

**Translating Adat Reform into Judicial Reasoning: Legal Pluralism
and Women's Inheritance Rights in Bali**

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Abstract

Balinese customary inheritance law operates within a plural legal order in which the traditional patrilineal *kepurusa* system interacts with evolving principles of gender equality and internal adat reform. This creates a legal problem when courts apply different understandings of the inheritance status of women who marry out of their natal families, particularly after the 2010 Decision of the Majelis Utama Desa Pakraman (MUDP) expanded recognition of women's inheritance rights. This study examines the sources and forms of judicial incoherence in Balinese inheritance disputes and evaluates whether judicial reasoning reflects the normative development introduced by the 2010 MUDP Decision. Using normative legal research, the study applies statutory, conceptual, and case approaches to legislation, customary-law instruments, the MUDP Decision, relevant court decisions, legal doctrines, and scholarly literature. The comparative analysis shows that judicial reasoning remains divided between decisions that acknowledge the evolving character of Balinese customary law and those that continue to prioritize traditional patrilineal concepts such as *purusa*, *sentana rajeg*, and *nyentana*. This divergence demonstrates that judicial incoherence is not merely a consequence of legal pluralism but also reflects a gap between internal adat reform and its recognition in state adjudication. The study contributes theoretically by conceptualizing this inconsistency as an adjudicative recognition gap between normative change within customary law and its translation into judicial reasoning. It argues that greater consistency requires clearer recognition of adat reform, stronger incorporation into *awig-awig* and *perarem*, gender-sensitive interpretation, improved evidentiary standards, and consistent jurisprudential guidance to strengthen legal certainty and women's protection in Indonesia.

Keywords: balinese customary inheritance, judicial incoherence, legal pluralism

Abstrak

Hukum waris adat Bali beroperasi dalam tatanan hukum plural, di mana sistem patrilineal kepurusa berinteraksi dengan perkembangan prinsip kesetaraan gender dan reformasi internal hukum adat. Kondisi ini menimbulkan persoalan hukum ketika pengadilan menerapkan pemahaman yang berbeda mengenai kedudukan waris perempuan yang menikah keluar dari keluarga asalnya, khususnya setelah Keputusan Majelis Utama Desa Pakraman (MUDP) Tahun

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2010 memperluas pengakuan terhadap hak waris perempuan. Penelitian ini menganalisis sumber dan bentuk inkoherensi yudisial dalam sengketa waris adat Bali serta menilai sejauh mana pertimbangan hakim mencerminkan perkembangan normatif yang diperkenalkan melalui Keputusan MUDP Tahun 2010. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus terhadap peraturan perundang-undangan, instrumen hukum adat, Keputusan MUDP, putusan pengadilan yang relevan, doktrin hukum, dan literatur ilmiah. Analisis komparatif menunjukkan bahwa pertimbangan hakim masih terbagi antara putusan yang mengakui sifat dinamis hukum adat Bali dan putusan yang tetap mengutamakan konsep patrilineal tradisional seperti purusa, sentana rajeg, dan nyentana. Perbedaan tersebut menunjukkan bahwa inkoherensi yudisial bukan sekadar akibat pluralisme hukum, tetapi juga mencerminkan kesenjangan antara reformasi internal adat dan pengakuannya dalam proses peradilan negara. Penelitian ini memberikan kontribusi teoretis dengan mengonseptualisasikan kondisi tersebut sebagai *adjudicative recognition gap*, yaitu kesenjangan antara perubahan normatif dalam hukum adat dan penerjemahannya ke dalam pertimbangan hakim. Konsistensi yudisial memerlukan pengakuan yang lebih jelas terhadap reformasi adat, penguatan dalam awig-awig dan perarem, interpretasi sensitif gender, standar pembuktian yang lebih baik, dan pedoman yurisprudensi yang konsisten.

Kata kunci: hukum waris adat bali, inkoherensi yudisial, pluralisme hukum

1. INTRODUCTION

Customary law remains an important component of Indonesia's plural legal system. Its existence reflects the recognition of living norms that continue to regulate social relations within indigenous communities. The Indonesian constitutional framework acknowledges customary law communities and their traditional rights as long as they remain alive, develop within society, and conform to the principles of the unitary state.¹ This recognition creates space for local legal traditions to operate alongside national law. At the same time, legal pluralism may generate tension when customary norms intersect with constitutional values, gender equality, and judicial protection. One of the most significant areas where this tension appears is inheritance law. In legal pluralism scholarship, the central issue is therefore not merely the coexistence of state law and customary law, but how institutions determine which normative order should prevail when different legal sources produce competing claims. Inheritance disputes provide an

¹ John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

important setting for examining this problem because courts must translate socially embedded customary norms into formal judicial reasoning.

