

## The Right Of Acquisition By Pradana's Family As Legal Heirs Based On The Decision Of The Court Number 37/Pdt.P/2022/Pn.Sgr In Gesing Village

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### Article Info

### Abstract

Received: January 20, 2024

Accepted: March 20, 2024

Published: April 1, 2024

#### Keywords:

Right of Pardon, Pradana,  
Heirs

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Guardianship is a condition in which a person is deemed unable to perform legal acts. A person in this condition needs a representative to be able to represent legal actions, which is called a guardian or curator. This research aims to find out and analyze (1) the regulation of the Gesing Village Customary Law regarding the Right of Guardianship by the Purusa family as legal heirs, (2) The legal consequences of Determination Number 37/Pdt.P/2022/PN.Sgr when viewed from the perspective of Gesing customary law, and (3) The judge's consideration in appointing someone as guardian based on Determination Number 37/Pdt.P/2022/PN.Sgr. The type of research used in this research is empirical legal research, with the nature of the research using a descriptive nature. This research uses primary data and secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The data collection technique in the research is a non-probability sampling technique by determining research subjects using a purposive sampling technique. The results of the research conducted state that (1) the regulation regarding guardianship in the Gesing Traditional Village is determined by the existence of male lineage (purusa) because this is closely related to inheritance, (2) due to the determination of guardianship from the pradana family based on Decision Number 37/Pdt.P/2022/PN.Sgr, then there is a transfer of inherited land without the consent of the purusa family and (3) the basis for consideration by the District Court judge in appointing someone as guardian according to Decision Number 37/Pdt.P/2022/PN.Sgr is Article 433 of the Civil Code and Article 434 of the Civil Code as the rationale for determining a guardian, without considering the existence of an examination process, namely hearing information from the purusa.

### 1. Introduction

Customary Law is all unwritten customs and lives in society in morals, habits and conventions that have legal consequences (Mustari, 2020: 5). Customary law has a very traditional nature, which means that customary law originates from the will of ancestors

who are respected. With this, customary law is a part that is not lost from the culture of Indonesian society. Customary law can shift and adjust to certain situations of societal change. The changes in question are changes in conditions, places, times, as well as new rules decided by authorized institutions. Uncodified law has the property of making customary law easy to change and develop. The very dynamic nature of customary law is that it can accompany the progress of the indigenous people themselves so that in various customary law areas and certain indigenous peoples the application, existence of customary forms and sanctions are still valid today such as the customary law in Bali. Customary society in Bali is closely related to customary law because of the influence of religion (*Hinduism*) on customary law in Bali.

Balinese Customary Law that applies is basically the same, but in its application there are differences according to the *village kala patra* (place, time, and conditions) where the customary law is implemented (Wirawan, 2017: 2). With these differences, so that what is more shown is the similarities that exist in meeting the differences that exist in accordance with their beliefs without disturbing or imposing on other parties. The implementation of Balinese customary law is in accordance with the life of the customary law community, namely the life of the community as *Krama* (citizens) of the Pakraman village. In general, customary law regulates more about private matters, especially regulating family law. One of the provisions of customary law is the right to guardianship. In addition to customary law, positive law generally regulates that a person who is incapable of carrying out legal behavior regarding their rights and obligations must be replaced by a guardian. Guardianship is a situation in which a person, due to his or her personal characteristics, is deemed incapable of acting in any legal capacity (Widagdo, 2012: 413). There are factors of legal incompetence in exercising rights and obligations, namely age and mental health. If one of the family members has a mental disorder, then he cannot carry out legal behavior in any way, be it an agreement, agreement or something else that results in legal consequences. Every human being or person without exception can have rights, but in law not everyone is allowed to exercise their own rights. There are several groups of people who have been said to be "incapable" or "less capable" in carrying out legal acts, for example in someone who has a mental disorder which in the end they must be represented or assisted by someone else. Therefore, it is necessary to have someone representing the mentally ill person in carrying out legal actions, especially in the case of inheritance. The term often used in Indonesia is referred to as Guardianship. The person who becomes the guardian is called the guardian, while the process is called the guardianship (*Curatele*).

A person who is said to be capable of carrying out legal acts is an adult and healthy mind and is not prohibited by law in carrying out legal acts. Article 1330 in conjunction with Article 433 of the Civil Code confirms that a person who is declared incapable of performing legal acts, namely "A person under guardianship is an adult in a state of insanity, imbecility, dark eyes and spendthrift." In contrast to civil law in regulating guardianship rights, customary law also has unwritten rules regarding guardianship rights which are closely related to inheritance rights, especially Balinese customary law which adheres to a patrilineal family system. In relation to the guardianship process in Bali, especially in the Gesing Traditional Village area, where the Gesing Village customary law does not explain in writing that the person entitled to guardianship is a *purusa*.

