

The Involvement of Balinese Customary Law in Judicial Consideration (A Study of Supreme Court Decision Number 1331/K/Pdt/2010)

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Received: 29-10-2025

Revised: 05-11-2025

Accepted: 26-11-2025

Abstract

This study aims to analyze how Balinese customary law is accommodated in court decisions, particularly in Supreme Court Decision Number 1331/K/Pdt/2010, and its implications for the practice of gifts (*hibah*) and inheritance rights in society. The main research problem is how judges integrate customary law with national law within the context of legal pluralism. The research method employed is normative-juridical, using a systematic and historical analytical framework, complemented by a socio-legal approach to examine the social relevance of the decision. Research data are derived from court decisions as primary legal materials, relevant statutes and regulations as secondary legal materials, and academic literature and legal documents as tertiary supporting materials. The findings indicate that the judge's considerations in the decision affirm recognition of Balinese customary law within the limits of national law, while emphasizing the importance of social context in gift and inheritance practices. In conclusion, integrating customary law into court decisions strengthens the implementation of legal pluralism in Indonesia, but requires further attention to harmonization with positive law to ensure inclusive justice.

Keywords: Balinese Customary Law, Legal Pluralism, Court Decision, Gifts, Inheritance.



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INTRODUCTION

Indonesia is an archipelagic nation characterized by an extraordinary diversity of ethnic groups, languages, religions, and sociocultural traditions. Today, there are approximately 1,340 ethnic groups spread across the Indonesian archipelago, each maintaining its own unique cultural identity and heritage, contributing to the nation's rich multicultural character. This vast ethnic diversity has given rise to a wide variety of traditions, with each group developing its own distinctive customs and cultural practices that reflect their unique identity and heritage. This diversity makes customary law and traditions (*adat*) one of the fundamental social norms regulating community life at the local level. (Sukerti, 2012). Customary law (*adat*) is not merely a set of personal habits but a collective system of rules that regulates family relations, mechanisms for managing and transferring land, provisions regarding inheritance, as well as procedures for resolving disputes that have been passed down through generations and are deeply rooted in the local social traditions. One of the most widely developed collective rules is the concept of *tanah ulayat* (customary land). Customary land refers to territories that are traditionally governed and administered by tribal leaders. Under customary law, the authority to manage and utilize these lands is entrusted to each respective ethnic community. This governance system has been preserved and practiced for generations, reinforcing the legitimacy

and strength of customary ownership over such lands. The existence of customary law reflects a set of norms that coexist alongside state law and function within various communities as an essential source of social legitimacy in regulating relationships between individuals, families, and society (Alaydarani & Kistiawandira, 2023). In *Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia*, the state recognizes the existence of customary law communities and their traditional rights. This recognition places customary law within the national legal system. In practice, the constitutional recognition and legal status of customary law in statutory regulations demonstrate that customary norms are not only a social phenomenon but also a binding legal entity. The recognition grants legal validity to customary norms, provided that such norms remain consistent with the fundamental principles of the state, serve the public interest, and do not conflict with superior statutory provisions or national law. This formal recognition requires a regulatory framework capable of harmonizing the oral, particular, and dynamic nature of customary law with the legal certainty demanded by the national legal system (Rahmawati et al., 2025).

According to Moh. Koesno, customary law constitutes a set of teachings that serve as guidelines for life within a particular community. In this sense, customary law can be understood as rules and directional instructions that regulate how members of a community conduct their lives, and therefore its applicability is limited only to the society that adheres to it. One example of customary law that still exists and remains in force is Balinese customary law, which becomes the focus of this study. Customary law continues to play an important role in various aspects of life, including matters of marriage and inheritance (Artadi, 1981). Balinese society recognizes various forms of customary marriage, each carrying its own meaning and rules. One well-known form is the *Mepanak Bareng* or *Negen Dadua* marriage, which reflects the richness of local traditions and the strong social values upheld by the community. Bali is deeply rooted in its customary legal system, which continues to exist and function strongly today. In addition to customary marriage law, Balinese society also strictly maintains its customary inheritance law. Balinese customary inheritance is patrilineal in nature, in which primary inheritance rights are vested in the male lineage. Customary rulings on inheritance are firm and are intended to preserve the continuity of the family line (*warga*) and maintain the integrity of inherited property (Media, 2022).

The recognition of customary law in Indonesia is constitutionally affirmed in Article 18B paragraph (2) of the 1945 Constitution, which obligates the state to respect indigenous law communities and their traditional rights as long as they remain alive and in accordance with the principles of the unitary state. The constitutional acknowledgment of customary law serves as a strong foundation for creating harmony between customary norms and national legal rules. This recognition encourages the formulation of regulations and legal interpretations that help reduce overlaps between the two systems. Furthermore, the judiciary's consistent practice of considering local customary rules alongside formal legal provisions demonstrates an approach that is contextually appropriate and responsive to the needs of society (Renanda & Wahyu, 2024). Thus, the role of judges in maintaining a balance between these two legal systems contributes to the formation of dynamic court decisions, which strengthen legal pluralism and

gradually enhance public trust in the law, while simultaneously respecting local uniqueness and national principles (Mansur, 2018).

