



## Rights and Responsibilities of Widowed Women in the Village Balinese Customs: A Normative Analysis of the Principles of Gender Justice

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### Abstract

Widowed women in Bali often experience injustice in the fulfillment of rights and the imposition of responsibilities in social life in traditional villages in Bali. The customary law in force often places widows in a vulnerable position socially, economically, and legally, which has the potential to violate the principle of gender justice as observed in national law and human rights instruments. This study aims to normatively analyze the rights and responsibilities of widowed women in traditional villages in Bali, and to test their conformity with the principle of gender justice. This study uses a normative legal research method with a legislative, conceptual, and comparative legal approach in several traditional villages. The results of the study indicate an imbalance between customary norms and the principle of gender justice, especially regarding ownership rights, social rights, and family and customary responsibilities that are imposed in a discriminatory manner. Therefore, harmonization is needed between customary law and the principle of gender justice within the framework of national law.

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### Introduction

Customary law in Bali has an important role in regulating the socio-cultural life of the community, including the division of rights and obligations based on social status (Saraswati : 2020) <sup>[8]</sup>. In the patrilineal-based Balinese customary law system, widowed women's status tends to be seen as a party "outside" the male family, so their rights to property, residence, and social standing are limited to family agreements or customary villages (Wulandari : 2021) <sup>[9]</sup>. Based on the Decree of the Supreme Court III of MUDP Bali No.01/Kep/PSM-3/MDP Bali/X/2010, widows or often called widows are not considered as full heirs, but only have the right to manage and enjoy heritage assets as long as they are still carrying out *dharma* (customary obligations) (Mahadewi: 2024) <sup>[6]</sup>. However, in practice, this status still raises uncertainty because the parameters of customary rules (*awig-awig*) in each customary village have different *dharma* parameters so that the implementation varies and there is no clear parameter.

One of the research studies conducted in Suter Traditional Village, Bangli, showed that *widows* who continue to practice *their dharma* can live in the house of their deceased husbands, take care of their property, and be authorized to sell assets with the consent of the traditional family (Suriana: 2020) <sup>[10]</sup>. However, if they violate the *agreed dharma* such as remarrying or squandering property, then the traditional family has the right to reprimand and even return the woman to her family. Then, research conducted in Adar Titab Village, Busungbiu District revealed that widows only get limited control over the joint property after divorce due to the dominance of patrilineal customary norms (Lestari: 2023) <sup>[5]</sup>.

This condition is contrary to the principle of gender justice recognized in national law and international instruments such as CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women) which has been ratified through

Law Number 7 of 1984. The conversion of CEDAW aims to ensure that women have the same rights and opportunities as men to obtain equal benefits in all aspects of life<sup>4</sup>. The principle of equality before the law guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia also affirms that everyone has the right to fair legal recognition, guarantee, protection, and certainty without discrimination.

The results of the latest study show that the practice of gender-based discrimination against widowed women is still prevalent in Balinese customary law practices, which puts them in a vulnerable socio-economic position. Looking at the socio-economic aspect in the Bali area, especially Denpasar City, the surge in the number of divorces has reached 1,155 cases in 2024. This is due to a combination of economic factors, family conflicts, infidelity, boredom, and increased awareness of women to file for divorce. The divorce makes widows face substantial challenges after divorce (Antara: 2025)<sup>[18]</sup>.

This raises the need to further examine how customary law norms applicable to women in Balinese customary villages can be aligned with the principles of *gender justice* within the national legal framework. This research aims to provide a normative analysis of the rights and responsibilities of widowed women in Balinese traditional villages, as well as provide recommendations for harmonization of customary law with the principle of *gender justice* as a form of respect for human rights.

## 2. Research Methods

Based on the preliminary description above, the writing of this work uses doctrinal (normative) legal research methods. Doctrinal or normative research is legal research that is carried out by examining the applicable legal provisions and reviewing the practice of its application to obtain the truth based on legal logic from a normative point of view (Marzuki: 2021)<sup>[1]</sup>. This research applies the statute *approach* as the main instrument in analyzing problems. The problems identified were then analyzed using various legal materials, both primary and secondary. Primary legal materials include national laws and regulations related to *gender justice* and women's rights, as well as relevant Balinese customary law provisions. Meanwhile, secondary legal materials are obtained from legal literature, results of previous research, scientific journal articles, and reports of related institutions. After all the materials are collected, the legal and non-legal materials are processed and analyzed qualitatively, then the research results are compiled in descriptive form (Seokanto: 2018).

