

## Implementation Of Awig-Awig Of Gesing Traditional Village Related To Widow Inheritance Rights (Case Study In Gesing Village, Buleleng District)

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### Article Info

Received: May 1, 2024  
Accepted: July 20, 2024  
Published: August 2, 2024

#### Keywords:

Implementation, Awig-awig,  
Inheritance Rights, Windows

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### Abstract

This study aims to determine Implementation of awig-awig in the Gesing traditional village regarding the inheritance rights of widows in the Gesing traditional village) and Legal consequences for widows who sell inherited land from the perspective of customary law in Gesing village. This type of research uses empirical juridical methods, with descriptive research characteristics. The location of this research was carried out in Gesing Village, Buleleng district. The data and data sources used in this research are primary data and secondary data. Data collection techniques were carried out using document study techniques, observation techniques and interview techniques. The sampling technique uses non-probability sampling techniques. After the necessary data has been collected, the next step is the data processing and analysis stage. Data processing and analysis was carried out using qualitative methods. The results of this research show (1) The implementation of awig-awig in the Gesing traditional village has been going well as evidenced by the return of land which was originally bought and sold by parties who had no right to inherit, (2) The legal consequences of inherited land being sold or transferred without the consent of the heirs will result in an illegal sale. Apart from that, automatically transactions carried out by widows related to inheritance will be canceled by law and the inherited land will be returned to the rightful person, which is the consequence.

### 1. Introduction

Customary law is called unwritten law (Unstatuta Law), which is different from continental law as written law (Statute Law). In the English legal system, unwritten law is called "Common Law" or "Judge Made Law". Customary law is a cultural product that

contains substance about cultural values as human creation, creation, and taste. In the sense that customary law was born from awareness of the needs and desires of humans to live in a fair and civilized manner as an actualization of human civilization (Arif, 2022: 22). The life of the Balinese people cannot be separated from the existence of customary law in its customary law community unit. Basically, the basic principles in customary law that apply in Bali are the same, but in practice there are differences according to the village *kala patra* (place, time, and conditions) where the customary law is applied. As the principles and customs that exist in the Balinese customary law society, in dealing with existing differences, the similarities that exist in dealing with these differences will be emphasized. While the differences are used individually according to their beliefs without disturbing or imposing on the other party.

Bali strongly upholds the customs and culture of its people. The highest law in Balinese society is customary law. Customary law is the values that live and develop in the community of a region. Although most customary laws are unwritten, customary law has a strong binding force in society because it is *Religious Magical*. Customary law is the original law of the Indonesian people. Balinese society is a society that is thick with tradition, culture and customary law. For people in Bali, the division of inheritance is still closely related to the customary inheritance system (Wintari, 2021: 68). The inheritance law of Balinese customary law adheres to the fatherly system (patrilineal) in Bali, so that the prominent one is the son. Sons have absolute power to continue the family, while daughters do not, meaning that families without sons have no heirs to continue the lineage. In Balinese customary law inheritance, the first thing to look at is the straight line of descent downwards. When there is no straight line downwards, then it is seen upwards, When between downwards and upwards there is no, it is seen from the sideways line until there is a stump.

Based on *awig-awig* or customary law in Gesing Village which is still valid today where a widow / Predana is not a purusa heir. In addition, a widow does not have the right to transfer / or transfer the heir's inheritance, where a widow who still carries out her obligations and lives in the late husband's house only has the right to enjoy the inheritance during her lifetime and the daughter only has the right to enjoy while the daughter is not married. In addition, there is also the Decree of the Main Assembly of the Balinese Pakraman Village (MUDP) Bali No.01/KEP/PSM-3/MDP Bali/X/2010, dated October 15, 2010, concerning the results of the Great Pesamuhan III MUDP Bali ("Decision of the Great Pesamuhan III/2010"). The decree explains the inheritance position of biological women, widows, and adopted daughters. The decree explains that Balinese women can receive half of their parents' inheritance rights after deducting one-third for heirlooms and pelesatarian interests. However, if the girl's parents die before the girl marries out, the girl is entitled to a share of her parents' inheritance for the continuity of the child's future. However, the property is only limited to being enjoyed for the survival of the child and the child's education after being left behind, not to be traded (Cahyani and Amelda, 2022: 456). This is the case with the position of widows in Gesing Village, where a widow has the right to inherit from her husband, but only for the survival of his wife, provided that she continues to perform her duties as a wife. If a widow no longer performs her dharma in the sense of remarrying someone else, then the widow who was previously part of the family of her late husband is no longer part of her late husband's family and no longer has the right to her husband's inheritance. The inheritance of the heirs who are entitled to inherit, namely from the descendants of the purusa down, sideways and or up who will become heirs both in scale and niskala.