Balinese customary inheritance law is traditionally rooted in a patrilineal kinship system known as *kepurusa*.² Under this system, the male line is positioned as the principal channel of descent, family continuity, religious obligations, and inheritance. Sons are generally regarded as the main heirs because they are expected to continue the family lineage, maintain ancestral temples, and perform customary and religious duties. Women, by contrast, have historically occupied a limited position in inheritance distribution, especially when they marry out of their natal family. A married-out woman is commonly viewed as having entered her husband's family structure and therefore losing her inheritance position in her family of origin. Existing studies have therefore established that inheritance rights in Bali cannot be separated from the relationship between kinship status, customary obligations, and the continuity of the family line. What remains contested, however, is whether this traditional structure should continue to determine judicial outcomes when customary norms themselves have undergone normative development.

This traditional inheritance structure is closely connected to the Balinese customary marriage system. In ordinary marriage, a woman usually moves into the husband's family, while the husband remains within his own patrilineal line. Consequently, the woman is regarded as no longer part of the inheritance line of her natal family. An exception exists in the form of *nyentana* marriage, where the husband enters the wife's family and the woman may be positioned as *purusa*.³ Through this mechanism, a daughter may obtain a legal-customary status similar to that of a son and may become an heir in her family of origin. However, outside this specific arrangement, married-out women have traditionally faced exclusion from inheritance rights. This distinction has generally been discussed as

² Hanna Christine Ndun, Sarah Sutor, and I Gusti Agung Ayu Dike Widhiyaastuti, "Does Customary Law Discriminate Balinese Women's Inheritance Rights?," *Udayana Journal of Law and Culture* 2, no. 1 (May 2018): 97, <https://doi.org/10.24843/UJLC.2018.v02.i01.p05>.

³ Helen Creese, "The Legal Status of Widows and Divorcees (Janda) in Colonial Bali," *Indonesia and the Malay World* 44, no. 128 (January 2016): 84–103, <https://doi.org/10.1080/13639811.2015.1100862>.

a substantive rule of Balinese inheritance law, but less attention has been paid to how judges construct and apply these categories differently when resolving similar disputes. The problem therefore concerns not only the content of adat, but also the judicial process through which concepts such as *purusa*, *sentana rajeg*, and *nyentana* acquire legal meaning in individual cases.

The development of Balinese society has gradually challenged this traditional model. Social change, women's increasing public participation, and the growing influence of equality principles have encouraged reconsideration of women's inheritance rights. A significant normative shift occurred through the 2010 Decision of the Majelis Utama Desa Pakraman (MUDP) of Bali.⁴ This decision recognized that Balinese women may have inheritance rights, including women who have married out, although their rights remain connected to customary obligations and the structure of Balinese adat. The decision marked an important attempt to reform customary inheritance law from within the adat institutional framework. Accordingly, the 2010 MUDP Decision is significant not merely because it expands women's inheritance position, but because it demonstrates that customary law is capable of normative transformation from within its own institutional structure. This development challenges approaches that treat Balinese customary inheritance law as a fixed and historically static body of rules.

The 2010 MUDP Decision seeks to balance the preservation of Balinese customary values with the need to provide greater protection for women. It does not entirely abolish the *kepurusa* system, but it introduces a more inclusive understanding of inheritance rights. Under this framework, daughters are no longer automatically excluded from inheritance merely because of their gender. The decision therefore represents a progressive customary-law reform that responds to changing social conditions while maintaining the relevance of adat institutions.⁵ Nevertheless, its practical implementation

⁴ Ingrid Westendorp, "Personal Status Law and Women's Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu Women," *Journal of Human Rights Practice* 7, no. 3 (November 2015): 430–50, <https://doi.org/10.1093/jhuman/huv013>.

⁵ Tody Sasmita Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 2021): 269–89, <https://doi.org/10.1080/07329113.2021.1945222>.

remains uneven because customary norms in Bali are also shaped by awig-awig, perarem, local village practices, and judicial interpretation. Previous research has largely demonstrated what changed normatively through the MUDP Decision and how women's inheritance rights have developed within Balinese customary law. However, considerably less is known about why this normative reform is not translated consistently into state adjudication. This distinction between normative reform and judicial recognition constitutes the central academic problem addressed in this study.

In judicial practice, disputes concerning the inheritance rights of married-out Balinese women reveal continuing inconsistency. Several court decisions still rely heavily on the traditional patrilineal concept that only persons with purusa status may inherit. In such reasoning, married-out women who are not appointed through nyentana or sentana rajeg mechanisms may be denied inheritance rights. This approach creates tension with the 2010 MUDP Decision, which was intended to expand recognition of women's inheritance rights.⁶ The problem is not merely a difference in legal interpretation, but a deeper incoherence between customary-law reform and judicial application. To move beyond a general claim of inconsistency, this study comparatively examines judicial reasoning across three selected inheritance cases by identifying how judges construct the legal status of married-out women, determine the relevance of customary institutions, and assign normative weight to the 2010 MUDP Decision. The comparison enables judicial incoherence to be assessed through differences in ratio decidendi rather than merely through differences in final judgments.

