The dynamics of customary inheritance law from the perspective of gender equality in Klungkung District-Bali

Laksana Arum Nugraheni ^(a) Asmin Fransiska ^{(b)*} Putu Devi Kusumawardani ^(c)

^(a,b,c) Faculty of Law, Atma Jaya Catholic University of Indonesia, Jakarta, Indonesia

ARTICLE INFO

Article history:

Received 12 December 2021

Received in rev. form 04 Feb. 2022

Accepted 12 February 2022

Keywords:

Gender, Inheritance Law, Women Equality, Bali

JEL Classification:

K10

ABSTRACT

The current development and reform in society and government in local and national level have made customary law less strict than before. These developments influence also the inheritances law based on customary law. Inheritance disputes or their unequal distributions impacted the marginalization of certain groups, such as women or girls. There has been a shift in the opinion among the society regarding women inequality related to the access to inheritance. Several developments of the notion of gender equality have been and are being stipulated in laws and regulations. The gender dimension interacts with other social values in the society, and it is related to the social structure as a whole. This research aims to shed a light on the dynamics of customary inheritance law in terms of women's inheritance rights with the perspective of gender equality in Klungkung, Bali. The issues that will be explored are related to the inheritance law focusing on the access to civil rights, i.e. women's inheritance rights, after the Decision of Bali MUDP Number 01/Kep/Psm-3/MDP Bali/X/2010 and the Supreme Court Jurisprudence Number 3/Yur/Pdt/2018 were issued. This study was conducted through the juridical and sociological methods. From the sociological perspective of gender based on the critical paradigm, the power relations based on gender and social reality among women and men can be analyzed. The gender relations according to the sociological analysis are not only the social relations among women and men but also the power relations in social life. Primary data was collected using interviews and observations in 3 (three) sub-districts in Klungkung, Bali, and secondary data was obtained through literature review of gender and customary inheritance law.

© 2022 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

Introduction

The changing of the societies on the new paradigm of thinking becomes a challenge for customary law for changing its implementation rigidly (Takane, 2008). One of the causes of disputes or inheritance disputes is the demand for equality among society's member. The inheritance law becomes one of the civil rights for everyone, which must be protected and fulfilled when there is an inheritance-relates occurs (Mulyadi, 2019). Unfortunately, in the practical level, this civil right is one of the rights that cannot be given fairly to all. Researchers try to examine the growing demand for fairness in society, especially equality for marginalized groups, in this case in women's groups. Thus, researchers examined the issue of inheritance rights for women from a gender perspective (Kingwill, 2016).

Inheritance disputes due to the unequal division of inheritance rights reflect that there is one party or marginalized group. Indonesian women are a second-class group after men and now increasingly experiencing the changes through demanding access to justice (Chuanchuan & Jingwen, 2021). She adds that one of the fundamental changes on gender equality for women is through action and interaction of women workers in social changes (Grown et al., 2005). The law based on gender equality will reform the patriarchy structure in the society that can become the barriers for accessing equality toward women.

* Corresponding author.

© 2022 by the authors. Hosting by SSBFNET. Peer review under responsibility of Center for Strategic Studies in Business and Finance.
<https://doi.org/10.20525/ijrbs.v11i1.1601>

Citation: Nugraheni, L. A., Fransiska, A., & Kusumawardani, P. D. (2022). The dynamics of customary inheritance law from the perspective of gender equality in Klungkung District-Bali. *International Journal of Research in Business and Social Science* (2147- 4478), 11(1).

The changes need the legal foundation both in national and international level. In the international level, Indonesia has ratified various international treaties and other agreement related to women's rights. The most important document that give the norms, principles and guidelines for the state to fulfil and protect women rights is the Convention on the Elimination of all Forms of Discrimination Against Women (Jahanghiri & Bighash, 2021; Wotipka & Ramirez, 2008). The other international treaties that should be taken into account in order to guarantee the gender equality is the International Covenant on Social and Political Rights (Lee, 2007), and the International Covenant on Economic, Social, and Cultural Rights (Coomans, 2011). Through this research with those non-discrimination and freedom principles enshrined in international treaties, we will describe and analyse how dynamics the customary inheritance law is and how it can adjust due to the development of the paradigm of community and social's views. The gender perspective is one way of seeing and analysing this change (Daraba et al., 2018).

