

NAVIGATING DUAL LINEAGE: INHERITANCE UNCERTAINTY FOR CHILDREN OF *PADA* *GELAHANG* MARRIAGES IN BALI

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Abstrak

Perkawinan “*Pada Gelahang*” merupakan bentuk perkawinan alternatif dalam masyarakat adat Bali yang dipilih ketika pasangan tidak dapat melaksanakan perkawinan biasa atau *nyentana*. Dalam praktiknya, baik suami maupun istri tetap berstatus *purusa* di rumah masing-masing dengan segala hak (*swadikara*) dan kewajiban (*swadharma*) yang melekat. Kondisi ini menimbulkan persoalan dalam hukum kewarisan karena sistem adat Bali memprioritaskan laki-laki sebagai penerus tanggung jawab keluarga dan pengelola warisan, sedangkan perempuan hanya berperan sebagai penerima manfaat. Penelitian ini bertujuan untuk menganalisis implikasi pelaksanaan hak waris anak dalam sistem perkawinan *Pada Gelahang* di Kabupaten Buleleng dan Kota Denpasar. Metode penelitian yang digunakan adalah *Socio Legal Research* dengan pendekatan yuridis sosiologis. Hasil penelitian menunjukkan bahwa kedudukan hak waris anak dalam perkawinan *Pada Gelahang* tidak memperoleh kepastian hukum yang jelas. Posisi anak sebagai ahli waris menjadi ambigu karena tidak terdapat perjanjian formal yang mengatur status mereka dalam struktur keluarga ganda. Hal ini menimbulkan ketidakpastian dalam distribusi harta warisan, sehingga diperlukan regulasi atau kesepakatan adat yang lebih tegas untuk memberikan kepastian hukum.

Kata Kunci: *Perkawinan Pada Gelahang, Purusa, Hukum Waris, Masyarakat Adat Bali, Kepastian Hukum*

Abstract

Pada Gelahang marriage is an alternative form of marriage in Balinese customary law, chosen when couples are unable to perform either the common marriage system or the *nyentana* system. In this practice, both husband and wife retain their status as *purusa* in their respective families, along with the attached rights (*swadikara*) and obligations (*swadharma*). This situation creates challenges in inheritance law since Balinese customary law prioritizes males as family successors and estate managers, while females are regarded merely as beneficiaries. This study aims to analyze the implications of children's inheritance

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rights in the *Pada Gelahang* marriage system in Buleleng Regency and Denpasar City. The research employs Socio Legal Research with a sociological juridical approach. The findings reveal that the inheritance rights of children born from *Pada Gelahang* marriages lack legal certainty. Their position as heirs remains ambiguous due to the absence of a formal agreement regulating their status within the dual family structure. This ambiguity creates uncertainty in the distribution of inheritance, indicating the need for clearer customary agreements or regulations to ensure legal certainty.

Keywords: *Pada Gelahang* Marriage, *Purusa*, Inheritance Law, Balinese Customary Community, Legal Certainty

INTRODUCTION

In Hinduism, marriage is considered a stage of life through which one must pass to have children. When this concept is combined with the national and Hindu goals of marriage—forming a happy, prosperous family and continuing the lineage—it becomes clear that the primary purpose of marriage is to have children (Artadi, 2017). The Balinese customary (Bali Adat) community recognizes two forms of traditional Balinese marriage: ordinary marriage and *nyentana* marriage. In an ordinary marriage, the husband is considered a *purusa* and the wife is considered a *pradana*. The wedding takes place at the groom's house, and the groom's family is fully responsible for it. The marriage ceremony marks the moment when a woman officially severs her ties with her family of origin, her parents, and instead becomes an integral part of her husband's family. This transition is accompanied by the fulfillment of responsibilities (*swadharma*) that she has towards her husband's family. Her children will follow the father's lineage. A man who opts for a conventional marriage is referred to as *nyuang* or (take) in Balinese, while a woman is termed *kajuang* (taken). (Windia, 2015) Children born from this marriage are only legally related to the family of the father. They are only socially and morally related to the family of the mother. Therefore, children born from this marriage have legal obligations (*swadharma*) to their father's family and community (*desa pakraman*), and they receive rights (*swadikara*), including inheritance rights, from their father's family (Siti Wahyuni Laadiy et al., 2025).