This incoherence has direct implications for legal certainty. When courts apply different standards in similar inheritance disputes, women's legal position becomes unpredictable. Some judicial reasoning may acknowledge the development of Balinese customary law, while other decisions continue to apply older patrilineal norms. Such inconsistency weakens the protective function of law and may limit the effectiveness of

⁶ Birgit Bräuchler, "The Revival Dilemma: Reflections on Human Rights, Self-Determination and Legal Pluralism in Eastern Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 42, no. 62 (January 2010): 1–42, <https://doi.org/10.1080/07329113.2010.10756648>.

customary reform.⁷ Legal certainty is particularly important in inheritance disputes because the outcome determines not only property distribution, but also family status, social recognition, and the protection of vulnerable parties within customary communities. The academic issue is therefore not simply whether judicial decisions are consistent, but what explains the divergence in judicial reasoning despite the existence of a common normative reform. Examining this divergence allows legal certainty to be understood as a problem of institutional recognition and judicial norm selection within a plural legal order.

The issue also illustrates the complexity of legal pluralism in Indonesia. Balinese inheritance disputes involve the interaction between national law, customary law, adat institutional decisions, village-level regulations, and court judgments. Each legal order may produce different normative claims regarding who qualifies as an heir and what rights should be protected. Courts are therefore required not only to identify applicable customary norms, but also to interpret them in light of social development, gender justice, and legal certainty.⁸ When judges fail to consider the dynamic character of customary law, judicial decisions may preserve outdated norms and undermine progressive customary reforms. In this study, legal pluralism is therefore used not merely as a descriptive theory explaining the existence of multiple legal orders, but as an analytical framework for examining how judges select, rank, and translate competing normative sources into judicial decisions. Through this framework, differences in judicial reasoning can be used to identify the mechanisms that produce incoherence between evolving adat norms and state adjudication.

This study aims to analyze the incoherence between Balinese court decisions and the 2010 MUDP Decision in disputes concerning the inheritance rights of married-out women. The analysis focuses on the legal reasoning used by judges in determining the inheritance status of Balinese women and examines whether such reasoning aligns with

⁷ Thi Quang Hong TRAN, “The Choice of Norms in Courtroom Adjudication in Vietnam: In Search of Legitimacy in a Socialist Regulatory Context,” *Asian Journal of Law and Society* 6, no. 01 (May 2019): 159–79, <https://doi.org/10.1017/als.2018.44>.

⁸ Keebet VON BENDA-BECKMANN, “Social Security, Personhood, and the State,” *Asian Journal of Law and Society* 2, no. 2 (November 2015): 323–38, <https://doi.org/10.1017/als.2015.13>.

the development of Balinese customary law. This study also seeks to identify legal mechanisms that may reduce inconsistency between adat reform and judicial practice. The academic contribution of this article lies in offering a normative analysis of judicial incoherence within Balinese customary inheritance law, particularly in relation to women's inheritance rights, legal certainty, and the operation of legal pluralism in Indonesia. This study aims to analyze the incoherence between Balinese court decisions and the 2010 MUDP Decision in disputes concerning the inheritance rights of married-out women. The analysis focuses on the legal reasoning used by judges in determining the inheritance status of Balinese women and examines whether such reasoning aligns with the development of Balinese customary law.

This study also seeks to identify legal mechanisms that may reduce inconsistency between adat reform and judicial practice. More specifically, this study addresses two analytical questions: first, how do judges construct and justify the normative authority of Balinese customary law and the 2010 MUDP Decision in determining the inheritance rights of married-out women; and second, why does judicial reasoning diverge across comparable inheritance disputes despite the normative reform introduced within Balinese adat? The academic contribution of this article lies in offering a normative analysis of judicial incoherence within Balinese customary inheritance law, particularly in relation to women's inheritance rights, legal certainty, and the operation of legal pluralism in Indonesia. Unlike previous studies that primarily examine women's inheritance rights or individual court decisions, this article comparatively analyzes judicial reasoning across three cases and explains the institutional gap through which internal adat reform fails to be translated consistently into state adjudication. It therefore conceptualizes judicial incoherence as an adjudicative recognition problem in which normative change within customary law is not automatically accompanied by consistent recognition in judicial reasoning. This perspective extends the discussion beyond Balinese inheritance law by demonstrating how state courts may become a critical institutional site for determining whether changes originating within non-state legal orders acquire effective legal recognition.

2. RESEARCH METHOD

This study employs a normative legal research method using a descriptive-analytical approach.⁹ Normative legal research conceptualizes law as a system of norms reflected in statutory regulations, customary legal principles, legal doctrines, and judicial decisions; therefore, this study focuses on examining the incoherence between Balinese court decisions and the 2010 Decision of the Majelis Utama Desa Pakraman (MUDP) concerning the inheritance rights of married-out Balinese women. This study applies a statutory approach to analyze the recognition of customary law within the Indonesian legal system and its relationship with principles of legal certainty and gender protection. A conceptual approach is used to examine the concepts of Balinese customary inheritance law, *kepurusa*, *purusa*, *pradana*, *nyentana*, legal pluralism, and legal certainty. In addition, a case approach is applied by analyzing relevant court decisions, including Supreme Court Decision Number 2360 K/Pdt/2016, Supreme Court Decision Number 2824 K/Pdt/2017, and Tabanan District Court Decision Number 234/Pdt.G/2021, in order to identify the *ratio decidendi* used by judges in determining the inheritance status of married-out Balinese women.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, the 2010 MUDP Decision, customary-law instruments, and court decisions related to Balinese inheritance disputes. Secondary legal materials include scholarly books, journal articles, legal doctrines, and academic studies concerning customary law, women's inheritance rights, legal pluralism, and judicial reasoning. Tertiary legal materials include legal dictionaries, encyclopedias, and bibliographic sources used to support source identification and verification. Legal materials are collected through library research and document study by inventorying, classifying, and analyzing materials relevant to the research issues.¹⁰

⁹ Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," ed. Sanne Taekema, *Erasmus Law Review* 8, no. 3 (December 2015): 130–38, <https://doi.org/10.5553/ELR.000055>.

