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## Inheritance Rights of Children Born in Mixed Marriages Reviewed from the Civil Code and Balinese Customary Law

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**Abstract:** This research is motivated by the existence of several legal systems in Indonesia that exist and develop in its diverse society, so that the inheritance rights of children born in mixed marriages should be obtained by examining not only through civil law in Indonesia, but also through customary law. This research was conducted to analyze how the inheritance rights of children born in mixed marriages are reviewed from the Civil Code and Balinese Customary Law. This paper was compiled using a doctrinal research method. The results of the study show that the inheritance rights in the Civil Code and Balinese Customary Law are both carried out by the testator who gives inheritance to the heirs solely to improve the welfare of the heirs. Although in Civil Law and Balinese Customary Law both want the best for their heirs, there are differences in the implementation of the distribution of the inheritance. This comparison can be seen from the differences in when the distribution of inheritance can be carried out, the differences in the elements of inheritance, the differences in objectives, and the differences in the parts of rights and obligations inherited by the heirs.

**Keyword:** Inheritance Rights, Mixed Marriages, Indonesian Civil Code, Balinese Customary Law.

### INTRODUCTION

The inheritance rights of children born in mixed marriages should be obtained by examining not only civil law in Indonesia, but also through the customary law adopted. This is because Indonesia is a pluralistic country and has several legal systems that live and develop in its society.

Parents are a pair of men and women as husband and wife who have a bond called a marriage bond. Humans as social creatures cannot actually live alone. This is due to the goals of humans who live in groups and have the same interests (Setiawati, 2018). The social environment of society also considers that the marriage bond is very important, where marriage itself will produce the smallest unit of society which is called the family (Arliman, 2019). According to Article 1 of Law no. 1 of 1974 concerning Marriage (later the Marriage Law) states that "Marriage is a physical and spiritual bond between a man and a woman as husband

and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.” (UU Perkawinan, 1974) Marriage in Indonesia is considered valid if it is carried out according to the legal provisions applicable to each religion and belief, as explained in Article 2 paragraph (1) of the Marriage Law. In Indonesia, marriages are not only carried out between Indonesian citizens, but there are also marriages between Indonesian citizens and foreign citizens which are called mixed marriages. A foreign citizen is a person who temporarily or permanently resides in a particular country and is not domiciled and is not officially registered as a citizen (Palupi et al., 2020). According to Article 57 of the Marriage Law, it states that,

“What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality and one party is a foreign citizen and one party is an Indonesian citizen.” (UU Perkawinan, 1974, Pasal 57)

Mixed marriages can be carried out in Indonesia or abroad. If a mixed marriage is carried out in Indonesia, it must comply with the terms and conditions stated in the Marriage Law.

In Article 29 paragraph (1) Law no. 23 of 2002 concerning Child Protection explains that, "If a mixed marriage occurs between a citizen of the Republic of Indonesia and a foreign citizen, the child born from that marriage has the right to obtain the citizenship of the father or mother in accordance with the provisions of the applicable laws and regulations." (UU Perlindungan Anak, 2002, Pasal 29 Ayat (1)) So children born in mixed marriages have different nationalities following their parents, so they are subject to two laws from different countries. As stated in Article 6 paragraph (1) of Law 12 of 2006 concerning Citizenship of the Republic of Indonesia (hereinafter referred to as the Citizenship Law) states that,

“In the event that the Citizenship status of the Republic of Indonesia for a child as referred to in Article 4 letters c, letter d, letter h, letter l, and Article 5 results in the child having dual citizenship, after the age of 18 (eighteen) years or is married the child must declare that they have chosen one of his nationalities (UU Kewarganegaraan, 2006, Pasal 6 Ayat (1)).”

So, in the event that a child born to a father who is an Indonesian citizen and a mother who is a foreign citizen or a father who is a foreign citizen and a mother who is an Indonesian citizen enters into a legal marriage, or can be called a mixed marriage, will have dual citizenship until the age of 18 (eighteen) years or before marriage. Once the child is 18 (eighteen) years old or has entered into a marriage, the child must determine their choice of citizenship. The declaration of citizen election must be submitted no later than 3 (three) years after the child turns 18 (eighteen) years or after marriage (UU Kewarganegaraan, 2006, Pasal 6 Ayat (3)).