The Supreme Court's Decision Number 179 K/Sip/ 1961 has stipulated that woman have the right to inherit their father's property. This is contrary to the principle of inheritance in customary law, particularly in patrilineal communities. The human rights perspective is used to criticize inequality between men and women in customary inheritance law. Gender equality as one of the human rights principles has been used in reviewing the law and its implementation. Supreme Court Jurisprudence Number 3/ Yur/Pdt/2018 contains the legal rules as a basis of equal rights between men and women, therefore women have the same right to the inheritance of their parents or husbands properties. This jurisprudence also gives a legal standing to demand for inheritance and get inheritance with the same share or portion as men. In line with Article 28I paragraph (3) of the Constitution of the Republic of Indonesia of 1945 that states the cultural identity and rights of indigenous peoples are respected by "the development of times and civilizations", therefore customary laws which are designed under the patriarchy system and values that apply in society must adjust themselves to the development of society and experience dynamics over time (Wanandi, 2002).

This research is concentrated on the people of Bali, especially the Klungkung District which adheres to the patrilineal kinship system. As a result of the enactment of this kinship system are heirs recognized are only men, while women are not heirs that have ability to access. The consequences of this system greatly affect the position of women in terms of inheritance in particular and their civil rights in general. The decision of MUDP Bali Province Number 01/Kep/Psm-3/MDP/bali/X/2010 is an advance towards the position of women as heirs. Based on the decision, Balinese women received half of *purusa* inheritance rights after being cut by one-third (1/3) for inheritance and preservation interests. Previous research found that Bendesa Adat and indigenous peoples still could not accept this decision because indigenous krama still strongly maintains *dresta*, *awig-awig*, and habits that bequeath only men (Ndun et al., 2018). A paternalistic culture that has crystallized led to the Decree of The Pesamuhan Agung III of 2010 MUDP Bali is difficult to implement so that there is a speech or *gugon tuwon* "*anak mule keto dini*" (it is like that here) because no women dare to demand to get inheritance rights in each family.

This study uses the juridical and sociological methods with gender perspective to deliver the critical thinking on the power relations between men and women (KirombaTwinomugisha, 2012). The gender relations according to the sociological analysis are not only the social relations among women and men but also the power relations in social life. Primary data was collected using interviews and observations in 3 (three) sub-districts in Klungkung, Bali, and secondary data was obtained through literature review of gender and customary inheritance law.

The purpose of this study is to find out the dynamics of customary inheritance law in terms of inheritance to women in Klungkung District, Bali Province after the issuance of Bali Provincial MUDP Decree Number 01/Kep/Psm-3/MDP Bali/X/2010. Second, to know the sense of justice in inheritance of women when viewed from a gender perspective. Researchers contributed thoughts about gender equality which can be reflected together whether the regulations in customary inheritance law and their objects are categorized into two, namely heirlooms (magical-religious value) and/or property (which is economically valuable), while heirs (heritage subjects) are also divided into two, namely heirs *predana* and/or heir *purusa*. Women are not always *predana* and vice versa, *purusa* is not always male (Dyatmikawati, 2016).

Literature Review

The International instruments on Gender equality have been increasing that we can found in international treaties regarding human rights and women rights such as ICCPR, ICESCR and CEDAW. The scholars who expose the need for critical thinking on gender equality nowadays are also varied, such as Kiromba Twinomugisha and others deliver the urgency of equality between men and women in all sectors, including the private sector. The national legal instruments on gender equality are spreading in some national regulations. However, in terms of the equality among man and women in inheritance law are limited.

The customary inheritance law is governed under customary law and regulation. In Bali in particular, Bali Provincial MUDP Decree Number 01/Kep/Psm-3/MDP Bali/X/2010 is a provincial regulation related to heritage. Dyatmikawati in 2006 and Setyawati in 2017 confirm the issues of Balinese heritage law and how the customary law influences many decisions, whether through court or local settlements. The patriarchal system in family law also affects the heritage system in Bali. In many cases, the dynamic of gender equality among men and women is inequally delivered. Ndun et al., 2018, shows the majority preference regarding inheritance. The court decisions have implications for the diversity of heritage access for women. It is happening in Bali and other provinces, as stated in Febriawanti and Mansur in 2020. The Supreme Court Decision Number 257K/Pdt/2019; Supreme Court Decision Number 179K

/ SIP / 1961; Supreme Decision Number 415K/SIP/1970; Supreme Decision Number 707K / SIP / 1973 and Supreme Court decision Number 1589K/SIP/1974.

