



# Legal Problems in Regulating Inbreeding (Incest) in the Social Life of Society in Bali

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**ABSTRACT.** Balinese people inherit socio-religious values through the culture of *dresta* and *sima* (customs), which contain the content of traditions that have been inherited from generation to generation and are used to organize community life in organizing the order of community life. Marriage is a very important and sacred momentum for Balinese Hindus. In Balinese, traditional marriage is a sacred bond that is carried out between two individuals or people in the world. Balinese customary law is unwritten. However, the legal awareness of each member of the community causes the growth and development of customary law to be in line. marriage in Balinese life is also not only interpreted as a meeting of two human beings on the basis of mutual consent (love) alone but there are fundamental things that must be obeyed by the couple. Bali avoids forms of *patemuan* (matchmaking/marriage) that are contrary to the socio-religious values of its society. Marriages that are prohibited or avoided by Balinese people are mainly inbreeding (incest taboo) because this also medically / scientifically has a great effect/chance to produce abnormal offspring or physical defects caused by genetic similarities between parents (mother and father).

**Keywords:** Marriage, Bali, Incest

## 1 INTRODUCTION

Bali, as one of the islands in Indonesia, has inherited a noble culture that has been passed on from one generation to the next. Likewise, the customary rules are maintained and flourish among the people of Bali. The word "*adat*" in Balinese terminology is used with the words "*dresta, sima and cara*" and is preserved among the people and felt as necessary.

In Bali, the concept of *Tri Hita Karana* is reflected in the life of the Hindu community. Harmony in life is fostered. Therefore, apply *Tri Hita Karana* in everyday life. The three elements always underlie the Balinese life order, becoming an umbrella in various aspects of life to achieve their life goals in obtaining happiness, which in Hinduism is called *moksartam jagaditya yacha iti dharma*. This understanding of *tri hita karana* is based on the contemplation of the Balinese people in maintaining harmony to realize the harmony, welfare, and peace of their society. This conception is the

local wisdom of Balinese people's original knowledge that is useful for regulating their lives, both to handle human relations in a society, human relations with nature, and human relations with God [1].

Balanced and harmonious relationships in the socio-religious culture of Balinese society are characterized by the community's consistent and continuous adherence to life values that are used as guidelines in their lives, namely, avoiding prohibitions, taboos, or things that are considered contrary to the values or socio-religious norms set by the community. The prohibition in this socio-religious context, the author calls incest, in the form of an understanding of the religious social order that is avoided by every member of the community. This prohibition is based on the socio-religious consequences for any member of Balinese society who violates it for the effects caused.

## 2 METHODS

In the preparation of this research, the researcher applies the legal research method and normative research method. This is because normative research is a type of research conducted by studying norms or laws and regulations related to the issues discussed.

## 3 RESULTS AND DISCUSSION

### 3.1 Religious Social Relationships in Marriage

#### a. What is the Meaning of a Balinese Wedding

Marriage holds significant cultural and religious significance among the Balinese Hindu community. Traditional Balinese marriage is regarded as a holy union that is solemnised between two individuals within the Balinese community. The concept of marriage, as defined by customary law, entails a mutual agreement between a mature man and woman to cohabit with the intention of establishing a familial unit. This arrangement necessitates the presence of witnesses and the endorsement or acknowledgment from both families and customary entities involved. According to customary law, marriage is a practise that encompasses both secular and spiritual dimensions, incorporating elements of both the worldly and the religious. The significance of marriage within customary law is of great importance, as it encompasses not only the individuals involved but also extends to encompass the respective families on both sides. Furthermore, the significance of marriage within customary law holds considerable importance for deceased ancestors [2].

The Balinese customary law community is one of the regions that adheres to the patrilineal or kapurusa family system [3]. In the inheritance system in patrilineal societies, only sons are heirs or entitled to inherit all wealth and also have the authority to continue the lineage. Based on this, sons have an essential role and are expected to continue the family lineage and responsibility (swadharma), both in the family and community environment [4].

A marriage in Balinese life is also not only interpreted as a meeting of two human beings on the basis of mutual consent (love) alone but there are basic things that must be obeyed by the couple. In order to arrive at the expected goal of marriage, Balinese people generally avoid forms of patemuan (matchmaking/marriage) that are contrary to the socio-religious values of the community [5]. Marriages that are prohibited or avoided by Balinese people are mainly inbreeding (incest taboo) because this also medically / scientifically has a great effect/chance to produce abnormal offspring or physical defects caused by genetic similarities between parents (mother and father).