The Gesing Village community prioritizes the *Purusa* to be the guardian because guardianship is related to the property inherited by the guardian. However, in practice,

there are some differences in the application of customary law to guardianship rights in Gesing Traditional Village in relation to the irregularities based on the application for guardianship stipulation that has been determined by the Singaraja District Court when related to Gesing customary law. The reality in Gesing Traditional Village is that the guardian in real life is the heir who is entitled to guardianship, but in Stipulation No. 37/Pdt.P/202222. 37/Pdt.P/2022/PN.Sgr states that the guardian is the female family (*pradana*) of the guardian. The applicant and the guardian have no inheritance relationship, as stated in Stipulation No. 37/Pdt.P/2022/PN.Sgr. 37/Pdt.P/2022/PN.Sgr, which is the Determination of Guardianship Rights determined by the Singaraja District Court, states that it is legally valid to grant the Petition of the Petitioner. the problems described above, so the author wants to study the problem entitled "**THE RIGHT OF GUARDIANSHIP BY THE PRADANA FAMILY AS A LEGAL HEIR (BASED ON THE DECISION OF THE COURT NUMBER 37/Pdt.P/2022/PN.Sgr IN GESING VILLAGE)**".

## 2. Research Methods

The type of research used is empirical legal research. Empirical legal research in this study is the difference in the application of customary law in Gesing Village to guardianship rights in Gesing Traditional Village based on guardianship decisions. The reality that occurs in the community is that the guardian is the purusa, but the court decision states that the guardian is the *pradana* family. The nature of this research is descriptive. Descriptive research is research that is useful for obtaining information about the current situation and seeing the relationship between existing variables (Widagdo, 2012: 408). This study aims to describe the arrangements related to guardianship rights by the *pradana* family as legal heirs in customary law in Gesing Village.

This research also uses data and legal materials. The data used are primary data and secondary data. Primary data used in this research is obtained through interviews with the customary chief, dadia chief, purusa party and pradana party conducted directly to Gesing Traditional Village. Data is factual information used as a basis for reasoning, discussion, or calculation in scientific research and data as pure facts that have not been given any interpretation (Ramdhan, 2021: 2). The secondary data used in this research consists of three legal sources, namely the Civil Code, Awig-awig, and Court Decision Number 37/Pdt/2022/PN.Sgr. Furthermore, it uses tertiary legal materials, namely legal materials that support primary legal materials and secondary legal materials by providing understanding and understanding of legal materials including Legal Dictionaries and the Big Indonesian Dictionary (KBBI).

The data collection techniques in this research are document studies, interviews, and observations. Document studies are case studies obtained to support and add to the evidence obtained from other sources, such as facts in interview data (Sanjaya, 2015: 74). The observation technique used in this research was carried out by direct observation of the actual conditions in Gesing Traditional Village. The data processing technique is to analyze the data with qualitative descriptive methods. In this study using a sampling technique, namely non probability sampling technique. Non probability sampling in this study is Purposive Sampling, namely sampling determined based on the research objectives (Ishaq, 2017: 113). The research objectives in this study are to determine the regulation of guardianship rights by *pradana* families as legal heirs in Gesing Traditional

Village, the basis for the judge's consideration in determining a guardian, and the legal consequences.

### **3. Results and Discussion**

#### **3.1 Gesing Village Customary Law Arrangements related to Guardianship Rights by the *Purusa* family as legal heirs**

However, according to information from the Bendesa Adat and Kelian Dadia of Gesing Traditional Village, customary law in Gesing Village is basically the same as Balinese customary law, which in general is closely related to customary inheritance law, with the difference being the dadia in Gesing Traditional Village. In the dadia of Gesing Traditional Village, the terms *Purusa*, *Pradana*, and *Ijasan* are closely related to inheritance issues. In Gesing indigenous society that adheres to the patrilineal system, the term *Purusa* tends to be interpreted as male while the term *Pradana* is interpreted as female. The term *purusa* has a broader meaning because it includes men and women who have the status or position of men (Pradnya, 2017: 25). The term *purusa* is contrasted with the term *Pradana* which also has a broader meaning than women because *Pradana* includes women and men who have the status or position of women. In Balinese society being a *Purusa* will tend to be related to inheritance. The patrilineal lineage in Bali causes a *Purusa* to be the heir. The intended heirs, namely the straight line down (descendants), straight line up (parents, grandparents) or on the side line (brothers, uncles) are families or male or female people who have a *kapurusa* relationship with the heir.

