

Inheritance Rights of Children of Extramarital in the Perspective of Balinese Customary Law After Constitutional Court Decision Number 46/PUU-VIII/2010

Trisna Sandya MAHARANI¹, I Nyoman SUJANA², I Nyoman Alit PUSPADMA³

^{1,2,3}Master of Notarial Study Program, Postgraduate Program, Warmadewa University, Denpasar Indonesia

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Corresponding Author:

I Nyoman Sujana

E-mail:

nyomansujana808@gmail.com

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Abstract:

Purpose:

This Article analyzes the inheritance rights of children of extramarital in the perspective of Balinese Customary Law after Constitutional Court Decision Number 46/PUU-VIII/2010. This study is focused on the children born with extramarital inheritance as regulated under the customary law in Bali after the issuance of the Constitutional Court Decision regarding children of extramarital.

Methodology:

This research is conducted with normative legal methods by applying the statutory, conceptual, and case approaches. The theory of justice and legal certainty is applied as the tools for analyzing legal issues as the focus of the study.

Findings:

After the analysis, it can be understood that the inheritance rights of children born extramarital under customary law in Bali are still marginalized because for them to obtain the position of being an heir, the Balinese customary law and community still consider legal marriage as determining point whether a person can become an heir or not.

Implication:

Even though the Supreme Court Decision determines that the biological father has a civil relationship with a child born extramarital, providing that it can be proven by science or technology and or for other evidence under the applicable laws and regulations or other supporting evidence legally, but if the ratification is not carried out for husband and wife relationship through a religious ceremony as referred to in Article 2 Paragraph (1) of the Marriage Law, then a child born of extramarital still has no relationship in terms of inheritance to his father's kinship lineage or patrilineal kinship lineage. Children born of extramarital have an inheritance relationship with their mother or their mother's family.

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INTRODUCTION

The definition of marriage is the union in a husband-and-wife bond of a man and a woman whose aim is to form a family in service to God. Thus, a marriage becomes a contract with unique features intended to last a lifetime. Divorce is an exception to perpetual marriage because marriages are expected to end when one partner dies (Meliala, 2014).

Marriage is an essential part of human existence and one of the subsystems of religious life. Marriage offers a lawful and societal structure for the upkeep and nurturing of a family. Only by forming a *sakinah* family, or a family full of blessing, peace, harmony, happiness, and immortality, then the essence and purpose of the family (household) life can be realized in a marriage as the physical and spiritual relationships existing in the union of the husband-and-wife bond of both men and women.

Irawan said that the provisions in the Marriage Law make it clear that the institution of marriage is based on the principle of monogamy, meaning that if a man has become a husband, he can only have one wife, and a woman or wife can only have one husband, except in cases where the individual's religious law expressly permits polygamy or where the individual's best interests so require (Irawan, 2007).

Because of the religious importance of marriage, the union of a man and a woman must be celebrated with complete rituals and celebrations, as determined by a couple's beliefs and cultural traditions. A marriage is valid if

it is solemnized under the law of religion and adheres to a belief, as stated in Article 2, paragraph (1) of the Marriage Law.

Therefore, Article 2 paragraph (1) can be interpreted as marriage being legal when it is solemnized under the religious law of the parties having carried out a marriage; for Muslims, the validity of a marriage if it is carried out according to Islamic Law, and for Christians, the validity of a marriage if it is solemnized according to a set of religious law or state law (Mardani, 2013). Even though several regulations existed before the promulgation of the Marriage Law, it is determined in the Elucidation of the law that it is necessary to have an amendment.

The applicable laws in Indonesia are classified differently depending on the religious background and ethnicity of the individual. For Muslim indigenous people in Indonesia, religious and customary law adopted in certain areas is the reference for solemnizing their marriage.

Meanwhile, for other Indonesian people, customary law is the legal basis governing their lives. Regarding native people adhering to Christianity, *Huweljk Ordonnantie Christen Indonesia* (S.1933 No. 74) applies to their marriage. Meanwhile, for East Chinese Foreigners and Indonesian Citizens of Chinese descent, the provisions of the Civil Code apply with certain amendments. Other Eastern Foreigners and Indonesian citizens of other Eastern Foreign descent are subject to their customary law. Finally, Europeans and citizens of European descent, having been equated with them, are subject to the Civil Code. As such, these various laws provide different legal frameworks for individuals based on their religious and ethnic background in Indonesia.

