

ANALISIS DASAR HUKUM GUGATAN PEREMPUAN ADAT BALI DAN PENEMUAN HUKUM HAKIM DALAM PENYELESAIAN SENGKETA WARIS

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Intisari

Hukum waris adat Bali yang menganut sistem kekerabatan patrilineal mendiskriminasi hak waris perempuan. Pluralisme hukum waris membuka ruang bagi perempuan untuk menuntut hak melalui jalur litigasi. Apalagi, Majelis Utama Desa Pakraman (MUDP) telah mengeluarkan putusan tentang waris bagi janda dan anak perempuan pada tahun 2010. Penelitian ini bertujuan menganalisis klaim hak mewaris perempuan adat Bali dalam dasar hukum gugatan dan penemuan hukum hakim dalam penyelesaian sengketa waris. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kasus, konseptual, dan kritis serta mengkaji sebelas putusan sengketa waris perempuan adat Bali, yaitu delapan putusan pengadilan tingkat pertama, dua putusan tingkat banding, dan satu putusan tingkat kasasi pada periode setelah terbitnya keputusan MUDP: 2010–2025.

Hasil penelitian menunjukkan bahwa perempuan adat Bali secara aktif melakukan navigasi hukum memperjuangkan hak mewaris dengan menyusun dasar gugatan yang beragam, meliputi penggunaan Keputusan MUDP, *Awig-Awig* tentang pewarisan, serta pembuktian akta otentik berdasarkan hukum positif. Penemuan hukum hakim terhadap hak waris perempuan adat Bali beragam. Ada hakim yang memberikan hak waris penuh kepada perempuan adat Bali dengan menginterpretasikan akta otentik dan mengesampingkan berlakunya sistem kekerabatan patrilineal Bali. Ada hakim yang tidak memberikan hak waris, namun mengakui janda memiliki hak menikmati harta waris. Ada hakim yang menolak hak waris perempuan adat Bali karena harta yang disengketakan merupakan harta pusaka.

Penelitian ini menunjukkan pilihan hukum hakim, menentukan hak mewaris perempuan adat. Jika hakim memahami bahwa sistem kekerabatan patrilineal Bali mendiskriminasi hak perempuan, hakim akan menggunakan sumber hukum yang memberikan hak waris kepada perempuan. Dengan demikian, pengetahuan tentang keadilan gender dan sumber hukum yang melindungi hak-hak perempuan perlu terus diajarkan dan disosialisasikan.

Kata Kunci: Hukum Waris Adat Bali, Dasar Hukum Gugatan, Penemuan Hukum.

***ANALYSIS OF THE LEGAL BASIS FOR LAWSUITS BY BALINESE
WOMEN AND LEGAL DISCOVERY BY JUDGES IN THE RESOLUTION
OF INHERITANCE DISPUTES***

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Abstract

Balinese customary inheritance law, which adheres to a patrilineal kinship system, discriminates against women's inheritance rights. Legal pluralism in inheritance law opens the space for women to claim their rights through litigation. Moreover, the Main Assembly of Pakraman Villages (Majelis Utama Desa Pakraman/MUDP) issued a decree regarding inheritance for widows and daughters in 2010. This study aims to analyze the claims of inheritance rights by Balinese women within the legal basis of their lawsuits and the legal discovery by judges in resolving inheritance disputes. This research is a normative legal study examining eleven court decisions on inheritance disputes involving Balinese women, consisting of eight first-instance court decisions, two appellate court decisions, and one supreme court cassation decision in the period following the issuance of the MUDP decree: 2010–2025.

The results indicate that Balinese women actively navigate the law to fight for their inheritance rights by formulating diverse legal grounds for their lawsuits, including the use of the MUDP Decree, Awig-Awig (customary village regulations) on inheritance, and the evidentiary use of authentic deeds based on positive law. The legal discovery by judges regarding the inheritance rights of Balinese women varies. Some judges grant full inheritance rights to Balinese women by interpreting authentic deeds and setting aside the application of the Balinese patrilineal kinship system. Some judges do not grant inheritance rights but recognize that widows have the right to enjoy the inheritance property. Meanwhile, other judges reject the inheritance rights of Balinese women because the disputed property is ancestral property (harta pusaka).

This research demonstrates that the legal choices made by judges determine the inheritance rights of customary women. If judges understand that the Balinese patrilineal kinship system discriminates against women's rights, they will utilize legal sources that grant inheritance rights to women. Therefore, knowledge about gender equity and legal sources that protect women's rights must continue to be taught and disseminated.

Keywords: *Balinese Customary Inheritance Law, Legal Basis of Lawsuits, Legal Discovery.*