The *Nyentana* marriage is also known as the *Nyeburin* or *Kaceburin* marriage, or the *Nyaluk Sentana* marriage. This type of marriage is generally

1215



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chosen by families with only one or a few daughters. To ensure they have descendants and avoid *putung/camput* (extinction due to a lack of descendants), one of their daughters is given *kapurusa* status. A daughter with this status is known as a *sentana rajeg*. (Windia, Mengenal Hukum Adat Bali, 2023) In *Nyentana* marriages, the wife is considered male (*purusa*), while the husband is considered female (*pradana*). After the wedding, the husband cuts ties with his family of origin (parents and siblings). He enters into matrimony with his wife and becomes an integral element of his wife's family and the community within which he resides. The wedding ceremony is held at the bride's residence and is the sole responsibility of her family. Any children born will follow the mother's lineage, as she is considered a *purusa*.

The Balinese indigenous community currently practices two marriage systems: the customary system and the *Nyentana* system. Changes to these traditional systems have given rise to different perspectives and understandings. One such alternative is the *Pada Gelahang* marriage system (Djuniarti, 2020; Dyatmikawati, 2011, 2015). The *Pada Gelahang* marriage can be understood through the lens of the dialectic between traditional regulations and societal progress, the dimensions of justice and openness, and the critical analytical paradigm. This demonstrates the flexible and dynamic nature of customary law (Mulyadi & Suhariyanto, 2017). The Balinese indigenous community recognizes *Pada Gelahang* as a marriage that deviates from the traditional form, chosen out of necessity (Darmada et al., 2016; Devi et al., 2019). In this marriage, both the man and woman are considered *purusa* in their respective households. According to local customs, they have all the rights and responsibilities (*swadharma* and *swadikara*) that accompany this status (Cindy, 2023; Wibawa et al., 2019).

Pada Gelahang is a marriage performed according to Hindu teachings and Balinese customary law. It is not considered a normal (*kawin ke luar*, or to marry out) or *nyentana* (*kawin nyeburin*, or to marry in) marriage (Ananda Putra & Wagian, 2021; Siswadi, 2022; Widnyani & Astitiani, 2022). In this type of marriage, the husband and wife remain *kapurusa* in their respective households. Therefore, two responsibilities and obligations are incumbent upon them (*swadharma*). One of these is the responsibility of continuing the responsibilities of the husband's family. *Sekala* and *Niskala* are continued



either continuously or for a set period, depending on the agreement of the couple and their families (Windia, 2018).

In the *Pada Gelahang* marriage, the husband and wife are *kapurusa* in their respective households, with all the rights and responsibilities (*swadharma* and *swadikara*) that accompany the status, according to local customs and *Pasubayan Mawarang*, an agreement between the spouses and their families (Pursika, 2015; Pursika & Arini, 2012; Sudiana & Susilawati, 2018). The spouses' status as *kapurusa* in their respective households has been recognized based on the following decision: 1331 K/Pdt/2010, dated Thursday, September 30, 2010. This decision was further reinforced by the Supreme Court of the Republic of Indonesia on Tuesday, December 24, 2013, in case number 603 PK/Pdt/2012.

The requirements and validity of the *Pada Gelahang* marriage are the same as those of other marriages, both ordinary and *Nyentana* (Budiasni & Ayuni, 2020; Sanjiwani & Valentina, 2017). Therefore, it can be concluded that all Indonesian citizens must adhere to the Marriage Law's requirements for marriage. The key differences in the preference among couples for the *Pada Gelahang* form of marriage are as follows: (Windia, Menata Perkawanan Sebelum Perkawinan, 2019)

- a) One was born the only child in his family, male or female;
- b) One was born the only son;
- c) His/her parents and/or ancestors had a substantial inheritance;
- d) Parents want their inheritance to be managed and continued by their biological child;
- e) Parents are reluctant to have their wealth, whether ancestral or acquired, suddenly fall into the hands of someone who is not their biological offspring.

The *Pasamuhan Agung* PHDI's decision in case number 13/Kep/P.A. Parisada/X/2009 also explains the validity of the marriage *Pada Gelahang* as follows: (Dipa, Gelgel, & Dharmika, 2020)

- a) The Upacara Pabiyakaonan has already been performed;
- b) The Upacara Mepamit was not performed;
- c) It has been agreed upon by the bride and groom and their parents.

The "*negen dadua/pada gelahang*" marriage means that the bride is considered a *purusa*. A *purusa* is the bloodline successor in her parents'



household. The groom also remains a *purusa*, meaning he is the bloodline successor in his parents' household. Children born from a "*negen dadua/pada gelahang*" marriage are considered *kapurusa*, which gives rise to certain obligations (*swadharma*), rights (*swadikara*), and social relationships (*pasodikaran*). These are all determined by mutual agreement (Amin & Muhdi, 2021; Auliya et al., 2025).