The marriage is solemnized based on the conditions following the regulations stipulated in Article 6 to Article 12 of the Marriage Law. These prerequisites are divided into two categories: material prerequisites, which are related to the physical condition of the prospective husband and wife, and formal prerequisites, which are related to formalities or the implementation of a procedure that becomes a necessity when someone is solemnizing a marriage, also related to marriage registration carried out in the marriage registration office. The notion of implementation of marriage requires an agreement made by the parties, which follows Article 6 of the Marriage Law. Since it complies with human rights and the purpose of marriage, namely the formation of an everlasting and peaceful family.

In a perfect world, both spouses want to grow their family by having children. However, several studies show that parents are willing to abandon or murder their biological children to avoid embarrassment. Since a child is conceived extramarital, which is against most religious and ethical teachings, the child's birth would shame the family (Witanto, 2012).

In a broader sense, children are examined not only in the domain of knowledge (the body of information) but also from the centralist philosophy of life's point of view. Studies of religion, law, and sociology enrich children's understanding of the social world. Child advocacy and protection laws apply to children. A favorable legal system governing children transforms children into objects and people with legitimacy and a generalization process (Wadong, 2000).

Children are a gift blessed by God and can provide a better future for their families. As described in the Marriage Law, types of children include the birth of a child in marriage and the birth of a child beyond the implementation of a marriage. A child born extramarital does not have the legal right to marry outside the mother's family, according to what is regulated in Article 43, paragraph (1) of the Marriage Law.

It removes any financial support or inheritance a father could provide for his child. If the child's mother agrees, the father may admit the child to a civil court. Most of a child's family members are strangers to him if the child is born extramarital. In addition, children born of extramarital have a lower degree than legitimate children in the eyes of their parents (Pitlo, 2021).

A child who was born in a relationship declared to be legal is considered to be a complete member of the father's and mother's family. In contrast, a child born extramarital is only considered to have a civil relationship with the mother and family. To ensure that a child born from a mother without solemnizing marriage gets recognition by his or her father, approval from the competent authority is required upon the recognition made by both the father and mother.

A child born extramarital does not have a relationship with his or her father, so he or she does not reserve rights and obligations toward his father as a legitimate child regarding living expenses, education, and inheritance. In all other respects, the recognized child status is identical to the legal child status upon approval is given. In order

to establish legal rights such as inheritance, citizenship, and guardianship, a child must have a biological father, even though this is biologically impossible. Therefore, a new civil law relationship exists when the child is recognized and legalized. It complies with the research (Situmorang & Sitanggang, 1991).

On 17 February 2012, the Constitutional Court handed down a *groundbreaking* decision to the application for review of the Marriage Law, namely Hj. Aisyah Mochtar alias Machica and Muhammad Iqbal Ramadhan (Machica's son) are the parties filing for the review. Constitutional Court Decision Number 46/PUU-VIII/2010 documents the case. Article 43 paragraph (1) of Law No. 1 of 1974 concerning marriage as amended under Law No. 16 of 2019 changed as the basis for a lawsuit against discrimination and unfair treatment under the law in one of the requests. Paragraph (1) of Article 43 contradicts the contents of the article, emphasizing that every person reserves the right to live and maintain his life with guarantees in Article 28 B paragraphs (1) and (2) and Article 28 D paragraph (1) of the Constitution of 1945 of The Republic of Indonesia. The Constitutional Court Decision regarding this matter has been partly fulfilled in the petition filed.

The provisions in Article 43 paragraph (1) of the Marriage Law governing the relevant part: "Children born of extramarital only have civil relations with the mother or from the mother's family, the decision of which is null and void provided that it is interpreted as terminating a civil relationship with men as evidence based on science and technology or other evidence under to actual law. A child born out of the marriage of his or her parents has a civil relationship with the mother and the mother's family and to a man with scientific and technological evidence as well as other evidence under the law as the father of these children.