Inbreeding does not have a direct impact on the couple, but it has a big impact on the offspring, such as a short life suffering from a disease caused by the genetic similarity of the parents. In addition to inbreeding (incest), inbreeding or incestuous marriage is a marriage between two or more individuals who are still closely related. Another term used is "inbreeding". While the generation or individual resulting from inbreeding is called inbred, the term incest is also considered as a relationship through marriage between fellow families / inbreeding where, by law or custom, it is prohibited. From a religious point of view, inbreeding is prohibited because of its many disadvantages.

Balinese people also believe in the prohibition of marriage (incest), which is socially and religiously forbidden by Balinese society.

### **b. Establishing harmony with the universe**

Balinese Hindus believe that maintaining a good, harmonious relationship with the universe will provide a sense of security, comfort, and peace. Nature has an undeniable power, so humans, as its inhabitants, should always harmonize their lives with nature. One of the things that can be done is to choose a place to live or palemahan coral that is considered appropriate. To determine the appropriate home pakarangan/coral, it is best to pay attention to signs about the characteristics and layout of the land [6].

### **c. Ban on Padewasan for Atiwa-tiwa**

Dewasa is an indication of a good or bad day (time) to do an activity/work. Balinese people have long recognized the term good days (dewasa ayu) and days that are

considered bad (*dewasa ala*) in their lives. Almost every traditional village in Bali summarizes the provisions of *ala ayuning padewasan* (good and bad days) in written regulations called *awig-awig*, and other oral regulations regulated and agreed upon by the local community. In a more specific embodiment, it is usually made in the form of *perarem*, which contains descriptions / explanations and applications of *awig-awig* about the procedures for social life. One of the provisions in *awig-awig* is about *atiwa-tiwa*, the procedure for burying or burning a corpse (*sawa*) which is regulated in accordance with the agreement of the local customary village community.

There are many provisions about *dewasa ala* (day restrictions) that are generally avoided by Balinese people in *pitra yadnya* ceremonies, especially referring to *wariga* as mentioned by Nala (2001: 12), including; *pasah*, *anggara kasih*, *buda wage*, *buda keliwon*, *tumpek*, *purwani*, *purnama*, and *tilem*. Balinese people certainly try to obey these provisions, because if they are violated it is believed that it will have bad consequences for the life of the community and the family who has a death. All these restrictions do not apply to all Balinese people, more so to the Bali Aga or Bali Mula people. The Bali Aga and Bali Mula communities historically have different provisions from the Bali Dataran community. Thus, the prohibition of *atiwatiwa* is always adjusted to the village, *kala*, *patra* (place, time and circumstances) and *desa mawa cara* (each village has different rules), especially for the Balinese Plain. In most communities, there is also a ban on *atiwa-tiwa* on days called (1) *semut sedulur*, and (2) *kala gotongan*, (3) *titi buuk*.

### 3.2 Scope of Inbreeding (incest)

Some regulations regarding marriage law in this country still refer to the respective customary laws in each region. However, In this case, the prospective researcher is more concerned about blood marriage in the sideways lineage (incest). The three customary law systems that apply in Indonesia are the Patrilineal customary law system (customary law system according to paternal lineage), Matrilineal customary law system (customary law system according to maternal lineage), parental customary law system (customary law system according to maternal-fatherly lineage).

Marriage according to Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage Amendments to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage". Marriage according to Article 1 of Law of the Republic of Indonesia Number 16 of 2019 Concerning Marriage Amendments to Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage is " The intrinsic and extrinsic connection between a male and female individual in the role of husband and wife, with the objective of establishing a contented and everlasting familial unit, grounded in the divine authority of God".

If there are valid marriages, there are also invalid marriages. It is said to be invalid if the marriage is included in a prohibited marriage. The marriage prohibitions stipulated in Article 8 letter b, namely:

1. Related by blood in a straight line down or up.
2. Related by blood in the line of descent, i.e., between a person and his parent's sibling and between a person and his grandmother's sibling.
3. Related semenda, namely in-laws stepchildren, sons-in-law, and mother or stepfather.
4. Related to breastfeeding, namely parents of breastfeeding children, breastfeeding siblings, and aunts or uncles of breastfeeding.
5. Related to the wife's siblings or as aunts and nephews of stepchildren.
6. Have a relationship that is prohibited by their religion or other applicable regulations from marrying. Marriage according to the Civil Code which is regulated in Article 30 of the Civil Code is "marriage is prohibited between those who are related to each other in the family line up and down"..

