



Juridical Implications of Marriage Breakup Due to Death on The Rights of Girls in Angantaka in The Perspective of Balinese Customary Law

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ABSTRACT. This article analyzes the Balinese customary marriage system and the implications of marriage breakup due to death on girls' rights in customary law in Bali. The research contains two problems, namely how the legal consequences of the breakup of marriage due to death on the rights of girls in Balinese customary law. This research uses empirical legal research types and then analyzed using legal certainty theory using conceptual approaches and case approaches. This study obtained results by discussing that in the event of the breakup of marriage due to death, it can be found that the rights of daughters can be positioned as heirs in terms of sentana rajeg position, while if following the husband's family law, then inheritance rights will be lost due to carrying out an obligation to the husband's house and inheritance obtained with the husband. The Balinese customary marriage system adheres to the patrilineal system. In Angantaka Village there are several wives left dead by their husbands and consequently in the case of inheritance according to Bendesa Adat Angantaka and Kelian Adat if the husband and wife have sons and daughters, especially those who are not married, then their rights and obligations remain as heirs of their parents and get heirs also because until the end of the verse do not marry. While girls who marry out (limited kedaton ninggal) cannot inherit or are called guwak ngutang taluh (crows leave eggs), because of the crystallized paternalistic culture.

Keywords: The breakup of marriage, the rights of girls, Balinese customary law.

1 Problem Background

For the wider community, marriage becomes something very important in human life and becomes a sacred thing. Making a decision will not be easy in running a marriage alone and also not easy to end the marriage. In this modern era, there are many people who are not ready for marriage or live a life forming a household, because of the desire to create unlimited freedom of expression from the existence of marriage. Carrying out a marriage is necessary to comply with the norms and rules in the marriage rules. The establishment of a norm in marriage that requires regulation of rights, obli-

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M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804, https://doi.org/10.2991/978-2-38476-180-7_86

gations and the responsibility of each family member used in the formation of a peaceful and peaceful household in accordance with the norms that live in society.

The Marriage Law contains this rule as a manifestation of the existence of the nation's marriage order used as a legal basis, according to the Law has given the understanding that marriage is an inner birth bond between a man and a woman who as husband and wife aims to form a happy and eternal home based on Godhead.

In Bali, customary law that grows and develops in accordance with the legal awareness of each community has an unwritten nature, customary law is a custom that is implemented continuously by the community, not only that customary law also contains sanctions and its nature must be obeyed for generations [1].

The Balinese people can generally be known as people with customs and traditions that are firmly and firmly held by the entire community [2]. Customary law is also used as a customary court based on Hindu Law, where it is concluded that Balinese customary law is Hindu law.

In relation to Hinduism, customary rules were also introduced that were implemented for generations [3]. The customs of a Hindu religion are absolute, imperative and functional. In terms of the function of customary law, it aims to make agreements in the field related to the spiritual aspects of the community in Bali. Customs have the power to influence the social life of the community, especially in Bali. Providing a very strong influence, giving reflections in all aspects of people's lives, for example during wife pregnancy, child birth, menek complaint (when the child reaches adolescence), metatah (cut teeth), benestation.

In particular, traditional marriage in Bali is in accordance with Hinduism which is very noble and sacred, this is because every marriage is seen as a way to release the suffering of parents (ancestors) when they have died [4]. From marriage to the birth of a child is a very noble religious commandment. A person who embraces Hinduism strongly believes that the nature of the marriage is the same thing from time to time and in terms of time. The fact in terms of depiction of Hinduism if the marriage went through many ways. In the nature of marriage, it can mean that marriage becomes broken up for various reasons.

Marriage ending in the breakup of marriage is something that is not expected by anyone who has carried out the marriage, unless the breakup of the marriage is due to death. In the past, people in Bali had few problems that occurred from a breakup of a marriage but now many problems have surfaced due to the breakup of a marriage due to death, this is because family property will be fractured. Especially regarding the determination in the division of inheritance. The division of inheritance according to Bai custom means that there is an equal division of inheritance for both men and women related to social life which becomes a social gap. Especially women in Bali are often ignored and do not get a balance in the distribution of inheritance. The main thing that causes it is the family system adopted.

The important role of inheritance in the life of a society, where the law related to inheritance is part of wealth law which has a very strong relationship with family law, this is because all inheritance in the law is based on blood family relations or relationships with marriage [5]. Customary law of the family system as lived in community is

patrilineal or commonly referred to as the line of descent following the man / father. Many women in Bali expect some fairness in the balance of inheritance.