Where in practice in Gesing Village, Banjar District, Buleleng Regency, a widow was found where the widow's husband who occurred in Gesing village had died, Her late husband left an inheritance which should have been intended for the survival of his wife and children who were left behind but was misused by the widow who occurred in Gesing Village, namely by transferring or transferring (selling) the inheritance of the heir (her late husband) secretly which was not based on any reason, without the knowledge and permission of the purusa heirs, a widow who had transferred or transferred the inheritance was the first wife of the late husband. The deceased husband still has the closest purusa family and is the legal Ijasan/heir who is more entitled to inherit the inheritance left behind. The inheritance left by the deceased husband which is of a *Magical Religious* nature is the sanggah / Pemerajan Temple and also economic value inheritance in the form of inheritance of land and those responsible for maintaining the inheritance are heirs. So that with the case that occurred in Gesing village to get justice and how the allocation of the inheritance should be, the heirs chose to resolve this dispute through the litigation process or through court channels, namely with case number 373/Pdt.G/2022/PN. Sgr.

Balinese customary law is known by the form contained in *awig-awig* both written and unwritten owned by each customary village, which with regional regulation No.3 of 2003 the name of the customary village was changed to pakraman village (Sukerti, 2014: 249). Each pakraman village with another pakraman village in regulating inheritance issues is not the same and there are even *awig-awig* pakraman villages that do not regulate inheritance issues in detail, especially regarding widow inheritance rights. Gesing traditional village until now still believes in the existence of its customary law based on the custom that widows or women are not heirs, even though it is not written or stated in the form of *awig-awig* which has sanctions. Because basically customary law is unwritten law.

Based on the background description above, the author is interested in examining more deeply the **"Implementation of Awig-Awig of Gesing Traditional Village regarding Widow's Inheritance Rights (Case Study in Gesing Village, Buleleng Regency)"**.

## 2. Research Methods

This research is an empirical juridical research that examines the gap between *das sollen* and *das sein*, namely the gap between theory and the real world. Based on the *awig-awig* or customary law of Gesing Village, widows are not purusa heirs. In addition, widows do not have the right to transfer / or transfer the heir's inheritance, but in reality in Gesing Village it was found that widows transferred or sold the inheritance of the heir (her late husband) without the consent of the purusa heirs. This research is descriptive in nature so that researchers provide a real picture and explanation of the implementation of *awig-awig* of Gesing traditional village related to widow inheritance rights (Case study in Gesing village, Buleleng Regency). The data used are primary data and secondary data. Primary data consisted of interviews with the kelian adat, kelian dadia, legal counsel and *purusa* family. Secondary data consisted of Regulations and Regional Regulations of Bali Province. Furthermore, the data obtained is processed and analyzed qualitatively. namely data that is presented not in the form of numbers but data in the form of words which will be arranged systematically and arranged then the collected data is processed and then clarified between one data and other data, then

interpretation is carried out to understand the meaning of data in social situations and interpretation is carried out from the perspective of researchers after understanding the overall quality of the data. From this, conclusions can be drawn and truths that can be used in problems that arise.

### 3. Results and Discussion

#### 3.1 Implementation of Awig-awig of Gesing Traditional Village Regarding Widow Inheritance Rights

Speaking of *awig-awig* related to the inheritance system, according to Balinese customary law and customary law in Gesing village itself where the inheritance system is inseparable from the family system and the marriage system adopted and carried out by customary law communities, and in Bali the family system adopted is a patrilineal system which is then called *purusa*. As a consequence of this family system, it will affect the inheritance system adopted. Where the tracking for determining the heirs is from the lineage of sons, commonly referred to as *purusa*. Then, the marriage system also determines the inheritance problem. Regarding the implementation of *awig-awig* or customary law related to inheritance, it has been well implemented since long ago. The Gesing customary village community realizes the existence of *awig-awig* in which widows are not entitled to sell or transfer the late husband's inheritance. Since the past until now, only 1 (one) incident has been found that contradicts the *awig-awig* of Gesing traditional village, where the widow sold the land inherited by her late husband. However, the community realizes that this is not justified because in the *awig-awig* of the traditional village a widow only has the right to enjoy the late husband's inheritance during her lifetime.