Biological father now has legal responsibility for their children born extramarital due to the Constitutional Court Decision. Any legal differences between a child born in a husband and wife in a legal marriage and a child born without any legal marriage have been eliminated. There is no difference between a child born to an unmarried couple and a child born to a legally married couple. The Constitutional Court Decision extends legal protection and social position for children born before their parents' marriage bond. The Constitutional Court Decision would have a broad impact, especially in family law.

The birth of a child before the contract is performed is considered extramarital under Balinese customary law. It is further categorized into two categories: *bebinjat* child and *Astra* child. A Child classified as *Bebinjat* and *Astra* are different in some terms: *Beinjat* is having a child without a recognized father or knowing who the father is. A child classified as *astra* is born before a marriage bond is solemnized, namely those whose father's cast is higher than their mother's. The child's biological father is known, but no official marriage has yet been solemnized. As stated in (Artadi & Supartha, 1987).

The biological father's identity determines whether a child is considered *bebinjat* or *astra*. If the identity of the child's biological father is unknown, we refer to the offspring as a *beinjat* child; otherwise, we call them *Astra* children.

If the pregnancy occurs after the couple legally marries, the child is valid only if the biological father accepts responsibility. However, if the marriage occurs after the child is born, he is considered an illegitimate offspring and legally prohibited from marrying the father. Under customary law, male parents (fathers) are given more weight than female parents (mothers). The birth of a child of extramarital has legal protection classified as the same as that of their mother's family and other relatives by having children born before their parents' marriage bond.

Using the definition of Tonja Pakraman Village, Tonja Village, North Denpasar Sub-District, is an example of its application in Balinese customary law and *awig-awig*. Awig-awig describes that a child born extramarital has no legal bond with anyone other than the mother and her immediate family. In Balinese customary law, a child born extramarital is classified as *bebinjat* and *Astra*; a *bebinjat* and *astra* child can only inherit from one of his mother's families through a special ceremony.

Thus, based on the awig-awig, extramarital children do not have the right to inherit property in their father's family. Meanwhile, for inheritance rights in the mother's family, the child can only inherit if a *peperasan* traditional ceremony has been carried out. The focus of the study of this article is regarding the position of Children born extramarital in inheritance under Balinese Customary Law after the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning children of extramarital.

METHODS

This research applies normative legal research methods, with a statutory approach and a case approach, where an analysis will be carried out in the Constitutional Court Decision Number 46/PUU-VIII/2010 and other regulations related to this research.

RESULT AND DISCUSSION

The Position of Child of Extramarital in the Perspective of Balinese Customary Law After the Constitutional Court Decision No. 46/PUU-VIII/2010. The social and legal implications of a child born extramarital are constantly debated. Many people say, and many see, that society is too prepared to label a child born extramarital as the lowest of the lowest. They are often subject to cruel treatment. Whereas the Balinese, who are predominantly Hindu, should think that every new life is sacred. However, the act leads to his birth being morally reprehensible.

The legal position of a child born extramarital will be crucial in many contexts, such as social interactions and the distribution of assets upon parents' death. Of course, legitimate children have a unique position, especially when compared to illegitimate offspring. The status of a child as legal or illegitimate depends on whether his parents were married at the time of his birth. Article 42 of the Marriage Law of 1974, revised in 2019, describes that children born in legal marriages or as a result of such marriages are considered legitimate children. The affirmation of this article makes it clear that the institution of marriage plays a role in determining whether a child is legally considered a legitimate child or a child of extramarital. Therefore, a couple's marital status is essential in inheritance for their offspring.

The absence of a marriage but producing a child is referred to as a *bebinjat* child or "astra" child under the customary law in Bali, and a temporary resolution of their status can be reached through deliberation among the family's heirs. If there are differences of opinion originating from family disputes, the matter can be brought to the customary head (*Bendesa Adat*).

If the customary head cannot resolve the inheritance problem, the village head can be consulted for guidance based on relevant customary norms or laws. Taking the dispute to court is a last resort if disagreements persist.