Constitutionally, Indonesia is declared a “state based on law,” as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that “the State of Indonesia is a state based on law.” This provision emphasizes that all aspects of national and state administration must be grounded in law, rather than based solely on power. As a state based on law, Indonesia adheres to a positive legal system, namely a legal system derived from written legislation enacted by authorized institutions and possessing binding power on the general public. Positive law is imperative and normative in nature, meaning that every citizen is obligated to comply with the applicable laws regardless of social or political status. The positive legal system in Indonesia is largely influenced by the Continental European legal tradition (*civil law system*) inherited from the Dutch during the colonial period. Within this system, written law (statutory regulations) serves as the primary source of law, and legislation is organized into a clear hierarchical structure as regulated under Law Number 12 of 2011 concerning the Establishment of Legislation. (Rato, 2015).

In addition, the Indonesian positive legal system also reflects a form of legal syncretism, namely the coexistence and interaction of *Western law*, *customary law (adat law)*, and *Islamic law*. However, within the formal framework of the state, positive law holds the highest authority and serves as the foundation for every action taken by the government, law enforcement agencies, and citizens (Purbacaraka & Soekanto, 1979). This principle reflects the *principle of legality*, which means that every legal act must have a legitimate legal basis, as emphasized in the maxim *nullum crimen sine lege, nulla poena sine lege* (there is no punishable act without a governing legal provision). Thus, the implementation of positive law in Indonesia serves as concrete evidence of the state's commitment to legal certainty, justice, and utility. Positive law functions *not only as an instrument of social control but also as a means to achieve the goals of the state as stated in the Preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and the homeland of Indonesia, and to realize social justice for all Indonesian people*" (Rahardjo, 1991).

This research holds a high degree of urgency considering the limited public understanding of *tajdid nikah* (marriage renewal) and its legal implications. Misinterpretations regarding the legal status of marriage frequently lead to uncertainty in household life, particularly concerning the legal status of children. Furthermore, this research can serve as a reference for relevant institutions, such as the Office of Religious Affairs (KUA) and Islamic legal authorities, in formulating policies and providing education to the public regarding marital law that is in accordance with the provisions of Islamic law (*syar'iyah*) and positive law in Indonesia.

In addition to applying a positive legal system, Indonesia also recognizes customary law as a legitimate source of law, one of which is Balinese adat law. In Balinese custom, inheritance tradition reflects a patrilineal character in which the *purusa* (male descendants) are positioned as the primary heirs, while daughters (*pradana*) are not entitled to inherit because the continuation of the lineage is attributed to males. Nevertheless, customary law is not static; there are exceptional rituals that allow the recognition of inheritance rights for daughters under certain circumstances. The Supreme Court Decision No. 1331 K/Pdt/2010 illustrates how the court took Balinese customary principles into consideration while simultaneously providing

space for the recognition of daughters' inheritance rights when the relevant customary requirements are fulfilled. This decision demonstrates a judicial effort to bridge respect for local traditions with the principles of national law. Based on this description, the involvement of customary law in the implementation of Indonesia's positive legal system highlights the need for research examining how customary law operates within the enforcement of positive law in Indonesia, particularly in the Study of the Supreme Court Decision No. 1331 K/Pdt/2010.

RESEARCH METHODS

This research employs a normative-juridical approach combined with a socio-legal approach to provide a more contextual analysis. Referring to the views of Wheeler and Thomas, socio-legal studies constitute an alternative approach that critically examines doctrinal studies of law. The term "socio" in socio-legal studies represents the interrelationship between law and the social contexts in which it operates. The analytical framework adopted in this study consists of systematic and historical interpretation. Systematic interpretation is applied to examine the relationship between national legal provisions, Balinese customary law, and prevailing principles of justice, while historical interpretation is used to trace the development of Balinese customary law practices as reflected in court decisions and their underlying social contexts.

The legal materials used in this research include primary, secondary, and tertiary legal sources. Primary legal sources consist of the Supreme Court Decision No. 1331/K/Pdt/2010, Law No. 5 of 1960 concerning the Basic Agrarian Law, as well as regional and village regulations related to Balinese customary law. Secondary legal sources include books, journals, and scholarly articles discussing customary law, inheritance law, and the practice of grant transfer (*hibah*) in Bali, whereas tertiary legal sources consist of legal encyclopedias, legal dictionaries, and official government publications.

The object of this study is Supreme Court Decision No. 1331/K/Pdt/2010, which was selected due to its significance as a landmark case demonstrating the recognition of Balinese customary law by national courts, particularly in relation to grants and inheritance rights. This decision illustrates the interaction between customary law and national law, as well as judicial considerations that reflect the application of legal pluralism. The decision is analyzed by identifying the core legal reasoning, examining the judge's considerations, classifying findings based on aspects of positive law, customary law, and social factors, and comparing them with other legal literature to assess the consistency and implications of the decision for customary law practices.

RESULTS AND DISCUSSION

Each region possesses its own unique set of customary laws that function to regulate daily interactions and social order within the community. These customary laws constitute a body of living rules that emerge organically from the traditions, values, and collective experiences of the people. Fundamentally, such laws are deeply rooted in the community's culture and have evolved in parallel with its social development, making them an integral and inseparable part of the society's way of life (Teams, n.d.). Customary law serves as a fundamental foundation and essential guideline for communities living in a particular region. It is preserved and upheld to ensure the continuity of order and social harmony in everyday life. This system of customary

law regulates how individuals interact with one another, including how they communicate, behave, and carry out various actions within their community (Mezak, 2006).

Customary law that is recognized and practiced within society is fundamentally closely related to spiritual and religious principles. A concrete example can be found in the Balinese Customary Law community, which implements customary regulations that are strongly rooted in the doctrines and moral values of Hinduism. This religious influence continues to play a significant role in shaping the social order and everyday life of the community. The Balinese Customary Law community itself mainly consists of Hindu adherents who preserve ancestral traditions and identities, both those associated with specific customary villages and those bound by genealogical ties within the *soroh* (lineage) system.