In Article 832 of the Civil Code (hereinafter referred to as the Civil Code) states that "According to the law those who have the right to become heirs are blood relatives, whether legal or extramarital and the husband or wife who has lived the longest, all according to the regulations listed below. (Subekti & Tjitrosudibio, 2006)” In this case, children born in mixed marriages will become heirs and have the right to inherit the property inherited from their parents.

As explained above regarding the legal protection of children, the protection of children should be carried out by the family, community and government. Moreover, legal regulations in Indonesia adhere to the principle of bilateral inheritance, which means that a person can receive inheritance from both male and female lineages (Masrurroh & Widiastuti, 2022). So that children born from mixed marriages and having dual citizenship still have the right to receive the inheritance left by their parents. Moreover, this inheritance can provide guarantees for the child's life and future in continuing their education, as well as fulfilling the child's human rights.

Apart from national law in Indonesia, there is also the application of customary law. The Indonesian state itself recognizes the existence of customary law, as explained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "The state recognizes and respects customary law community units and their traditional rights as long as

they are still alive and in accordance with developments society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.(Undang-Undang Dasar Negara Republik Indonesia, 1945, Pasal 18B Ayat (2))” Customary law according to Prof. Dr. Soepomo, S.H. is,

“law that is not written down in legislative regulations, customary law includes rules of life which, although not determined by the authorities, are nevertheless obeyed and supported by the people based on the belief that these regulations have the force of law” (Laksana, 2020).

According to Cornelis van Vollenhoven, quoted from the book entitled Indonesian Customary Law – An Introduction by Prof. Dr. C. Dewi Wulansari, S.H., MH., SE., MM. it is explained that, customary law is a combination of rules regarding behavior that apply to native and foreign Eastern people, if they are not adhered to they have witnesses and on the other hand are not codified (because of custom) (Wulansari, 2016).

Each province in Indonesia has customary law community units with their own characteristics. One of the islands with strong customary law community unity is the island of Bali. The province of Bali, with its diversity, has customary laws that regulate the welfare of its people. The Balinese customary law community is a society that forms and implements its own laws, these laws are Balinese customary law. Balinese customary law is applied in daily life among people of the Hindu faith (Balinese Hindus) who are bound by a legal alliance, whether bound by territorial factors (villages) or bound by genealogical factors.

In essence, the principles of customary law that apply in Bali are the same as customary law in general. However, as time goes by, in its implementation it is very possible that there will be differences according to the village, kala, patra (place, time and situation) where the customary law is applied. Through the description above, the issues that will be discussed can be stated, among others, what are the inheritance rights of children born in mixed marriages according to the Civil Code and Balinese customary law and what is the comparison of the inheritance rights of children born in mixed marriages in terms of the Civil Code and Balinese customary law. The purpose of this writing is to gain knowledge and understanding regarding the explanation of the inheritance rights of children born in mixed marriages in terms of the Civil Code and Balinese customary law.

In Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), it is stipulated that, "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with developments of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. (Undang-Undang Dasar Negara Republik Indonesia, 1945, Pasal 18B Ayat (2))” Therefore, customary law lives and is recognized in the reality of society and is mixed with religious values. The life of the Balinese traditional law community is an example that there is still strong customary law community life.

In discussing matters relating to Balinese customary law, it is necessary to first understand several basic ideas that are used as an initial basis for understanding Balinese customary law. There are 3 (three) main things that form the basis for understanding the existence of Balinese customary law. These things, among others, can be called Tri Hita Karana. The philosophy of Tri Hita Karana has always been a reference and support in the life of the Balinese people. In his understanding, Tri Hita Karana can be interpreted one by one, namely "tri" which means three, "hita" which means happiness, and "karana" which means cause. So overall Tri Hita Karana means three causes of happiness (Parmajaya, 2018). These three things include (Ahitama, 2020):

#### 1. Parahyangan

Parahyangan is a relationship between humans and God Almighty. Living creatures were created by God (Ida Sang Hyang Widhi Wasa), but humans can live because of the atman which is a small spark from God that exists within humans and also all creatures created by

God. So it is mandatory for humans to always serve God as an implementation of the Tri Hita Karana teachings.