In theory, Law No. 1 of 1974 on Marriage regulates marriage as a single entity with a clear family structure. However, the social reality that has developed, particularly within the traditional Balinese legal system, shows that Balinese customary law does not fully align with this provision when it comes to marriage. In the *Pada Gelahang* marriage, both spouses maintain their status as *purusa* in their respective families of origin (Lestari et al., 2021; Pursika & Arini, 2012; Sanjiwani & Valentina, 2017). This leads to uncertainty regarding the legal status of their children, particularly concerning inheritance.

Additionally, the Civil Code on Inheritance contains three principles. The first is the personal principle, which states that heirs are individuals. The second, the bilateral principle, states that heirs receive inheritance property according to both the male and female lines. The same applies to the deceased. The third principle is the principle of gradation, meaning the recipient of the inheritance is the person or heir who is more closely related to the deceased. (Suhartono, Azizah, & Wibisono, 2022) The heirs receive an inheritance that can be anything from valuable assets to tangible or intangible objects. This is done openly so that the whole family is aware of it. However, not all heirs receive their full inheritance, as they are also responsible for the legacy left by the deceased. The complexity of inheritance rules and regulations often leads to problems in people's lives. In many cases, the distribution of inheritance does not align with the regulations set out in the Civil Code, which remains in effect in Indonesia.

According to civil law, inheritance is divided among surviving heirs if certain conditions are met. These conditions involve both the heirs and the assets left by the deceased. Civil code categorizes heirs into four groups:

- a) Category I inheritors include children in the lineage, children born out of wedlock, legitimate children, legally adopted children, and spouses (husbands or wives).



- b) Category II inheritors include fathers and mothers in the lineage and siblings (brothers and sisters).
- c) Category III inheritors include grandparents (grandfathers or grandmothers) in the lineage.
- d) Category IV inheritors include siblings from both parents of the inheritors or category III and IV.

The Civil Code does not differentiate between heirs based on gender. However, there are provisions regarding heirs in the first group. The next group of heirs will be prevented from inheriting if the heirs in the first group are still alive. The KUHPerdata also addresses situations that would prevent an heir from receiving an inheritance as follows:

- a) One convicted by a court of murdering or attempting to murder the heir.
- b) One forges or destroys a will by force and/or prevents the heir from making a will according to their wishes.
- c) One proven by a judge to have defamed the deceased because they committed a crime punishable by at least five years of imprisonment.

Based on the above, it can be concluded that children's rights as heirs are not automatically lost due to the dissolution of family ties caused by traditional marriages, this means the Civil Code's inheritance principle is not aligned with Balinese customary law's social reality of inheritance, where a spouse loses inheritance rights by leaving their family to join their spouse's. Meanwhile, in the marriage, *Pada Gelahang* will later be burdened with responsibilities in one of the families of the mother or father, or possibly both, because they are both *purusa* in their respective families. The controversy surrounding the *Pada Gelahang* marriage stems from differing opinions about it, showing that there is no societal consensus about it. Thus, it has caused long-standing controversy.

Based on the above issues, the researcher formulated the legal issue of this study as "Navigating Dual Lineage: Inheritance Uncertainty for Children of *Pada Gelahang* Marriages in Bali." This study focuses on the implications of legal uncertainty regarding the inheritance rights of children from *Pada Gelahang* marriages in Buleleng Regency and Denpasar City. Previous research on related topics, such as Kadek Septia Ningsih's The



Position of Widows in the *Pada Gelahang* Marriage System in Bali, examines inheritance rights in *Pada Gelahang* traditional marriages. However, Kadek Septia Ningsih's research focuses on the position of widows in the *Pada Gelahang* marriage system and uses different research locations.

LITERATURE REVIEW

Legal System Theory

In his book *The Legal System: In A Social Science Perspective*, Friedman argues that the ideal legal system consists of three main components:

a) Legal Structure

Regarding the legal system, Friedman explained: *"First off, the legal system is structured like a legal system, with components such as the quantity and size of courts, their jurisdiction, etc. structure also refers to the laws governing the legislative, the protocols of the police force, and so forth. In a sense. Structure is a cross section of the judicial system, a still image that stops the motion."* Legal structure refers to the institutions or legal bodies that carry out the functions of the legal system. These include courts, legislative bodies, the police, and other administrative authorities. This structure illustrates how law is implemented through formal organizations that are authorized to establish, enforce, and resolve laws. Friedman describes the legal structure as a "still image" of the legal system, containing the size, jurisdiction, and procedures of these institutions (Marzuki, 2005)

b) Legal Substance

Regarding the substance of the law, Friedman explained: *"The substance of the legal system is another facet. This refers to the real norms, regulations, and behavioural patterns that individuals inside the system follow. Not only rules found in AWR books, but living law is the focus here."* The substance of the law refers to the norms, regulations, and values of the law that are enacted in society. Living law, or customary law that is implemented in social practice, is included in this definition, along with codified laws written in statutes. Friedman emphasizes that the significance of a legal text extends beyond its written content, encompassing how it is absorbed, followed, or even circumvented by its practitioners in society (Darmada et al., 2016; Devi et al., 2019; Djuniarti, 2020; Dyatmikawati, 2011, 2015).