¹⁰ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (October 1, 2012): 83, <https://doi.org/10.21153/dlr2012vol17no1art70>.

The analysis is conducted qualitatively through grammatical, systematic, and teleological interpretation, supported by legal reasoning and legal syllogism to connect general legal norms with the specific issue of judicial incoherence in Balinese women's inheritance disputes. The findings are presented descriptively and analytically to explain the causes of incoherence between the 2010 MUDP Decision and court decisions, and to formulate legal mechanisms for strengthening legal certainty and the protection of married-out Balinese women's inheritance rights.

3. RESULTS AND DISCUSSION

3.1. Judicial Incoherence in Balinese Inheritance Disputes after the 2010 MUDP Decision

Balinese customary inheritance law operates within Indonesia's plural legal order, where state law, customary law, religious values, and local institutional decisions may coexist in the same legal space. This plurality creates flexibility because local communities can preserve their normative identity, but it also creates interpretive tension when courts are required to decide disputes involving customary norms. In inheritance disputes, this tension becomes more visible because courts must determine whether they should apply traditional patrilineal norms, contemporary customary-law reforms, or broader principles of legal certainty and gender protection.¹¹ The incoherence between Balinese court decisions and the 2010 MUDP Decision therefore reflects not only a technical problem of judicial interpretation, but also a structural problem of legal pluralism in Indonesia. Accordingly, the analysis of judicial incoherence must move beyond identifying the coexistence of different normative orders and examine how judges select, rank, and translate those competing norms into their *ratio decidendi*. The comparative significance of the selected cases lies precisely in identifying whether similar customary issues are resolved through consistent or divergent patterns of judicial reasoning.

¹¹ Griffiths, "What Is Legal Pluralism?"

The traditional Balinese inheritance system is strongly influenced by the *kepurusa* or patrilineal kinship structure. Under this system, sons are generally positioned as the principal heirs because they continue the family lineage, maintain ancestral temples, and perform religious-customary obligations. Daughters, especially those who marry out of their natal family, have historically been placed in a weaker inheritance position because marriage is understood as transferring their customary affiliation into the husband's family.¹² This structure explains why many inheritance disputes involving married-out women are not merely disputes over property, but also disputes over status, lineage, and customary obligations. For comparative judicial analysis, this relationship between rights and obligations is important because differences in case outcomes cannot be evaluated solely from the gender of the claimant; the claimant's position within the family structure, customary responsibilities, and the nature of the disputed property must also form part of the judicial assessment.

The position of married-out women is closely related to the distinction between *purusa* and *pradana* in Balinese customary law. A woman who marries in the ordinary form is generally viewed as entering the husband's family line and leaving the inheritance structure of her family of origin. By contrast, a woman may retain or obtain inheritance status when she is positioned as *sentana rajeg* through a *nyentana* or *nyeburin* marriage arrangement, in which the husband enters the wife's family.¹³ This mechanism shows that Balinese customary law does not always exclude women absolutely, but it traditionally recognizes women's inheritance rights through a specific transformation of customary status. The relevant judicial question is therefore not merely whether the claimant is a woman who has married out, but how the court interprets these customary classifications and whether such classifications continue to operate in the same manner after the normative development of Balinese *adat*. Differences in the interpretation of these concepts constitute one of the analytical variables for comparing the selected decisions.

¹² Christine Ndun, Suttor, and Dike Widhiyaastuti, "Does Customary Law Discriminate Balinese Women's Inheritance Rights?"

¹³ Creese, "The Legal Status of Widows and Divorcees (*Janda*) in Colonial Bali."

The 2010 Decision of the Majelis Utama Desa Pakraman represents a significant normative development in Balinese customary inheritance law. The decision recognizes that Balinese women may receive inheritance rights, including women who have married out, although such rights remain connected to customary obligations and the preservation of ancestral property.¹⁴ This decision does not completely abolish the *kepurusa* system, but it modifies the older exclusionary model by introducing a more inclusive recognition of women's legal position. In this sense, the MUDP Decision functions as an internal customary-law reform that attempts to reconcile adat continuity with contemporary demands for gender justice. However, its importance should not be assessed only from its progressive substantive content. A more fundamental issue concerns its normative authority: whether courts understand the MUDP Decision as a binding customary rule, a persuasive adat norm, authoritative evidence of living law, or an institutional policy requiring further acceptance through local customary instruments. This classification is decisive because different perceptions of the MUDP Decision's normative authority may produce different judicial outcomes even where the underlying disputes are substantially comparable.