The concept of inheritance in customary law in Bali has a different meaning from inheritance in Western law. In this case, inheritance in Bali contains a right and obligation that cannot be rejected and has a material or immaterial nature. According to Balinese customary law, inheritance is generally received by sons by carrying out the following obligations: the obligation to ngayah and mayah in traditional villages, the obligation to maintain worship in temples including snacking to worship gods, the obligation to carry out manusa Yadnya and Pitra Yadnya to families, parents and also sisters who are not married or have become widows, Obligated to give offspring, namely giving birth to biological children or adopting children who will be heirs to family property or to a debt receivable by the heir.

Basically, based on the prevailing customary law, Balinese women who have married will also get soul dhana (provisions) or property given by parents in full to their daughters [7]. The question of inheritance causes a problem of contestation between religious courts in a complex of ideological, political, religious and legal issues. As stipulated in the Decree of Pesamuhan Agung III MUDP Bali Number 01 / KEP / PSM-3 / MDP-Bali / X / 2010, which explains the ability of women to become heirs or as heirs.

The customary inheritance law in Bali states that a daughter does not have the right to inherit because she is considered unable to maintain her obligations, either in caring for parents or obligations in traditional fatherhood [6]. After the Supreme Decree, a woman in Balinese tradition can be given the right as an heir even though she has carried out the marriage but still carries out her obligation to care for the parents.

Based on Pesamuhan Agung III states that women can also have rights as heirs. The grand assembly also explains that women who have married out of their families and have a status not in their homes (ninggal kedaton) get the right to get rich owned by their parents, where the property is calculated for the reduction of one-third of the amount used as a middle duwe used in caring for the elderly [8].

It can be said that a daughter has the right to receive one-half of the wealth as it has been acquired such as a brother who has the status of purusa or in this case a son. But an heir is categorized as marrying out in full or marrying and doing his religion, the child will no longer get inheritance from his parents or cannot be given by his parents, but the parents of the child can give belak which is commonly called soul dhana or provision. Against a decision MUDP has not been implemented properly which can cause people in Bali to mostly be unable to implement the regulation regarding the right of marriage in terms of receiving an inheritance from their families.

Related to a process that can give rise to customary law can appear generally as habits that arise from below, a rule that applies to community life and social conditions that are always developing so that it can become customary law.

The decision of MUDP Bali, which in fact pertains to a daughter, can be granted one-second of the rights acquired by the son, the basis of inheritance obtained and deducted one-third which will be used in the maintenance of the heritage and the costs for its preservation that will arise from customary rules - the above matters have not been fully accepted and applied by indigenous peoples. The purpose given by a deci-

sion can create a harmonious life for girls in Bali but as is generally true there is still a firm grip with previous rules or customs. So from this background, the author provides an explanation of the juridical implications of the breakup of marriage due to death on the rights of girls in Angantaka in the perspective of customary law in Bali.

2 Method

This research uses research methods, namely empirical legal research. The main data that support empirical legal research is conducting interviews with Angantaka Village Residents and Angantaka Village Leaders. The problem approach is a statutory approach, a conceptual approach and a sociological approach. The use of legal material sources is primary data such as literature and applicable legislation, while the secondary data used are interview techniques from resource persons from Angantaka Villagers, Kelian Adat and Bendesa (Village leaders) in Angantaka.

3 Discussion

3.1 Mating System

Regarding the marriage system in Indonesia as stipulated in the Marriage Law where in the past Indonesia was faced with the enactment of a plural law which was then determined based on the classification of the population consisting of several groups, including:

1. European Group: Group consisting of all Dutch citizens, all citizens of European origin but not from the Netherlands, all Japanese citizens, all citizens of other countries. but not Dutch citizens, all of whom do not follow the rules governing family law. In the past, the so-called legitimate or punau children received recognition by law and their descendants which were also carried out by citizens who came from European countries or those who had been born from the Dutch East Indies.
2. Bumiputera group: a group consisting of everyone who is classified as a native citizen who comes from the Dutch East Indies and the citizen is declared to have never tried to move into another population group from the bumiputera group, from residents who have been classified as bumiputera, namely the action of following the way in daily life or for those who marry out. Foreign Easterners: The group consists of citizens who are not classified as European countries or groups from bumiputera.

The provisions regarding inheritance will always pertain to the law of marriage. This is because it is based on the following:

1. Provisions related to heirs beginning with the execution of a marriage. So that a widow or widower is an heir and marriage is carried out which then becomes a descendant is also an heir.
2. The provision of an estate based on one-half of the joint property as it has been acquired in the marriage and also received an increase from the estate.

The provisions in Article 35 of the Marriage Law state as follows:

1. All property that has been acquired during the course of the marriage bond is a herta together.
2. Each husband and wife who carry property as acquired with each for gifts or as inheritance is controlled by each party in the absence of other rules from each party.

Then the provisions based on Article 36 of the Marriage Law state:

1. With regard to joint property, the husband and wife can take actions as previously agreed by the parties.
2. With regard to each property if a husband and wife have full rights in carrying out a legal act regarding property.