c) Legal Culture

Regarding legal culture, Friedman explains: *"The third element of the legal culture and egalitarian system. This refers to people's belief about the judicial system and their attitudes towards it. States differently; it is prevailing societal ideology and influence the dictates the appropriate ways of using, avoiding, and abusing a given situation."* Legal culture encompasses society's values, attitudes, and perceptions toward the law. It includes how society understands, obeys, avoids, or abuses the law. Without a strong legal culture, law enforcement becomes ineffective. Friedman asserts that cultural law lies at the core of the legal system, determining how legal norms and institutions function within society. (Ananda Putra & Wagian, 2021; Darmada et al., 2016; Wibawa et al., 2019; Windia, 2018)

In this study, the researcher applied Lawrence M. Friedman's theory of legal systems to understand how inheritance law is implemented in *Pada Gelahang* marriages within Balinese society. According to Friedman, legal systems consist of three main elements: legal structure, legal substance, and legal culture. These elements are interconnected and play an important role in determining the effectiveness of a legal system. Legal structure refers to the institutions that implement and enforce the law. In this study, the legal structure encompasses traditional institutions such as *kelian adat*, *prajuru banjar*, and the Council of Pakraman Village or *Majelis Utama Desa Pakraman* (MUDP). These institutions establish customary inheritance norms through mechanisms such as *Pasobayan Mawarang*. In addition to their usual duties, state institutions such as courts, notaries, and government village officials also have a role in formal validation and conflict resolution in inheritance matters. Determining whether traditional and state legal structures can work together to ensure inheritance rights for children from *pada gelahang* marriages is an important area of study (Deni et al., 2020; Lestari et al., 2021; Pursika & Arini, 2012; Sanjiwani & Valentina, 2017).

Next, "legal substance" refers to the norms, values, and rules that apply within a legal system, whether written or unwritten. Take Balinese customary law, for instance. Legal substance is not always expressed in writing; rather, it is expressed through oral law that has been passed down through generations. *Pasobayan Mawarang*, a family agreement, is part of the community's living law and does not need to be included in national



legislation. However, if this agreement is made in writing and officially recorded, it can serve as strong evidence in the event of a conflict or dispute. This study will analyze the legal substance as the customary inheritance norm that applies to the *Pada Gelahang* practice (Ananda Putra & Wagian, 2021; Budiasni & Ayuni, 2020; Cindy, 2023; Devi et al., 2019; Dyatmikawati, 2015; Pursika, 2015).

Legal culture encompasses the society's attitude, beliefs, and perceptions to law and its implementation. In Balinese society, for example, legal culture significantly affects the enforcement of inheritance laws due to the prevalence of the *Purusa* kinship system. In the context of the *pada gelahang* marriage, where spouses maintain their *Purusa* status in their respective households, there is often confusion or disregard for the rights of children as heirs, particularly when there is no written agreement, such as a *Pasobayan Mawarang*. Through a cultural legal analysis, this study highlights how social values, family pressure, and community understanding of tradition influence inheritance law practices.

RESEARCH METHODS

The juridical empirical research method, also known as Socio-Legal research, is the basis of this study. This method involves studying real-world situations in the application of legal practices in society and analyzing related issues to provide legal certainty. Direct analysis of the information obtained is necessary for this study because it is the only way to obtain the necessary materials and explanations for the research problem, thus obtaining accurate results. A research guide known as "the methodology" is necessary for achieving a specific objective by thinking critically. The objective of this study is to identify and evaluate the regulations concerning the implementation of inheritance rights for individuals who enter into the *pada gelahang* marriage type in Bali. The study will also explore the status of spouses who enter into a marriage of this type.

Employing a sociological approach to the law, the author studies it as a dependent variable influenced by the implementation of inheritance rights in "Pada Gelahang" marriages in Buleleng Regency and Denpasar City. This study will be conducted in these locations in Bali Province. The study will use purposive sampling, which is based on considerations such

1222



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as population characteristics or previously known traits. The researcher will select the most relevant respondents from the following groups:

- a) Couples who have entered into a *pada gelahang* marriage;
- b) Local customary figure/*Kelian Adat*, who understand the local inheritance customs;
- c) Academic Expert/Practitioner of Customary Law, who understand the inheritance structure in traditional Balinese marriages.