The kinship or family system serves as a framework for tracing ancestral lineage, enabling individuals to identify blood relations and familial connections. Through this system, a person can clearly understand the duties or obligations (*swadharma*) that must be fulfilled, as well as the rights or authorities (*swadikara*) that will be received. Essentially, this system functions as a social structure that maintains harmony and order within the family by defining relationships, responsibilities, and privileges among its members. In general, there are three widely recognized types of kinship systems (Prakarsa et al., 2025). First, the *patrilineal kinship system*, in which lineage and inheritance are traced through the father's line. Second, the *matrilineal kinship system*, in which lineage follows the mother's line. Finally, there is the *parental or bilateral kinship system*, which recognizes both the father's and mother's lineage. In Balinese customary law, society generally adheres to the *patrilineal kinship model*, locally referred to as the *kapurusa* or *purusa* system, in which family identity, inheritance rights, and social responsibilities are passed down through the male line (Navydien et al., 2023).

Marriage holds a highly significant role in Balinese society as one of the most fundamental forms of kinship that strengthens family bonds. According to I Gusti Ngurah Bagus, traditional customs shaped by the *dadia* (clan) system and *Wangsa* (caste) indicate that marriage is ideally carried out within the same clan or, at the very least, between individuals of equal social status and caste. In Balinese culture, members of the same clan are regarded as equal in terms of tradition, religion, and caste position. Therefore, maintaining marriage within the boundaries of the clan helps prevent potential conflicts and disharmony that may arise from unions between individuals of different caste levels (Suketi, 2020). Furthermore, these customary norms place particular emphasis on ensuring that women from higher castes do not marry men from lower castes, as such unions are considered to disrupt the established social hierarchy. The caste system itself is deeply rooted in a patrilineal lineage, meaning that lineage and social status are inherited through the male line, which further reinforces these marital and social conventions:

1. The Brahmana caste, regarded as the highest social group within the Balinese caste system, traditionally consists of priests and scholars. Within this caste, a Brahmana who serves as a priest is typically guided and assisted by a *sisya* (a spiritual disciple or religious assistant) who is responsible for supporting the priest's welfare and spiritual duties. In major religious rituals and ceremonies, Brahmana priests hold a central role as the principal officiants. The family names of Brahmanas often reflect their ancestral origins and spiritual lineage. Male descendants customarily bear the name "Ida Bagus," while female descendants are known

as “Ida Ayu,” though both may simply use “Ida” as a prefix. The traditional Brahmana household is referred to as a “Griya,” which commonly functions not only as a family residence but also as a spiritual center.

2. The Ksatriya caste occupies an important position in Balinese society, particularly in matters of governance and politics. Members of this caste are descendants of royal families and rulers of ancient Balinese kingdoms. Even in modern times, remnants of these historical power structures persist, with some villages still viewing themselves as loyal subjects to the descendants of these royal lineages. Individuals belonging to the Ksatriya lineage commonly bear aristocratic titles such as “Anak Agung,” “Dewa Agung,” “Tjokorda,” or simply “Dewa.” Their traditional residences are known as “Puri,” symbolizing their royal heritage. Conversely, descendants of the King’s trusted attendants or high-ranking military leaders who were once part of the royal circle but experienced a decline in status due to certain historical circumstances often use names such as “I Gusti Agung,” “I Gusti Bagus,” “I Gusti Ayu,” or “I Gusti.” Their houses are commonly referred to as “Jero,” denoting a noble lineage, yet one that holds a secondary rank within the royal hierarchy.
3. The Sudra caste, also known as Jaba, represents the majority of the Balinese population but occupies the lowest position within the traditional social hierarchy. Members of this group are expected to use *Sor Singgih Basa*, a refined and respectful register of Balinese language, when addressing individuals from the higher *Tri Wangsa* castes namely Brahmana, Ksatriya, and Waisya. Despite experiencing gradual social advancement, the Sudra community is still frequently positioned as participants or followers of the *Tri Wangsa*. In naming conventions, Sudra individuals are generally identified according to their birth order, using names such as Wayan (first-born), Made (second), Nyoman (third), and Ketut (fourth). Their family homes are commonly referred to as “Umah,” a simple term meaning “house,” which reflects the modest lifestyle traditionally associated with this caste (Cahyani & Amelda, 2022).

kinship structure based on a patrilineal system, which traces lineage through the father’s line, requires married women to become part of their husband’s lineage. As a result, an individual considers all relatives on the father’s side to be members of their own kinship group, while relatives on the mother’s side are regarded as belonging outside of that group. With regard to inheritance, the right to inherit property is generally granted to male children, while female children receive inheritance only indirectly through their husband’s family after marriage. This reflects a broader social principle in patrilineal communities, in which the continuity of lineage and ownership of property is preserved through the male line (Jimly Asshiddiqie, 2021). In Indonesia, customary law is often referred to as a kinship-based legal system that regulates various aspects of social life, including the distribution of inheritance. In Balinese society, inheritance follows a “majority system,” in which inheritance rights are granted exclusively to the eldest son. This practice reflects deep cultural and religious influences, bearing similarities to the kinship principles outlined in the *Manawa Dharmasastra*, the renowned ancient Hindu legal text. According to Balinese customary inheritance norms, men occupy a central and privileged position as heirs. They are regarded not merely as recipients of property, but also as

spiritual successors entrusted with the moral and religious duty to preserve family traditions and fulfill obligations toward their parents and ancestors (Putriani & Ardana, 2016).