The birth before the marriage ceremony is a child born extramarital. *Bebinjat* child and astra child are the terminology used to refer to a child born before a legal marriage ceremony. A child born extramarital is classified as *Bebinjat* if the biological father's identity is unknown, and Astra, where the man as the child's father has a higher social status than the woman who gives birth to him (Soeripto, 1973). When considering the two categories of illegitimate children, it is crucial to acknowledge that Astra's children have a known biological father, whereas the *bebinjat* child's father is unknown.

Balinese language dictionary defines Astra children as descendants whose biological father belongs to the aristocratic class. In contrast, their mother belongs to the ordinary class due to marriages not registered outside the marriage institution. What is meant by being classified as an "Astra child" is a child born out of a marriage relationship between a mother from the Sudra caste and a biological father from the Tri Wangsa or aristocratic caste. This relationship has no legal recognition through marriage and is characterized by caste differences.

Based on the interpretation above, the difference between *bebinjat* children and Astra children describes the status, position, and role of a child referred to in the realm of family law and Balinese customary inheritance law. Knowing the status of Astra children can also determine their position in legal inheritance in the custom of the Bali area. One example can be seen in the awig-awig (traditional customary law) of Tonja Pakraman Village, located in Tonja Village, Denpasar City. Under this awig-awig, children born extramarital before *pawiwahan* or marriage ceremony are called *Panak diadin*. It is important to note that the consequences of this situation extend beyond the individuals involved, affecting both mother and child and the households in which they live. The culmination of this cultural practice occurs when individuals perceive their adoption as children through the implementation of traditional ceremonies. Likewise, the status of children born under the astrological sign *Astra* must be examined.

Based on the legal principles of customary law in Bali, it is stipulated that a child born extramarital and legally recognized is only entitled as an heir to the assets of the mother and the mother's lineage. Additionally, if the child passes away, any inheritance they may have passed to the mother or a maternal relative.

In order to reduce the number of children born without fathers, traditional law suggests giving importance to the marriage of mothers and fathers as much as possible. According to Tamakiran, this effort aims to form an institution providing legitimacy to children who were born extramarital. According to Tamakiran, the institution in question is the Parisada Hindu Dharma Indonesia (PHDI) institution. (Hamidjo, 2003). According to Manawa

Dharmasastra, Parisada can be understood as an association of educated Brahmin Sistas or knowledgeable Panditas, along with representatives from three categories of hostels, namely *Brahmacari*, *Grhasta*, and *Wana Prastha*. The principle underlying the establishment of the Articles of Association of Parisada by Maha Sabha VIII of Parisada Hindu Dharma Indonesia (PHDI) in Denpasar is that the highest element is Sabha Pandita. The provisions referred to are stipulated in Article 10 of the PHDI Articles of Association.

Three Parisada Hindu Dharma Indonesia functions are regulated in Article 7, paragraph (1) of the Articles of Association. The three functions covered by Bhisama are as follows:

- a. The establishment of Bhisama,
- b. Settlement of religious disputes arising from different interpretations of religious teachings or uncertainties, and
- c. Dissemination of Vedic teachings, Bhisama, and decisions made by Parisadsa. In addition, it should be noted that according to Article 7, paragraph 2 of the Articles of Association, the implementation of the Parisada function, as referred to in paragraphs 1 a and b, is entrusted to the Headquarters Sabha Pandita PHDI Institute.

The provisions outlined in the Parisada Articles of Association clearly and honorably position the Sabha Pandita component in close harmony with the provisions contained in the Manawa Dharmasastra. It led to the Parisada taking on a more concentrated role as the Brahmin Sista assembly. Parisada is subject to functional limitations preventing its members and non-members from engaging effectively with its operations. Therefore, the presence of Parisada in a *tarekat* (Sufi Order) sometimes needs to be clarified.

Therefore, it is essential for Hindus to actively contribute to the continuity of the Headquarters Sabha Pandita PHDI Institute, thereby enabling it to effectively fulfill its role in facilitating the function of the Parisada to produce genuine and appropriate Bhisama according to the contemporary needs of people. Likewise, for Sabha Panditas to improve their decision-making abilities in religion, it is essential to address and resolve the different interpretations and uncertainties relating to various aspects of Hindu teachings.