In Bali's local settlement, there is Pesamuhan Agung III in 2010 as a decision on the position of husband and wife on inheritance and *gunakaya* property. Moreover, the Bali Governor Regulation Number 4 of 2020 concerning the Implementing Regulation of Regional Regulation Number 4 of 2019 elaborates some rules called *Awig-awig* made by *Desa Adat* and/or *Banjar Adat Krama Desa Adat, Krama Tamiu, and Tamiu*. Those varieties of rules increase the discussion of heritage and property access for women and men in Bali. The Supreme Court of MUDP Bali Number 01/KEP/PSM-3MDP Bali /X/2010 provides rights for women in getting inheritance from their parents. In addition, the Supreme Court Jurisprudence Number 3/Yur/Pdt/2018 rules the equal rights between men and women so that women have the right to the inheritance of their parents or husbands. The concern is that the court decisions and other local orders are not known well and equally informed in all Bali places. The research found that many of those decisions and regulations are limited to the head of the villages that all of them are men, addition to that the information regarding good practices through court is imposed only for the families who settle the heritage dispute but not for other families.

The dynamics of customary inheritance law in terms of inheritance of women in Klungkung District-Bali

In line with Roscoe Pond's opinion that law for society as "a tool of social engineering", the flexible nature of customary law aims to direct society towards order and order (Khairuummah, 2021). Customary law should be flexible and dynamic by following the developments in society. Customary law provides great opportunities as an embodiment of aspects of justice for society in the framework for applying the principle of equality or equality before the law, both men and women. Customary law in Bali in the form of MUDP Decree Number 01/Kep/Psm-3/MDP Bali/X/2010 is considered to make a major contribution in the determination of policies that meet the public element. Customary law whose crystallization is in the form of a Decree of MUDP of Bali substantively contains provisions that regulate human behavior or that become human guidelines to behave to maintain the balance of their interests in society.

Customary decisions often lead to pros and cons so that the implementation is not following the content of the decision. One of the problems that arise is the arrangement of an inheritance system for women in Bali. In general, those who are entitled to bequeath in Bali are men who are the successors of their father's descendants, known as *plates* or *purusa* which means inheritance only addressed to men in the patrilineal kinship system (Setyawati, 2017). The Supreme Decree III held on October 15, 2010, resulted in the Decree of the Supreme Court of MUDP Bali Number 01 / KEP / PSM-3MDP Bali / X / 2010, mentioning the right of inheritance for women (*predana*). This decision is a breath of fresh air for women in Bali. In line with that, there is jurisprudence providing opportunities for women to be able to become heirs in the patrilineal kinship system.

The patrilineal kinship system is also applied in Bali where only men have the right to bequeath wealth from parents. In addition to adhering to the patrilineal kinship system, Bali also knows the majorat inheritance system, which is an inherited system in which the heir's legacy is only inherited by the eldest child, the same as collective inheritance but inherited by the eldest child. Bali knows the system of inheritance of male majorat that is if the eldest man (male offspring) becomes the sole heir of the heir, with the record that the child must support his parents and younger siblings (Ndun et al., 2018). Balinese people distinguish property (heritage objects) into two, namely heirlooms (magical-religious value) and/or property (which is economically valuable), while heirs (heritage subjects) are also divided into two, namely heirs *predana* and/or heir *purusa*. Women are not always *predana* and vice versa, *purusa* is not always male (Dyatmikawati, 2016).

