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Status and Inheritance Rights of *Daha Tua* in Balinese Customary Inheritance Law: Study on Balinese Indigenous People in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency

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Abstract

Old Daha is an adult woman biologically menstruating, until old age. It is said that *Daha Tua* if his status does not carry out marriage until the end of reproductive ability. So *Old Daha* was an adult woman until she died with the status of never married. The situation of *Old Daha* will be set aside by his family members because it is considered a mere burden, so the issue of *Old Daha*'s inheritance rights arises and the distribution of *Old Daha*'s inheritance rights to his heirs in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency.

This research is empirical normative legal research, with a descriptive type. The problem approach used is a juridical-sociological approach. The data used are secondary data and primary data. Data collection techniques with literature

studies and field studies are interviews. Data analysis is used qualitative data analysis.

The results showed that *Daha Tua* in Banjar Dewa Village was not an heir, however, along with the development of the era, parents assumed that *Daha Tua* was entitled to receive his parents' property while still paying attention to customary law as a guideline that applies in the Balinese customary inheritance system. The distribution of inheritance rights belonging to *Daha Tua* to his heirs in Banjar Dewa Village will be inherited to heirs who are related to Purusa by blood, such as his chosen brother or by adopting the nephew of his brother as a legitimate child. These efforts were made to get heirs and shelter in old age.

Keywords: *Daha Tua*, Waris, Balinese Customs

1. Introduction

Bali is one of the provinces in Indonesia that is famous for its diverse and unique traditions. Bali has a majority of people who are Hindus so that customary law that develops in Bali is Hindu customary law including inheritance law. Balinese indigenous peoples who generally have a patrilineal kinship system are descendants from the father *so purusa*. Customary law in Indonesia has at least three kinship systems that are widely known to the community, namely patrilineal, matrilineal and bilateral. Patrilineal is a family system that draws the lineage of the male or father, for example the Batak and Balinese tribes. Matrilineal is a lineage system that places the mother as the determinant of lineage, for example the Minangkabau tribe. While the bilateral kinship system explains that there is no dominance between men and women, for example Javanese.¹ Patrilineal is a family system that draws the male or paternal lineage.² Patrilineal is a community custom that regulates the flow of paternal descent. Likewise, the word is often equated with always found in patrilineal kinship systems and patriarchal power relations. Patrilineal comes from two words, namely *pater* (Latin) which means "line". So, patrilineal means to follow the "bloodline drawn from the father's side". Meanwhile patriarchy comes from two other words, namely *pater* which means "father and *archein* (Greek) which means "to rule". So, patriarchy means "power is in the hands of the father or the man".²

¹ Nuzul, A. 2010, *Efforts to Codify Inheritance Law Bilaterally with Differentiation Patterns in Pluarist Society*, tt, Yogyakarta, Universitas Gadjah Mada, pp. 465-481. ² <http://scholar.unand.ac.id> accessed on August 3, 2023 at 13.00 WIB.

² Hefni, M. 2012, *Madurese Women Among Matrilocal Residency Patterns and Kekuasaan Patriarkat*, *KARSA: Journal of Social and Islamic Culture*, Vol. 20, No. 2, hlm. 211227.

Unmarried Balinese women are called *Daha Tua*. The life of unmarried women becomes a problem, when their existence in economic terms is considered qualified, then they will be given respect by their relatives. Conversely, when they are considered unqualified in economic terms, especially if they do not want to communicate well with their relatives, they will be left aside or relatives will consider it a burden and misfortune. This condition often makes unmarried women *Daha Tua* as children alone, living in social institutions that are in charge of caring for the elderly. This is because *the Old Daha* has no descendants who are responsible for ensuring its survival. When *Old Daha* is given respect and lives with his relatives, it will be a question by the community, when he dies the property owned by *Old Daha* can be enjoyed by other relatives. The ³ status of *Old Daha* is often labeled as an old virgin, and even considered a woman who can wreak havoc. Generally, this status will be pinned as long as the woman is not married until she dies. *Daha Tua* also experienced political disturbances in his family, decision-making was sometimes not included. People tend to label *the Old Daha* as something that is considered mystical and give social warnings to it.⁴

The existence of *Daha Tua* in a family is often labeled as a heavy burden on families in Balinese indigenous communities that adhere to the patrilineal kinship system. The position of *Old Daha* tends to be weak because it does not marry so it seems to depend only on the mercy of his brothers, especially for *Old Daha* who does not have a good educational and financial background. Patriarchal violence against Balinese women, often the heavy burden carried by most Balinese women is not commensurate with the rights they get. Girls in Balinese customs are made *bungan natah* aka "flowers in the yard". This connotation can mean double, daughter merely as an accessory or complement, the type of female being given in the family. Or the woman is prepared as the guardian of traditions and rituals with all the consequences. Women are often symbolized as *pre-funding*. Balinese women are required to be perfect *prada* figures. Women are recognized for their existence when she is able to become a wife, a mother who gives birth to sons. If he cannot do both of these things, then his achievements and contributions in the family and society will not have the place of appreciation or due rights. There are three categories of women who are considered imperfect in Bali, namely, women who are not married *Daha Tua*, who have no children, and those who do not have male children. So, in this case unmarried women are not considered their status as heirs because they are included in the category of women who are considered imperfect in Balinese custom.