Guardianship is where a person is incapable of carrying out legal acts or legal traffic, so a guardian or representative is needed. In Gesing Customary Law, which is guided by Balinese customary law, a guardian must be a *Purusa* (male) because this will be related to *Niskala* or accountability to God. Regarding the Gesing customary law regulation, the right to inherit is directly given to sons because they have "*tetegenan*", which is to continue the *fatherhood* at the house, *merajan*, or *banjar* level. There is no written rule or *awig-awig*, but its application has been carried out by habit accompanying *pasuara* (agreement), *destra* (custom), and *sima* (accepted from generation to generation). Gesing Traditional Village in one dadia family consists of several groups based on blood ties or heirs known as *Ijasan*. The *Ijasan* / *uka Duka* group based on heirs has the main tasks and rights and obligations related to *suka duka* and religious ceremonial activities. The guardian in this case will become the heir of the guardian if the guardian dies in the future. The obligation of a guardian is to continue the guardian's *fatherhood* in the *banjar* or *pakraman* village community, this is so that the obligations of the guardian can be carried out and can maintain a relationship of *Menyama Braya*. *Menyama Braya* is an action needed to maintain harmony in social life, a form of *menyama braya* we can see from mutual cooperation during the *dewa yadnya* and human *yadnya* ceremonies (Fatmawati, 2021).

If one of the members of the *Ijasan* / group of heirs has a fun activity, the first and most responsible person to complete the work is the *Ijasan*. Thus, the Gesing customary village requires the guardian to have a *kapurusa* relationship with the ward. However, there is a discrepancy based on the stipulation of guardianship application no. 37/Pdt.P/2022/PN.Sgr that the person who filed the guardianship application to the Singaraja District Court was not Nyoman Darmawa but Putu Mariama, who is a relative of *Pradana* who is not a legal heir under Balinese customary law. Putu Mariama is a cousin of Luh Ruspinah, and Putu Mariama's mother is a sibling of Luh Ruspinah's

father. This is contrary to Balinese Customary Law, especially in Gesing Customary Village, which is reinforced by the interview testimony related to Guardianship in Gesing Customary Village, where the Guardianship between the Guardian and the guardian must be 1 (one) *dadia* because it is related to *Niskala* or accountability to God.

### **3.2 Judges' Consideration in Determining a Person as a Guardian Based on Stipulation Number 37/Pdt.P/2022/PN.Sgr**

The judge's consideration is an important form in realizing the value of a judge's decision that contains justice and legal certainty so that the judge's consideration must be carried out carefully, carefully and well (Maulidin, 2021: 9). Guardianship is only determined by the judge. The judge's decision on guardianship depends on the grounds required for guardianship. The authorized judge is the judge of the court where the person applying for guardianship has been appointed (someone under guardianship).

Based on the Stipulation of Guardianship Number 37/Pdt/2022/PN.Sgr, it was decided to accept and grant the Petitioner's request to represent Luh Ruspinah, Female, Born in Gesing, March 27, 1980, Hindu Religion, Unemployed, Address at Dinas Gesing I, Gesing Village, Banjar Sub-district, Buleleng Regency, Bali Province, Being under guardianship to carry out legal actions related to the transfer of sale and purchase rights on a piece of land Certificate of Ownership Number: 1134 / Gesing Village in the name of Ketut Swamin and charge the Petitioner to pay all application costs in the amount of Rp. 160,000, - (one hundred sixty thousand rupiah). The Court's examination process of a person's request to place a person who is in a state of imbecility, mental illness, powerlessness and extravagance under guardianship is as follows:

- a. In filing a guardianship petition, the court must include facts and evidence stating the circumstances of the person seeking guardianship, as well as the names of witnesses to be investigated by the judge.
- b. The examination of the candidate must be completed with other evidence such as a marriage certificate, family card, identity card, and most importantly a letter from the hospital stating that the candidate is incapable of carrying out legal acts.
- c. If the District Court is of the opinion that the incident is important enough to justify guardianship, then it is obligatory to hear the opinions of the blood relatives or cousins. The purpose of this is to ensure that the examination of the prospective guardian does not become a problem in the future.
- d. Examination of the Potential Guardian After the process of listening to and legally summoning persons of blood and consanguinity, the next step is to hear the prospective guardian with the aim that the guardian can be named or asked about his or her own condition, such as a person under guardianship.
- e. The decision on the District Court's Letter of Request after receiving sufficient notice, so that the Court can provide certainty regarding the letter of request without further efforts, the District Court must order the examination of witnesses so that the events described are clearer and more detailed.
- f. Appointing a Temporary Administrator If there is cause, the District Court may appoint a temporary administrator to manage the person's person and property (if there is property to manage). Judgment pronounced in open court
- g. Notification to the Party Requesting Guardianship The stipulation and decision related to guardianship must be announced by the party requesting guardianship to the opposing party and notified by placing it in the State Gazette.