Basically, customary law is unwritten, with the development of the times of unwritten customary law that is still alive in society and is still considered important to regulate life. Then it is incorporated into *awig-awig* into written law but there are also unwritten *awig-awig*. So that written or unwritten does not mean that customary law cannot be used as a basis for deciding a dispute with customary nuances, including in the Gesing traditional village. In Gesing traditional village too, according to the traditional leaders there, the rules that are still alive even though they are not written *awig-awig* can still be used as a basis for deciding a customary case including inheritance. In fact, according to traditional leaders or traditional village officials, the implementation of *awig-awig*, both written and unwritten, is quite good. So that with this case many people realize that what has been done by the widow is an act that is not in accordance with the *awig-awig* of the Gesing traditional village. So that in the future the Gesing traditional village officials need to emphasize the *awig-awig* of the Gesing traditional village.

*Awig-awig* as a form of Balinese customary law so that Balinese indigenous people have *awig-awig* which is formed as a social control that controls the course of village karma life with the aim of maintaining harmony and tranquility for the sake of a peaceful and peaceful indigenous village (Yoga, 2023: 295). All Pakraman villages in Bali have *awig-awig* but the names or terms used in mentioning the customary rules are different such as some call *adat*, *dresta*, *gama*, *sima*, *pengeling-eling*, *pengeling-eling*, *stump*, *pararem* and others. As well as the form until now there is still an unwritten form. *Awig-awig* that exists in each village follows the *village kala patra*, namely (place, time and conditions) so that each *awig-awig* is adjusted to the *village kala patra* of each pakraman village (Junia, 2023: 830). Inheritance according to Balinese customary law can be said to be different from inheritance according to civil law (western law). The difference is

evident in its elements, principles and substance. The elements of inheritance according to Balinese customary law are 4 (four) elements consisting of heirs, inheritance (descendants), inheritance, and heirs. Meanwhile, the elements of inheritance according to civil law are only 3 (three) elements consisting of heirs, inheritance and heirs. According to Balinese customary law, a legatee (descendant) is not always the heir who is entitled to the inheritance left by the testator.

A woman widowed by death is only entitled to utilize her husband's estate and not to own it. However, if a widow then receives inheritance in the form of land, this sometimes not only has secondary value but also has *magical religious* value, so in order to be able to carry out these legal actions she must get approval from the purusa of her husband's family if she does not have adult purusa children (Rosmilawati, 2008: 78).

According to Balinese customary law, even if a family does not have sons, widows are still not entitled to the inheritance left by the testator. So as to determine the heirs who do not have sons, it will be seen from the lineage up and sideways. According to Balinese customary law, if a family does not have a son who has the status of purusa, there are several steps that can be taken. Firstly, the family can change the status of their daughter who has the status of pradana by a traditional ceremony, of course with witnesses, to become purusa, with a peperasan ceremony. Secondly, they can adopt a son who may be their family or someone else who of course must have the consent of other families to be appointed as an adopted son with purusa status, an alternative to Balinese customary law related to heirs.

Gesing traditional village has been able to prove its existence so far regarding the implementation or implementation of *awig-awig*, seen from its customs and culture that are imbued by the local community to this day. It can be seen from the matter of inheritance, which originates from habits that occur in the daily life of the community, then passed down from generation to generation and is still believed to exist. Gesing traditional village although the *awig-awig* or customary law is not written regarding inheritance, but from the past until now the community is still aware of its *awig-awig* and continues to implement *its awig-awig* regarding inheritance which is then considered to be local customary law, where inheritance is in the son or purusa party so that widows are not entitled to inherit.



In fact, until now there has only been one case where a widow sold/transferred an inheritance without the consent of the heirs. With this case, it cannot be directly said that the *awig-awig* of Gesing traditional village is not well implemented. It can be seen that after this case the community realized that this was a wrong act because it was not in accordance with the *awig-awig* of the Gesing traditional village, where widows do not have the right to sell or transfer the heir's inheritance. So it can be said that Gesing traditional village still implements and preserves *awig-awig* passed down from ancestors well. The ability of Gesing traditional village to exist and upright in maintaining customs and habits for that long is of course inseparable from the services of Balinese ancestors who have laid the foundation for a strong traditional village.

Based on the results of the research, the community still believes that according to Balinese customary law, the issue of inheritance property is always tied to *religious-magical* values even though in the case of inheritance property in the form of material such as land, but the lands left behind are not only to be enjoyed but also in the context of being able to be managed in order to maintain inheritances that are immaterial in nature. So that inherited property in customary law, both in material and immaterial form, cannot be easily transferred by someone who does not have rights to inherited property. Very different from inherited property in the context of western law which only has economic / secondary ties.