Some of the cases decided by the Court became evident that there are new paradigms used in the application of law and law enforcement in society. These rules are the result of the legal discovery of jurists and certainly adjust to the developments in society. Some of the Supreme Court's rulings are as follows: (Febriawanti and Mansur, 2020)

- i. Supreme Court Decision Number 257K/Pdt/2019 stated that the cassation application was rejected and stated that the plaintiff and defendant were entitled to a share of the inheritance.
- ii. Supreme Court Decision Number 179K / SIP / 1961 dated October 23, 1961, which says that the law that lives throughout Indonesia, as well as in Tanah Karo, the daughters, and sons of an inheritor are jointly entitled to inheritance in the sense that the part of the man is the same as the part of the woman.
- iii. The Supreme Court of the Republic of Indonesia Decision Number 415K/SIP/1970 dated June 30, 1970, contains the legal rule that customary law in the Tapanuli area has developed towards granting equal rights to women as men, and development can also be strengthened by a permanent jurisprudence regarding inheritance law in the area.
- iv. The Supreme Court of the Republic of Indonesia Decision Number 707K / SIP / 1973 dated March 18, 1976, which contains the legal rule that the division of inheritance in the current case must be according to the law that recognizes women's rights equal to the rights of men in inheritance law.
- v. Supreme Court decision Number 1589K/SIP/1974. This ruling refers to supreme court jurisprudence against women in Tapanuli in inheritance, that women are heirs.

The Supreme Court held that the growth of society has led to equality of position between men and women. Through the Supreme Court of Indonesia Decision, Number 257K / Pdt / 2019 and some of the rulings above can be said that there have been developments

in the field of the division of inheritance using customary inheritance law. Supreme Court Decision Number. 257K / Pdt / 2019 shows that there is a legal dynamic so that the majorat system should be carried out in the division of his heirs, but the judge in resolving the customary inheritance dispute decided that it was done with an individual system in which each heir gets their share.

Pesamuhan Agung III in 2010 issued a decision on the position of husband and wife on inheritance and *gunakaya* property are as follows:

- i. The husband and his wife and the husband's brother and his wife, have an equal position in the effort to ensure that inheritance can be passed on to his children and grandchildren to preserve or preserve immaterial inheritance,
- ii. During the marriage, the husband and his wife have an equal position in their usefulness (property acquired during marital status),
- iii. Biological children (male or female) and adopted children (men or women) who are not married, basically have the same position on the property of their parents,
- iv. The biological child (male or female) is entitled to the property of his parents, after being reduced by one-third as a "*duwe tengah*" (joint property), which is controlled (not owned) by the child who "*nguwubang*" (continuing self-sufficiency or responsibility) of his parents,
- v. Children who are limestone status are entitled to one part of the inheritance, while those with the limited status of *predana / ninggal kedaton* are entitled to part or half of the inheritance received by a child who is *kapurusa* status,
- vi. In the case of inheritance sharing, the child who is still in the womb has the same rights as the child who has been born, as long as he is born alive,
- vii. Children who are full *ninggal kedaton* are not entitled to inheritance but can be given provisions (soul funds) by their parents from the property without harming the heirs.

The division of inheritance is not only done after the heir dies, but when the heir lives the division of inheritance can be done. This is what distinguishes inheritance according to different laws from the concept of inheritance according to *Burgelijk Wetboek* and Islamic law. In its development, parents give provisions in the form of objects to their daughters known as *jiwadana* which is a gift to the daughter while still alive gathered, the gift is inviolable by her heirs. There is also a so-called *tetatan* which is a gift to a woman at the time of marriage (Lestawi & Bunga, 2020). The position of the man as an heir is closely related to the view that men in Bali have a great responsibility in the family, while the responsibility of women to the family is completed because the daughter will enter and carry out her responsibilities in her husband's family. According to Manullang (2021), the customary law is an unwritten law in unwritten regulations, covering the rules of life that although not established by the authorities remain obeyed and supported by the people based on the belief that they have the power of law. In line with this opinion, Prof. Mr. Cornelis Van Vollen Hoven stated that customary law is the entire rules of community behavior that apply and have sanctions and have not been codified (Hidayat et al., 2018). Concluding from both opinions, as well as other expert's opinions that customary law is generally unwritten and unified, but still adhered to and has sanctions imposed on the people who violate it.

Customary law in Bali has a uniqueness with customary law in other regions because *awig-awig* must be written even registered. This obligation is contained in Article 3 of Bali Governor Regulation Number 4 of 2020 concerning the Implementing Regulation of Regional Regulation Number 4 of 2019 concerning Indigenous Villages in Bali. *Awig-awig* is a rule made by *Desa Adat* and/or *Banjar Adat* that applies to *Krama Desa Adat*, *Krama Tamiu*, and *Tamiu*.