Judicial incoherence arises when courts continue to rely on traditional patrilineal concepts without adequately considering the normative development introduced by the 2010 MUDP Decision. In several inheritance disputes, judges have emphasized whether a woman has been formally positioned as *purusa* through *nyentana* or *sentana* *raja* mechanisms. When such status is not proven, the woman's claim may be rejected even though the MUDP Decision has opened space for broader recognition of women's inheritance rights.¹⁵ This judicial approach narrows the reformative meaning of the MUDP Decision and maintains a rigid interpretation of Balinese customary inheritance law. The three selected decisions therefore need to be read comparatively by examining

¹⁴ Ni Made Sumerti Asih and Made Emy Andayani Citra, "THE POSITION OF DAUGHTERS IN BALINESE CUSTOMARY INHERITANCE SYSTEM FROM GENDER EQUALITY PERSPECTIVE," *International Journal of Law Reconstruction* 5, no. 2 (September 2021): 186, <https://doi.org/10.26532/ijlr.v5i2.12668>.

¹⁵ Lilik Mulyadi, "Interpretation Of Judges In Representing The Dynamics Of Religion Of Indigenous Legal Inheritance Of Bali," *Jurnal Hukum Dan Peradilan* 8, no. 2 (July 31, 2019): 214, <https://doi.org/10.25216/jhp.8.2.2019.214-227>.

at least the claimant's customary status, the legal sources relied upon, the interpretation of patrilineal concepts, the treatment of the MUDP Decision, and the reasoning connecting these elements to the final judgment. Such comparison shifts the analysis from merely identifying different outcomes to explaining the doctrinal sources of judicial divergence.

Viewed across the selected cases, judicial incoherence can be identified at three levels. First, normative-authority incoherence occurs when judges assign different legal weight to customary institutional decisions and traditional practices. Second, interpretive incoherence occurs when similar concepts such as *purusa*, *sentana rajeg*, and *nyentana* are understood or applied differently. Third, recognition-based incoherence occurs when courts differ in determining whether normative developments in adat constitute part of the contemporary law applicable to the dispute. These distinctions provide a more precise analytical framework for explaining why adat reform does not necessarily translate consistently into state adjudication.

Table 1. Dimensions of Judicial Incoherence in Balinese Inheritance Disputes

Dimension	Main Judicial Issue	Implication
Normative authority	Different legal weight is given to the 2010 MUDP Decision, <i>awig-awig</i> , <i>perarem</i> , and customary practices.	Uncertainty regarding which customary norm should be recognized by courts.
Customary interpretation	Courts may interpret <i>purusa</i> , <i>sentana rajeg</i> , <i>nyentana</i> , and married-out status differently.	Similar inheritance disputes may produce different legal outcomes.
Recognition of adat reform	Courts differ in recognizing whether the 2010 MUDP Decision reflects the development of contemporary Balinese customary law.	Internal adat reform may not be consistently translated into judicial reasoning.
Legal certainty and equality	Different approaches to evolving adat may affect predictability and the protection of women's inheritance rights.	Judicial incoherence may weaken legal certainty and equal legal protection.

Source: Author's analysis based on Mulyadi

As shown in Table 1, judicial incoherence is therefore multidimensional and cannot be explained merely by differences in case outcomes; it also arises from differences in normative authority,

customary interpretation, recognition of adat reform, and the judicial construction of legal certainty and equality.

The problem becomes more complex because customary law in Bali is not expressed through a single uniform source. Balinese customary norms may be found in awig-awig, perarem, local village practices, decisions of adat institutions, and judicial precedents. The 2010 MUDP Decision therefore needs local reception and institutional recognition before it can operate effectively in particular communities.¹⁶ When a court gives greater weight to older village practices than to the MUDP Decision, the result may be a decision that is formally grounded in adat but substantively inconsistent with the direction of customary-law reform. This plurality of sources confirms that the MUDP Decision should neither be automatically equated with statutory legislation nor treated as legally irrelevant. Its stronger characterization is as an authoritative indicator of internal customary-law development whose actual legal weight must be assessed together with awig-awig, perarem, institutional acceptance, and living community practice.

The institutional context has also developed beyond the 2010 MUDP Decision. Bali Provincial Regulation Number 4 of 2019 concerning Desa Adat strengthened the contemporary institutional framework of Balinese customary communities and the role of adat institutions, including the Majelis Desa Adat. This post-2019 development increases the relevance of examining whether principles of customary reform have subsequently been incorporated into awig-awig and perarem. Consequently, particularly for disputes arising in the later period, judicial analysis should not treat the 2010 MUDP Decision as an isolated normative event but should consider its relationship with subsequent institutional development within Balinese adat.