### **3.2 Legal Effects of Widows Selling Inherited Land from the Perspective of Gesing Village Customary Law.**

In the traditional village of Gesing, District, Buleleng Regency there is 1 (one) inheritance case. In this inheritance case where the one who sold the inherited land was the first wife of the deceased testator. Before the late testator died, he had never divided the inheritance owned. So that it is still intact enjoyed by a widow, even the inherited land in Gesing village was successfully sold or transferred without the consent of the purusa heirs. After the running of this inheritance case the widow or second wife of the deceased heir died even before dying the widow was never present when there was a summons at the trial. Because the defendant died, the inheritance lawsuit was revoked and resolved in a family manner.

When a widow who is left dead by her husband and the late husband leaves an inheritance where the inheritance should be intended for the survival of the widow and her children but the inheritance is sold / transferred without the consent of the heirs, this is not justified. Related again by looking at the three main principles that must be considered, namely *laras*, *rukun* and *patut*. From the value of propriety, it can be concluded that what the widow has done is not appropriate because in the context of State law, which in this case is known as good faith. Thus this is the touchstone that normatively and philosophically a widow does not have the authority in order to transfer her husband's inheritance, especially with regard to immovable assets such as land. So that when this is violated it is inappropriate and will actually cause legal consequences. Legal consequences are the result of an action or any action that has been carried out to obtain an effect of certain events desired by the perpetrator and also regulated by the law concerned. Legal consequences can also be said to be the source of the birth of rights and obligations for the legal subjects concerned. According to Indonesian Dictionary, consequence means something that becomes the outcome or result of an event, requirement, or situation that precedes it (Angga, 2016: 173).

In the case that occurred in Gesing Village, where a widow sold inherited land without the consent of the heirs, the inherited land was sold by someone who was not entitled to the sale of the inherited land. So that the legal consequences of inherited land that is sold or transferred without the consent of the heirs can result in an invalid sale. Because in Bali itself adheres to a *patrilineal* family system in which sons are heirs who have rights to inherited property and widows are not heirs to the land left by the testator. Deviations that occur between widows and heirs can be resolved through customary institutions, however, when problems cannot be resolved in customary institutions, they can take court channels.

Inheritance or land that has been sold/transferred by a widow in Gesing Village and the sale was made without the consent of the heirs/signatures of the heirs as the owner (because there was no consent from the heirs), then the land was sold by a person who had no right to sell it. As to whether the right to the land sold can be reclaimed, it depends on what is requested in the petitem of the lawsuit and depends on the judge's decision if the matter is resolved in court (Parhusip 2024:198).

If the control / transfer of inherited property is carried out without the consent of the heirs and then carried out by a widow, it can be said that it is not in accordance with the true nature of customary inheritance and the principles of customary law which prioritize harmony between the heirs. The land sold or transferred by a widow will clearly get into trouble because it is dealing with inherited land. Inherited land is part of the property left by the testator in the form of immovable objects that will be passed on to the heirs. Meanwhile, the heir is a person who has the right to the inheritance of the testator, in this case in the form of land. Basically, each heir can prevent the sale if there is disagreement between them over the land to be sold. The legal consequences of widows who sell inherited land that is not their right, or in the case of sales must have the consent of other heirs but in fact it is not done. Then the transaction carried out by the widow relating to inheritance can be canceled by law. So that the inherited land is returned to the rightful owner as a consequence.

#### 4. Conclusion

Based on the results of the research and discussion above, it can be concluded as follows:

1. The *Awig-awig* of Gesing Traditional Village has been well implemented, as evidenced by the fact that no widow was found to receive inheritance property, although there was a case in Gesing Traditional Village where a widow sold her late husband's inheritance property. The implementation of *awig-awig* in Gesing traditional village shows the existence of customs that have been valid for generations as a legacy of the ancestors.
2. In the case that occurred in Gesing Village, where a widow sold inherited land without the consent of the heirs, the inherited land was sold by someone who was not entitled to the sale of the inherited land. So that the legal consequences of inherited land that is sold or transferred without the consent of the heirs can result in an invalid sale. In addition, transactions carried out by widows relating to inheritance can be canceled by law. So that the inherited land is returned to the rightful that is the consequence.

There are suggestions from this research, namely that the *prajuru* of the Gesing traditional village need to make or issue a rule or *awig-awig* related to the allocation and allocation of inheritance left by the late husband to his wife, so that the allocation is clear and there are no more similar cases. In addition, to minimize the form of problems, the widow needs to be given an award or reward for her responsibility which is accommodated based on the Decision of the Bali MUDP Agung Pesamuhan Number 01/KEP/PSM-3/MDP Bali/X/2010 with the agreement of the late husband's family.

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