Establishing the PHDI institution has significantly reduced the number of children born before a marriage ceremony or marriage has not been declared valid.

Based on the area in Bali, there is a difference between a child born extramarital, defined as a child who is said to be an *astra*, and a child born to parents of different castes. Even if the parents are married according to Balinese custom and are declared legal, the child's status is still considered equivalent to a child born extramarital, according to customary norms. Astra's descendants are only entitled to inheritance either from their mother or through their mother's lineage. Based on Balinese customary law, a child in this context is considered to have no lineage from the father's side and instead can only be traced through the lineage from the mother's side. Consequently, the child's inheritance and social status are not determined by the father's lineage.

According to the customary law that has been in effect in Bali, the inheritance rights for a child born outside of a legally recognized marriage bond are limited to the mother's lineage. As a result, a child can only inherit assets that come from his mother or his mother's family. Furthermore, any inheritance they leave behind will also be transferred to their mother or maternal relatives in the event of a child's death.

Balinese customary law does not differentiate between children born before or after a legal marriage and those born without marriage. It contrasts the concept of an "Astra child," in which children are born to parents from different castes outside of marriage.

According to Balinese customary law, a child born extramarital, commonly called an astra child, is exclusively entitled to inherit property solely from his biological mother or maternal lineage. Based on the principles of Balinese customary law, it can be seen that a child in such a scenario is not associated with a father and is instead considered a mere descendant of the mother's lineage. Consequently, children's social status and inheritance rights are not inherited from the father's side of the family.

Based on the result of research conducted by Sukerti et al. (2022), it is stated that if children born extramarital were not officially recognized by their fathers, they did not have a legal relationship with them due to no legal process. Without a legally recognized relationship, children of extramarital, even though they receive proper economic care at their father's residence, do not have legal status as adopted children because there is no adoption process. As a result, the child is not entitled to inherit the father's property or the rights related to the father. If legal action is not taken, the absence of legal consequences makes the relationship status ambiguous within the household and among the father's relatives (Sukerti et al., 2022).

According to Balinese customary law, children born of extramarital are called *Bebinjat* children or *Astra* children, are less protected by law, and do not enjoy legal certainty and justice. Consequently, these children only have a legal relationship with the mother and her family, as the biological father's identity is unknown in the case of high-ranking children. However, in the case of *Astra* children, whose biological father is known to come from a noble family, they are entitled to receive financial assistance for education and living expenses, according to the ability of the biological father. However, these children are not given other rights, such as inheritance. Under Balinese customary law, children born of extramarital are limited to inherit property from their mother and family. In compliance with the principles of Balinese customary law, obligation inheritance is only limited to individuals of direct descendants of *Purusa*.

Philosophical investigation reveals two perspectives on existence, particularly concerning "justice." The law school holds that "justice is the nature of law." Therefore, the law embodies the concept of justice, implying that a law lacking justice is not obligatory. In addition, it should be noted that justice is only one of the multifaceted goals of the legal system. As a result, in cases where justice remains elusive, it can be concluded that one of the intended legal objectives has yet to be successfully achieved (Gede & Putu, 2018).

Inheritance Rights of Children Of extramarital in the Perspective of Balinese Customary Law After the Constitutional Court Decision Number 46/PUU-VIII/2010. With the enactment of the Marriage Law, article 280 of the Civil Code is no longer applicable. It is because the provisions have been stipulated in Article 43, paragraph (1) of the Marriage Law, which mainly regulates that if a child is born before the existence of a marriage bond, the child will get recognition of having a civil relationship with his mother or biological mother's family. The biological father is the only person responsible for admitting the paternity of a child born extramarital for establishing a civil relationship with the child. In order to acknowledge the legitimacy of children born out of wedlock and their entitlement to inheritance distribution, there is a need to be mindful of their social status and position.

Today's social values make Article 280 of the Indonesian Civil Code impractical, reducing a mother's obligation to recognize a child born before marriage. Therefore, in the case of a child born before a marriage bond, legal provisions determine that the child can form a civil relationship with his biological mother or the mother's family.