## 2. Pawongan

Pawongan is a relationship between humans and fellow humans. Humans as social creatures certainly cannot live alone and need the help of other people. So that relationships between human beings must run harmoniously on the basis of mutual honing, compassion and nurturing, sagilik, saguluk, salunglung sabayantaka which means mutual respect, mutual love and mutual guidance.

## 3. Palemahan

Palemahan is the relationship between humans and the natural environment. Humans cannot live without living materials, so humans will definitely return to their natural environment to obtain the necessary living materials. So humans must be able to protect their environment and maintain what is around them so that it is not damaged.

Apart from the Tri Hita Karana philosophy, there is also the Sad Kerti philosophy. Sad Kerti means six noble behaviors that are manifested in the development of the Balinese life order (Saputra & Heppyana, 2023). The six noble behaviors include (Saputra & Heppyana, 2023):

1. Atma Kerti, is an effort to uphold the purity that exists in the human soul so that it is able to strive for enlightenment that radiates from God (Ida Sang Hyang Widhi Wasa).
2. Samudra Kerti, is a noble effort to preserve the ocean. This can be done by maintaining cleanliness and preserving the sea and beaches from rubbish.
3. Wana Kerti, is an effort to maintain the sanctity and preservation of forests which are a source of prosperity.
4. Danu Kerti, is an effort to preserve water sources on land such as lakes and rivers. Danu Kerti is believed to be related to Wana Kerti because the process of creating water comes from the forest.
5. Jagat Kerti, is an effort to maintain the purity and harmony of relationships between living creatures. It can be implemented with mutual tolerance and respect for each other.
6. Jana Kerti, is an effort to uphold purity and balance within oneself so that one can become a quality human being.

## METHOD

The research method used in this writing is doctrinal research. Doctrinal research is research carried out by identifying legal sources then analyzing and providing interpretations of the legal sources used. Writing this research will use library materials as research sources and use primary data and secondary data by examining primary legal materials, namely statutory regulations, as well as secondary legal materials, namely scientific works. Research was carried out by understanding the norms and legal regulations related to the issues raised in this research. The research typology used in writing this research is a descriptive type of analysis. This research was carried out by describing a situation and analyzing it using data obtained through legal materials. Focuses on legal knowledge, especially in the field of civil law, and other legal knowledge as needed.

As previously explained, the form of research used is doctrinal research. So the type of data used in this research is primary data through interviews and secondary data by examining primary legal materials and secondary legal materials obtained through library materials, scientific articles and encyclopedias. The data analysis method in this research uses qualitative analysis methods. The research was carried out by managing the data obtained and then analyzing it by looking at the legal aspects contained in the legal materials obtained. After that, it will be linked to the problems studied in writing this research.

## RESULTS AND DISCUSSION

### Inheritance Rights of Children Born in Mixed Marriages According to Balinese Customary Law and the Civil Code

Inheritance is the transfer of all rights and obligations owned by someone who has died to their heirs (Milayani, 2017). Meanwhile, in general, inheritance is wealth left by an heir to his heirs. In Balinese customary law, it must first be determined whether the person who will inherit the inheritance adheres to a Hindu or non-Hindu religion. If a person does not follow the Hindu religion, then according to Balinese customary law inheritance he has no right to receive and cannot receive inheritance. Therefore, someone who has agreed to marry according to the form of marriage contained in Balinese customary law, can be considered someone who is Hindu.

Before understanding inheritance in Balinese customary law, you must first understand that there are several principles/principles for understanding inheritance in Balinese customary law, including (Windia, 2015):

#### 1. Principle of Unity

Heritage can be divided into 2 (two), namely heritage that has economic value and heritage that does not have economic value. Inheritance that has economic value, for example, includes assets in the form of land and buildings. Meanwhile, heritage that has no economic value, for example, includes sacred places (pura) and obligations (swadharma) towards family and society. The two legacies which have been divided into 2 (two) types must then be seen as one unit. It is not permissible for someone to only look at heritage that has economic value and ignore heritage that does not have economic value. If this is ignored then the principle of unity will not be achieved.

#### 2. Dependency Principle

According to the principle of dependency, a person can only obtain their rights (swadikara) after the person concerned carries out their responsibilities (swadharma). So the acquisition of swadikara will depend on the implementation of swadharma.