Unmarried women are ridiculed as *Old Daha* or spinsters. Their existence is interesting because often when these women are young, their existence tends to be maintained in the family. His financial ability is needed to support the family economy. Unfortunately, when growing old and not having *as rich* or material possessions, family members will

try to get rid of it because they consider it a burden on the family. This kind of family violence is often covered up by bringing the *Old Dahas* to nursing homes in old age.⁵ Some of these *Old Dahas* are kept at home if the woman is considered financially strong enough. In the future, if he dies, his property can be enjoyed by other family members. In some cases, *Daha Tua* did not marry to preserve parental feelings and family identity in the family and social community if they did not get *Sentana*. This is a form of sacrifice and at the same time filial piety of children to their parents. The intervention of patriarchal ideology penetrates too far in the private sphere. Patriarchal ideology works by applying social pressure.

The real roots and resolutions, the concepts of *purusa* and *pradana* at the level of symbolic discourse in Bali are recognized and placed *adiluhung* as a property of life balance. *Purusa* and *pradana* correspond to *yin* and *yang*, heaven and earth, male and female. This duality actually exists to complement and complement each other, aimed at achieving harmony in life. In practice, however, the concept of *purusa* has been distorted, merely as an inheritance right for men without an explanation of their responsibility for the fulfillment of family needs. *Purusa* or masculinity is roughly interpreted as a show of strength for territory and inheritance. Who is strong is in power as ideology always serves the interests of the dominant group. The discourse of privilege in boys is diverted as a result of his dominant responsibility in carrying out the customs of their family, and community. In fact, the role of Balinese women is very large in carrying out the wheel of religion, maintaining Balinese customs from the family level to social relations is very large.

On a practical level, women's rights are undermined by the practice of patriarchal ideology that subordinates women's existence. This ideology works where the existence of women is denied. In addition, the existence and rights of women are obscured or hidden through discourse on practices in the name of custom.⁶ The existence of women is marginalized in the game of family political interests in the context of decision-making and the equitable distribution of the right to life for them. The materialist base that penetrates people's thinking has made the word battle turn to the expansion of power and the struggle for inheritance. Although it is said that Balinese customary law regulates inheritance for women, but often in practice the distribution of rights does not reach women. Society should eliminate the *mindset* of women secondary.⁷ In practice, we can observe from how the treatment of inheritance distribution received by Balinese women. Such a situation is inseparable from the patriarchal ideology adopted in the family system of indigenous people in Bali which places the existence of Balinese women sidelined. Such women's rights are not considered important in indigenous societies. The lives of Balinese indigenous people have a tendency to maintain the

⁵ Pre-Research Results in Banjar Dewa Village on May 20, 2023 at 10.30 WIB.

⁶ Gayatri Mantra 2011, *Violence Patriarki at Woman Bali* <https://balebengong.id>, accessed on October 25, 2023 at 11:40 WIB.

⁷ Ni Nyoman Sukerti, 2012, *Women's Inheritance Rights in Balinese Customary Law a Critical Study*, Denpasar: Udayana University, p. 81.

³ Ni Ketut Sri Ratmini, 2015, Inheritance Rights and Their Relationship with *Daha Tua* According to Balinese Customary Law, *Journal Magister Hukum Udayana*, Vol. 4, No. 2, pp. 391-392.

⁴ <https://www.nusabali.com> accessed on August 15, 2023 at 10.00 WIB.

strength of this patriarchal hegemony unconsciously and consider it as something that is considered natural by men, not even a few women who support this hegemony because they do not have the right to make decisions.⁸

Currently, inheritance in Balinese indigenous communities has experienced developments, especially on equal rights in inheritance for Balinese women which has been regulated in the Decree of Pesamuhan Agung III MUDP (Main Council of Pakraman Village) Bali No. 01/KEP/PSM-3/MDP Bali/X/2010, October 15, 2010.⁹ Balinese women receive half of the *purusa* inheritance rights after deducting 1/3 for heirlooms and preservation interests. Only if Balinese women convert to someone else's religion are they not entitled to inheritance rights. If the parents are sincere, stay open by giving a *soul fund* or voluntary provision. Decree of Pesamuhan Agung III MUDP (Majelis Utama Desa Pakraman) Bali No. 01/KEP/PSM-3/MDP Bali/X/2010 is a development of several jurisprudence on the inheritance rights of *Daha Tua*, contained in Supreme Court Decision No.459/Sip/1982 dated August 15, 1983, the daughter is the heir of her deceased father. *Ratio Decidendi* panel of judges in High Court Decision No. 380/PDT/1982/PTD *Junto* Court Decision No. 37/Pdt.G/1981/PN. KLK established a new norm regarding the inheritance rights of girls with the status of *Old Daha* by deciding that an *Old Daha* has the right to inherit in the sense of being an heir just like a son. So that the development of the position of inheritance rights of *Old Daha* which originally started from custom and did not give inheritance rights to *Old Daha* at all. Paswaran 1900 which provided an opportunity for *Daha Tua* to be able to have inheritance rights through grants or *soul funds*. High Court Decision No. 380/PDT/1982/PTD *Junto* Court Decision No. 37/Pdt.G/1981/PN. KLK 2010 which gave full inheritance rights of *Daha Tua* as heirs which then the decision was reapplied through the decision of Pesamuhan Agung MUDP Bali Number 01 / KEP / PSM-3 / MDP Bali / X / 2010.