This situation differs for daughters, who, after marriage, are considered to join their husband's family. Although they become part of their spouse's household, their responsibilities toward their birth family do not entirely cease. This continued sense of obligation reflects the belief that women hold rights and responsibilities that are distinct from those of men (Hadikusuma, 2003). As a result, under Balinese customary law, daughters are typically excluded from inheritance rights, as the privilege of inheriting family property traditionally belongs to sons. The Balinese customary legal system shapes family relationships and the distribution of wealth based on a combination of lineage rules, traditional ceremonies, and a distinct social structure. Changes in contemporary social and economic life, as well as modern family patterns, influence how people perceive the roles of men and women within customary law. Among the various ways of determining relationships and access to wealth, marriage patterns play a crucial role because they define an individual's lineage and material rights. Therefore, to understand the position of women in customary inheritance law, it is necessary to analyze marital practices that affect women's legal and social status within the customary community. Regarding reforms and developments in Balinese marital customs, the Nyentana marriage process can be applied as part of this evolving system (Hadikusuma, Sh, 2003).

The development of women's roles within the Balinese customary inheritance system cannot be examined without considering distinctive marital practices, such as **Nyentana**, a form of marriage in which the husband "enters" the wife's lineage and resides in her household. This practice symbolically and practically transforms kinship relationships as well as inheritance rights (Atmaja et al., 2017). In this context, Nyentana is often practiced by families without male heirs to position daughters as heirs, or Sentana Rajeg, to continue the lineage and fulfill customary obligations. As a result, the customary status of daughters can change to be equivalent to that of males, potentially granting them inheritance rights that were previously exclusive to sons. The Nyentana ritual highlights the uncertainty within the Balinese customary inheritance system. On one hand, it provides women with a means to remain economically and symbolically connected to family property. On the other hand, these rights are conditional, varying according to local traditions, and often face resistance from the community because they disrupt the male-lineage-based kinship structure (Konstitusi & Indonesia, n.d.).

Therefore, discussions on gender equality in inheritance in Bali must include an analysis of the Nyentana ritual as a customary mechanism that has a dual function: serving as a solution in cases of absent male heirs while also highlighting the limitations of the customary system in achieving equal rights without the intervention of state law and broader social changes. Increasing education, the influence of modernization, and awareness of human rights have the potential to encourage a reinterpretation of the Nyentana practice, so that it can function not only as a means of preserving lineage but also as a tool to reduce discrimination in the distribution of inheritance (Asshiddiqie, 2006). Customary law, as a living cultural framework, demonstrates a considerable capacity for adaptation. Grounded in social legitimacy, values of mutual cooperation (*gotong royong*), deliberation (*musyawarah*), and local wisdom, customary institutions have the potential to act as drivers of inclusive normative change. Through internal processes such as village deliberations, the strengthening of women's roles within customary

institutions, and the formal recording of customary rules, the Nyentana practice can be reformed to maintain its social function of safeguarding lineage continuity while simultaneously providing broader opportunities for equitable inheritance distribution. This approach does not merely introduce external norms but leverages local potential to generate solutions based on collective agreement, respecting community identity, and applying principles of equality. Consequently, customary law is not only a guardian of tradition but also a progressive instrument for realizing justice in inheritance practices (Thontowi, 2015).

Mepanak Bareng marriage is one form of traditional marriage in Balinese society, emerging from the social need to maintain balance between the paternal and maternal lineages. The term *Mepanak Bareng* literally means “having children together,” which, in customary understanding, refers to a marriage between two only children who are each considered the heirs (*sentana*) of their respective family lineages. In the Balinese kinship system, which follows a patrilineal structure (*kapurusa*), lineage is traced through the male line. This means that only male children are regarded as family successors and as inheritors of customary and spiritual responsibilities toward the ancestors (*pitara*). In cases where a family has no male children, the lineage is considered broken (*sentana alit*), resulting in the family losing its heir to both rights and customary obligations. To address this issue, Balinese customary society recognizes several forms of marriage, including:

1. Ordinary marriage (*purusa*), in which the woman joins the husband’s family and the descendants follow the husband’s lineage.
2. Nyentana marriage (*ngidih sentana*), in which the man joins the wife’s family and the descendants follow the wife’s lineage.
3. Mepanak Bareng marriage (*pada gelahang*), a form of marriage in which both parties, male and female, continue their respective family lineages

Thus, Mepanak Bareng represents a middle ground (a win-win solution) between the *purusa* and *nyentana* systems. Through this form of marriage, both the male and female parties retain their customary rights and obligations within their respective families. Children born from this marriage are usually “divided” symbolically: for example, the first child follows the father’s lineage, while the second child follows the mother’s lineage. Under customary law, a Mepanak Bareng marriage is recognized if agreed upon by both families and formalized through customary ceremonies and approval by the local customary institution. However, to obtain formal legal recognition within the national legal system, the couple must secure a court decree (known as *lekita*), which is an official document from the District Court declaring the validity of the marriage system and determining the legal consequences regarding inheritance, joint property, and family responsibilities. From a socio-philosophical perspective, Mepanak Bareng reflects the principle of balance (*Rwa Bhineda*) in Balinese Hindu teachings, which emphasizes maintaining harmony between two opposing elements to achieve equilibrium. This form of marriage also symbolizes a compromise between strong customary traditions and modern social demands that highlight gender equality in the distribution of family responsibilities (Hamimah, 2018). Thus, the Mepanak Bareng marriage is not only an innovation within the Balinese customary marriage system but also reflects the adaptive dynamics of customary law in response to social developments and the needs of modern

families, without abandoning spiritual values and ancestral traditions (Hastabrata & Septyningrum, 2024). There is one legal document requirement that must be fulfilled when choosing the Mepanak Bareng type of marriage, namely the lekita (court-issued certificate of approval). This document is crucial because, initially, the mechanisms for inheritance, rights, and obligations in this type of marriage are considered abstract. Therefore, a court-issued certificate is needed to formalize and legally bind the rights and responsibilities of the couple and their descendants in the future.