The provisions in the Marriage Law do not only provide rules regarding marriage but also regulate family law. The provisions outlined in the Marriage Law cover many aspects. It includes the basic principles of marriage, prerequisites for marriage, steps to prevent an incompatible marriage, procedures for annulment of marriage, formation of marriage agreements, rights and responsibilities of husband and wife, application of wealth and property in the marriage, the result of the marriage when breaking up, the legal status of the child, and the rights and obligations of parents and children, as well as the concept of guardianship. This research examines the origin of children in mixed marriages outside Indonesia.

The Marriage Law will take effect when the regulation is promulgated. Government regulations will further regulate the implementation of this law. Government regulation (PP) is PP No. 9 of 1975, effective 1 October 1975. However, it should be noted that Government Regulation Number 9 of 1975 covered only some of the provisions outlined in the Law of the Republic of Indonesia, Number 16 of 2019, concerning the amendment to Law Number 1 of 1974 concerning Marriage. Government Regulation Number 9 of 1975 contains various provisions, including but not limited to general provisions. 2. Marriage registration process 3. Formalities in solemnizing marriage 4. An official document issued as proof of marriage 5. Legal steps required to obtain a divorce The topic of discussion is the annulment of marriage. Waiting time refers to an individual's anticipation or inactivity before the desired event or action occurs. Polygamy, the practice of having multiple wives, is a phenomenon that has been observed in various cultures throughout history. Criminal provisions are provisions in the legal framework related to the punishment and prosecution of someone committing a criminal act.

In Government regulation, more is needed to provide a rule for certain aspects. It is supported by the contents of the Supreme Court Circular Letter dated 20 August under the reference number MA/Pemb/0807/75. The Circular Letter articulates various aspects, including identifying matters that have not been adequately regulated, so they do not have practical requirements. One of these matters relates to property in the context of marriage, the child's role and the parent's rights and obligations, and the concept of child guardianship.

Concerning the status of children, especially those who were born before the existence of a marriage bond, such as children born before the implementation of marriage in Bali, which are commonly referred to as "*bebinjat*"

children or "*astra*" children, it is stated that the Supreme Court Circular on this matter had not yet provided the desired results, making it possible to continue to apply the previous provisions and regulations. However, different points of view remain to exist. The enforcement of the provisions regarding children of extramarital has yet to materialize because there is no regulation in the implementation guidelines, so the previous provisions are still valid. The provisions regarding children born extramarital are still valid in the current context, so the previous provisions must be continuously applied. The affirmation that children born of extramarital have been recognized as such according to the Law of the Republic of Indonesia Number 16 of 2019, which amended Law Number 1 of 1974 concerning Marriage, is supported by various factors. One of these factors is the Decision of the Supreme Court of the Republic of Indonesia, dated 29 June 1991, Case Number 1159 K/Pdt/1987. This decision stipulated that a child born extramarital still has a civil relationship with his mother.

Let us look carefully at the arrangements regarding children born extramarital as outlined in the Law of the Republic of Indonesia Number 16 of 2019, which amended Law Number 1 of 1974 concerning marriage, and the provisions of the Civil Code and Customary Law. We can identify a fundamental difference in principle. This difference can be seen between Law Number 16 of 2019, which amended Law Number 1 of 1974 concerning Marriage, and the regulations contained in Customary Law and Civil Law. In the context of marriage and customary law, it is regulated that children born extramarital have a legal bond attached to their mothers and families from their respective mothers' side. According to the provisions outlined in the Civil Code, it is not considered that a child born to parents who are not married has a legal relationship with his mother or family from the mother's side. In compliance with the provisions of the Civil Code, forming a legal relationship between an illegitimate child and his mother requires an additional legal procedure, namely the recognition of the child.

Therefore, the difference mentioned above can be rationalized. The enactment of the provisions of the Civil Code is limited to children born of extramarital who are included in the scope of the Civil Code. According to the provisions outlined in Law Number 1 of 1974 and customary law practices, it is not mandatory to recognize children born extramarital.

Under the customary inheritance law in Balinese society, recognition or validation of a child is classified as *bebinjat* child, and children classified as *astra* are legitimate offspring considered not allowed. This prohibition was rooted in considerations of caste, honor, and the inheritance rights of an extended kinship network. To form a legal bond between a child born out of a marriage bond, also referred to as a *bebinjat* child, and children, classified as *Astra*, with mothers and their families, it is necessary to have an automatic civil recognition. On the other hand, when these children are born to parents in a legal marriage, they do not have a legal relationship with their father or mother.