Banjar Dewa is a village where the majority of people have income or economy from plantations and animal husbandry, but there are also many people who work as entrepreneurs, and there are people who predominantly embrace Hinduism, and still carry out their customs in the village. The distribution of inheritance practiced in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency adheres to the patrilineal system, so that in terms of inheritance distribution, the position of women is set aside, especially for women with the status of *Daha Tua*. The distribution of inheritance to *Old Daha* women in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency, in practice there is still inequality and discrimination. Inheritance is intended and prioritization is intended for sons while girls with the status of unmarried women of *Old Daha* are often sidelined for their rights in inheritance which causes the life of *Old Daha* to be concerned, especially experienced by Ni Ketut Indriani, Ni Kadek Wiasmani, and Ni Wayan Nilowati. This problem will affect the status and inheritance rights of *Daha Tua* in Banjar Dewa Village.

⁸ *Ibid*, p. 85.

⁹ Majelis Utama Desa Pakraman (MUDP) Bali, 2010, *Himpunan Hasil Pesamuhan Agung II MDP Bali*, MUDP, Denpasar, p. 43.

The fact of the vagueness regarding the status and inheritance rights of *Old Daha* in the people of Banjar Dewa Village, led *Old Daha* to a life full of uncertainty, life without purpose (in this case due to not marrying having no children and successors) everything was lived with suffering. *Daha Tua* in the indigenous Balinese community especially in Banjar Dewa Village is connoted as garbage (useless to the family, worthless and has no self-respect, principles and values of life). The indigenous peoples of Bali use a patrilineal kinship system. This patrilineal kinship system clearly places men in a higher position. This is what causes gender discrimination between boys and girls in Balinese customary law. Women who feel aggrieved at the deliberative distribution of inheritance do not demand much division of inheritance, for fear of separation from kinship. The concreteness of the *Old Daha* case that occurred in the community, so far looked at *Old Daha* only one eye. That is, *Daha Tua* is considered not to have the same rights as women in general who are recognized for their rights both financially, socially, and politically.

In social activities in general, *Daha Tua* has never been involved or participated. In the context of prosecuting the right to inherit under national law, *Daha Tua* can assert its rights to customary courts and other judicial systems. However, as a consequence of the prosecution of rights, there will be disputes between families, one of the consequences of which is that *Daha Tua* is not considered a family, because it has been considered presumptuous to claim its rights. With these consequences, the *Old Daha* is reluctant to claim its rights and prefers to accept whatever has been given, whether given the right to inherit or not, the *Old Daha* will still choose to accept it freely. This is motivated by the habit of Balinese indigenous people who prioritize a sense of inheritance, so they choose to accept whatever has been decided in order to maintain a sense of family. On the basis of a sense of kinship, it is unlikely that an *Old Daha* will claim his right to inherit.

In the general legal context, unmarried women or spinsters have the same rights as other women. These rights include the right to live without being judged or unfairly tried based on his marital status. The right to life is a human right of every individual and should not be reduced based on marital status or age. Unmarried women or spinsters have the right to live with dignity and honor, and should not be subjected to degrading or discriminatory treatment. The right of inheritance is also acquired under the Act, and may not be reduced on the basis of marital status or age. Unmarried women or spinsters have the same right to inherit family property or property as provided for by applicable inheritance laws. Human rights are fundamental rights that every individual has, including the right not to be discriminated against or restricted based on sex or marital status. Unmarried women or spinsters have the same human rights as other women and these rights must be respected and protected by the law and the judicial system. In addition, women's rights in general should not be restricted. Women have the right to live without violence, the right to choose a spouse or not to marry, the right to work and earn fair wages, the right to access quality education and health care, and the right to participate in political and social life in the absence of discrimination. It is important to remember that understanding and protecting women's rights is the responsibility of every individual, society, and government. In realizing gender equality and social justice, it is important

not to restrict women's rights based on marital status or other personal circumstances. Previous studies have only focused on the rights of married women, while the rights of an unmarried woman have not yet been raised to reveal the inheritance system to fulfill a sense of justice for all citizens. Seeing from various phenomena about inequality and discrimination against women in Balinese indigenous communities, the author is interested in researching more specifically about how the inheritance rights of *Daha Tua* according to Balinese customary inheritance law.

2. Problem Formulation

Based on the description of the background above, the formulation of the problem in this study is:

1. How are the inheritance rights of *Daha Tua* in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency?
2. How is the distribution of inheritance rights belonging to *Daha Tua* to the heirs of his successors in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency?

3. Discussion

3.1 Inheritance Rights of Unmarried Balinese Women in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency

Banjar Dewa Village is located in Banjar Agung District, Tulang Bawang Regency, Lampung Province. Banjar Dewa Village is one part of Banjar Agung District which consists of 11 villages. Banjar Dewa Village is a pemekaran village from Banjar Agung village on September 10, 2006. With the current holder of the village head office is Ibu Asri Susilowati. Banjar Dewa Village has a heterogeneous population that varies in religious background, ethnicity, interest, and education level. The majority of Banjar Dewa villagers are followers of Islam and while the minority religions are Christians and Hindus. However, differences still make the residents in Banjar Dewa village live side by side with the diversity of their respective cultures and habits. Banjar Dewa Village consists of various tribes, namely Javanese, Sundanese and others. Although different religions and tribes, in the daily life of the people of Banjar Dewa village seen from the social system is very strong, this can be seen in several activities that take place in the community, such as in recitation, social gathering, takziah when someone dies, doing work by helping each other, working together and so on. Then the level of progress of a society can be seen from the economic condition of the community.

