if the *swadharma* of the heir to the *purusa* family is not carried out then the *swadikara* will automatically be lost. In Balinese customary law, the *swadharma* and *swadikara* of a person are regulated in the *awig-awig* and *pararem* of each Banjar in the Desa Adat and also regulated in the *Pasamuhan* Majelis Desa Adat Bali Year 2023 on the Principles of Marriage, Divorce, and Inheritance. In letter C on the Principles of Inheritance, number 8 on the Legal Status and Blood Relationship of Children after Divorce is regulated, which stipulates:

8.1 Children born before divorce, have a legal position and blood relationship with the family of their parents who have the status of *purusa*;

8.2 Parents of children who have the status of *pradana* can / have the right to take care of children born before divorce until the child is an adult, but the custody rights do not eliminate the legal position and blood relationship of the child in the family of his parents who have the status of *purusa* as referred to in number 8.1.

Therefore, if we refer to the 2023 *Pasamuhan* Majelis Desa Adat Bali, it is the same as the opinion expressed by the *Kelian Adat* of Banjar Gelogor Carik Desa Adat Pemogan and Banjar Kerandan Desa Adat Pemecutan, both *Kelian Adat* agree that the position of a son who follows his mother *mulih daha* both by law and the *pararem* of the Desa Adat where he lives, will not change as *purusa* of his father's family as long as there is no agreement from the extended family of both the father's family and the mother's family.

B. Legal Protection of a Boy Who Follows His Mother In *Mulih Daha* Against Inheritance Property Unilaterally Controlled By The *Purusa* Family.

In the context of Balinese customary law, the patrilineal family system is very strong, where lineage, inheritance rights, and inheritance generally follow the male line. However, in practice, there is a case of a boy who is currently following his mother *mulih daha*, namely when the boy since he was a toddler has followed his mother *mulih daha* because of the divorce of his parents, which resulted in an agreement from both families that the child's custody was given to his mother until the age of the child was mature and able to make his choices. However, over time the father of the child passed away and left some inherited property in the form of land, houses and vehicles whose management status was under the authority of the brothers of the deceased. The beginning of the unilateral control by the brothers and sisters of the testator, is because when the testator died the boy was still a toddler, so it was felt by the family that he was not yet able to manage or take care of the inheritance left by the testator, then the reason given by the testator's brothers was also due to the fear of control by the mother of the heir to the inheritance, And when the heirs had the opportunity to ask about the management of the inheritance, the explanation from the testator's brothers and sisters was the agreement of the testator's extended family to manage the inheritance for the benefit of the heirs when they grow up, but until the heirs were 16 (sixteen) years old the costs of daily life, school, and health were borne by his mother without any interference from the testator's family. The state actually has rules governing children's inheritance rights, both in customary law that has developed and in national law. Among them is Article 28 B (2) of the 1945 Constitution which stipulates:

"Every child has the right to survival, growth and development and the right to protection from violence and discrimination, including in the aspect of inheritance rights."

It is also regulated in Article 46 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, which stipulates:

"children in marriage are entitled to love, protection and care from both parents."

"both parents are obliged to provide proper and adequate protection and care for the child." This is also the case in Civil Code Article 832, which stipulates:

"According to the law, those entitled to be heirs are blood relatives, both legal according to the law and outside of marriage, and the husband or wife who lives the longest, according to the following rules." "In the absence of blood relatives and the longest surviving husband or wife, all of the estate belongs to the state, which is obliged to pay the debts of the deceased, to the extent that the estate is sufficient for this purpose."

The Bali Provincial Traditional Village Council (MDA) in the decision of *Pasamuhan Agung IV* of the Bali Traditional Village Council (MDA) in 2023, on the Principal Provisions of Marriage, Divorce, and Inheritance, in point 18 on the Relationship between Parents and Children, specifies:

18.1 Parents should *asih ngupapira* (nurture and educate with affection) until the child or offspring becomes an adult or enters into marriage.

18.2 Children or descendants should be *subhakti* (respectful and responsible) towards parents and ancestors *sakala-niskala*.