The data collection techniques applied are as follows: First, observation, through which researchers could examine behavior and its meaning. This study involved direct field observation in Buleleng Regency and Denpasar City. Second, interviews were conducted by asking open-ended questions while adhering to a predetermined protocol. Questions continued to develop during the interview according to the researcher's needs. The purpose of the interview is to gather information for the research. Interviews were conducted face-to-face, meaning researchers met directly with the informants. In guided interviews, the prepared question guide is used, but respondents are allowed to answer more generally to explain their opinions or experiences. The informants approved the inclusion of the interview results in this study, which will be quoted accurately and not misused. Third, documentation. This technique involves collecting data and information in the form of books, archives, documents, written records, images, reports, and other information that can support the study.

This study uses two types of data analysis: primary and secondary. Primary data analysis uses a qualitative approach in which collected data is systematically organized and analyzed. This approach emphasizes developing a deep understanding of the phenomenon being studied by focusing on interpreting meaning and context. Qualitative data analysis is a research method that produces descriptive analytical data. In this study, the author collected primary data at the research site and sorted it based on classifications of problems, their impacts, and solutions using legal theories and concepts. Second, secondary data analysis was conducted by applying legal principles, focusing on the core of the legislation. This approach helped identify the legal principles underlying the implementation of



children's inheritance rights in *Pada Gelahang* marriages in Bali. Although customary law regarding inheritance already exists, it is not applied optimally in society. The dominant patrilineal kinship system often causes uncertainty in the implementation of inheritance rights for children born from *Pada Gelahang* marriages. Thus, this study interprets various legal sources to analyze the discrepancy between established rules and reality.

RESULTS

Implementation of children's inheritance rights in *Pada Gelahang*

The way Bali's *Gelahang* marriage system implements inheritance rights for children exemplifies the intricate interplay between tradition and modern legal needs, where the community's values and the need for legal clarity must be carefully balanced. The implications of this system extend beyond family relations, directly impacting an individual's legal status and the rights of their children in terms of inheritance. Therefore, it is important to understand how the indigenous community implements and interprets the *Pada Gelahang* system in daily life, especially with regard to the division of responsibilities, inheritance, and the position of children in the traditional family structure.

In an interview with Windia, Wayan P. explained that the Balinese term *perkawinan pada gelahang* means "mutual possession." This type of marriage seems unique because Balinese genealogy follows the male line, or *purusa*. After marriage, a woman leaves her family and joins her husband's. However, in a *Pada Gelahang* marriage, both the man and the woman hold the *purusa* status. The most important aspect of a *Pada Gelahang* marriage is adhering to three principles: (1) *Paksa*, meaning "forced" in the sense that it is the only option, (2) *Lasia*, meaning to carry out the marriage with sincerity and a willingness to accept the consequences, and (3) *Satya*, meaning that both parties must honestly and sincerely carry out all agreed-upon terms, whether oral or written, for the greater good of *Pasubayan Mawarang*. Should these three principles remain unattainable, it would be most prudent to abstain from such matrimony. (*Researcher Interview Results with Wayan P. Windia on 9 April 2024*).

In an interview, Ibu Sagung Mas Ruscitadewi, the *Prajuru* of the Majelis Desa Adat Bali, explained that the *Pada Gelahang* marriage is an alternative solution for only children and families without sons. She



mentioned that perkawinan nyentana, in which the husband joins the wife's family, often encounters practical difficulties. Implementing perkawinan nyentana is not always easy, she said, because the prospective husband may refuse, or his family may not give consent. Pasamuhan Agung PHDI Decision No. 13/Kep/P.Parisada/X/2009 also states that "*negen dadua/pada gelahang*" marriages are performed under Hindu teachings and customary law. These marriages are not included in traditional marriages, also known as "*kawin keluar* (marry-out)" or "*kawin ke dalam* (marry-in)" marriages. However, the husband and wife remain *kapurusa* in their respective households. Therefore, they have two sets of responsibilities and obligations (*swadharma*): the physical and spiritual responsibilities of both the wife's and the husband's families. (*Researcher Interview Results with Mrs Sagung Mas Ruscitadewi as Prajuru Majelis Desa Adat Bali (Balinese Traditional Village Council) on 9 April 2024*).

a. Implementation of children's inheritance rights in Pada Gelahang marriage in Buleleng

An interview with Mr. I Komang Budiarsana, secretary of the Kloncing Village Adat Council in Sawan, Buleleng Regency, revealed that the rights of children born from the *Pada Gelahang* marriage system are still an issue. He explained that marriages within this system are permitted only if both partners are from the same village in Buleleng Regency. Interviews with the married couple I Gusti Putu Sekar and Ni Putu Ayu from Kloncing Village in the Sawan District of Buleleng Regency, revealed that they chose the *Pada Gelahang* marriage system due to strong structural and cultural considerations within their family. The couple married in 2011. The husband was the only son in his family, and the wife had only daughters. The absence of male children in the female family and the importance of maintaining continuity of responsibility in both families were the main reasons for choosing the *Pada Gelahang* system. The performance of *swadharma*, or religious obligations, is more efficient because both also come from the same *banjar*. The couple actively performs prayers and *ngayah* (religious community service) at two family shrines: the husband's *merajan* and the wife's *merajan*.