For this reason, knowledge of economic conditions is very important to see the level of community welfare as well as knowing the development progress carried out. At the economic level, the development carried out is one of the efforts to grow and advance and improve the economy by doing various kinds of businesses in everyday life.¹⁰ Interview with Mr. I Ketut Agus Toni, S.E., M.M. Traditional Chairman in Banjar Dewa Village explained that in the inheritance system addressed to *Old Daha women* in Banjar Dewa Village, it is known that there are 3 incidents

of inheritance distribution to *Old Daha women* by the people of Banjar Dewa Village. In the legality of customary law, it is valid if the parties approve the distribution of inheritance. He, explained if who is entitled to inheritance in Balinese cultural customs, namely: Heirs, waris (*waris* or descendants), inheritance, heirs (*waris* or descendants who have the right to inheritance). According to Balinese customary law, an heir (descendant) is not necessarily an heir (entitled to the inheritance left by the heir). He explained that, an heir (descendant) can be categorized or qualified as an heir, depending on the amount of *swadharma* (responsibility) of the heir carried out by the heir concerned. *Swadharma* (responsibility) of an heir includes three things, namely:

- a. *Swadharma parahyangan* (obligation to carry out religious activities in accordance with the teachings of Hinduism).
- b. *Swadharma pawongan* (obligation to carry out humanitarian activities based on Hindu teachings).
- c. *Swadharma palemahan* (obligation to carry out environmental maintenance activities according to Hindu teachings).

And heirs have certain obligations, namely:

- a. Maintain the heir when the heir is in a state of inability to carry out his daily activities.
- b. Burying the body of the heir and or holding *a benal* (funeral burning ceremony) for the heir and resting his spirit in *a sanggah* or *merajan* (family place of worship).
- c. Worshipping the spirits of ancestors who are scattered in *refutation* or *snacking*.
- d. Carry out obligations (*ayahan*) towards the *banjar* or village.
- e. In line with one of the principles in inheritance according to Balinese customary law, namely the principle of dependence, the substance of the distribution of inheritance, becomes as follows:
 - 1) Heirs who exercise full *swadharma*, are fully entitled to inheritance.
 - 2) The heir who performs *the swadharma* half, is entitled to half the inheritance (*ninggal kedaton* limited).
 - 3) Heirs who do not perform *swadharma*, the right to inheritance is declared void (*full kedaton*).

The results of an interview with Mr. I Ketut Agus Toni, S.E., M.M. as the Traditional Chairman in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency on November 3, 2023, Balinese customary inheritance law adheres to the patrilineal family system, and *purusa sons* are entitled to inherit from an heir. The inheritance system applied by the Balinese indigenous people in Banjar Dewa village is based on Balinese customary law that applies from their home region, Bali. However, in certain circumstances, some of these communities are a little bit up to date with the times so that their application is no longer in accordance with Balinese customs. Inheritance is a process that takes place with a fairly long period of time. The term inheritance according to Balinese customary law can take place, whether the heir is still alive or after death. When the heir is still alive which means the passing or giving of property, after the testator dies which means the forwarding or division of the estate. In this regard, if the inheritance is distributed while the parents are still alive, it is intended that there will be no problems in the future when the heir has

¹⁰The results of an interview with Mrs. Nanik Hariyati as Village Administrator in Banjar Dewa Village on November 3, 2023 at 08.00 WIB.

died, because at the time of distribution of the inheritance the heir himself is the one who distributes it.

The distribution of inheritance carried out after the heir dies is referred to as a will, so in the distribution of the property the traditional leader or traditional figure in the area where he lives takes part as a witness so that the process of inheritance distribution can run as stipulated in Balinese customary law. The division of property does not have to take place after the testator dies, but the process is possible while the heir is still alive. This process of forwarding property is called inheritance. That process begins while the parents are still alive. The process does not become lost because the parents die. This can be interpreted as the process of transferring or passing assets that can be carried out without waiting for the heir to die first. In Bali, most of the people carry out the inheritance process when the heir is still alive. This is due to the belief that if in the inheritance process there is a dispute between heirs, then the spirit of the heir cannot calm down. To prevent such things from happening, inheritance is carried out while the heir is still alive, so that the heir can supervise and prevent conflicts between his heirs.

Inheritance is a process that can begin while the testator is still alive, so it is not true that the division of inheritance can only be done after the heir is in *aben*. The process of forwarding inheritance has begun when the heir is still alive, especially for inheritance that can be divided individually (individual inheritance system). If there are more than one heir, as long as the heir is alive, he has generally distributed his property to the heirs in order to avoid difficulties in the future. This can be done through temporary or permanent gifts. Thus, although the death of the heir and the ceremony of beneficitation are not absolute requirements for the inheritance property to be divided, the death of the heir and beneficitation is an important moment in the inheritance process in Balinese customary law, because at that time the inheritance process is complete, the inheritance can be divided permanently and the process of turning over the name of the land can be carried out.

The patrilineal system adopted by the Balinese community, has the consequence that only sons are entitled to inherit (majority inheritance system), while if parents have daughters, then if they are married they will be provided with jewelry and household furniture.¹¹ Divisible inheritance is generally inherited individually among heirs (individual inheritance system). The distribution of inheritance is carried out by deliberation among heirs based on the principle of barrel, harmony and proper led by their own parents. When the parents are no longer there, the deliberations are led by the eldest son, sometimes also invited by village officials (village head and traditional head of *Pakraman* village) to be witnesses. There is no strict stipulation regarding each heir, except for the ratio of shares between unmarried sons and daughters, i.e. (2:1). "Article 5 Paragraph (2) states that: If a government intermediary is requested in the division, each son receives two shares and each girl half a share (2:1)".

