

# Balinese Customary Law Perspective on The Existence of Adopted Children

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**Abstract**—This research was conducted to find out what the inheritance rights of adopted children are regarding the existence of the inheritance of their adoptive parents according to Balinese customary law and what the position of adopted children is in the adoptive parents' family according to Balinese customary law. The method in this research is descriptive legal research. Secondary legal materials are obtained from the results of literature reviews, books, statutory regulations, archives, and other materials or sources supporting this research. The results of the discussion are: 1) the inheritance rights of adopted children over the inheritance of adoptive parents according to Balinese customary law, namely, if the adopted child has carried out the *Yadnya* ceremony with *meperas*, the adopted child has the same position as the biological child and the adopted child has the right to inherit in his adoptive family. 2) The adopted child's position towards the adoptive parents' family according to Balinese customary law that the adopted child has the right to inherit as an heir like a biological child. The adopted child has no right to inherit the property inherited from his biological parents because his family relationship was severed at the time of the *pemerasan* ceremony.

**Keywords:** adopted child; balinese customary law; *pemerasan* ceremony

## Introduction

Adopting someone else's child into your own family so that you can create a relationship, namely a form of family relationship between the adopter and the adoptee, such as the relationship that arises between parents and biological children.

The differences in customary law that apply in Indonesia cause many child adoption activities to be carried out in different ways following the customary law that applies in that region. The adoption process has an impact on severing the adopted child's familial relationship with his biological parents, or in some child adoption situations; some do not involve efforts to sever the familial relationship between the biological parents and the adopted child.

Family and society in Indonesia still consider descendants to be of significant importance. As we know, the existence of descendants will be the ones to continue the responsibilities of the family and society. Specifically, the Hindu community in Bali still considers the presence of descendants to be an absolute part of carrying out the obligation of performing *pitra yadnya*, which will later request and offer prayers for the ancestors so that they may find enlightenment. The Hindu community in Bali believes and interprets the presence of descendants to be closely related to marriage. The purpose of marriage, based on

the Manawa Dharmasastra, is where husband and wife together fulfil dharma, with offspring being born. Based on the existence of the Manawa Dharmasastra, it is clear that the purpose of Hindu people in Bali to hold marriage ceremonies is to have offspring.

The perspective differs when viewed from parents who allow their children to be adopted because these parents feel unable to care for or educate their children. Giving their child to be adopted by someone else is based on several reasons, for example, to ease the burden as a parent, especially in terms of care and education, and the rewards that come with it. This decision may follow suggestions from various parties, such as family and society, reflecting the parents' desire for their child to have a better quality of life. Thus, it is considered wiser and more responsible to grant permission for the child to live with adoptive parents, ensuring their well-being. Furthermore, it may be motivated by the parents' desire to provide their child with material security. Another reason may be the presence of multiple children in the family. In some cases, parents allow their children to be adopted due to the social stigma associated with having children outside of marriage or in relationships without clear status and because they may lack the necessary sense of responsibility to raise their children. These are some of the reasons why parents allow their children to be adopted by prospective adoptive parents.

Adoption as part of the family's succession plan in Balinese customary law society is no longer solely based on adopting a child from the *Purusa* (paternal) family. Currently, adoption can also be carried out from the wife's family environment, especially if the husband and wife come from the same family clan.

Customary law in Bali regulates the adoption of someone who is then raised, cared for, and treated as one's descendant. The underlying principle of adoption is to acquire a child as an heir and is inseparable from the obligations upon the parents' death. In this regard, the adoption process in Balinese customary law society is based on adoption requirements, namely the presence of ceremonies such as *peras*, *siar*, and the parties' consent.

In its development, adoption in Bali conducted under Balinese customary law has shifted from its original rigidity, especially regarding requirements for adopted children adapted to the customary law provisions of each *banjar* (local community) where the adoptive parents reside. It should be noted that adoption will have implications for inheritance law for the adopted child. The development of inheritance interests will inevitably give rise to its own issues regarding adoption and inheritance.

Based on the above background, this research examines the following issues.

What are the inheritance rights of adopted children according to Balinese customary law?

What is the position of adopted children regarding their parents' inheritance according to Balinese customary law?

## Method

The method used in this research is normative, utilizing secondary data consisting of legal materials (Constitution, Laws, other legal regulations) and relevant literature obtained through document study (literature review). Secondary legal materials were obtained from literature reviews, books, statutory regulations, archives, and other materials or sources supporting factors in this research. The collected legal materials are further analyzed using a descriptive-analytical juridical method, which involves discussing legal materials related to the existing issues with various legal concepts to produce accurate conclusions.