## 3. Results and Discussion

### 3.1. The Position of Widows in the Balinese Customary Law System

In general, a widow or *widow* in Balinese society is a woman whose husband has been declared deceased, regardless of whether they have children or not. In the perspective of Balinese customary law, widow status marks the change in a woman's social position from a wife who is in her husband's family to a woman who is "between" or no longer fully considered a member of her husband's family but also does not necessarily return to her family of origin (Marzuki: 2021)<sup>[1]</sup>. Balinese customary law is thick with a *patrilineal* system, namely lineage and inheritance rights are drawn through the male side. In this system, widowed women are not considered

as the successors of the family line (*purusa*), but only as "passengers" (*pradana*) whose legal status depends on their position as a wife.

After her husband dies, a widow woman is in principle entitled to remain in her husband's family home and enjoy the proceeds of the common property left behind, as long as she continues to carry out the *dharma* (customary obligations) of her husband's family. The Decree of the Supreme Court III of MUDP Bali No.01/Kep/PSM-3/MDP Bali/X/2010 has stipulated that widowed women who do not remarry and continue to carry out their customary obligations have the right to manage their husband's house and inheritance during her lifetime. However, in practice at the customary village level, the implementation of this right is highly dependent on *local awig-awig*, such as the results of research that has been conducted in Suter Bangli Traditional Village which explains that a widow who does not have a son is asked to leave her husband's family home on the grounds that she no longer has a successor in the family.

The position of widowed women in Balinese customary law is in a weak position due to the dominance of patriarchal values in the social structure of traditional villages. The Balinese people's view of widowed women is generally ambiguous and discriminatory. On the one hand, a widow will still be respected as long as she maintains the honor of the family and carries out her customary obligations. However, on the other hand, a widow who is no longer economically productive or remarried will be considered a burden. It was also found that there is a social stigma attached to widowed women, namely they are often seen as parties who bring misfortune or have the potential to damage family harmony because they are considered "incomplete", even some residents refer to widows as "half of the family" (Pratiwi: 2023)<sup>[7]</sup>.

The existence of such ambiguous and discriminatory views has an impact on the survival of widowed women. The impacts felt include:

- Economic Vulnerability, where many widows lose full access to inheritance because their rights are only temporary or even deprived by the husband's extended family, such as the case that occurred in the Karangasem area where a widow who sells her husband's inherited land is sued by the extended family because it is considered that they do not have the right to sell without their consent, which causes the widow to be in debt because she has no income (Bali Exspress:2023).
- Social Alienation, a widow who chooses not to live with her husband's family or prefers to remarry is often excluded from the traditional social environment such as being rarely invited to banjar meetings, removed from the list of customary customs, and losing the right to vote in village decision-making.
- Psychological burden, known as an "incomplete" woman, causes a widow to experience psychological distress, feelings of disrespect, and depression. Not a few women with widow status feel that their lives are uncertain because their rights are unclear and there are obligations that must be fulfilled (Utami: 2021)<sup>[11]</sup>.

The position of widowed women in Balinese customary law is in a weak position due to the dominance of patriarchal values in the social structure of traditional villages. Despite the existence of normative rules that give limited rights to

widows, their implementation is still influenced by *discriminatory local awigs*. The society's expectation of widows to remain loyal to their husband's family narrows their space for movement, while society's negative views further worsen the psychological and economic condition of widows. This shows the need to harmonize customary law with the principles of gender justice as regulated in national law.

### 3.2. The Rights of Widowed Women in the Perspective of National Law and Balinese Customary Law

#### 3.2.1. The Rights of Widowed Women in the Perspective of National Law

Indonesian national law is based on the principle of *equality before the law*, as stipulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states:

"Everyone is entitled to the recognition, guarantee, protection, and certainty of just law and equal treatment before the law."