¹¹ The results of an interview with Mr. I Ketut Agus Toni as the Traditional Chairman in Banjar Dewa Village on November 3, 2023 at 16.00 WIB.

a. Old Daha Rights in the Inheritance System

The position of girls before the 1980s in Balinese Hindus, the condition of girls was less dominant, especially girls who held the status of *Daha Tua* with boys as the basis because in customary law contained the terms *purusa* and *pradana*. So, in lineage Balinese Hindus are very prioritizing *purusa* (male). Under Balinese customary law a daughter has no right to inherit. This is because inheritance is not just distributing inheritance from heirs to heirs. However, all related to the responsibility towards *Tri Hita Karana* (*parahyangan*, *pawongan* and *palemahan*) embraced by the indigenous people of Bali. The responsibility given to heirs is given based on the system adopted by the indigenous Balinese people, namely the patrilineal family system. Where sons will be given full responsibility for the continuity of offspring and inheritance. A daughter is not entitled to continue the responsibility because after marriage she will enter the male family bond and automatically after that the daughter will be separated from the family bond. In the case of a woman who is not married or holds the status of *an Old Daha*, she is not entitled to continue the responsibility because her status is not married and the whole consequences of her life take refuge in the family which makes her helpless in that responsibility. For this reason, girls are actually not entitled to inheritance from their parents at all and are not obliged to bear family responsibilities.¹²

Unmarried Balinese Hindu women are referred to as *Daha Tua*. The substance of women is said to be *Old Daha* because in society single status who never marry until the age is said to be old (so in this case they have no children because of that status). According to the Big Balinese Dictionary, the word *Daha* means teenage woman, adult woman who has experienced menstruation while old means old and old age. A Balinese woman who is not married has the same position to carry out as a villager in various obligations such as *ngayah mejejaitan*, gotong royong and other *fatherhood*. However, unmarried Balinese women still follow the temple ceremony. Customary law originates from customs that have existed for generations and are applied by the community from ancient times until now and is a rule to control community actions, which are generally not written by the community but are coercive and have sanctions for people who violate the implementation of customary law itself.

One of the customary laws that apply in Bali is *awig-awig*. Of the *awigs* that contain inheritance for unmarried women cannot be said to be heirs. This is because there is no fixed arrangement in the article *inawig-awig*. There is no woman who is not married or *Old Daha* to be the heir but there is no prohibition for parents to give inheritance to their daughters because it is certainly returned to their respective parents if anyone gives inheritance. The unmarried woman in this case can be referred to as *purusa*, as it continues the responsibilities and obligations of *swadharma* to the family and society. If an unmarried woman has the status of *purusa*, then her inheritance rights are equal to men and women who are in the position of *purusa*. This is due to its obligations which are equal to men and women who have the status of *purusa*. In Balinese customary law, the

¹² The results of an interview with PHDI Desa Banjar Dewa Mr. I Wayan Kardi on November 4, 2023 at 17.00 WIB.

daughter / *Daha Tua* is not the heir, this is in line with the kinship system that applies in Balinese indigenous people, namely patrilineal or *topurusa*, where it is the son's obligation to continue all these obligations both related to the place of worship / worship which is often referred to as *merajan / sanggah*, all obligations of *pawongan* Other (humanitarian) in relation to the family as part of indigenous peoples, as well as various other obligations, relating to parents/ancestors.

Women are considered less worthy of inheritance, more or less because their position is not as a *purusa*. However, with various factors and along with the times, Balinese indigenous people, especially those who are abroad, such as the people in Banjar Dewa village, have changed their mindset. Based on the results of interviews from several informants, they assume that in fact the daughters of both *Daha*, *Daha Tua* and *Mulih Daha* women are also entitled to receive property from their parents. They are very worried that their daughters will not have any provisions when they marry or even if they decide not to marry or become widows, for this reason there are still some parents who give property to daughters for this reason. It is also considered by parents that they will behave fairly towards their children without distinguishing between each other in terms of affection. The rest of the time, heirs still pay attention to customary law as a guideline that applies in everyday life, especially in the inheritance system.

b. The Reason Why Old Daha Inherited his Inheritance from his Parents

Some of the reasons parents give inheritance to their daughters who have the status of *Daha Tua*, namely:

1. All children are considered equal in the eyes of their parents or are not differentiated;
2. A form of parental affection for their daughters regardless of their child's status as an old girl;
3. As provisions for her daughter after being abandoned by her parents;
4. As a form of effort by parents to be fair to all their children;
5. Form of parental and family responsibility towards their daughters.

The data was obtained from interviews with informants who are *Daha Tua* who received inheritance from their parents, on November 3, 2023.

Based on the description above, it is known that there are 3 informants who have the status of *Daha Tua* who get a share of the inheritance from their parents on the grounds that all children are considered equal in the eyes of their parents regardless of the status held by the child, parents do not discriminate between them. The three informants reasoned that as a form of parental affection for their daughters, whatever status the child carries, parents will always accept it. The three informants also argued that the property given as provisions for their daughters both after marriage and their daughters who held the status of *Old Daha*, the informants also reasoned that their parents wanted to be fair to all their children, and the three informants also gave reasons that it was a form of parental responsibility towards their daughters.