The Balinese customary community follows a patrilineal kinship system known as kapurusa, in which lineage is traced through the father. In this system, when a woman marries, she is considered to become part of her husband's family. Male children are regarded as purusa, the primary heirs within the family. Several alternative forms of marriage exist, one of which is Mepanak Bareng. In this type of marriage, both husband and wife retain their purusa status within their respective original families and are obligated to fulfill customary duties to both families. In such marriages, the role of a second wife often differs according to local customs. Some studies on polygamy in Bali indicate that the second wife is generally not fully involved in the family's customary responsibilities (Windia, 2009). For example, the first wife manages customary ceremonies and religious obligations, while the second wife does not participate in these customary activities as long as the first wife is able to perform them. In other words, socially, the second wife holds a lower status compared to the first wife.

In terms of inheritance rights, Balinese customary law gives priority to the male descendants of the first wife. According to Balinese adat rules, the heir must come from the primary line of descent, namely the sons of the first wife. Based on general understanding and the decisions of the Supreme Court of the Republic of Indonesia, a widow (including a second wife who becomes a widow after her husband's death) is not considered a purusa heir. In Balinese customary polygamy, the main heirs are the husband's children, particularly the sons of the first wife. Children or relatives of the second wife are only entitled to inherit if the first wife and her descendants are absent. Therefore, the second wife does not receive a portion of her husband's estate; she only acts as a guardian for her young children. Overall, in traditional Balinese adat society, the second wife does not have equal status with the first wife. Socially, the second wife is regarded as a newcomer to the husband's family (Hastabrata & Septyningrum, 2024). Customary law does not require the second wife to assume the same obligations as the first wife in ritual activities. Balinese customary inheritance law does not grant any special inheritance rights to the second wife. The inheritance rights rest with the nearest purusa, namely the sons from the first marriage, while the second wife serves only as the legal guardian of her own children, not as an heir.

Supreme Court Decision Number 1331/K/Pdt/2010 is one of the significant rulings in the field of family and inheritance law. Therefore, this study was conducted to examine the role of customary law in the judicial consideration when deciding the case. The decision addresses the relationship between Balinese customary law and national law, as well as how both systems interact in determining whether a marriage is valid and who holds the right to inherit family property. The case originated from a dispute among heirs who raised questions regarding the validity of a customary marriage conducted by the defendant. The plaintiffs also sought

clarification on how the status of this customary marriage would affect their rights to the property left by the family.

This dispute arose from a disagreement between the children of the defendant and the plaintiffs, who claimed to be rightful heirs based on a Balinese customary marriage known as Mepanak Bareng or Negen Dadua. The defendant questioned the validity of the marriage and whether this form of marriage was recognized under Balinese customary law and national law. The issue became even more complex when the defendant argued that the customary marriage lacked the status of *purusa*, which refers to the position of male descendants in Balinese custom who hold full inheritance rights—a crucial requirement in determining who is entitled to inherit family property. In the social and legal structure of Balinese society, the status of *purusa* and *pradana* carries significant legal implications. A *purusa* is regarded as the one who continues the lineage and therefore has inheritance rights in his family of origin. Consequently, if a customary marriage stipulates that both husband and wife are considered *purusa* in their respective families of origin, they are still regarded as part of their original families and retain their inheritance rights.

In the previous court proceedings, the plaintiffs presented several pieces of evidence, including a marriage certificate registered with the civil registry. The certificate indicated that both spouses held *purusa* status. Additionally, an expert witness on Balinese customary law testified that the Mepanak Bareng practice has long been recognized in several customary communities in Bali, particularly in specific regions. The Mepanak Bareng marriage allows both husband and wife to remain in their respective family homes while maintaining their customary status. Consequently, neither spouse changes their status to join the partner's family, unlike in a conventional marriage where one party typically relinquishes their customary status to become part of the spouse's family.

In this case, the Supreme Court assessed that the testimony provided by the customary law expert was valid and aligned with the practices of the community. The marriage certificate was formally proper and did not conflict with national legal regulations. Furthermore, the inclusion of the status "both *purusa*" in the certificate did not violate civil registry rules, as it merely reflected the customary facts observed by both spouses. Based on this evidence, it was concluded that the customary marriage was valid under both Balinese customary law and national law.

In this case, the Supreme Court emphasized that the practice of the Mepanak Bareng customary marriage is legally recognized as a valid form of marriage under Balinese customary law, provided it can be proven and does not conflict with statutory regulations. The Court explained that the official registration of the marriage does not diminish the value or validity of customary law; rather, it serves as formal evidence that strengthens the legitimacy of the marriage under both national and customary law. In this context, the marriage certificate is not a replacement for or a negation of customary practice, but a supporting document confirming the existence of the marriage. Furthermore, the Court affirmed that both spouses retain their status as *purusa* within their respective families, thereby preserving their inheritance rights, as well as the rights of children born from the marriage to inherit from their respective parental lines. This has significant implications for determining the disputed inheritance shares. Additionally, the Supreme Court found that the lower court had erred by failing to properly consider the testimony of the customary law expert, disregarding the marriage registration evidence, and misinterpreting the legal impact of the Mepanak Bareng practice on lineage and

inheritance rights. Based on these considerations, the Supreme Court ruled that the previous decision must be annulled as it was inconsistent with the correct application of the law.