#### 3. Principle of Togetherness

In Balinese customary law, it is different from Western law, in the distribution of inheritance, togetherness is prioritized to determine the goodness of one another. So that it is not permissible for heirs to be selfish or discriminate in the distribution of inheritance, so peace can be created to reach a mutual agreement.

#### 4. Principle of Priority

Heirs can arise due to heredity, but not all heirs can always carry out their responsibilities and obligations properly and correctly. So the principle of priority exists for heirs who have carried out their responsibilities and obligations better than those who have not. This can be determined using the principle of togetherness, to jointly come to an agreement regarding who can take priority in giving the heir's inheritance.

#### 5. Principles of Sustainability

Of course, inheritance does not stop with one person, but will continue to the next generation. Therefore, it is better if inherited assets with economic value are set aside to be left for the next heirs. Meanwhile, inherited assets that have no economic value will definitely be taken care of and passed on to the next generation (Undang-Undang Dasar Negara Republik Indonesia, 1945). The method that can be taken is to make middle money which is then owned jointly to be saved to the next heir.

In Balinese customary law, inheritance contains several meanings, including responsibility (swadharma) carried out towards the family and community in the environment where one lives. The rights (swadikara) and assets (arta berana) left by the heir to the heirs should be managed by the heirs and passed on to the next heirs (Windia, 2015). The above responsibilities and rights include the teachings of Tri Hita Karana, namely:

#### 1. Responsibilities and rights in the field of parahyangan (holy places).



2. Responsibilities and rights in the field of pawongan (social community).
3. Responsibilities and rights in the field of palemahan (natural environment) (Windia, 2015).

According to the principle of dependency, these three responsibilities must first be carried out properly and correctly in accordance with the provisions of Balinese customary law, then after that a person is entitled to obtain rights (swadikara) over the heir's assets.

Inheritance has 2 groups, including (Majelis Desa Adat (MDA), 2023):

1. Classified based on heritage value
  - a. Inheritance of material value, such as land, savings, etc.
  - b. Heritage that has immaterial value, such as holy places and sacred objects.
2. Classified based on the nature of inheritance
  - a. A legacy that can be shared.
  - b. Indivisible inheritance.

Inheritance assets according to Balinese customary law can be divided into 3 (three) asset qualifications, including:

1. Inheritance assets (tetamian), are legacies left by ancestors from generation to generation, both those with economic value and those without economic value. Inheritance of inheritance usually belongs absolutely to a purusa. Tetamian can be divided into 2 (two), including (Majelis Desa Adat (MDA), 2023):
  - a. An indivisible tetamian that contains religious elements, such as a family prayer place (sanggah).
  - b. Tetamians that can be shared that do not contain religious elements, such as rice fields and fields.
2. Gunakaya assets, are inheritance obtained from the joint assets of the heirs. This inheritance is usually obtained when the heirs, who are husband and wife, get married and receive the property during the marriage. Examples include residential houses, land, etc.
3. Tatatadan assets, are inheritance owned by the heir which is often known as inherited assets. Tatatadan assets can be obtained in 2 (two) types, including:
  - a. Obtained through the results of one's own work (sekaya); and
  - b. Obtained through grants (jiwadana).

Through understanding the differences in inherited assets, it can be seen that each asset has its own origin/source. So that when it is given to the heirs, it is known that the inherited assets must be managed and passed on.

In Balinese customary law, there is a term for giving inheritance which is temporary in nature or known as pangupajiwa, padum pamong, or padum raksa, while the term which is permanent is called Jiwa dana (Majelis Desa Adat (MDA), 2023). Provision of temporary inheritance will be carried out until a permanent distribution of inheritance is held in the future in accordance with the mutual agreement of the heirs after the heir cremation ceremony (ngaben) is carried out. Meanwhile, permanent inheritance is carried out by means of a gift, which is a free gift from the heir to the heirs who are entitled to the inheritance. However, grants can also be given to those who do not have the status of heirs, including daughters who marry outside or sons who nyentana marriage.

In inheritance law there are elements that must be taken into account, including (Rahmah et al., 2023):

- (1) A heir is a person who has died, whether male or female, who will relinquish inherited assets in the form of rights and obligations that he had while he was still alive.
- (2) Heir, is someone who will take over the position of inheriting someone or who has the right to inheritance.
- (3) Inheritance assets are inherited assets and all the rights and obligations of the heir.