In their daily lives, this couple performs their duties in a balanced manner while doing *ngayah* and praying at their family temples. However, no agreement has been reached regarding the issue of inheritance rights for children, either verbally or in writing. This pair has not yet taken any concrete steps. They recognize that their three children are still young, so they have not yet taken steps to establish a *Pasubayan Mawarang* or a written agreement regarding the division of inheritance in the future. Ni Putu Ayu says that she is still confused about how to divide the inheritance appropriately and fairly for her children. (*Interview results with Ms I Gusti Putu Sekar and Mrs Ni Putu Ayu from Kloncing Village, Sawan District, Buleleng Regency on 26 March 2025*).

b. Implementation of children's inheritance rights in *Pada Gelahang* in Denpasar

Based on the results of the interview, it was found that Pak Komang Ferry and Ibu Made Ayuning, a couple who live in Kesiman Village in Denpasar, chose the *Pada Gelahang* form of marriage. They chose this form of marriage because Ayuning's family does not have any sons. Ayuning's sister had married "out of the house," so the responsibility of continuing the family lineage fell to Ayuning, the youngest child. Pak Komang's family initially wanted him to marry Ayuning, but his in-laws refused because their customs do not allow for such a union. As a compromise, the couple agreed to have a *Pada Gelahang* marriage. The couple also drew up a marriage contract through a notary before getting married.

The agreement clearly outlines the terms for dividing rights and responsibilities for any future children. The first child will follow the mother's family line in Denpasar, while the second will follow the father's in Singaraja. To prevent future disputes, this division was fairly made using the 50:50 principle. In traditional life, they fulfill dual responsibilities by physically attending Denpasar's traditional ceremonies and contributing membership fees to Singaraja. The bendesa adat's presence at the wedding ceremony affirms that the marriage is of *Pada Gelahang* status. (*Interview results with the wife of Ms Komang Ferry and Mrs Made Ayuning, who reside in Kesiman Traditional Village, Denpasar City on 12 April 2024*).



DISCUSSION

1. The position of Children's Inheritance Rights in *Pada Gelahang* Marriage

The Marriage Law establishes two aspects that determine the validity of a marriage: execution according to the laws of each religion and administrative registration by the state. Article 2 stipulates that a marriage is valid if it is performed by the laws of each religion and belief, and if it is recorded following the law's regulations. In other words, a marriage is considered valid under national law if it is performed according to religious norms and recorded by the state. *Pada Gelahang* is a form of traditional Balinese marriage based on Hindu teachings. For a marriage to be recognized as valid by the state, it must meet religious and traditional requirements. These requirements include parental consent, a traditional ceremony, and administrative registration. Thus, this marriage can be considered valid according to both customary and national law, and the validity of the *Pada Gelahang* marriage will have legal consequences, such as inheritance, in both the customary and national contexts.

Pada Gelahang is a unique form of marriage that deviates from the conventional patterns of Balinese society, where men are usually regarded as *purusa*. Prospective spouses who cannot choose a traditional or *nyentana* marriage usually opt for this type. Because of this, the family structure formed by this marriage does not follow the general pattern of Balinese customary law, which is based on a pure patrilineal system. Instead, it establishes a more flexible social relationship pattern. Depending on an agreement between the couple and their extended families, children born to the couple may be considered part of either the father's or the mother's family.

In Bali, the relationship between family law, marriage forms, and kinship systems plays a crucial role in determining inheritance mechanisms. In traditional Balinese society, which follows a patrilineal system, the *purusa* lineage determines inheritance rights. Soepomo defines inheritance as the transfer of assets, whether tangible or intangible, from one generation to the next. (Soepomo, 2001) In addition to material heritage, such as land, rice paddies, or movable objects, Balinese society recognizes a



sacred intangible heritage, such as *sanggah merajan*, which cannot be physically divided but must be maintained by the primary heir.