This ruling reaffirms that customary law continues to coexist with national law in Indonesia within the same legal system. The Supreme Court emphasized that customary law holds a constitutionally recognized status as long as it is alive, practiced, and respected by the community, and therefore cannot be ignored in resolving cases related to social and family life. From this perspective, civil registration does not negate customary law but serves as a supplementary mechanism providing official legal certainty for marriages. Accordingly, this ruling serves as an important example demonstrating that customary law retains binding authority and must be taken seriously, particularly in cases concerning family status, lineage, and inheritance.

The impact of this decision is significant from theoretical, practical, and policy perspectives. Theoretically, it reinforces the concept of legal pluralism by showing that Indonesia's legal system is not a single monolithic entity but recognizes and accommodates customary norms as long as they adhere to the principles of legal certainty and can be validly proven in court. Practically, the ruling serves as a guideline for notaries, civil registry officials, and customary village authorities in managing and recording customary marriages, permitting the inclusion of customary elements or status in official documents as long as they do not conflict with formal legal provisions. From a policy standpoint, the decision underscores the importance of more coordinated and organized cooperation between customary villages, civil registry offices, and local governments to integrate the registration of customary marriages into the state administrative system without diminishing the inherent values and distinct characteristics of customary law.

Supreme Court Decision Number 1331 K/Pdt/2010 is one of the rulings concerning customary law, specifically Balinese customary law. The parties involved in the dispute included Dra. Ni Made Lely Nawaksari and Ni Nyoman Sri Rahayu Madya, both daughters of the deceased heir, Drs. I Made Madia. The Governor of Bali Province, through the Regent of Karangasem and the Head of the Population, Civil Registration, and Family Planning Office of Karangasem Regency, was also involved. The respondent in cassation was Ni Made Sudiasih, AMD, the second wife of the deceased heir, while the co-respondent in cassation was Anak Agung Ngurah Manik Danendra, serving as a notary and land deed official (PPAT).

The dispute began with the marriage of Drs. I Made Madia to his first wife, who is not named in the decision, and from this marriage, they were blessed with three children, one of whom is Ni Nyoman Sri Rahayu. Subsequently, I Made Madia married the plaintiff in this case, who became his second wife, and they had two children together. I Made Madia passed away on December 7, 2006. As an heir, he naturally had assets to be inherited; however, these were never distributed to the heirs from either the first or second wife, including the plaintiff. During his lifetime, I Made Madia had created a family lineage document, which later became crucial in determining the outcome of this case. After his death, a document requiring signatures related to bank matters arose. Since I Made Madia had not provided for his heirs, the bank investigated the family lineage document prepared by him. The plaintiff argued that the document in question was forged and subsequently filed a lawsuit claiming unlawful acts committed by the defendant. In the course of the proceedings, a cassation appeal was filed, as reflected in Supreme Court Decision Number 1331 K/Pdt/2010. In this cassation appeal, the roles were reversed, with the former defendant becoming the cassation applicant, as follows:

1. Ni Made Lely Nawaksari held the status of "Purusa" in her marriage (Mepanak Bareng/Negen Dadua).

2. The defendants contested the plaintiff's claims, asserting that Ni Made Lely Nawaksari's marriage was valid under Balinese customary law.

In the cassation appeal, the petitioners requested that their appeal be granted. The judges, after careful consideration, approved the cassation petition and annulled the Denpasar District Court Decision No. 74/Pdt/2009/PT.Dps dated August 19, 2009, which had upheld the Denpasar District Court Decision No. 273/Pdt.G/2008/PN.Dps dated November 6, 2008. The Supreme Court emphasized that Balinese customary law recognizes the marriage system known as "Mepanak Bareng" or "Negen Dadua" (also referred to as Pada Gelahang/Magelar Warang). According to expert witness testimony and submitted evidence, this form of marriage exists to address the absence of male heirs in a family, allowing daughters to continue the lineage and inherit property in their original household.

Regarding inheritance in a "Mepanak Bareng" marriage, the Supreme Court stated that each spouse retains the status of "Purusa" (heir) in their respective original family. The wife remains an heir in her natal home, while the husband continues as an heir in his family of origin. In the specific case of the marriage between Dra. Ni Made Lely Nawaksari and I Ketut Sukarta, the court concluded that their union constituted a "Mepanak Bareng" marriage, noting that at the time of the marriage, Ni Made Lely Nawaksari's father, I Made Madia, had not yet had any male children.

The Supreme Court also affirmed that the registration of the marriage at the Civil Registry of Karangasem Regency made the marriage legally valid. The inclusion of the phrase "both as Purusa" in the marriage certificate did not violate the provisions regarding the registration of births, marriages, or deaths. This decision highlights the significant role of customary law in the implementation of positive law. Bali's continued application of customary law provided a strong benchmark for the court, demonstrating that judges carefully considered and fully acknowledged the existence and continuing validity of customary law in Bali in their judicial reasoning.