In the perspective of national law, widowed women are recognized as full citizens with equal rights with men and women who are still married. The rights attached to widows include:

- The right to inheritance from the husband is based on the provisions of the Civil Code (KUHPercivil) for non-Muslim citizens or Islamic inheritance law for Muslims.
- The right to remain at home with his children, unless there are other provisions in the division of inheritance.
- Rights as guardians of children and caregivers of minor children as stipulated in Marriage Law No. 1 of 1974 or which has currently been regulated in Article 45 paragraph (2) of Law No. 16 of 2019 which is an amendment to Law No. 1 of 1974 concerning marriage.
- Ha term non-discriminatory treatment based on Law No. 7 of 1984 concerning the ratification of CEDAW, which requires the elimination of discrimination against women

in all fields, including in the family.

In national law, the position of a widow does not depend on the son or the family ties of the husband. Her rights are based on her status as an heir, mother of her children, and an independent legal subject.

#### 3.2.2. The Rights of Widowed Women in the Perspective of Balinese Customary Law

On the other hand, Balinese customary law which adheres to *the patrilineal* system stipulates that women are not the main heirs (*purusa*), but only *pradana*. This means that the rights of widowed women in Balinese customs are not absolute, but conditional. The rights of widowed women in Balinese customary law include:

- They have the right to stay in the husband's family home and enjoy the proceeds of the family property as long as they continue to practice dharma towards the husband's family.
- They are not entitled to inherit the *karapan* land (the husband's family land) in full because the main inheritance is transferred to the husband's son or brother.
- Entitled to a share of the inheritance in the form of living support (not full ownership) to raise his children, if any.
- If you remarry (*ngiwa*), the rights to the house, land, and customary obligations of the husband's family are lost.
- Widows who do not have sons tend to be more vulnerable to losing their rights, sometimes even being asked to return to their home home.

The Regulation of Pasamuhan Agung III MUDP Bali (2010) has emphasized that widows still have the right to occupy the house of their husband's family as long as they carry out their customary obligations. However, implementation in each village is highly dependent on *the local awig-awig*.

A summary of the differences between the rights of widowed women based on national law and Balinese customary law can be seen in the table as follows.

**Table 1:** Differences in the Rights of Widowed Women (National Law vs. Balinese Customary Law).

Aspects	National Law	Balinese Customary Law
Legal Basis	1945 Constitution, Law 1/1974 jo. 16/2019, Civil Code, Law 7/1984 on CEDAW	Awig-awig Customary Village, MUDP Bali Decision (2010), <i>Patrilineal Tradition</i>
Legal Position	Independent legal subjects with equal rights like other citizens	Status depends on the husband's family, not full membership if without son
Inheritance Rights	Getting the husband's share of the inheritance according to Civil Code/Law Islam	No right to family inheritance land ( <i>karapan</i> ), only the right to use it during life
Rights above Place Stay	Have the right to stay in the husband's house if there is no other division of inheritance	Right to stay if you practice the family <i>dharma</i> ; can be asked to leave if you remarry ( <i>left</i> )
Status when remarrying	Still have inheritance rights and rights as the mother of her children	Loss of rights to the husband's home, land, and customary obligations
Discriminatory Treatment	Protected from discrimination (Law 7/1984)	Still often discriminated against, seen as "incomplete" or "burden"
Applicability	Applicable nationally and coercively	Applicable locally, varies between traditional villages, and is highly dependent on <i>the awig-awig</i> of each village

This phenomenon reflects the tension between the principle of substantive justice in national law and traditional norms that are still strong in Bali. Therefore, the harmonization of customary rules with the principle of *gender* equality in national law needs to be encouraged.

### 3.3. Normative Analysis of the Principles of Gender Justice

The principle of *gender* justice is a principle that ensures equal rights, treatment, and opportunities between men and women in all aspects of life, both in the social, economic, legal, political, and cultural fields. Gender justice not only means providing equal treatment, but also paying attention to

women's special needs and conditions to achieve real equality (*equity*). Komnas Perempuan stated that gender justice includes recognition of women's experiences, roles, and contributions that are different from men, as well as efforts to remove structural and cultural barriers that lead to discrimination (Komnas Perempuan: 2021)<sup>[3]</sup>.