The heir in good faith inquired about his rights as a child of the testator to the family of his deceased father, but there was no explanation of the status of his rights to the inheritance from the brothers of his deceased father. The heir's statement was also

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clarified by his mother who explained that the inheritance that is currently managed by the brothers of the deceased is the result of the hard work of the deceased during his lifetime without any mixing of inheritance from ancestors or from other families, so the mother of the heir feels that her son is entitled to get the right to education, health and daily living expenses that he used to get when his late father was still alive. Because in the Bali Provincial Customary Village Council (MDA) in the decision of *Pasamuhan* Agung IV of the Bali Customary Village Council (MDA) in 2023, concerning the Principal Provisions of Marriage, Divorce, and Inheritance, in number 3 concerning the Classification of Inheritance which determines:

Inheritance can be classified based on its value and nature.

3.1 Value of Inheritance:

3.1.1. Inheritance that has material value, among others: land, savings, debts, receivables;

3.1.2. Inheritance that has immaterial value, among others: shrines/temples/*merajans*, sacred objects.

3.2 Nature of Inheritance:

3.2.1. Inheritance that can be divided, among others: land, savings, debt;

3.2.2. Inheritance that cannot be divided, among others: shrines/*pura*, *merajan*, sacred objects.

With the provisions made by the Indigenous Village Council regarding the classification of inheritance, the heirs should get their inheritance rights in the form of land, shelter, and vehicles, especially land which is also regulated by the Bali Provincial Indigenous Village Council (MDA) in the decision of *Pasamuhan* Agung IV of the Bali Indigenous Village Council (MDA) in 2023, concerning Basic Provisions for Marriage, Divorce, and Inheritance, point 4 concerning Land Inheritance, determines:

Specifically, land inheritance as referred to in number 3.1.1 and number 3.2.1, some can be divided and some cannot be divided.

4.1. Land inheritance that can be divided is *gelah padidi* land (individual property), such as *tetamian* land (heirloom), *gunakaya* land (land jointly owned by husband and wife), *sakaya* land (land from their own efforts before marriage).

In the provisions of the Traditional Village Council (MDA) above, it is clear that the inheritance of the land left by his late father can be fought for by the heirs as his right. From the heir's explanation and reinforced by his mother as his sole guardian at this time, the heir's relationship with his late father's extended family was well established, but the relationship began to go bad when the heir questioned his inheritance rights which should have been his right from the testator. What was done by the purusa family to control the inheritance from the testator with internal factors that did not consider the impact on the heirs who were the sons of the testator, where the impact on the psychology and social of the heirs would be disturbed because of the conflict that occurred between the purusa family and the wife of the testator who was concerned with their respective egos. Basically, the State regulates the protection of the rights of children in terms of getting a decent life, growth and development in accordance with the dignity of humanity. Therefore, the family should be able to think that the control of the inherited property is tantamount to discrimination against the rights to life, growth and development of a child who should get a decent life from the results of his parents. However, in the Balinese customary law system, it all comes back to the fact that the customary rules in the Banjar where one lives become awig-awig (rules) that must be obeyed by every citizen because awigawig (rules) are made based on the results of deliberation and consensus of local residents for the common interests of the residents who live there. Because in the Majelis Desa Adat (MDA) of Bali Province, the Decree of *Pasamuhan* Agung IV Majelis Desa Adat (MDA) in 2023, regulates the principles of inheritance which states that:

5.1 The principle of wholeness, meaning that the inheritance that has sakala/material and niskala/immaterial values is seen as a unity (abungkul).

5.2 The principle of balance, means that swadikara / rights to inheritance that has material and immaterial value depends on the swadharma / obligations carried out.

5.3 The Principle of Kindness, means that the division of inheritance prioritizes the common good among the heirs.

5.4 The Principle of Primacy, means that inheritance that has material and immaterial value is not divided equally but there are heirs who are prioritized based on the responsibilities carried out.

5.5 The Principle of Sustainability, means that not all inheritances that have material value are divided, but some are maintained to be continued / passed on to the next generation.

I Nyoman Gede Puspanagara, as *Kelian Adat* of Banjar Kerandan, Pemecutan Village, stated that in the event of a dispute between the heirs and the purusa family, the penjuru adat should not interfere in the matter because the penjuru adat is not part of the family and therefore the penjuru adat should not enter and interfere in the inheritance dispute. However, Mr. I Nyoman Gede Puspanagara emphasized that every problem in Banjar Kerandang, Pemogan Village, in every settlement must include a statement from both parties that states that the ongoing problem is resolved in the manner and choice of both parties. So that the customary judges in the future will not be included in the problem. I Made Edy Djati Sardika, as the secretary of Banjar Kerandan, Pemecutan