The inconsistency of judicial reasoning affects legal certainty for Balinese women. Legal certainty requires that similar disputes be resolved through stable and predictable legal reasoning. When one decision recognizes the development of women's inheritance rights while another decision continues to deny married-out women's claims based on

¹⁶ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *The Journal of Legal Pluralism and Unofficial Law* 38, no. 53–54 (January 2006): 1–44, <https://doi.org/10.1080/07329113.2006.10756597>.

older patrilineal norms, the legal position of women becomes uncertain.¹⁷ This uncertainty may discourage women from claiming inheritance rights and may strengthen informal pressure to accept discriminatory inheritance arrangements. This issue also has a constitutional dimension. Article 18B(2) of the 1945 Constitution requires recognition and respect for customary-law communities and their traditional rights, while Article 28D(1) guarantees fair legal certainty and equal treatment before the law. These provisions should not be understood as creating a simple opposition between adat and gender equality; rather, they require constitutional accommodation in which customary autonomy is respected while judicial interpretations remain capable of justification under principles of legal certainty, equality, and non-discrimination.

The constitutional perspective is complemented by Indonesia's international commitments under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In this study, CEDAW is not positioned as an external rule that automatically displaces Balinese customary law, but as an external normative benchmark for assessing whether the judicial application of customary distinctions results in unjustified discrimination. This approach is especially relevant because the 2010 MUDP Decision itself demonstrates that greater protection of women can emerge through internal adat reform rather than solely through external legal intervention.

The analysis of *ratio decidendi* is therefore essential to identify why judicial incoherence occurs. A court decision should not only be examined from its final ruling, but also from the legal reasons used to connect facts, customary norms, and applicable legal principles.¹⁸ In Balinese inheritance disputes, the *ratio decidendi* often turns on whether the judge treats the 2010 MUDP Decision as a binding customary-law development, a persuasive adat policy, or merely a non-binding institutional recommendation. Different judicial classifications of the MUDP Decision may produce different outcomes in similar disputes. Accordingly, comparative analysis of the selected

¹⁷ Herliana Herliana, "Ensuring Certainty through Legal Reasoning: What Can Indonesia Learn from the United Kingdom and the United States?," *Jurnal Jurisprudence*, February 2024, 318–38, <https://doi.org/10.23917/jurisprudence.v13i2.3057>.

¹⁸ TRAN, "The Choice of Norms in Courtroom Adjudication in Vietnam: In Search of Legitimacy in a Socialist Regulatory Context."

cases should identify not only which rule was applied but also why a particular source was considered authoritative, how competing customary norms were resolved, and whether the court explained its acceptance, limitation, or rejection of the reformative direction of the MUDP Decision. This method enables the causes of incoherence to be traced to specific stages of judicial reasoning.

From the perspective of legal pluralism, judicial incoherence reflects the difficulty of choosing norms in a plural normative environment. Judges must decide whether to prioritize state law, living customary practice, adat institutional reform, or constitutional values of equality and protection.¹⁹ If judges treat adat as static, court decisions may reproduce older patriarchal interpretations. If judges treat adat as dynamic, court decisions may accommodate the MUDP Decision as evidence that Balinese customary law has evolved. The quality of judicial reasoning therefore determines whether legal pluralism becomes a source of justice or a source of uncertainty. Legal pluralism therefore functions in this study not merely as a descriptive theory of normative coexistence, but as an analytical tool for explaining judicial norm selection. The comparative cases demonstrate that the principal difficulty lies in translating changes occurring within the customary normative order into the formal reasoning of state courts.

The incoherence between the 2010 MUDP Decision and court decisions also shows the limits of customary-law reform when it is not supported by consistent judicial application. Reform at the adat-institutional level may be progressive, but its effectiveness depends on whether judges, village institutions, and customary communities recognize the reform as part of the applicable legal order. Without harmonization, married-out Balinese women remain vulnerable to different interpretations across villages and courts. The main legal issue is therefore not whether adat can change, but whether the formal justice system is willing to acknowledge and stabilize that change in judicial reasoning. This study conceptualizes this condition as an “adjudicative recognition gap,” namely a gap between normative change within

¹⁹ Brian Z. Tamanaha, “Legal Pluralism across the Global South: Colonial Origins and Contemporary Consequences,” *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 2021): 168–205, <https://doi.org/10.1080/07329113.2021.1942606>.

customary law and its consistent recognition and translation into state judicial reasoning. Unlike a simple implementation gap, this problem concerns the more fundamental question of when and on what basis a development within adat becomes legally cognizable for state courts.

3.2. Legal Mechanisms to Harmonize the 2010 MUDP Decision and Court Practice in Balinese Women's Inheritance Rights

The first mechanism for addressing judicial incoherence is strengthening the normative position of the 2010 MUDP Decision within Balinese customary-law practice. The decision should be treated as an important expression of adat reform because it was issued by a central customary institution and responds to social developments affecting Balinese women. Although it may not have the same status as statutory legislation, it can function as a persuasive and authoritative source for interpreting contemporary Balinese customary inheritance law.²⁰ Courts should therefore consider the decision as evidence that the living law of Balinese inheritance has developed beyond rigid patrilineal exclusion. More precisely, the MUDP Decision should function as authoritative evidence of normative development within adat, while the extent of its applicability should be assessed through its relationship with local customary instruments and actual living practices. This formulation avoids both treating the MUDP Decision as formally equivalent to legislation and reducing it to a legally insignificant institutional recommendation.