The principle of *gender justice* has been regulated in Indonesian national law which is outlined in various regulations, namely: (1) the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph 1 concerning ensuring equal treatment before the law, (2) Law No. 7 of 1984 concerning CEDAW, which obliges the state to eliminate discrimination against women in all areas of life including the family, (3) Law No. 39 of 1999 concerning human rights, which regulates the right of women to receive equal treatment with men, and (4) Constitutional Court Decision No.46/PUU-VIII/2010, which affirms the recognition of women's rights as single parents over children out of wedlock. Normatively, national legal frameworks are strong enough to guarantee *gender justice* but their implementation often faces cultural constraints, including among indigenous peoples.

Given that Balinese customary law is still heavily influenced by the *patrilineal kinship system*, as a result the position of women, including women with widow status, is in a weaker position and depends on the husband's family. It was found that the principle of gender justice has not been fully accommodated because *awig-awig* prioritizes the preservation of traditions rather than adjustment to the value of equality that has been contained in national law. Real cases show that widowed women often lose their right to live, inheritance, and even voting rights in banjar if they do not meet customary expectations.

Normatively, customary law must be subject to the principles of national law and human rights as affirmed in Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states: "*The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.*" This means that customary rights are recognized as long as they do not conflict with human rights principles, including *gender justice*. In practice, many customary rules in Bali do not meet these standards, resulting in veiled discrimination against women.

Therefore, it is important to harmonize customary law with national law through the revision of *customary village awigs*, socialization of gender justice values, and increasing indigenous peoples' awareness that women are equal legal subjects. This effort is in line with the constitutional mandate to maintain living customary values but still in accordance with human rights principles and the development of society in this modern era.

### 3.4. Efforts to Harmonize Customary Law with the Principles of Gender Justice in Bali Customary Villages

One of the harmonization efforts that has been carried out is Decree No.01/Kep/PSM-3/MDP Bali/X/2010 issued by the Bali Customary Village Assembly through Pasamuhan Agung III of 2010, which gives women the right to remain in their husband's family home after becoming a widow, as long as she carries out her husband's family's customary obligations. This decision is the first step in the formal

recognition of widowed women's rights in customary structures.

Several traditional villages in Bali have also revised *awig-awig* (customary rules) to adjust to the principles of *gender justice*. Example: (1) Pakraman Tenganan Pegriingsingan Village has included a provision that unmarried girls have the right to participate in customary decision-making, (2) Batuan Traditional Village (Gianyar) recognizes the right of widows to remain fully customary if they continue to carry out ceremonial and social obligations in banjar (Warmadewa University:2022). This revision was carried out with a dialogical approach, involving customary customs, community leaders, village governments, and women's empowerment institutions. Furthermore, local governments and civil society organizations such as Bali Sruti, the Bali Women's Advocacy Institute, and Komnas Perempuan are intensively conducting training, seminars, and socialization in indigenous villages to increase public understanding of women's rights. This socialization at the banjar level succeeded in increasing the awareness of residents about the importance of *discriminatory revision of awig-awig* so that residents began to accept widows as an important part of banjar.

In addition, there are economic empowerment programs such as skills training, access to capital, and the establishment of women's cooperatives. This is an important strategy to strengthen the position of women in the family and indigenous peoples. With economic independence, widowed women are more courageous to voice their rights. Although there have been harmonization efforts made, some of the challenges that will be faced are the rejection of some indigenous leaders on the grounds of preserving traditions, the lack of understanding of national law at the customary village level, and the social stigma against women who demand their rights. These challenges show that the harmonization of customary law with gender justice is not only a matter of regulation, but also a change in people's mindset.

### 4. Conclusion

From the results of this study, it can be concluded that the rights and responsibilities of widows in Balinese traditional villages are still far from the principle of gender justice. The inequality they experience is the impact of the dominance of patriarchal norms in customary law that has not been fully harmonized with national law. For this reason, concrete efforts are needed in the form of revision of customary rules, strengthening legal protection, and changing people's perspectives to ensure that the rights of widowed women are fulfilled fairly.

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