CONCLUSION

The analysis shows that the court recognized customary law as a legitimate source of norms capable of determining family rights, including inheritance rights, as long as they can be proven and do not conflict with national law. The relationship between customary law and state law is complementary, where civil registration and formal evidence do not negate the validity of customary law but can strengthen state recognition when evidentiary requirements are met. Traditional marriage practices such as Mepanak Bareng and Nyentana serve as adaptive strategies for Balinese society to address inheritance imbalances, although they present challenges in terms of legal certainty, protection of women, and administrative management. This reinforces the theory of legal pluralism, demonstrating that the Supreme Court not only normatively acknowledges customary law but also harmonizes it with national law through customary proof mechanisms and integration into the state legal system.

Based on these findings, national guidelines are needed to harmonize customary law with civil registration, including standards for proving customary law and recording customary statuses such as Purusa and Mepanak Bareng to ensure legal certainty. Training for judges, civil

registration officers, and customary village officials is also necessary, particularly regarding the proof of customary law, non-discrimination principles, and protection of women in inheritance disputes. Verified customary registration in areas with complex adat practices can promote orderly administration, ensuring that customary inheritance proceeds systematically and aligns with positive law. Overall, these findings confirm that positive law and customary law are closely interconnected in practice, with Supreme Court Decision No. 1331 K/Pdt/2010 demonstrating that Balinese customary law continues to be seriously considered as long as it does not conflict with the fundamental principles of national law.

REFERENCES

- Alaydarani, S., & Kistiawandira, A. P. (2023). Hak Perempuan Dalam Sistem Pewarisan Ditinjau Dari Perspektif Hukum Adat Bali. *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora*, 1(5), 72–78.
- Banakar, Reza dan Max Travers (2005), *Law, Sociology and Method* dalam Reza Banakar & Max Travers (ed), *Theory and Method in Socio-Legal Research*. Onati: Hart Publishing Oxford and Portland Oregon, hal 1-26
- Artadi, I. K. (1981). *Hukum Adat Bali dengan aneka masalahnya*. Sumber Mas Bali.
- Asshiddiqie, J. (2006). *Pengantar ilmu hukum tata negara jilid II*. https://simpus.mkri.id/uploaded_files/temporary/DigitalCollection/MjZmYjgyZjZkZDI3NDVlODNkNjkyYWE4YTJjMWI5MjU1YTAwYTU0YQ==.pdf
- Atmaja, G. M. W., SH, M., Aryani, N. M., SH, M., Utari, A. A. S., SH, M., ni Griadhi, N. M. A. Y., & SH, M. (2017). Pluralisme Konstitusional dalam Pengakuan Kesatuan Masyarakat Hukum Adat: Studi Interpretasi atas Putusan Mahkamah Agung dalam Perkara Permohonan Keberatan Hak Uji Materiil terhadap Peraturan Daerah Provinsi Bali Nomor 16 Tahun 2009. Penerbit Andi. https://books.google.com/books?hl=id&lr=&id=xilLDwAAQBAJ&oi=fnd&pg=PA1&dq=Keterlibatan+Hukum+Adat+Bali+Dalam+Pertimbangan+Hakim+&ots=zAjKZAPfyP&sig=e23J_3RUnDE_2bppVvcz-YF_d4g
- Bahder Johan Nasution, S. (2008). *Metode Penelitian Ilmu Hukum*. CV. Mandar Maju.
- Cahyani, F. A., & Amelda, D. A. (2022). Kedudukan Perempuan Hindu dalam Sistem Pewarisan Menurut Hukum Waris Adat Bali. *Jurnal Hukum Lex Generalis*, 3(6), 448–459. <https://www.rewangrencang.com/ojs/index.php/JHLG/article/view/190>
- Hadikusuma, H. (2003). *Pengantar ilmu hukum adat Indonesia*. (No Title). <https://cir.nii.ac.jp/crid/1130282271782128896>
- Hadikusuma, Sh, P. H. H. (2003). *Pengantar Ilmu Hukum Adat Indonesia Ed.Revisi*. Penerbit Mandar Maju.
- Hamimah, S. (2018). Peran Kepala Adat dalam Pelaksanaan Putusan Peradilan Adat (Desa Pegayaman Sukasada Buleleng Bali). *Jurnal Hukum Positum*, 3(1), 133–146. <https://journal.unsika.ac.id/index.php/positum/article/view/2711>
- Hastabrata, M. W., & Septyningrum, S. M. (2024). Perlindungan Hak Waris Perempuan Dalam Perspektif Hukum Adat Bali. *Jurnal Begawan Hukum (JBH)*, 2(1), 44–55. <https://journal.unisan.ac.id/index.php/JBH/article/view/78>