The Kramusan system guides the application of Balinese customary law in family law. Individual kinship ties are primarily centered around the paternal lineage, tracing back to the grandfather (father's father) and so on, without considering the maternal lineage.

In the context of the patrilineal system, the relative significance of male offspring tends to be higher than that of their female counterparts. Bringing *dhana* and fulfilling *pitra* puja, which involves worship of and responsibility towards ancestors, is very important because it is closely related to the right of inheritance, commonly referred to as the heirs.

Children are legally recognized to be born after a marriage bond that is legally recognized and is defined as the union of a man and a woman, which is then carried out according to religious law through a *wide widana* ceremony. In the context of Balinese customary law, the marriage cannot be continued if a woman from the Sudra caste is pregnant, her gestational age is more than five months, and she intends to marry a man from the *tri-wangsa* class. Conversely, marriage can only occur after the birth of a child. However, it should be noted that a born child will not receive recognition as a legitimate descendant, but as an *Astra* child, as the terminology used in Balinese customary law. *Astra*'s descendants lack a harmonious relationship with their paternal figure, so they are ostracized from inheriting their father's status, even though they are recognized as biological children.

Astra children only receive an inheritance from their mother. However, suppose the mother enters into a legal marriage. In that case, the legal bond between a child who belongs to *Astra* and the mother who gave birth to him will be cut off so that the right of a child classified as *Astra* to inherit from his mother is revoked.

Related to the theory of justice and legal certainty, the status of a child who is born before the existence of marital bond in terms of inheritance, as customary law applies in the area of Bali, after a decision from the Constitutional Court, does not provide legal certainty or adequate protection. Of the children born before, there

is a bond in marriage in terms of inheritance under the Balinese customary law that continues to have marginalization. The cause of this issue is the belief in society under customary law in Bali that legal marriage determines a person's eligibility as an heir. Even though there is a Constitutional Court Decision under case number 46/PUU-VIII/2010, which has determined in a civil manner a child born extramarital to a biological father, provided that this relationship can be between the mother and her relatives.

CONCLUSION

According to the Constitutional Court Decision No. 46/PUU-VIII/2010, the birth of a child outside of a marriage bond under the customary law adopted in Bali is called a *bebinjat* child or *Astra* child, and this child only reserves the right to inherit from the mother and her family. This child's inheritance division is according to the rules of Article 43, paragraph (1) of the Marriage Law. This regulation determines if a child is classified as a *bebinjat* child or *Astra* child, he or she has a legal relationship solely to the mother and the mother's family. The only person responsible for recognizing the status of an *Astra* child is the child's biological father, providing that he wants to establish a respectful relationship with the *Astra* child. In order to ensure the proper recognition and rights of children of *Astra* descent, it is essential to acknowledge their status as legitimate offspring. It will guarantee their entitlements when it comes to the distribution of inheritances. Balinese customary inheritance law stipulates that children born extramarital are also classified as *bebinjat* or *Astra* children who are only entitled to inherit from their mother. However, if the mother later enters into a legal marriage, the legal bond between the child born outside of the marriage to the mother will be severed. As a result, a child who is categorized as an *Astra* child will not be able to have the right to inherit from his mother.

Based on the analysis using an analysis framework of justice and legal certainty, a child born out of a marriage in the context of inheritance, according to Balinese customary law, will continue to experience marginalization and a lack of legal protection and certainty. It occurs due to the perception existing in people's lives that a valid marriage is the main criterion for determining a person's eligibility to inherit. The Constitutional Court has stipulated that biological fathers can enter into civil relations with children born extramarital, providing that it is proven through scientific and technological means as well as evidence that may support other legal matters. However, if the marriage bond between parents is not formally recognized through a religious ceremony as stipulated in Article 2 Paragraph (1) of the Marriage Law, then a child born extramarital still has no inheritance rights. Associated with an inheritance relationship to the mother and relatives.

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