One of the elements of inheritance in the Civil Code, namely heirs, can be divided into 4 (four) groups, including:

1. According to Article 852 jo. Article 852a Civil Code, the deceased husband or wife and their children or descendants are the first group of heirs. As long as there are first class heirs, second class heirs can be excluded.
2. According to Article 854 jo. Article 855 of the Civil Code, if the heir does not leave behind a husband or wife and descendants, then the surviving father or mother and siblings of the heir become the second group of heirs. As long as there are second class heirs and no first class heirs at all, third and fourth class heirs can be excluded.
3. According to Article 858 of the Civil Code, if the heir has no siblings and there are no surviving blood relatives in one of the upward lines, then the surviving blood relatives in the upward line are either from the father's lineage or the mother's lineage (other than the father and mother of the testator) who becomes the third group of heirs. As long as there are third class heirs and there are no first and second class heirs at all, fourth class heirs can be excluded.
4. According to Article 858 paragraph (2) of the Civil Code, if the heir has no siblings and there are no blood relatives in the second line upwards, then the closest blood family in each line to the side up to the sixth degree can become the fourth class heir. The fourth group of heirs include uncles and aunts and their descendants from both the father's line and the mother's line. Then siblings of grandparents and their descendants up to the sixth degree.

As explained in Article 832 of the Civil Code, if the heir does not leave any blood relatives and does not have a husband or wife who is the longest living, then all of the heir's inheritance becomes the property of the state.

### **Comparison of the Inheritance Rights of Children Born in Mixed Marriages in View of the Civil Code and Balinese Customary Law**

According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that, "The State of Indonesia is a state of law", which means that all social order of life is based on applicable law. Indonesia adheres to several legal systems, including the civil law legal system which is written law that developed in Indonesia, the customary law system, and the religious (Islamic) legal system (Aditya & Yulistyaputri, 2019). By referring to the theory of legal pluralism, the inheritance rights of children born in mixed marriages are not only reviewed through civil law but also through customary law.

Basically, inheritance in Civil Law and Balinese Customary Law is both carried out by the heir giving inherited property to the heirs solely for the welfare of the heirs. Even though in Civil Law and Balinese Customary Law both want the best for their heirs, there are differences in the implementation of the distribution of inherited assets.

In Article 830 of the Civil Code it is stated that, "Inheritance only occurs due to death (KUHPerdata, 1847)." Then, in Balinese customary law, dividing the entire inheritance (*magi waris*), setting aside a small portion of the inheritance to be divided (*nyepih waris*), and transferring the inheritance to be managed and passed on can be discussed and carried out as long as the heir is still alive (Windia, 2015). In the opinion of Prof. Wayan P. Windia, S.H., M.Si, a Professor of Balinese Customary Law, Faculty of Law, Udayana University, said that inheritance should be done while the heir is still alive and can also be done after the heir dies, so that it can provide clarity regarding what inheritance can be requested. may be divided, and which parts can be taken care of and passed on. It can be recalled that the inheritance referred to in Balinese Customary law is inheritance in the form of responsibility (*swadharma*) towards the family and responsibility towards the community in the surrounding environment. *Swadharma* left by the heir must be taken care of and passed on to the next generation by the heirs so that the person concerned can receive *swadikara* (rights) and *arta berana* (wealth).

Apart from that, the elements of inheritance in Civil Law include, among others, the heir as a person who dies and leaves an inheritance. Then the heirs are blood relatives, both legal and extramarital and the husband or wife who lives the longest. Basically a child those

born from mixed marriages when the child has not yet reached adulthood have dual citizenship (Indonesian citizen and foreign citizen). Then after the child is 18 (eighteen) years old or the child is married, the child is obliged to determine his/her citizenship choice. Therefore, children still have the right to inherit from their parents, regardless of whether they have different nationalities from one of their parents, because those who are actually entitled to be heirs are those who are related by blood, whether legal or extramarital.