The guardianship exists from the moment the decision or stipulation on guardianship is made, whereas according to Article 434 of the Civil Code, it is as follows:

1. Every blood relative has the right to request the guardianship of a blood relative based on a state of imbecility, insanity or blindness.
2. Guardianship may only be requested by his blood relatives based on his extravagance in the straight line by his blood relatives in the divergent line up to the fourth degree.
3. A person who is incapable of taking care of his/her own interests, in terms of his/her mental capacity, is best permitted to request guardianship for himself/herself.

After being legally appointed as a guardian, the role and authority of the guardian is related to managing the interests of the assets of the person placed under guardianship, with this the guardian will be obliged to carry out the needs for the interests of the person under guardianship against the actions of other people who harm the person and carry out resistance for the needs of the person under guardianship.

According to the interview with Mr. I Gusti Made Juliartawan, S.H., M.H. as the Public Relations Judge of Singaraja District Court, it can be explained that the judge's consideration in determining a person as a guardian based on Decision Number 37/Pdt.P/2022/PN.Sgr is based on Article 433 of the Civil Code which states that "every adult who is always in a state of imbecility, insanity or dark eyes, must be placed under guardianship, even if he is sometimes capable of using his mind.

Based on the judge's consideration based on the above decision, in the context of formal law, the judge's consideration is only based on articles 433 of the Civil Code and 434 of the Civil Code. When viewed from the perspective of Gesing Customary Law, this is contradictory because the person applying for guardianship is the pradana. A person who applies for guardianship in formal law is based on Article 434 of the Civil Code, namely: "Every blood relative has the right to request the guardianship of a blood relative, based on a state of imbecility, cerebral palsy, or dark eyes". The judge in this case only considered Article 434 of the Civil Code and 433 of the Civil Code as rationales for the appointment of a guardian. In addition, the examination process for blood relatives only heard from the pradana side, but the purusa side was not heard. The Gesing Customary Village is thick with customary law that is applied in the area, so in this case the judge should prioritize Gesing customary law even though there are no specific rules regarding guardianship arrangements in Gesing. A petition for guardianship must pay attention to the petition regarding the matter that the petitioner wants the Court to decide on, so that it is not only limited to deciding that the respondent is under the guardianship of the petitioner, but must also be able to describe the needs and interests of the petitioner to request that the respondent be under guardianship.

### **3.2 Legal consequences of Stipulation Number 37/Pdt.P/2022/PN.Sgr when viewed from the perspective of Gesing customary law**

Guardianship will result in the elimination of a person's identity as a legal subject by allowing another person to make decisions, form a family, deprive a legal subject of basic rights such as marriage, and determine health care about themselves (Panglipurjati, 2021: 90). Guardianship arises because there are persons with disabilities who are unable to carry out certain actions, including performing legal actions for their own interests or in other words, are not capable of performing legal actions. A person who is said to be a person with a disability according to the definition of Law No. 8/2016

in Article 1, namely every person with a disability. 8/2016 in Article 1 is every person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. A person is referred to as a person with a disability if they fulfill the following conditions:

1. Disruption of the health of the mind, in this case has a broad meaning which includes brain / reasoning sickness, ignorance, foolishness, dark eyes and anger, as regulated in Article 434 paragraph (1) of the Civil Code.
2. Weakness of mind, in the case of weak mind here is not only intended for weak mind / intellect but also related to old age, disability and so on, as regulated in Article 434 paragraph (2) of the Civil Code.
3. The extravagant nature of a person means that there is a person who is extravagant and cannot control his extravagance, namely to spend his wealth. This extravagance does not put a person in a position of competence to act, but can be used as a reason to place the person under guardianship. As regulated in Article 434 paragraph (3) of the Civil Code.

Thus, judges in making decisions in court must be based on legal principles in the form of the principle of prudence and the principle of good faith and legislation in the form of Articles 433 and 434 of the Civil Code in an effort to protect the public in providing legal certainty regarding issues of legal status regarding guardianship of persons with disabilities.