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Village, added that customary law in Bali adheres to the purusa family system, in which men are the main heirs who will continue the legacy of ancestors and family. However, if indeed the son who follows his mother mulih daha is the only heir of the inheritance which was obtained by the deceased from his hard work during his lifetime without any mixed property from his purusa family. So the alternative dispute resolution that can be done by the heirs by conducting a large family deliberation which is certainly based on the results of discussions and mediation between the purusa family and the mother of the boy who is currently still under the guardianship of his mother because he is still 16 (sixteen) years old, with the aim of finding the best solution for the boy's future. I Gede Nyoman Puspanagara, as the customary cleric of Banjar Kerandan, Pemecutan Traditional Village, added that if the mediation conducted by the two extended families experienced obstacles, the customary *prajuru* could mediate the mediation in the hope that if there were customary *prajuru* who witnessed and knew the mediation could run well without obstacles, but if it did not work, it could be submitted to the Traditional Village Council (MDA) to assist in the final settlement. Not only the law regulates the protection of a child's right to inheritance but also Balinese customary law regulates inheritance that can be divided and become the rights of heirs, because in Balinese customary law inheritance has a value in the form of material and immaterial, which includes material inheritance in the form of land, savings, and also debts, the inheritance can be divided. While immaterial inheritance in the form of, shrines / temples / *gerajan*, and sacred objects, which this type of inheritance cannot be divided.

It is clearly stated in the Bali Provincial Traditional Village Council (MDA) in the decision of *Pasamuhan Agung IV* of the Bali Traditional Village Council (MDA) in 2023, on the Principal Provisions of Marriage, Divorce, and Inheritance, number 9 on the Loss of Rights to Inheritance, which is regulated at number 9.4 specifies:

9.4. A person who dies in a limited *kedaton* is entitled to half of the share of an heir who has the status of *purusa*, for the use of his parents, after deducting one-third for *duwetengah*.

In the explanation of the Bali Provincial Council of Indigenous Villages (MDA) in the decision of *Pasamuhan Agung IV* of the Bali Provincial Council of Indigenous Villages (MDA) in 2023, on the Principles of Marriage, Divorce, and Inheritance, number 10 on the Restoration of Rights to Inheritance specifies:

10.1 A person who has lost the right to inherit from his/her parents and/or ancestors due to full *ninggal kedaton* or limited *ninggal kedaton*, may recover his/her right to inheritance if he/she has performed swadharma as a Hindu properly towards the family and ancestors.

10.3 Specifically, the right to inheritance from one's parents can be restored as long as the inheritance has not been legally transferred.

From the contents of the Bali Province Customary Village Assembly (MDA) in 2023, it can be a reference for heirs to defend their inheritance rights to their late father's property, as long as the heirs follow the rules agreed upon between families and make the Customary Village Assembly (MDA) as a basis for mediating with the purusa family, it is hoped that no disputes will occur up to the Court.

V. CONCLUSIONS

Based on the results of the research and the explanation above, several conclusions can be drawn to answer the problem formulation above, namely: The position of a son who follows his mother mulih daha, in principle will break up as purusa but based on awig-awig, *pararem* Desa Adat and *Pasamuhan* Majelis Desa Adat in which it determines the position of an heir can return again if he re-executes his *Swadharma* and *Swadikara* based on the provisions in the Banjar Desa Adat where he lives and because of the great affection of his family and parents so that he is heartened to keep him as purusa in the family of his late father. And the legal protection of the son who follows his mother mulih daha against the inheritance that is controlled unilaterally by the purusa family, is by conducting deliberations with the family of his late father with the aim of making an agreement between the two families regarding the future of the heir who is currently still under the guardianship of his mother because the age of the heir is still 16 (sixteen) years old and based on the law is still incapable of making a decision. However, if the deliberation between families does not find a bright spot, it can ask the customary *prajuru* as a party when mediating, it is hoped that with the presence of people when there will be different suggestions and input and be able to mediate if there is a dispute between the two parties, and if the deliberation and mediation are also unsuccessful, the heirs accompanied by the mother as a guardian can ask for help from the Adat Village Assembly to resolve the inheritance dispute, with reference to letter C. Principles of Inheritance where it is regulated about the principles of inheritance, *Swadharma* and *Swadikara* of heirs, about divisible and indivisible inheritance, the loss of rights to inheritance, the recovery of rights to inheritance and the division of inheritance.

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