- Jimly Asshiddiqie, S. H. (2021). *Konstitusi dan konstitusionalisme Indonesia*. Sinar Grafika. <https://books.google.com/books?hl=id&lr=&id=QXtWEAAAQBAJ&oi=fnd&pg=PP1&dq=Jimly+Asshiddiqie,+Konstitusi+dan+Konstitusionalisme+Indonesia,+Jakarta:+Sinar+Grafika,+2010.+&ots=UMQ3mROuAC&sig=4pY5RewXngsQPQ5uXNtdVvVTiAw>
- Konstitusi, M., & Indonesia, R. (N.D.). *Pengantar Ilmu Hukum Tata Negara Jilid I*. Retrieved October 30, 2025, from <https://pptoda.org/wp-content/uploads/2023/11/Pengantar-Ilmu-Hukum-Tata-Negara.pdf>
- Mansur, T. M. (2018). *Hukum Adat: Perkembangan dan Pembaruannya*. Syiah Kuala University Press. [https://books.google.com/books?hl=id&lr=&id=swTQDwAAQBAJ&oi=fnd&pg=PR1&dq=Mansur,+T.+M.+\(2018\).+%E2%80%9CHukum+Adat+Pengembangan+dan+Pembaruannya%E2%80%9D,+Cetakan+Ke-1+\(Aceh:+Syiah+Kuala+Aceh\),+hal.+8.&ots=R8t-uUAVpc&sig=y9DKAPDT14kFFYDfprod5tz55gw](https://books.google.com/books?hl=id&lr=&id=swTQDwAAQBAJ&oi=fnd&pg=PR1&dq=Mansur,+T.+M.+(2018).+%E2%80%9CHukum+Adat+Pengembangan+dan+Pembaruannya%E2%80%9D,+Cetakan+Ke-1+(Aceh:+Syiah+Kuala+Aceh),+hal.+8.&ots=R8t-uUAVpc&sig=y9DKAPDT14kFFYDfprod5tz55gw)
- Media, K. C. (2022, June 8). *Hukum Adat: Pengertian, Sumber, dan Unsur*. KOMPAS.com. <https://nasional.kompas.com/read/2022/06/09/03000081/hukum-adat--pengertian-sumber-dan-unsur>
- Mezak, M. H. (2006). *Jenis, metode dan pendekatan dalam penelitian hukum*. https://www.academia.edu/download/33676150/lw-05-03-2006-jenis_metode_dan_pendekatan.pdf
- Navydien, M. D., Khusnul, K., & Utomo, F. (2023). *Kedudukan Hak Waris Wanita Dalam Hukum Adat Bali*. *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora*, 1, 90–98.
- Prakarsa, A., Saputra, D. H., & Sya'bana, A. Z. (2025). *Keberlakuan Peradilan Adat dalam Masyarakat Hukum Adat Bali: Posisi dan Tantangan dalam Sistem Hukum Nasional*. *Proceedings Series on Social Sciences & Humanities*, 27, 175–183. <https://conferenceproceedings.ump.ac.id/pssh/article/view/1839>
- Purbacaraka, P., & Soekanto, S. (1979). *Sendi-Sendi Ilmu Hukum dan Tata Hukum*. (No Title). <https://cir.nii.ac.jp/crid/1130282271425531648>
- Putriani, G. M., & Ardana, P. S. (2016). *Pelaksanaan Perkawinan Pada Gelahang Ditinjau Dari Hukum Adat Bali Di Desa Pakraman Buleleng, Kecamatan Buleleng, Kabupaten Buleleng*. *Kertha Widya*, 4(2). <https://ejournal.unipas.ac.id/index.php/KW/article/view/466>
- Rahardjo, S. (1991). *Ilmu hukum*. Citra Aditya Bakti.
- Rahmawati, O., Septiani, A., Gustiara, R. Z., Primananda, K., & Rahmadilla, K. A. (2025). *Harmonisasi Hukum Pidana Adat Bali dengan Hukum Nasional: Studi tentang Asas Legalitas, HAM dan Due Process of Law*. *Pikukuh: Jurnal Hukum Dan Kearifan Lokal*, 2(2), 70–85. <https://jurnal.untirta.ac.id/index.php/pikukuh/article/view/33993>
- Rato, D. (2015). *Hukum perkawinan dan waris adat di Indonesia: Sistem kekerabatan, perkawinan dan pewarisan menurut hukum adat*. (No Title). <https://cir.nii.ac.jp/crid/1130282270004024576>

- Renanda, V. S., & Wahyu, A. S. (2024). Tinjauan Terhadap Upaya Ahli Waris Perempuan Dalam Memperoleh Hak Waris Pada Sistem Waris Adat Bali. *Depositi: Jurnal Publikasi Ilmu Hukum*, 2(1), 241–249.
- Sukerti, N. N. (2012). *Hak mewaris perempuan dalam hukum adat Bali: Sebuah studi kritis*. Udayana University Press.
- Suketi, N. N. (2020). *Kedudukan Perempuan Dalam Perspektif Hukum Waris Bali*. Indonesia Prime.
[https://books.google.com/books?hl=id&lr=&id=dFHNEAAAQBAJ&oi=fnd&pg=PP1&dq=Keterlibatan+Hukum+Adat+Bali+Dalam+Pertimbangan+Hakim+\(Studi+Putusan+Mahkamah+Agung+Nomor+1331/K/Pdt/2010\)&Ots=C5t2gujwkk&Sig=Ulxwhpebohvmcvsfuwu6hmczwkq](https://books.google.com/books?hl=id&lr=&id=dFHNEAAAQBAJ&oi=fnd&pg=PP1&dq=Keterlibatan+Hukum+Adat+Bali+Dalam+Pertimbangan+Hakim+(Studi+Putusan+Mahkamah+Agung+Nomor+1331/K/Pdt/2010)&Ots=C5t2gujwkk&Sig=Ulxwhpebohvmcvsfuwu6hmczwkq)
- Teams, I. id. (n.d.). Sebaran Jumlah Suku di Indonesia. Retrieved October 30, 2025, from <http://indonesiabaik.id/infografis/sebaran-jumlah-suku-di-indonesia>
- Thontowi, J. (2015). Pengaturan masyarakat hukum adat dan implementasi perlindungan hak-hak tradisionalnya. *Pandecta Research Law Journal*, 10(1).
- Windia, W. P. (2009). Perkawinan pada gelahang di Bali. (*No Title*). <https://cir.nii.ac.jp/crid/1130282269708515328>