The results of the data obtained showed that from the three female informants who held the status of *Daha Tua* gave reasons for all children to be considered equal in the eyes of

their parents / not differentiated. So that reason is also related to another reason given that they want to be fair to all their children. These two reasons are the most common reasons and the most given by informants from research results and data obtained from the field. Based on the analysis of the data above, the fact found today is that customary law that applies in society in general can develop following the development of the existing era and the progress of thinking in this era of globalization. So that customary law can be flexible and not rigid in adjusting the circumstances and environment around it, adjusting the conditions, problems, and needs of its indigenous people.

c. Factors of the shift in customary values in Balinese indigenous peoples towards the granting of inheritance to Daha Tua

The results of interviews with informants of *Daha Tua Women Perpetrators*, there are several factors that influence the shift in customary values towards inheritance to girls with *Old Daha status*, as follows:

1) Economic Factors

The economic situation in the family is one of the important factors in the distribution of inheritance. From the results of interviews with informants, the average parent with sufficient economic conditions also gave property to their daughter who had the status of *Daha Tua*. It also depends on the level of ability of the parents, and does not simply distribute all the inheritance equally to their children. Surely between girls and boys will get different parts. Based on the information of the informant, parents who gave inheritance to their daughters who had the status of *Daha Tua* based on the type of work of her parents. Of the three female informants, *Daha Tua* averaged the type of work her parents did as farmers. From 3 (three) informants, it can be said that his parents have decent jobs and have wealth.

The results of the data show that the average type of work is as a farmer. From the author's observations and research, Banjar Dewa Village is part of an agricultural area in Tulang Bawang Regency. So it is considered natural that many of the people living in the area on average work as farmers. In addition, the property is on average acquired during the marriage (joint property), or property obtained from the inheritance of his previous parents. So that the heir can give inheritance to his daughter who has the status of *Daha Tua* based on their policy and affection for his daughter. The reason, because by giving property to their daughters, it is felt that it will not cause a loss to the main heir, namely the son of the heir. Based on the results of the analysis, the type of work owned by the heir greatly affects their income, in addition to determining what property is owned by the heir. So that welfare in a family is influential with inheritance that will be distributed by the heir in the future.

2) Education Factors

Education is a process of self-actualization that aims to multiply knowledge and develop it for progress in thinking. The result of an educational process will form humans who are more qualified and use reason more to think more rationally than before. Regarding customary inheritance law applied by indigenous Balinese people, parents who have a history of higher education tend to use logic and think more rationally to act as fairly as possible towards their children in the process of giving inheritance. So that the principle he uses seems to override the prevailing customary law. So in

this category there is a slight shift in indigenous values due to educational factors.

Based on data obtained from direct interviews with *Daha Tua* female informants who received inheritance from their parents, on November 3, 2023. It is known that 1 informant had the last education of Junior High School (SMP), and 2 of them had the last education of Senior High School (SMA). Based on the last education taken by the parents of the *Old Daha Women* informant, it will affect the mindset of the heir to give inheritance to his daughter who has the status of *Old Daha*. When viewed from the educational factor, the informant who gave inheritance to his daughter who had the status of *Old Daha* already had a modern mind. If we look at the mindset and habits of people in ancient times, education up to high school level is good and considered quite high. The conclusion of the analysis from the data obtained shows that the lower the level of education affects the mindset of parents who are still less open, while the higher the level of education pursued by parents, the mindset will also be more flexible and open.

That is, the thinking of parents from the past has seemed flexible and open. And in relation to inheritance, parents will think more and be fair to all their children. Although the mind is more open, the informant still pays attention to certain things, one of which is the fair distribution of inheritance will be seen in terms of the responsibility of heirs. The division of property will take into account several factors that he considers important that all children have equal rights to their parents, especially the rights to property owned by parents. Judging from the context of the division, all are considered entitled to receive property from parents. But still consider the responsibilities of the heirs. Because between sons and daughters who have the status of *Old Daha* have different responsibilities for parents, property and the survival of their offspring.

3) Environmental Factors and Times

This factor is actually seen in the area where the community lives. Basically, indigenous Balinese people who migrate to areas outside the island of Bali (overseas communities) will slightly adjust the surrounding conditions. If it is considered necessary and not too opposed to existing customary regulations, then a slight shift in customary values is considered reasonable. And along with the times, customary law is no longer rigid and absolute. So that some of the customary law communities themselves will follow the progress.

Based on the results of interviews with informants, the fundamental factors that greatly influence the shift in values towards the distribution of inheritance to girls in Banjar Dewa Village are factors of economic ability in the family and factors of high education. These two factors both support each other where economic conditions greatly affect the property that will be given to their respective heirs. In addition, the factor of high education also affects the mindset of the community to determine policies in terms of indigenous inheritance. While environmental and era factors are supporting factors from other factors so that they still influence the decision of Balinese indigenous people in Banjar Dewa Village to continue to give inheritance to their unmarried daughters *Daha Tua*.

The granting of inheritance by the heir to his unmarried daughter *Daha Tua* actually still considers many things, and must obtain approval from all parties concerned, especially to the main heir. If the division is still considered within

reasonable limits, the heirs will not object to agreeing to the policy taken by the heir. Basically, informants who distribute inheritance to sons or daughters whose status is *Daha Tua* still pay attention to the boundaries that have been set based on Balinese customary law. So, the heirs still consider the amount of share given to sons is greater than the share of daughters whose status is *Old Daha*. This is because the son is the successor who will be responsible for the continuity of his family related to *Tri Hita Karana* (*Parahyangan, Pawongan, and Palemahan*) which is embraced by Balinese Hindus. That is, boys must be able to balance their relationship with God, fellow humans and nature.¹³

2. Distribution of inheritance rights belonging to *Daha Tua* to his heirs or successors

The distribution of inheritance rights is dominated by family agreement and based on customary law in force in the community. In the division of inheritance belonging to *the Old Daha* is based on *the wangsa* (descendants), and the deliberations of the *purusa* family. When the parents of *the Old Daha* are still alive the status of *the Old Daha* is still as children, and when the parents have passed away the status of *the Old Daha* as a family member of his brother if he chooses to live with his brother. Balinese indigenous people in their customs and habits prioritize a sense of kinship so that with compassion (pity) the *purusa* family will provide protection and shelter for women who have the status of *Daha Tua*.¹⁴ Even in traditional activities, *Old Daha* has been represented by his brother, so in this case *Old Daha* does not participate in *traditional slaughter*. *Old Daha* has full rights to the distribution of inheritance but the inheritance will return to the *purusa* family, because when old he will need family protection to guarantee his old age and last wishes when he dies.