Based on data processed through interviews and FGD with the people of Banjar Bucu, Banjar Pande, and Banjar Kelod Klungkung District, the community admitted that it has not included rules about inheritance into the *awig-awig* so that in the event of inheritance they are guided by customary inheritance laws that are passed down through generations by ancestors. According to the findings of the research, inheritance undergoes various modifications to its implementation. The community considers that inheritance affairs are very private and left to the condition of their respective families. Based on the FGD conducted with the people of Banjar Bucu, Banjar Pande, and Banjar Kelod Klungkung District, the inheritance with *kapurusa* system is still valid. If the family conditions allow, it will give mental funds and stages to women, but it is not an obligation. Therefore, it is the role of the Indigenous Village Assembly as a working partner of the Regional Government to carry out functions in customs, traditions, culture, religious social, local wisdom, and indigenous economy. The Indigenous Village Assembly (MDA) consists of Provincial-level MDA, District/City level MDA, and Subdistrict level MDA. Article 76 paragraph (1) of Regional Regulation Number 4 of 2019 concerning Indigenous Villages in Bali regulates the duties of provincial-level MDA is as follows:

- i. protect, build, and develop customs;
- ii. provide advice, proposals, and opinions/considerations on customary issues and local wisdom to the Local Government and various parties, both individuals, groups, and institutions;
- iii. carry out every decision of Paruman and Pesamuhan as referred to in Article 73;
- iv. accompanying the Customary Village in the extension of *Awig-Awig* and *Pararem*; and
- v. implementing the extension of customs, traditions, cultures, and local wisdom of the Balinese community as a whole.

As discussed above regarding the Supreme Decree of MUDP Bali Number 01/KEP/PSM-3MDP Bali/X/2010 which is the result of the Pesamuhan Agung III MUDP of Bali is a product of the same decision as to the Provincial-level Indigenous Village Assembly (*Majelis Desa Adat*/MDA) Decision because MUDP has been amended and called MDA based on Regional Regulation Number 4

of 2019 concerning Indigenous Villages in Bali. According to the results of interviews with the Provincial-level MDA, the issue of inheritance is the focus of problems that cannot be standardized. The efforts that MDA can do are only to accommodate developments in the community so that the decision is also only as an *aanvullenrecht* law or complementary.

Regarding disputes caused by inheritance disputes, the community claims to choose to resolve them through customary mechanisms. The customary bodies include Kelihan Banjar, Prajuru Adat, Sabha Desa, and Kerta Desa. If the dispute cannot be resolved within the scope of the Customary Village, it will be continued to the scope of the District level MDA. If it can be resolved it will be made a treatise on the results of the dispute settlement. If not, the dispute resolution process will continue in the context of the District or City level MDA, and the last is dispute resolution by the Provincial level MDA.

The Gender equality challenges in the inheritance for woman in Klungkung District-Bali

The critical legal feminist develops through feminist jurisprudence that aimed to describe that law has limitation towards the reality of social values. The limitation occurs firstly caused by the phallogocentric to male dominated while the law or legal interpretation and define were established, thus this domination leads to the access to justice that become barriers in the court locally or nationally. This structure becomes the status quo and used predominately. Secondly, the law structure also becomes barriers when the women demand the equality or fairness decision throughout court or other legal arena to protect women's right. Thirdly, the rationality and neutrality of laws or legal perspective in many cases are not aimed to protect the marginalized group, since the particular male dominated group do not face the same challenges compare to female. Based on those challenges that occur in the entire world and patriarchy dominated system, the call or demand for the gender equality is happening until now. The Human Rights Conference in Tehran in 1968 became the prime meeting that resulted in the statement "discrimination against women as a continuing problem and call for the 'full implementation' of the 1967 Declaration on Discrimination as a necessity for the progress of mankind". The non-discrimination is predominated in the international legal treaties giving a sign that this principle should be taken into account by the state member. The Universal Declaration on Human Rights states that "all human beings are born free and equal in dignity and rights...". The equality and non-discrimination as principles in the UDHR is confirmed by the ICESCR that declares "The state parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights...". According to the ICCPR that also states the non-discrimination and equality as the principle of human rights in the article of the Covenant. In sum, it is clear that non-discrimination and equality principles are the customary international law that oblige the member state to create, establish to solve the issues related to the discrimination against women and to guarantee the access to justice if the discriminatory laws, regulation or practices are absent in its jurisdiction.