The second mechanism is the incorporation of the MUDP Decision into village-level customary instruments, especially *awig-awig* and *perarem*. Because Balinese customary law operates through local communities, the effectiveness of the MUDP Decision depends on whether *desa adat* adopt it into their own normative structures. If the decision is expressly incorporated into local regulations, judges will have clearer evidence that the community has accepted women's inheritance rights as part of

²⁰ Davina Ketaren and Ade Saptomo, "The Dynamics of Conflict in the Balinese Customary Inheritance to Enhance the Implementation of Customary Law in Indonesia," in *Proceedings of the 4th International Conference on Law, Social Sciences, Economics, and Education, ICLSSEE 2024, 25 May 2024, Jakarta, Indonesia* (EAI, 2024), <https://doi.org/10.4108/eai.25-5-2024.2349378>.

applicable adat.²¹ This incorporation can reduce uncertainty and prevent courts from relying solely on older unwritten practices that may no longer reflect contemporary social values. This mechanism has become increasingly relevant within the post-2019 institutional framework of Desa Adat because the development and clarification of awig-awig and perarem can provide stronger evidence of whether broader adat reforms have been locally accepted, modified, or rejected.

The third mechanism is the development of judicial guidelines for inheritance disputes involving Balinese women. Such guidelines do not need to eliminate judicial independence, but they can provide interpretive parameters for assessing customary-law evidence, women's inheritance status, and the legal relevance of the 2010 MUDP Decision.²² Judges should be encouraged to examine whether the claimant has performed or remains connected to customary obligations, whether the disputed property is ancestral or non-ancestral property, and whether the denial of inheritance rights would contradict the development of living adat. These parameters would make judicial reasoning more transparent and consistent. Together with the first and second mechanisms, this forms the first major policy contribution of the study: the establishment of a coherent judicial-recognition framework for identifying the normative authority, temporal relevance, and evidentiary basis of evolving adat.

The fourth mechanism is the use of a contextual interpretation of Balinese customary law.²³ Courts should not interpret *kepurusa* only as a rigid rule of male succession, but should examine its underlying relationship between rights and obligations. If inheritance in Balinese adat is connected to *swadikara* and *swadharma*, then the legal question should not be reduced to biological sex or marital status alone. A married-out woman's inheritance position should be assessed by considering her

²¹ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (October 2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

²² Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no. 4 (July 1973): 719–46, <https://doi.org/10.2307/3052967>.

²³ Mulyadi, "Interpretation of Judges In Representing The Dynamics of Religion of Indigenous Legal Inheritance of Bali."

continuing relationship with the natal family, her contribution to customary obligations, and the character of the inherited property. This contextual approach allows judicial reasoning to preserve the internal structure of Balinese customary law while preventing formal classifications of sex or marital status from operating as automatic grounds for exclusion.

The fifth mechanism is strengthening legal protection through a gender-sensitive reading of customary inheritance law. Gender-sensitive interpretation does not necessarily require rejecting adat, but it requires courts to identify whether a customary rule still reflects justice in contemporary society. The 2010 MUDP Decision can be read as an internal adat response to gender inequality, meaning that women's inheritance claims should not be dismissed solely because they challenge older patriarchal assumptions.²⁴ A gender-sensitive approach would help courts balance cultural preservation with the protection of women's legal and economic interests. Such reasoning should be developed through constitutional accommodation by simultaneously recognizing the continuing existence of adat under Article 18B(2) of the 1945 Constitution and the requirements of fair legal certainty, equality, and non-discrimination reflected in Article 28D(1). CEDAW may further operate as an external interpretive benchmark without eliminating the contextual character of Balinese customary law.

The sixth mechanism is improving evidentiary standards in customary inheritance disputes. Courts often face difficulty in determining which customary norm is applicable because parties may present different versions of adat. Evidence should therefore include written awig-awig, perarem, adat meeting records, expert testimony from customary-law scholars, statements from desa adat authorities, and evidence of the community's actual inheritance practice after 2010.²⁵ A stronger evidentiary framework would help courts avoid selective reliance on outdated customary narratives and would support a more accurate understanding of living Balinese inheritance law. The fourth, fifth, and sixth

²⁴ Westendorp, "Personal Status Law and Women's Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu Women."

²⁵ Bräuchler, "The Revival Dilemma: Reflections on Human Rights, Self-Determination and Legal Pluralism in Eastern Indonesia."

mechanisms collectively constitute the second major policy contribution: a contextual and evidence-based model of adjudication that links customary status and obligations with gender-sensitive constitutional reasoning and reliable proof of contemporary living adat.

The seventh mechanism is encouraging harmonization between adat institutions and the formal judiciary. Dialogue between customary leaders, judges, academics, and women's rights advocates can clarify how the 2010 MUDP Decision should be understood in inheritance disputes. Such dialogue is important because customary law is not merely a set of abstract rules, but a living normative order shaped by social acceptance and institutional practice.²⁶ Harmonization does not mean replacing adat with state law; rather, it means ensuring that adat reform is recognized and applied consistently when disputes enter the court system. Within the post-2019 institutional framework, this dialogue should also involve contemporary adat institutions so that judicial understanding reflects both the historical significance of the MUDP reform and subsequent institutional development.