The inheritance owned by *Old Daha* will be inherited by heirs who are related to him by blood (*purusa* family circle). For example, like his brother, in this case the brother or younger brother of *Old Daha*. *Old Daha* will bequeath all the property he has to the brother he chooses in order to have a shelter that will one day guarantee his old age. For the delegation of inheritance rights given by *Daha Tua* to his brother, rights and obligations arise as a result of inheriting property from women who have the status of *Old Daha*. The rights that arise as a result of the heirs of women who have the status of *Old Daha* are automatically everything that is inherited cannot be contested by anyone, including other relatives who have a biological relationship with *Old Daha*. The right of inheritance given by *Daha Tua* to his heirs is absolutely inviolable, it is based on the choice of conscience and will of *Daha Tua* to choose his heirs.

Obligations arise in tandem with the rights that have been given by *Daha Tua* to his chosen heirs, that is, the heirs are responsible for the entire livelihood of *Daha Tua* whether joy, sorrow, property, debt, illness or death. The heir has the obligation to bear all costs of *his beneficiary*, the debt owed

¹³ Results of an interview with the perpetrator of *the Old Daha Woman* in Banjar Dewa Village on November 3, 2023 at 08.00 WIB.

¹⁴ The results of an interview with Mr. I Putu Suwidre as a General Public Leader in Banjar Dewa Village on November 3, 2023 at 11.00 WIB.

by the *Old Daha* and everything related to the *Old Daha* the heir will be responsible. The heir is the shelter of *Old Daha* in his old age. *Old Daha* who took shelter to his brother, therefore, the *Old Daha* had no obligation to follow the *sime krame system* in the traditional slaughter. This is because all obligations in the *sime krame* have become the responsibility of his brother.

a. Another alternative is *Daha Tua* in determining his heirs

The Old *Daha woman* who chooses to live alone and does not want to be under the auspices of her brother has the status she has as the head of the family. With the existence of *Daha Tua* choosing to be the head of the family, it is mandatory to follow the *sime krame system* in the traditional banjar. The obligation imposed by the *Old Daha* in *sime krame* is half or 50 percent. The obligation of *sime krame* between *Daha Tua* and the status of married women has a difference, namely if a woman who is married and included in the *sime krame system* is slaughtered by custom, then her obligation is borne in full (100 percent), while women who have the status of *Daha Tua* are borne in the traditional *sime krame* half (50 percent). Old *Daha* women who choose to live alone can use another alternative to get their heirs, namely by means of the adoption system, but in the case of adopting a child must remain at the level of the *purusa family*. This is done by *Daha Tua* so that his heirs can have the status of a legal child and can be registered as a child on his family card.

The heirs that *Daha Tua* can adopt in Balinese customary inheritance law, for example, are the children of his brothers, in this case the nephews of *Daha Tua*. With the adoption system, the nephew becomes a legal child and can become the heir of *Daha Tua*. *Daha Tua* will inherit all the property he owns to his heirs in an effort to have a successor who will guarantee his old age. Adopted children in Balinese customary law are children who are adopted according to local customs, so that they have the same position as the biological children born by their adoptive parents. This will further have legal consequences in familial, inherited and societal relationships. Consequently here all rights and obligations that exist in the adoptive parents will be continued by the adopted child himself, as befits the biological child. In indigenous Balinese communities, a childless person will try to raise a child for reasons including:

- 1) Have no children or descendants.
- 2) Continuing the lineage associated with the peribadatan.

The position of adopted children is the same as biological children, both in family law, inheritance law, and social relations. Adopted children or adopted children are the continuation of offspring and are fully entitled as heirs to their adoptive parents. The purpose of child adoption in Balinese indigenous communities, is to continue the offspring of adoptive parents. As a result of this goal, the adopted child as a whole becomes part of his adoptive parents, continuing all the obligations and rights of his adoptive parents. The entire legal relationship that the child has with his biological parents is broken. The act of adoption of children must be carried out in accordance with the provisions. This is to prove the validity of a legal act carried out for the sake of legal certainty. The provisions of adoption of children according to Balinese customary law are:

- 1) The person performing the adoption of the child shall have the right to do so.
- 2) The adopted child must be qualified.
- 3) The conditions for the adoption ceremony must be fulfilled in accordance with local customs.

In Balinese customary inheritance law, if an *Old Daha* has no brothers, then his inheritance will be inherited to *mesan apisan* (nephew of *Daha's* father *Tua*) son of the father's brother of *Daha Tua*. The transfer of property usually follows the *purusa* lineage, that is, the inheritance will be passed on to the *purusa* heirs in the family. And if the father of *Old Daha* also has no brothers, then the transfer of inheritance rights from *Old Daha* will fall on the *misan mindon* (nephew of Old *Daha's* paternal grandfather) in this case the right to inherit is only reserved for the *purusa lineage*. The transfer of inheritance rights given by *Daha Tua* to *Misan Mindon* is the last attempt that *Old Daha* can make to get a successor. Balinese custom gives *Daha Tua* certain rights in the customary law system, especially in terms of inheritance. However, the recognition and application of these rights may vary depending on local customary factors, family policies, and the history of customary law in the area.