In the Civil Code, blood relationship is a blood kinship relationship, namely, family ties between people, where one is a descendant of another or between people who have the same paternal origin. In the straight line, the straight line down is distinguished from the straight line up, one of which is the relationship between the original father (biological) and his descendants.

Inbreeding is often referred to as incest. According to experts, incest is a sexual relationship that occurs between two people outside of marriage, while they are very close relatives.

Thus, the importance of the existence of legal products governing inbreeding so that the Marriage Law also appears nil so that it cannot be said to be effective in its existence and implementation so that it is felt and does not make problems in society in Bali.

## **4 CONCLUSIONS AND SUGGESTIONS**

### **4.1 Conclusions**

1. Balinese people intensely recognize and believe that the marriage process contains sacred elements and wisely try to protect it. A marriage in Balinese life is also not only interpreted as a meeting of two human beings based on mutual consent (love) alone but there are basic things that must be obeyed by the couple. To arrive at the expected goal of marriage, Balinese people generally avoid forms of patemuan

(matchmaking/marriage) that are contrary to the socio-religious values of the community. Marriages that are prohibited or avoided by Balinese people are mainly inbreeding (incest taboo) because this also medically / scientifically has a great effect / chance to produce abnormal offspring or physical defects caused by genetic similarities between parents (mother and father).

2. Inbreeding does not have a direct impact on the couple, but it has a big impact on the offspring, such as short life, or suffering from a disease caused by the genetic similarity of the parents. In addition to inbreeding (incest), inbreeding or incestuous marriage is a marriage between two or more individuals who are still closely related. Another term used is "inbreeding". While the generation or individual resulting from inbreeding is called inbred, the term incest is also considered as a relationship through marriage between fellow families / inbreeding where by law or custom it is prohibited. In terms of religion, inbreeding is prohibited due to its many disadvantages. Balinese people also believe in the prohibition of marriage (incest) which is socially and religiously prohibited by Balinese society, such as : makedeng ngad, ngulihang bengbengan, ngrangda tiga and megat jalan marriage, which is considered to bring bad things.

Some regulations regarding marriage law in this country still refer to customary law in each region. However, there are not a few rules in customary law that contradict the rules of legislation. In this case the prospective researcher is highlighting blood marriage in the sideways lineage (incest).

The three customary law systems that apply in Indonesia are the Patrilineal customary law system (customary law system according to paternal lineage), Matrilineal customary law system (customary law system according to maternal lineage), parental customary law system (customary law system according to maternal-fatherly lineage).

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If there are valid marriages, there are also invalid marriages. It is said to be invalid if the marriage is included in a prohibited marriage. The marriage prohibitions stipulated in Article 8 letter b, namely:

1. Related by blood in a straight line of descent downwards or upwards.

2. Related by blood in the line of descent deviating, namely between brothers between a person with a parent's brother and between a person with his grandmother's brother.
3. Related semenda, namely in-laws stepchildren, sons-in-law, and mother or stepfather.
4. Related to breastfeeding, namely parents of breastfeeding children, breastfeeding siblings, and aunts or uncles of breastfeeding.
5. Related to the wife's siblings or as aunts and nephews of stepchildren.
6. Have a relationship prohibited by their religion or other applicable regulations from marrying. Marriage, according to the Civil Code, which is regulated in article 30 of the Civil Code is "marriage is prohibited between those who are related to each other in the family line up and down".

In the Civil Code, blood relationship is a blood kinship relationship, namely, family ties between people, where one is a descendant of another or between people who have the same paternal origin. In a straight line, the straight line down is distinguished from the straight line up, one of which is the relationship between the original father (biological) and his descendants. Inbreeding is often referred to as incest. According to experts, incest is a sexual relationship that occurs between two people outside of marriage, while they are very close relatives.

## 4.2 Suggestions

The local government should include a regulation prohibiting inbreeding in every awig-awig in order to prevent inbreeding, especially in Bali because there are still many people who carry out inbreeding marriages where it is clear that the marriage has a harmful impact on future offspring. Related regulations Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage.

Amendment to the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage". Marriage, according to Article 1 of Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage Amendments to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage should be socialized to the broader community.

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