CEDAW as an international treaty gives guidance to the member states to protect and fulfil as well as promote gender equality. Indonesia as a state party should ensure take all appropriate measures to modify the social and cultural pattern of conduct of men and women, with a view to achieving the elimination of prejudice and customs and all other practices which are based on the idea of the inferiority or superiority of either of sexes or stereotyped roles for men and women. Regarding the social and other benefits, such as inheritance, CEDAW demands the state members, such as Indonesia, give the equal access to the legal capacity in civil matters and exercise the administer property, ensure to eliminate discrimination against women in all matters related to marriage and family relations, ask the government to create and adopt all necessary measures at the national level aimed to achieve full realization of the equal rights among men and women.

In our cultural and social construction, despite having a daughter, people are worried about not having a son as the successor to the lineage. Society is of the view that the *kapurusa* system should place men as *purusa*, although women can become *purusa* according to society this right raises complex advanced problems. Not all families can recognize or raise a *purusa* from a daughter. If the daughter is appointed as a *purusa*, it must be with the consent of all relatives or extended family.

The marriage of women who become *purusa* is also different from marriage for women with *predana* status. In ordinary marriages, a woman with *predana* status is married to a man with *purusa* status, so that the male lineage will be continued. If married to a woman with *purusa* status, then men must be willing to become *predana* and continue the female lineage. This is called *nyentana* marriage which places women as *sentana rajeg*. The rights and obligations that should be imposed on male *purusa* turn into women's responsibilities as *purusa*.

Klungkung District consists of four sub-districts namely Dawan Subdistrict, Klungkung Subdistrict, Banjarangkan Subdistrict, and Nusa Penida Subdistrict. Researchers took data from 3 sub-districts in Klungkung District, namely Dawan Subdistrict, Banjarangkan Subdistrict, and Klungkung Subdistrict. The results showed that customary law still exists in the community, especially the Balinese customary inheritance law that applies in Klungkung District. Balinese people place men have an important role in social life, customs, and religion. The social life of indigenous peoples in Klungkung District is divided into Krama Adat Village, Krama Tamiu, and Tamiu. Based on data obtained from 3 research sites, namely Banjar Bucu, Banjar Kelod, and Banjar Pande, 100% of the community is Hindu, therefore community life cannot be separated from the religious element of Tri Hita Karana which consists of *parahyangan*, *pawongan*, and *palemahan* where it puts men as leaders of all forms of activities in the society.

People's lives in indigenous, religious, and social communities put men in strategic and important positions. Religious and indigenous leaders are held by men so important decisions are taken by men. Women don't have access to any decision-making in the society. The role of women is still needed in carrying out traditional and religious ceremonies and carrying out their respective household

activities, but men are authorized to lead and make decisions. In terms of the role of women in society as people who do not have access to important decisions, causing the decision itself is a product produced by a group of men. Authority in decision-making cannot be separated from who the holder of the power. The power is one dimension of relationships. Where there is the relationship, there is power. The way Foucault understands power is very original. Foucault examined more power in individuals as subjects in the smallest scope. Power spreads unallocated and permeates the whole social fabric. That power operates and is not owned by anyone about knowledge, science, institutions and normalizes the makeup of society. Power operates within the scope of the society without being realized by the society itself. Power in the society does not come from outside, but what determines the order, rules, and relationships is the society itself. According to Foucault, power is actualized through knowledge, and knowledge has a powerful effect. There is no knowledge without power and on the contrary, there is no power without knowledge. Power relations cause interdependence between various parties ranging from those who hold power to those who are objects of power. The ruler can play an important social role in society. The occurrence of unbalanced patterns in society brings an attitude of compliance. By examining based on the perspective of gender using a critical paradigm it can be understood that gender-based power relations led to Foucault's concept of power as something that is always changing and produces points of intensity and stirs up resistance to equality.