Unmarried women can file charges or escalate their disputes to the customary court or local customary committee. However, the decision-making process in customary courts usually involves *different rites* and procedures than formal law court courts. Decisions taken in customary courts may be based more on customs, cultural norms, and social considerations within Balinese society. The recognition and protection of women's rights in Bali's indigenous peoples continues to evolve. Legally the *Old Daha* can claim its rights, but it is unlikely that an *Old Daha* can claim his rights to the customary court. This is motivated by the high sense of kinship possessed by Balinese indigenous people, in terms of the division of inheritance rights, the Balinese community prioritizes feelings in it so that they are reluctant to prosecute inheritance rights that can cause disputes between family members. So, in this case if an *Old Daha* is not given the right to inherit, then the *Old Daha* prefers to receive it rather than having to be considered absent by other family members.

Based on the analysis that has been done, the author can provide reasons related to the selection of themes and determination of the location of the study. The author raises the title of the status and inheritance rights of *Daha Tua* in Balinese customary inheritance law, a study on Balinese indigenous people in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency is based on the practice carried out by the community at the research location, where in practice the rights of *Daha Tua* are set aside. By researching the status and inheritance rights of *Daha Tua*, the author wants to convey to the community that *Daha Tua* has the same rights as other heirs, including human rights, life rights, inheritance rights, opinion rights, and the right to be heard. This is in accordance with the meaning contained in the constitution, the rights to security are guaranteed in Article 28G Paragraph (1) of the 1945 Constitution, women's rights mandate the state to guarantee the enjoyment of rights without discrimination and gender differences.

b. The position of the adopted child towards the inheritance of his adoptive parents according to Balinese custom

Balinese customary law, the position of adopted children on the estate of their adoptive parents can differ depending on the agreement made between the parties concerned. In some cases, adopted children can be considered to have equal rights with biological children in terms of inheritance. However, in many cases, adopted children are considered to have lower or no rights to the adoptive parents' estate. This is because Balinese customs tend to attach importance to the sustainability of blood lineage in terms of ownership of inheritance property. Adoption is usually done to obtain offspring or continue the lineage of families that do not have children. The adopted child shall be considered a child of the family, but in the case of inheritance, the right rests with the adoptive parents or with the biological children of the adoptive parents, if any.

However, social changes and the influence of modern law have changed the view of the position of adopted children in terms of inheritance in Bali. In some cases, formal adoption may give inheritance more equal rights. In practice, it is important to consider local customary law, the agreement made between adoptive parents and adopted children, and the national or civil law applicable in the area, to determine the adopted child's position against the adoptive parents' inheritance, especially Balinese customs. In Balinese customary law, the right to inherit adopted children cannot be easily revoked. Basically, the Balinese customary law system has the principle that the relationship between adopted children is strong and permanent, and is equivalent to the relationship between biological parents and biological children. The main reason why the right to inherit adopted children cannot be revoked is because of the existence of a strong social and cultural system in Balinese society that recognizes and respects the relationship between adopted children and adoptive parents.¹⁵

The importance of this relationship is reflected in the duties and responsibilities inherent to both parties. In Balinese customary law there are several bases that recognize the right to inherit adopted children. First, the basis of Balinese customary law is rooted in the kinship system, where the relationship between adopted children and adoptive parents is recognized and respected parallel to the relationship between parents and biological children. Second, in the Balinese customary system, adopted children are considered family members and have equal inheritance rights with biological children. In addition, Balinese customary law also pays attention to the rights of adopted children in terms of maintenance and education. Adoptive parents have the obligation to educate, maintain, and provide inheritance to adopted children equally as biological children. However, it is also important to note that the inheritance of adopted children will not take away the rights of biological children. Although Balinese customary law recognizes the right to inherit adopted children, Indonesian national law based on the current positive legal system recognizes the inheritance rights of biological children first. Therefore, in controversial situations where there is a dispute between the inheritance

of an adopted child and a biological child, Indonesian national law will apply. However, keep in mind that Bali has a specialty in applying customary law and maintaining its local culture. In some cases, if both parties agree and by custom or family agreement, adopted children may be granted customary inheritance rights, although this is not recognized under national law.

4. Conclusions

Based on the description that has been explained in the research results chapter above, the following conclusions can be drawn:

1. The inheritance rights of unmarried Balinese women *Daha Tua* in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency are open heirs, but with various factors and along with the times, Balinese indigenous people have changed their mindset. Parents assume that actually daughters, both *Daha*, *Daha Tua*, and *Mulih Daha* women are also entitled to receive property from their parents while still paying attention to customary law as a guideline that applies in daily life, especially in the inheritance system. This according to researchers, shows that there is a difference between the general rules that apply to the location of the study, the general rule applies that women will have *purusa status* if they do not marry then their inheritance rights should be intact the same as male heirs. The rule that applies to the research location is that the inheritance rights owned by *Old Daha* are limited.
2. The distribution of inheritance rights belonging to *Daha Tua* to the heirs of his successors in Banjar Dewa Village, Banjar Agung District, Tulang Bawang Regency will be inherited to heirs who are related to him by blood (*purusa* family circle). *Daha Tua* will bequeath all the property he has to his chosen brother to be used as shelter and shelter when old or by adopting the nephew of his brother as a legitimate son to become a successor who will guard and guarantee his old age.

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