

ABSTRAK

Tesis ini berjudul "**Perkembangan Kedudukan *Daha Tua* Dalam Masyarakat Adat Bali**", dengan 2 (dua) pokok permasalahan yaitu kedudukan *Daha Tua* hukum waris adat Bali dan *ratio decidendi* Putusan Pengadilan Tinggi No.380/PDT/1982/PTD tentang hak waris *Daha Tua*. Penelitian ini merupakan penelitian normatif yaitu penelitian yang didasarkan pada bahan primer. Pendekatan yang digunakan pada penelitian ini yaitu pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*) dan pendekatan kasus (*case approach*). Keberadaan *Daha Tua* di dalam suatu keluarga kerap diberikan cap sebagai beban berat keluarga di masyarakat adat Bali yang menganut sistem kekerabatan patrilineal. Kedudukan *Daha Tua* cenderung lemah karena tidak melakukan perkawinan sehingga seolah-olah hanya bergantung pada belas kasihan saudara laki-lakinya, terutama bagi *Daha Tua* yang tidak memiliki latar belakang pendidikan dan finansial yang baik. Namun seiring dengan kemajuan jaman dan akses pendidikan, kedudukan *Daha Tua* menurut hukum waris adat Bali berkembang pula. Hasil penelitian dari tesis ini menunjukkan bahwa; (1) Sistem patrilineal yang dianut masyarakat adat Bali memberikan kedudukan *Daha Tua* sebagai anak perempuan di dalam keluarga karena tidak melakukan perkawinan dan tetap berada di bawah tanggung jawab keluarganya yaitu orang tua atau saudara laki-lakinya yang memiliki kewajiban menanggungnya (*nguubin*). Sehingga *Daha Tua* tetap memiliki hak dan kewajiban pada keluarganya; (2) *Ratio decidendi* majelis hakim pada Putusan Pengadilan Tinggi No 380/PDT/1982/PTD *Juncto* Putusan Pengadilan Nomor 37/Pdt.G/1981/PN.KLK membuat suatu norma baru mengenai hak waris anak perempuan berstatus *Daha Tua* dengan memutuskan bahwa seorang *Daha Tua* berhak mewaris dalam arti ikut menjadi ahli waris sama seperti anak laki-laki. Sehingga perkembangan kedudukan hak waris *Daha Tua* yang semula dimulai dari kebiasaan dan tidak memberikan sama sekali hak waris kepada *Daha Tua*, kemudian Paswara 1900 yang memberikan kesempatan bagi *Daha Tua* untuk dapat memiliki hak waris melalui hibah atau *jiwa dana*, sampai pada Putusan Pengadilan Tinggi No 380/PDT/1982/PTD *Juncto* Putusan Pengadilan Nomor 37/Pdt.G/1981/PN.KLK 2010 yang memberikan hak waris penuh *Daha Tua* sebagai ahli waris yang kemudian putusan tersebut diaplikasikan kembali melalui Keputusan Pesamuan Agung MUDP Bali Nomor 01/KEP/PSM-3/MDP Bali/X/2010.

Kata Kunci: *Hukum Waris Adat, Hak Waris Perempuan, Daha Tua.*

ABSTRACT

This thesis is entitled "**The Development of Daha Tua's Position in Bali's Indigenous Society**", with 2 (two) main issues which are *Daha Tua's* position in Bali's traditional inheritance law and ratio decidendi High Court Decision No.380 / PDT / 1982 / PTD concerning *Daha Tua's* inheritance rights. This research is a type of normative research that is a research that is based on primary law source. The approach methods used in this study are the statute approach, conceptual approach and case approach. The presence of *Daha Tua* in a family is often labeled as a heavy burden on the family in Balinese indigenous people who adhere to the patrilineal kinship system, *Daha Tua's* position tends to be weak because she does not do marriage so that it seems as if she only relies on the mercy of her brother, especially for *Daha Tua* who does not have a good educational and financial background. The advances in time and access to education, *Daha Tua's* position according to Balinese inheritance law is growing too. The results of the research of this thesis show that; (1) The patrilineal system adopted by the Balinese customary community gives *Daha Tua's* position as a daughter in the family because she does not carry out marriage and remains under the responsibility of her family, namely her parents or brothers who have the obligation to bear it (*nguubin*). So that *Daha Tua* still has rights and obligations to his family; (2) *Ratio decidendi* of the panel of judges on the Decision of the High Court No. 380 / PDT / 1982 / PTD Juncto Court Decision Number 37 / Pdt.G / 1981 / PN.KLK made a new norm regarding the inheritance rights of *Daha Tua* status by deciding that *Daha Tua* has the right to inherit in the sense of being a heir as well as a son. The development of *Daha Tua's* inheritance rights was originally started from the habit and did not give the inheritance rights to *Daha Tua* at all, then Paswara 1900 which gave *Daha Tua* the opportunity to have inheritance rights through grants or souls of funds, up to High Court Decision No. 380 / PDT / 1982 / PTD Juncto Court Decision Number 37 / Pdt.G / 1981 / PN.KLK 2010 which granted full inheritance rights of *Daha Tua* as heirs and then the jurisprudence was reapplied through the MUDP Bali Grand Passion Decree Number 01 / KEP / PSM -3 / MDP Bali / X / 2010.

Keywords: *Inheritance Customary Law, Women Inheritance Right, Daha Tua.*