When a person is appointed as a guardian, the appointed party will have the authority to perform legal acts. According to Salim HS, there are two authorities in law, namely the authority to have rights and the authority to carry out legal actions and the causes that affect them (Salim, 2014: 19). In determining or imposing a verdict, a judge considers whether or not a person's actions can be held accountable on the basis of his power of attorney and in making a determination or decision. The judge's decision can be written or oral in the form of a decision on the result or conclusion of a case that has been considered. Furthermore, if the judge has made a guardianship decision in a trial attended by witnesses to provide testimony related to the guardianship, then the guardian can act as a curator. A guardian has many additional responsibilities, powers and roles for the person appointed. A court order authorizing the guardian, who is a family member, to act as a curator is based on the judge's decision and the reasons presented in the guardianship application.

The guardian has the role and authority to manage and administer the property of the guardian or the person under guardianship. In addition, the guardian also has the role and obligation to carry out actions to protect and protect the guardian's property from the actions of other people who are considered to be detrimental to the person under guardianship (Zulfachry, 2022: 1). Some members of the public still view people with disabilities as someone who is not independent and dependent on the mercy of other normal people. The guardian has an obligation to carry out actions or protection needed for the interests of the person under guardianship. The following is the role and authority of a family guardian:

1. The guardian carries out personal and property management of the party being guarded (contained in Article 449 jo. 441 of the Civil Code).
2. The guardian only carries out management duties on matters related to the interests of the guardian, for example in the condition of replacing the guardian as the holder

of parental authority over the guardian's minor child (contained in Article 1453 of the Civil Code).

The case in District Court Stipulation No. 37/Pdt.P/2022/PN.Sgr where the disabled Luh Ruspinah was determined to be under guardianship and according to the testimony of the applicant and witnesses that the person who took care of Luh Ruspinah was the applicant, but in fact in daily life the person who took care of Luh Ruspinah was Nyoman Darmawa. There was an inheritance of a piece of land that was originally owned by the heir's family, then passed on to Ketut Swamin. When the land was inherited, Putu Mariama, who was not a legitimate heir, made a bad intention to sell the land by applying for guardianship so that the land could be transferred. With the guardianship decision, the consequences that occurred according to the Gesing Village Customary Law perspective were the transfer of inherited land and there was no one to continue the fatherhood either in the village, house or banjar of a Luh Ruspinah because the guardian was the *Pradana* party.

#### **4. Conclusion**

Based on the discussion described above, the author can conclude:

1. The regulation of guardianship in Gesing Traditional Village is not written in the adat law, but according to information from Bendesa Adat and Kelian Dadia of Gesing Traditional Village, the customary law in Gesing Village is basically the same as the customary law in Bali, which in general will be closely related to customary inheritance law, the differentiating factor is the dadia in Gesing Traditional Village. The kinship system adopted in Gesing Traditional Village is more determined by the patrilineal system or the *Purusa* line. In the dadia of Gesing Traditional Village, the terms *Purusa*, *Pradana*, and *Ijasan* are closely related to inheritance issues. A son has a "*tetegenan*" which is to continue his *father's care* at the level of the house, *merajan*, or *banjar*.
2. The judge's reasoning in deciding a person as a guardian based on Decision Number 37/Pdt.P/2022/PN.Sgr is that he only considers Article 433 of the Civil Code as a rational for determining guardians. In addition, the examination of the blood family only heard from the *pradana* side, but the *purusa* side was not heard. A petition for guardianship must pay attention to the petition regarding the matters that the petitioner wants the Court to determine, so that it is not just about putting the respondent under guardianship but must also be able to explain what the petitioner's need is for the respondent to be under guardianship, so that the petitioner knows how much authority is given to the petitioner.
3. The guardian has the role and obligation to take action to protect and safeguard the guardian or to protect the guardian's assets. In the guardianship order No. 37/Pdt.P/2022/PN.Sgr, it appears that the guardian's duty in the order is only to take care of the property and does not explain the guardian's duties. Therefore, the consequences of the guardianship order are that the guardian's interests or needs are not properly taken care of, the inheritance is sold by the *pradana* in bad faith, and the village *fathers* cannot be represented by the *pradana* as the guardian.

#### **Recommendations**

Some suggestions that can be given are as follows:

1. Judges should prioritize customary law in Gesing Village, even though there is no specific regulation on guardianship in Gesing Traditional Village. This will not



result in losses or claims from those who object to the guardianship order, and most importantly, it will not result in the curandus' interests not being properly taken care of.

2. The Customary Village should pay attention to the person to whom the guardianship application is submitted, and should pay attention when a *krama* or citizen wants to ask for a signature to read in more detail the purpose of the application letter because if not, it will have an undesirable effect on the signature, so that in the future the guardianship application process can run in accordance with the applicable rules.

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**Verdict**

Decision on Guardianship Application Number 37/Pdt.P/2022/PN.Sgr