In Balinese customary law, the status of a child within the family structure is determined by their designation as a *purusa* or a *pradana*. A child who is designated as a *purusa* by one party is entitled to inherit and fulfill family responsibilities (*parahyangan*, *pawongan*, and *palemahan*) from that lineage. However, in the context of the *pada gelahang* marriage, the status of children becomes more complex due to the possibility of dividing responsibilities and rights between two large families, something not accommodated in traditional or *nyentana* marriages. Therefore, the customary law began to provide a framework for specifically regulating the status of children in this system through customary agreements such as *Pasobayan Mawarang*.

In Balinese customary law, the status of children is closely related to their position in the kinship structure. In the patrilineal system, only boys are considered legitimate heirs. (Wiryawan, 2007) According to Hindu law, the general requirements for heirs are as follows: (Wiana, 1993)

- a) Be a blood relative of the heir;
- b) Be male;
- c) If there are no male children, adopted children can become heirs;
- d) If there are no children or adopted children, other replacement groups can be established according to Hindu law.

In practice, however, a daughter's legal status can increase through traditional mechanisms, such as becoming a *sentana rajeg*: a daughter positioned as a lineage successor. In addition, there is the matter of the *paperasan*, the adopted child who is recognized by custom as the rightful heir, despite the absence of blood relation. This status is affirmed in various *awig-awig*, or village council laws, and is also reinforced by case law. For example, the Supreme Court of Indonesia ruled in case No. 4766/K/Pdt/1998, dated November 16, 1999, that a son is the primary heir.

Unlike customary law, which relies on flexibility and family consensus, the national legal system requires legal certainty and formal legitimacy. The Marriage Law does not include specific regulations regarding dual family structures, as seen in the *Pada Gelahang* marriage. The national registration system considers children as integral members of the



primary family unit. Their lineage is documented in their birth certificates. In such circumstances, the absence of a formal agreement or acknowledgment from the parents in a legal document may result in the children born from a *Pada Gelahang* marriage lacking a robust legal standing within the national family structure.

Potential normative conflicts arise from the difference between recognizing customary law and state law regarding the status of children, particularly in terms of children's legal rights, such as inheritance rights. This discrepancy also indicates a gap between customary family values and the administrative requirements of national law. In Balinese customary law, inheritance is generally decided by consensus within the family and is known as "*sagilik saguluk salunglung sabayantaka*," which means "unity and family spirit." There is no set system for dividing inheritance. The division is carried out fairly, equitably, and peacefully, taking into account the fertility of the land, the type of property, and the responsibility of each heir to adhere to customary practices and religious ceremonies, such as *ngaben*.

The fact that the legal status of children and inheritance in *Pada Gelahang* marriages depends on customary and traditional agreements shows that unification of the law has not yet been fully achieved. The state acknowledges the presence of customary law, provided it does not conflict with national legislation. However, there is no explicit legal framework that formally recognizes this type of marriage. Therefore, administrative recognition and harmonization of norms are important to avoid discrepancies between traditional recognition and state legal protection.

2. Legal implications of children's inheritance rights in *Pada Gelahang* marriage

The *pada gelahang* marriage system in Bali often leads to differences in perception between customary norms and national legal values when it comes to inheritance distribution to children. This is due to the lack of adequate harmonization between local customary laws and national legal provisions. The customary law provides for the regulation of inheritance based on family agreements and the role of the customary law. However, these provisions do not have the backing of formal legal protection within the national legal system. This inconsistency creates legal uncertainty that can potentially trigger internal family conflicts and horizontal conflicts



within the community. Therefore, it is necessary to establish a conflict resolution mechanism that adapts to local values but also provides legal certainty and fairness for children resulting from the *Pada Gelahang* marriage system.

The implementation of the *Pada Gelahang* marriage system in Buleleng Regency still lacks a strong legal foundation. There is no written *Pasubayan Mawarang*, and the system continues to rely on verbal agreements. This is inseparable from the social and cultural context of indigenous communities in Buleleng Regency. The gap between the law and the developing social reality is that most indigenous communities do not yet have explicit written inheritance regulations for children in this type of marriage, which could lead to conflicts in the future. In contrast, the implementation of children's inheritance rights in *Pada Gelahang* marriages in Denpasar City demonstrates an evolution in legal culture by utilizing notaries as a state institution to provide legal certainty for the indigenous community, although the status of *Purusa* and *Pradhana* is not recorded in the marriage contract, it stipulates that daughters will join their father's family in Singaraja, while sons will join their mother's family in Denpasar. This practice reflects an integrative approach combining traditional values with modern legal principles. It shows that the *Pada Gelahang* system can be implemented fairly and efficiently with written agreements and mutual understanding.