The patrilineal kinship system in Bali is not the system to blame, but the practice must adapt to the situation and conditions that develop in society itself. The results showed that women's attitudes towards this system are pros and cons. This is due to internal factors of the nuclear family or as well as external factors, namely large families or relatives or clans. The patrilineal kinship system becomes an entry point for discrimination if women feel that the rights received by them are not as they should or do not receive any rights at all. It does not matter when women do not feel aggrieved and can survive in the inheritance or by not receiving an inheritance at all. On the contrary, it can be a problem when women feel aggrieved by such inheritance sharing or do not get an inheritance at all because the financial conditions in each family vary. Gustav Radburch argued that the purposes of law include certainty, justice, and expediency. Justice is one of the goals of the law that must be achieved in law enforcement efforts. Therefore, the development of law in the society must realize the value of justice itself. The value of justice in the society must be extracted from the society itself. Marcus Tullius Cicero said, "*Ubi Societas Ibi Ius*" which means where there is a society there is the law. If in the beginning the value of justice is formed through a view and poured in the form of customary law regulations or customary law, then it is necessary to see who shaped the values of justice. If the rules of customary law are formulated by men, then the value of justice is certainly a product resulting from the results of male thought as well. If the regulation is applied to all levels of society, both women and men, then the paradigm of thinking society will follow the standards of justice successfully set by men.

Customary laws that apply and are adhered to by the community form a paradigm in the community itself. Along with the dynamics in society itself, causing a shift from the concept of the value of justice that is believed by the community. Women do not have access to important decision-making in indigenous peoples so that the value of justice is believed to be forced by the values that are already applicable in society. As explained earlier, the value of justice is a product of male thought.

Conclusion

Customary inheritance law in terms of inheritance for women in Klungkung District-Bali experienced dynamics, starting from the community experiencing a paradigm shift of thinking in placing the position of a woman in the family. Customary law that is flexible and dynamic must accommodate these developments so that the Indigenous Village Assembly previously called the Pakraman Village Main Assembly issued the Decree of the Supreme Court of MUDP Bali Number 01/KEP/PSM-3MDP Bali /X/2010 which provides rights for women in getting inheritance from their parents. In addition, the Supreme Court Jurisprudence Number 3/Yur/Pdt/2018 based on equal rights between men and women so that women have the right to the inheritance of their parents or husbands so that they have legal standing to file a lawsuit to obtain an inheritance and get inheritance with the same share (portion) as men. Although leaving pros and cons in the community regarding its implementation, the people of Klungkung District are also guided by *awig-awig* in each Indigenous Village. If the *awig-awig* has not written down the inheritance ordinance, then they will refer to the concept of inheritance with a *kapurusa* system based on the type of marriage. However, despite the progressive national jurisprudence, there is still a challenge to implementing the values of equality in the case of inheritance.

Non-discrimination and freedom from equality are found in entire international treaties on human rights. Indonesia as a member state should take all the measures to establish the progressive realization of equality among men and women. Although equality and fairness are the goals of the law so that the value of justice itself can be explored in the values that live in society, however, in the practice level, it is hard to be fulfilled. The issue of equality and fairness in terms of inheritance for women in Klungkung District-Bali when viewed from a gender perspective, cannot be separated from who is the holder of power in society. If the rules of customary law are formulated and dominated by men, then the values of justice and fairness are certainly a product resulting from the results of male thought and benefit as well. If the regulation is applied to all levels of society, both women and men then the paradigm of thinking society will follow the standards of justice successfully set by men. Women in the society as people who do not have access to important decisions. Women in the society follow the values of justice that have been established in their society so that their inheritance has no room to express what they think is fair because justice itself has been established by the ruler.

Author Contributions: Conceptualization, LAN., AF., PDK.; Methodology, LAN., AF., PDK.; Data Collection, LAN., AF., PDK.; Formal Analysis, LAN., AF., PDK.; Writing—Original Draft Preparation, LAN., AF., PDK.; Writing—Review And Editing, LAN., AF., PDK.; All authors have read and agreed to the published the final version of the manuscript.

Institutional Review Board Statement: Ethical review and approval were waived for this study, due to that the research does not deal with vulnerable groups or sensitive issues.

Data Availability Statement: The data presented in this study are available on request from the corresponding author. The data are not publicly available due to privacy.

Conflicts of Interest: The authors declare no conflict of interest.