The eighth mechanism is the formulation of a coherent judicial test for married-out women's inheritance claims. This test may include four elements: the status of the claimant within the family line, the type of property being claimed, the claimant's relationship with customary obligations, and the relevance of the 2010 MUDP Decision or local *perarem*. If these elements are assessed systematically, courts can avoid overly formalistic reasoning based solely on whether the woman has *nyentana* status.²⁷ This model would allow judges to distinguish between cases where inheritance rights should be recognized and cases where customary obligations legitimately affect the distribution of inheritance. For greater analytical consistency, these elements can be organized into four judicial considerations: normative authority, temporal applicability, the rights—obligations nexus, and constitutional compatibility. The purpose of the test is not to

²⁶ Tody S.J Utama et al., "New Ways of Teaching Adat (Customary) Law at Indonesian Law Schools," *The Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024), <https://doi.org/10.54828/ijsls.2024v4n1.2>.

²⁷ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (July 1988): 869–96, <https://doi.org/10.2307/3053638>.

predetermine identical outcomes, but to ensure that different outcomes arise from transparent and legally justifiable differences.

The ninth mechanism is ensuring that legal certainty does not become a justification for preserving discriminatory interpretations. Legal certainty should not be understood merely as consistency with older rules, but as consistency with valid and evolving legal norms. When Balinese customary law has undergone reform through the MUDP Decision, legal certainty requires courts to explain why that reform is accepted, limited, or rejected in a particular case.²⁸ A decision that ignores the reform may appear predictable from the perspective of old adat, but it produces uncertainty for women whose rights have been normatively recognized by adat institutions. The seventh, eighth, and ninth mechanisms therefore constitute the third major policy contribution: institutional and jurisprudential consolidation aimed at ensuring that judicial independence operates within an identifiable framework of reasoning rather than producing unexplained divergence among comparable cases.

The synthesis shows that judicial incoherence in Balinese women's inheritance disputes is caused by the unresolved relationship between traditional patrilineal norms, the 2010 MUDP Decision, local adat instruments, and court interpretation. The solution requires more than recognizing women's rights in principle; it requires doctrinal consistency, village-level incorporation, evidentiary clarity, and gender-sensitive judicial reasoning. This study therefore proposes that courts should treat the 2010 MUDP Decision as an authoritative indicator of contemporary Balinese customary-law development and should construct their *ratio decidendi* through a balanced assessment of status, obligation, property type, and legal certainty. Such an approach can strengthen the protection of married-out Balinese women while preserving the adaptive character of Balinese customary law. The comparative findings ultimately show that the core problem is an adjudicative recognition gap rather than the mere coexistence of multiple legal orders. The three policy contributions, judicial recognition of evolving adat, contextual and evidence-based adjudication, and institutional-jurisprudential consolidation are

²⁸ VON BENDA-BECKMANN, "Social Security, Personhood, and the State."

therefore directed at improving the process through which normative changes within adat are translated into state judicial reasoning. This finding also has broader significance for legal pluralism because it demonstrates that non-state legal orders may reform internally faster than formal judicial institutions develop consistent methods for recognizing those reforms.

CONCLUSION AND SUGGESTION

This research concludes that judicial incoherence in Balinese inheritance disputes arises not merely from differences in the application of the traditional *kepurusa* system, but from inconsistent judicial recognition of the normative development introduced by the 2010 MUDP Decision. The comparative analysis shows that courts may differ in assigning legal weight to the MUDP Decision, interpreting customary concepts such as *purusa*, *sentana rajeg*, and *nyentana*, and determining whether evolving adat norms should influence the inheritance position of married-out women. Such differences demonstrate that the central problem lies in the translation of internal adat reform into state judicial reasoning. This study conceptualizes this condition as an adjudicative recognition gap, namely the gap between normative change within customary law and its consistent recognition and application by state courts. Accordingly, legal certainty in a plural legal system should not be understood merely as adherence to older customary rules, but as consistency in the judicial criteria used to identify, interpret, and justify the application of evolving adat norms.

The government, courts, and Balinese customary institutions should therefore strengthen the interaction between adat reform and judicial practice through three integrated measures. First, courts should develop a clearer judicial recognition framework for assessing the normative authority, temporal relevance, and evidentiary basis of the 2010 MUDP Decision, *awig-awig*, *perarem*, and living customary practices. Second, *desa adat* and contemporary customary institutions should strengthen the incorporation and clarification of women's inheritance rights within *awig-awig* and *perarem* so that courts have clearer evidence of the development of applicable adat. Third, judges should apply contextual and gender-sensitive reasoning by considering the claimant's customary

status, the type of inherited property, customary rights and obligations, legal certainty, equality, and non-discrimination. These measures are intended not to replace Balinese customary law with uniform state law, but to ensure that its adaptive development is recognized more consistently within formal adjudication. More broadly, the findings demonstrate that legal pluralism requires not only recognition of multiple normative orders, but also coherent judicial mechanisms for translating changes within non-state legal systems into state legal reasoning.

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