## Result and Discussion

### Inheritance Rights of Adopted Children According to Balinese Customary Law

The presence of a child in a family is a trust. In other words, the existence of a child in a family is a

blessing from God. Children born from a legitimate marriage, biological children, or children who come through the adoption process, commonly known as the process of adopting a child, still have the right to be cared for, nurtured, educated, and raised with love.

In general, adoption can be defined as an activity involving raising someone else's child based on the prevailing legal provisions in society. The law that applies to the child adoption process in Bali includes two provisions: normative legal provisions as a form of authentication and administrative proof that the child adoption procedure has been carried out. Furthermore, the second legal provision is customary law, which is part of cultural respect for ancestral law and can be symbolized that the adoption of a child based on Balinese customary law is considered valid if it is carried out according to the procedures and requirements determined by customary law in Bali; one of which includes the consent of the parties concerned, involving witness gods (*Dewa*) and human witnesses as well as *siar*.

"Purusa" is a term for relatives on the husband's side, while the group on the wife's side is called "pradana." Generally, in the adoption process, according to the customs of Balinese society, the child to be adopted, specifically a male child, is usually taken from the husband's side (*purusa*). However, in certain villages in Bali, the adopted child can also come from the wife's side (*pradana*), which is, of course, also based on the impossibility of adopting a child from the *Purusa* group.

The patrilineal kinship system (based on paternal lineage) is the kinship system adopted by Balinese customary law society. This system makes the role of men in a family very important. This view contrasts somewhat with the presence of women in the customary law system in Bali. The patrilineal system influences the customary practice of adopting male children in Bali. According to Balinese customary law, male children are seen as symbols of lineage successors who have responsibilities and obligations in ancestor worship. It also confirms that male children are considered entitled to inherit property. Thus, families without male children can adopt a child as their successor.

The concept of patrilineality also creates family ties known as clan units, clans linked to the paternal lineage. The patrilineal principle in Balinese customary law also implies that male children are prioritized over female children. This system dictates that male children have the right to inherit while female children do not.

In Balinese customary law, adopting a child from family or close relatives is considered valid if it has been carried out according to customs. However, this step may still raise questions when viewed from the perspective of national law. It becomes a question if the legal status of adoption is solely based on customary law or practices without seeking confirmation from the national court as a form of national legal validation. Referring to Article 9 of the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption, it states:

The adoption of a child based on local customs and practices, as referred to in Article 8 letter a, namely the adoption of a child carried out within a community that clearly still adheres to customs and practices in communal living.

Adoption based on local customs and practices can be requested for court approval.

According to customary law, an adoption is an act of taking another person's child into one's own family so that between the person who adopts the child and the child adopted, a family relationship arises that is the same as that between parents and their own biological child. Customary adoption of children is carried out for the sake of continuity of offspring or to be able to maintain family assets.

The birth of a son (*suputra*) is highly desired by all parents in Balinese customary society, and this is the ideal goal in every marriage; however, not all couples succeed in having children. In Balinese customary law, couples who are not blessed with children are called *aputra*, *niputrika*, and *nirsamtana*. They are the ones who can have children by adopting them, or in customary terms, known as *prigraha* or *putika*, with the adopted child being called *kertakaputra*, *datrimasuta* or *putra dattaka*.

The child adoption process undertaken by prospective adoptive parents must follow the procedures that apply in Balinese traditional society, namely:

Conducting deliberations. Deliberations are held to determine whose child will be adopted. Deliberation is held with family members and is then followed by asking for blessing and agreement from both family members. If you have obtained approval from the family who will adopt the child and the child's family concerned (there are no further objections) then a good day can be determined to carry out the *widhi widana* (*pemerasan*) ceremony.

Conducting the Attestation Ceremony. The Balinese traditional community ceremony takes the form of a religious ritual known as the *widhi widana* ceremony or *pemerasan*. The attestation or *pemerasan* ceremony consists of 2 (two) parts: bidding farewell to the gods and ancestors, as well as the birth parents of the adopted child, followed by showing respect and prostration to the new family who adopted the child and their deities. This ceremony is led by the *pedanda* (priest), and offerings are made as part of the *pemerasan* ritual.

Conducting *siar* (announcing) to the Banjar (Community Announcement). After all is completed, the next step is to announce to the banjar in a banjar meeting, known as *siar*. It is done to inform all members of the banjar community about the adoption.