Questions of inheritance rights for children in the *Pada Gelahang* marriage are both a norm and a practical concern in society. Although agreements such as *Pasobayan Mawarang* have been established to ensure fair inheritance, conflicts often arise among family members during their implementation. These conflicts stem from differing perceptions of the values of *swadharma* and *swadikara*. Some parties may not fully understand that inheritance rights are often tied to the responsibilities of the customs that the child assumes.

The Village Council or *Majelis Desa Adat* (MDA) has explained that misunderstandings about who is considered *purusa* and who is entitled to the inheritance often cause problems. Sometimes, children who did not receive an equal share of the inheritance claim it because they believe they have a spiritual connection to their ancestors through the *sangga merajan*.



However, according to custom, only the child who consistently performs their swadharma is entitled to the full benefits of that *swadikara*. Stigma against women who are considered unworthy of the status of *purusa* also causes conflict, especially within the extended family of the woman. When a girl marries under the customary practice of Gelangang, it is often seen as a threat to the patrilineal lineage of her family, and the male heir who is older in age often rejects her. This shows that the transformation of the meaning of *purusa* has not been fully accepted in social circles.

Pada Gelahang is a context in which conflicts arise during the inheritance process. These conflicts can be categorized into two main types: normative and practical. Normative conflicts occur when there is no agreement on which norms to use as a basis. Practical conflicts occur when family members have different perceptions and interests regarding the inheritance, especially when there are no valid written documents, such as a deed of gift, will, or *Pasubayan Mawarang*. An example of this is illustrated by the fact that the couple from Buleleng explained in an interview that the matter of their children inheriting their property is still being discussed with their extended family. The couple said that they only relied on trust with their children when it came to disputes, even though they knew that there was no legal proof that could be used as a basis if a dispute were to occur in the future. This situation reflects the social reality in which inheritance distribution relies on trust, despite the need for a legal mechanism to provide objective certainty and protection and prevent future conflicts.

Therefore, positive law plays a vital role in balancing local wisdom with the demands of social justice and obtaining legal certainty, particularly in implementing inheritance rights for children from customary marriages, such as the *Pada Gelahang* tradition in Bali. Positive law serves as a legal framework that recognizes, protects, and integrates customary law into the national legal system while ensuring that applicable customary laws align with the principles of a modern constitutional state and do not conflict with the constitution. Currently, the implementation of inheritance rights for children from *Pada Gelahang* customary marriages in Bali is largely based on verbal discussions with the extended family and lacks written records. Thus, the state provides justice and legal certainty through state structures



and instruments, such as notary officials. The local customary community can use Notary Officials to create written agreements about the distribution of inheritance rights in *Pada Gelahang* marriages that are legally agreed upon by all parties involved. Nevertheless, it would be better if the Balinese indigenous community unified the provisions related to the distribution of children's inheritance rights in *Pada Gelahang* marriages, which could be incorporated into the *Pasubayan Mawarang*. This would allow the *Pasubayan Mawarang* to serve as a valid guideline for Balinese indigenous communities that choose to perform *Pada Gelahang* marriages.

CONCLUSION

In the *Pada Gelahang* marriage, the mechanism for determining children's inheritance rights is highly dependent on family agreements, local customs, and recognition by the local village community. The lack of a formal written set of rules for customary law leads to differences in its application, so the status of children in these communities is still based on social acceptance and recognition within the community. The inheritance rights of children from a *Pada Gelahang* marriage depend on the existence and formality of *Pasubayan Mawarang*. The indigenous people of Bali can use *Pasubayan Mawarang* as a guideline when entering into a *Pada Gelahang* marriage. This will allow them to obtain justice and legal certainty in defending their rights as heirs.

The objectives of this paper are as follows: First, the theoretical benefits of this research are expected to contribute new insights and ideas to developments in the field of law in general, particularly in the field of family law related to inheritance systems. Second, there are practical benefits for the Hindu community, notaries, and traditional leaders in Bali. It is hoped that this research can contribute to solving problems arising from legal uncertainty regarding the inheritance rights of children in *Pada Gelahang* marriages in Bali. Notary officials can assist the traditional community in Bali in drawing up written agreements regarding the distribution of inheritance rights in traditional *Pada Gelahang* marriages. Then, through the role of traditional leaders or traditional village councils, efforts can be made to unify the provisions related to the distribution of children's inheritance rights in *Pada Gelahang* marriages. These provisions can be incorporated into the *Pasubayan Mawarang*.

1232



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This study is limited in scope to two locations: Buleleng Regency and Denpasar City. The hope for future studies is to broaden the scope of research, with the aim of identifying every region in Bali in terms of the legal issues faced by the indigenous Balinese community regarding the implications of the distribution of children's inheritance rights in the traditional marriage of *Pada Gelahang*.

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