References

- Chuanchuan, Z., & Jingwen, W. (2021). Gender roles and women's labor market outcomes. *China Economic Quarterly International*, 1(2), 97-108.
- Coomans, F. (2011). The extraterritorial scope of the international covenant on economic, social and cultural rights in the work of the United Nations Committee on economic, social and cultural rights. *Human Rights Law Review*, 11(1), 1-35.
- Daraba, D., Akib, H., Saggaf, M. S., Cahaya, A., & Salam, R. (2018). Basic public service partnership model based on gender perspective in Makassar City, Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 21(4), 1-12.
- Dyatmikawati, P. (2016). Inheritance Rights Of Women Based On Customary Law In Bali. *International Journal of Business, Economics and Law*, 11(4), 13-16.
- Febriawanti, D., & Mansur, I. A. (2020). The Dynamics of Customary Inheritance Law in Balinese Society Today. *Media Iuris*, 3(2), 119-132.
- Grown, C., Gupta, G. R., Kes, A., & Proje Objectifs du millénaire. (2005). *Taking action: achieving gender equality and empowering women*. London: Earthscan.
- Hidayat, H., Yogaswara, H., Herawati, T., Blazey, P., Wyatt, S., & Howitt, R. (2018). Forests, law and customary rights in Indonesia: Implications of a decision of the Indonesian Constitutional Court in 2012. *Asia Pacific Viewpoint*, 59(3), 293-308.
- Jahanghiri, Y., & Bighash, K. A. (2021). A comparison of women's position in the Tasnim Exegesis of the Qur'an and the Convention on the Elimination of all forms of Discrimination Against Women and the 2030 Education Framework. *Nazhruna: Jurnal Pendidikan Islam*, 4(2), 208-220.
- Khairuummah, R. (2021). Implications of Geothermal Project Problem in Perspective of Social Engineering Theory and Development Law in Legal Sociology Discourse. *International Journal of Social Sciences Review*, 1(2), 51-65.
- Kingwill, R. (2016). [En] gendering the norms of customary inheritance in Botswana and South Africa. *The Journal of Legal Pluralism and Unofficial Law*, 48(2), 208-237.
- KirombaTwinomugisha, B. (2012). Beyond Juridical Approaches: What Role can the Gender Perspective Play in Interrogating the Right to Health in Africa. *Beyond the Law: Multidisciplinary Perspectives on Human Rights*, 41-66.
- Lee, K. (2007). China and the international covenant on civil and political rights: prospects and challenges. *Chinese Journal of International Law*, 6(2), 445-474.
- Lestawi, I. N., & Bunga, D. (2020). The Role of customary law in the forest preservation in Bali. *Journal of Landscape Ecology*, 13(1), 25-41.
- Manullang, S. O. (2021). Understanding the sociology of customary law in the reformation era: complexity and diversity of society in Indonesia. *Linguistics and Culture Review*, 5(S3), 16-26.
- Mulyadi, L. (2019). Interpretation of judges in representing the dynamics of religion of indigenous legal inheritance of Bali. *Jurnal Hukum dan Peradilan*, 8(2), 214-227.
- Ndun, H. C., Suttor, S., & Widhiyaastuti, I. G. A. A. D. (2018). Does Customary Law Discriminate Balinese Women's Inheritance Rights?'. *Udayana Journal of Law and Culture*, 2(1), 97-114.
- Setyawati, N. K. (2017). The position of Hindu women according to Balinese customary inheritance law in the perspective of gender equality. *Hindu Religion Research Journal*, 1(2), 618-625.
- Takane, T. (2008). Customary land tenure, inheritance rules, and smallholder farmers in Malawi. *Journal of Southern African Studies*, 34(2), 269-291.
- Wanandi, J. (2002). Islam in Indonesia: Its history, development and future challenges. *Asia Pacific Review*, 9(2), 104-112.
- Wotipka, C. M., & Ramirez, F. O. (2008). World society and human rights: an event history analysis of the convention on the elimination of all forms of discrimination against women. *The global diffusion of markets and democracy*, 3096, 303-343.

Publisher's Note: SSBFNET stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.

© 2022 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

International Journal of Research in Business and Social Science (2147-4478) by SSBFNET is licensed under a Creative Commons Attribution 4.0 International License.