The child who has been adopted automatically assumes the same status as the biological child of the adoptive parents. The biological parents' names attached to the child automatically change to the names of the adoptive father and mother. With this arrangement, the child's relationship with their biological parents is severed. As a result, the adopted child must obtain rights similar to those of biological children of the adoptive parents. Therefore, the adopted child has full inheritance rights like a biological child, which may supersede biological siblings' and adoptive parents' inheritance rights.

### The Position of Adopted Children Regarding the Inheritance of Adoptive Parents According to Balinese Customary Law

The process of adopting children that commonly occurs in Balinese customary society is carried out by married couples, typically if the adopting party does not have male offspring in the family. Adopted children's status and role are equal to biological children's. The presence of adopted children for adoptive parents is to ensure that the adopted child can take care of them in their old age and continue their obligations in the *pakeraman* (community). Therefore, it can be concluded that the presence of children is crucial in Balinese customary society.

In Balinese customary society, adopting children occurs when a family does not have male offspring who will become the heirs. This process is common in Balinese customary society due to the patrilineal system, which refers to the male lineage. Patrilineal lineage emphasizes male descendants, and the position of males is highly prioritized as heirs. In Bali, someone can adopt another person's child to be legally recognized through a customary ceremony called "peperasan," where a close family member or another person's child can be considered as one's child.

In Balinese traditional society, the process of adopting a child is a legal treatment, which contains the process of releasing the child's family relationship with his biological parents and transferring the child's legal position to his adoptive family. The process of adopting a child in Bali, as usual, is based on the principle of adopting someone else's child to then use it as your child as a biological child correctly and legally according to national law and Balinese customary law. Thus, couples who are married but have no children can adopt children. If in a marriage, the husband wants to adopt a child, the husband must first ask for permission and approval from the wife, and vice versa; if the wife wants to adopt the child, the wife must ask for the husband's approval.

In Balinese customary law, an adopted child holds the same status as what is understood as an

adopted child in national law. In this regard, the adopted child who becomes part of the adoptive family is regarded as a biological child. Subsequently, the adopted child will be granted the same rights as a biological child. It includes legitimate children who are children legally adopted.

The position of an adopted child concerning the adoptive parents is that of a biological child or one's child. Furthermore, the adopted child is entitled to inheritance rights and civil status. It is also evident in the customary law of Balinese society, where the act of adopting a child involves legally releasing the child from their family ties and integrating them into the adoptive father's family, thereby subsequently establishing the child's status as a biological child. This entails the consequence that all rights and obligations about the adoptive parents will be continued by the adopted child, as befits a biological child. Therefore, the adopted child has rights and responsibilities within their adoptive family as follows:

Adopted children have the right to maintain family relationships as well as possible to create a harmonious relationship between the families of both parties. Additionally, he is entitled to the inheritance of his adoptive parents.

Adopted children have more non-material obligations, namely obligations of responsibility (*tegenan*), namely carrying out the duties or obligations of their adoptive parents regarding village manners (*krama desa*), carrying out *piodalan* at family holy places such as *merajan* or *sanggah* their adoptive parents, carrying out the *manusa yadnya* ceremony after their adoptive parents pass away. This has consequences where all the rights and obligations of the adoptive parents will be continued by the adopted child himself, just like a biological child. In Balinese traditional law society, it is said that children's obligations are immaterial.

## Conclusion

Generally, child adoption can be defined as an activity involving the process of adopting someone else's child based on the legal provisions applicable in society. The law that applies to the child adoption process in Bali includes two provisions: normative legal provisions as a form of authentication and administrative proof that the child adoption procedure has been carried out. Furthermore, the provisions of customary law are part of respect for ancestral legal culture. They can be symbolized that adopting a child based on Balinese customary law is considered valid if conducted according to the procedures and requirements determined by customary law in Bali. Thus, it can be concluded that the inheritance rights of adopted children whose adoption complies with the provisions of normative law and Balinese customary law are the same as the position of biological children.

The position of an adopted child towards the adoptive parents is as a biological child or their own child. The adopted child is then considered entitled to inheritance rights and civil status. This is also shown in the customary law of Balinese society, where the act of adopting a child is a legal act of releasing a child from his family ties and placing the child into the adoptive father's family so that the child has the status of a biological child. This has the consequence that all the rights and obligations of the adoptive parents will be continued by the adopted child himself, as befits a biological child. In other words, the position of an adopted child regarding the inheritance of the adoptive parents, according to Balinese customary law, is that the adopted child can continue all forms of rights and obligations existing to the adoptive parents.

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