Inheritance assets can generally be explained as something given by an heir to an heir, whether in the form of goods, rights, or any receivables left behind by someone who dies. Meanwhile, in Balinese customary law, the elements of inheritance include, an heir is a person who leaves swadharma (obligations) and swadikara (rights) in the family, dadia (extended family), and traditional communities. Then the heirs who are the successors of the heir's descendants, then the heirs who are the successors of the heir's descendants who have the right (swadikara) to the inheritance. Then inheritance is all swadharma (obligations) and swadikara (rights) related to parahyangan (the relationship between humans and Almighty God), pawongan (the relationship between humans and fellow humans as social creatures), and palemahan (human relationships with the natural environment). and/or arta berana (wealth) left by heirs in the family, dadia (extended family), and traditional communities. The position of daughters in inheritance according to Balinese customary law has also been considered after the birth of Pasamuhan Agung III MUDP which positioned daughters as heirs, where before this decision daughters were not considered heirs in the patrilineal family system, even though daughters also carried out swadharma (obligations) in his family, swadharma in the neighborhood where he lives by being responsible in youth organizations, and swadharma to his ancestors, the person concerned should be able to get his swadikara (rights) also as one heirs who are then considered heirs. As explained previously regarding the inheritance rights of the heirs, because they have carried out their obligations (swadharma), they are entitled to a share in the inheritance.

The purpose of inheritance in Civil Law is to distribute assets left behind by someone who has died. The subjects who receive the inheritance are people who are entitled to become heirs according to the Civil Code and are counted head by head. Meanwhile, in Balinese customary law, those entitled to inheritance are the heirs who are responsible for carrying out obligations that must be taken care of and passed on. So that the subject who receives the inheritance is the heir who is responsible for carrying out his obligations. The spirit of inheritance according to Civil Law is individual, while the spirit of inheritance according to Balinese customary law is collective (Windia, 2015b). So the principle of inheritance distribution in Civil Law is that every heir, regardless of carrying out their obligations or not, still has the right to inherit, but this does not apply to Balinese customary law. Civil law provides protection to heirs formally following statutory provisions, whereas customary law places more emphasis on the principle of kinship.

A person's right to inherit according to Article 838 of the Civil Code can be declared invalid or an heir is not fit to be an heir and excluded from inheritance. This happens if someone is convicted of killing or attempting to kill an heir. Apart from that, if a person is found guilty by a judge's decision of making a false complaint regarding an heir, this will cause him or her to receive a prison sentence of five years or a heavier sentence. Then, if someone uses force or bad behavior to prevent the testator from canceling his will, and someone who embezzles, damages or falsifies the contents of the testator's will, their inheritance rights will be lost and excluded from inheritance. Those whose inheritance rights have been lost and are excluded from inheritance must return everything they have enjoyed since they inherited the inheritance. However, children born to those who have fallen as heirs are not excluded if they later have a calling to become heirs.

Meanwhile, according to Balinese Customary Law, a person's right to inherit can be said to be forfeited if the person concerned abandons their obligations and responsibilities as a



Hindu, and someone who has full ninggal kedaton. However, the right to inheritance can be restored if the person in question has carried out his or her family and ancestral obligations as a Hindu properly and has fulfilled the requirements as a member of the community in a traditional village, then has carried out his obligations towards the local traditional community and the rights to the inheritance of his parents can be restored. is inherited property that has not been legally transferred to another person.

Therefore, regarding the division of inheritance, basically it can be seen that the Civil Code has a rule that inheritance takes place after the testator dies. Meanwhile, in Balinese Customary Law, inheritance can be carried out while the heir is still alive or when the heir has died. The Civil Code has determined the shares given to heirs, head by head in detail. In the event that there are illegitimate children, or there is a will given to someone other than the heir, the portion of the inheritance that can be given is regulated in the Articles contained in the Civil Code. The Civil Code also stipulates the absolute share (*legitieme portie*) that should be received by the heirs. Meanwhile, in Balinese Customary Law, inheritance distribution can be discussed together in deliberation by prioritizing responsibilities related to the rights and obligations of the heirs. The heir can distribute the inheritance when the heir is married. The distribution of inheritance in Balinese Customary Law also applies the principles explained in the previous chapter, including the principle of unity, the principle of dependency, the principle of togetherness, the principle of priority and the principle of sustainability. So that inheritance distribution can be done by deliberation and consensus. However, if the distribution of the inheritance is carried out after the heir dies, the distribution must be carried out after a series of *pitra yadnya* ceremonies (sincere sacrificial procession to the ancestors), in this case a series of cremation ceremonies for the deceased heir have been completed.

Regarding the elements of inheritance, between the elements in the Civil Code and Balinese Customary Law there is a slight difference, namely in 1 (one) element, namely inheritance. Not all heirs are heirs, but all heirs are heirs. Inheritance means descendant, while heirs are descendants who have the right to inheritance. This is related to the principle of dependency, where heirs who carry out their obligations in the family and also in their community are called heirs. The heir is entitled to a share of the heir's inheritance. However, descendants who cannot possibly carry out their obligations and responsibilities within their family and community cannot be considered heirs, but are still heirs. Back again, because heirs who are not heirs are not entitled to independence from the heir's wealth because they do not implement *swadharma*. So the elements of inheritance in Balinese customary law include heirs, inheritance, inheritance and heirs.

If we then pay attention to Article 852 of the Civil Code, which explains that inheritance can be carried out by blood relatives without distinguishing between male and female gender, they have the right to inherit equally head by head. This is different in Balinese customary law which stipulates that children with *purusa* status and children with *predana* status receive different shares. In comparison, children with *purusa* status will get 1 (one) share of the inheritance, while children with *predana* status will get half the share of inheritance received by children with *purusa* status.

Meanwhile, children who have married and have a family consisting of a wife and children are still considered to have inherited the property inherited from their parents in civil law. Meanwhile, in Balinese customary law, if a child of *purusa* descent already has a family through marriage, he will still inherit from his parents who have *purusa* status. However, for children who have *predana* status or have left a limited *kedaton* where it is still possible for them to carry out their obligations (*swadharma*) as Hindus, they are entitled to receive a share of *ategen asuwun* or what is called two to one, that is, they get less than those who have *purusa* status. If a person with *predana* status then leaves the full *kedaton* such as changing religion which can occur due to marriage, then the person concerned has no right at all to the inheritance

because the person concerned is deemed to no longer be able to carry out the obligations (swadharma) of the Hindu religion within the family, community and also to the ancestors.

## CONCLUSION

In determining the inheritance rights of children born in mixed marriages, one must first look at the form of marriage entered into by the parents. In Balinese customary law, it can be analyzed that a man who is an Indonesian citizen who wants to marry a woman who is a foreign citizen, the form of marriage that is carried out is an ordinary marriage. Marriage is carried out by men who invite women to marry and become part of the man's family to continue the family's legacy. Meanwhile, if a man is a foreign citizen who marries a woman who is an Indonesian citizen, then the form of marriage carried out is a nyentana marriage. Marriage is carried out by women who invite men to marry and become part of the woman's family. So the descendants who continue are the descendants of the woman.

Inheritance exists to provide inherited assets to heirs so that the heirs can prosper. However, it is not only inherited assets that heirs can give to their heirs, they can also give debts and obligations that must be paid off and carried out by their heirs. Through the Civil Code and Balinese Customary Law, several comparisons between the two can be concluded, among others, that in the Civil Code inheritance can only be carried out if the testator has died, whereas in Balinese Customary Law inheritance can be carried out not only when the testator has died but can also be carried out when the heir is still alive. Then the difference that stands out from the element of inheritance is that Balinese Customary Law has an element of inheritance that is not contained in the Civil Code. This is because inheritance in Balinese Customary Law has the concept that those who have the right to become heirs are heirs who carry out their obligations well so that they are entitled to the heir's inheritance. As seen from the spirit of inheritance from Balinese Customary Law, namely togetherness, while the spirit of inheritance from Civil Law is individual. Civil law provides protection to heirs formally following statutory provisions, whereas customary law places more emphasis on the family principle.

To married couples who are going to have a mixed marriage, it would be a good idea before getting married to make a marriage agreement regarding the assets they own and other decisions that may be necessary for the continuity of the marriage being carried out and how to divide the children who will be born in the future, regardless of of the nationality their child will choose in the future.

When carrying out mixed marriages using customary law, it is important to note that couples with foreign nationals must understand traditions and culture, as well as the procedures for carrying out customary marriages, so as to avoid conflicts due to ignorance. In inheritance, it is important for people to understand and comprehend how to properly and correctly distribute inheritance according to the heir's beliefs so that inheritance can proceed in a deliberative and fair manner, according to the share that the heirs should get.

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