Related to Article 37 of the Marriage Law, it expressly regulates the existence of a marriage that is declared severed by divorce so that joint property then gets their respective legal arrangements.

Marriage is very important in people's lives. The existence of a regulation for the legal act of a relationship between a man and a woman legally whose position has an honorable place in the current law then proves that there is a regulation specifically regulated in the Marriage Law [9].

Marriage can be a lesson for every community to continue their offspring through marriage or the implementation of marriages that have been carried out in the country of Indonesia, there is a difference when there is an implementation that is the cause of the diverse culture of the religion that has been embraced.

Understanding marriage from experts include:

1. According to Scholten: a marriage is the existence of a legal relationship between a man and a woman in order to carry out life carefully and eternally and the state has recognized it legally. According to him, the existence of eternal, eternal and lifelong relationships that have lasted is created from the existence of the marriage that has been legalized by the state [10].
2. According to Bachtiar: a marriage is an act that is determined because of a meeting in social and social life that has been carried out for a relatively long period of time, in which there are rights and obligations that are carried out to the parties for the sake of a peaceful and happy life and until there are descendants [11].
3. According to Goldberg: marriage is an institution with a broad interest in people's lives but not an institution with longer defenses. A marriage becomes a union that promises to remain a long-standing intimacy and preserve a culture and fulfil the interpersonal needs [12].
4. According to Hazairin: marriage is the relationship between two parties, namely a man and a woman, where there is a role in his responsibilities and there is an element of intimacy and his role as parents [13].
5. According to Dariyo: marriage is a bond between a man and a woman for whom the ownership of an age of majority has been applied, a marriage that has become a bond due to a relationship between a man and woman who get valid recognition in force and the religion they profess [14].

6. According to Talib: marriage is a covenant that is carried out in a sacred and strong way in living a legitimate joint life for men and women in the formation of a happy family and mutual affection [15].
7. According to Imam Subekti: marriage must be carried out on the religious rules embraced by the prospective husband and wife, religious equality which has all been determined by a religion that has received recognition from the government and from a marriage that is based on religion first and finally registered in the office that affects a marriage [16].

Marriage in fact not only gives promises related to financial or property problems, as for other things that are also important to be agreed for example there are other needs related to the household, namely the issue of children's education and promising one party to continue working even though the marriage has been carried out and so on. There is agreement from husband and wife at the time of marriage in giving rules with the consequences of marriage regarding property. According to the Civil Code, the marriage must take place before the Civil Registry Officer (*Burgerlijke Stand*) and meet requirements such as age limits and mutual agreement of both parties.

The importance of a marriage carried out in the life of each individual. The occurrence of marriage between a man and a woman results in a physical or mental bond between parties in social life and a relationship regarding the acquisition of property by him either after or before, during or after marriage.

The development of its level along with a more advanced civilization will not be able to erase a customary custom as it has existed in people's lives. Civilization in this case also affects the noble value that has faded as it has been done with generations should be the absence of a higher law against the law of the land. Indonesia has a role in creating laws, so everything must be subject to it. In this case the State is seen in creating legal regulations.

In its application, customary ownership in each ethnic group in Indonesia is different even though in the same nature and basis, namely unity. These customs continue to develop and will continue to move based on a process of development of the nation. The development of customs that develop as community traditions have been able to regulate their own lives as customary rules.

Customary marriage law is very dependent on the pattern of indigenous people's lives [17]. Among indigenous peoples throughout the place, a very different family system is applied, so that later the relationship between family members with each other has different rights and obligations. In the marriage system in customary law consists of:

1. Endogamous Marriage System is a marriage system that has a necessity in the implementation carried out with a spouse of a tribe or descendant who has prohibited the implementation of marriage against someone who has the origin of another ethnic ancestry. Another opinion says that endogamous marriage is a way of marriage with the development of parties in a group social life with close relatives, endogamy consists of a lot of diversity according to the culture that exists in the customary area.
2. Exogamous Marriage System which means that a person must marry another tribe and marriage with his own tribe is a prohibited act. In the course of a very

long time this has gone through a modern thought process where the marriage forbids its application to a small family environment.

3. The system of *eleutherogamy* which is a system that prohibits and is a necessity. The system is not known for these prohibitions and obligations. Things that are prohibited in this system are prohibitions that are closely related to familial ties related to offspring or marriage carried out with one of their own family members.

Related to customary law itself, the elaboration of the principle of marriage is a marriage that has a purpose in the formation of a family and the existence of relationships associated with peaceful kinship. A marriage is not only valid in accordance with its religious law, it will be required by the recognition of relatives [18]. Marriages that are required on the basis and consent of family members and relatives in indigenous communities where the married couple can also be rejected by indigenous peoples in that place, marriages that can be carried out between one man and several women as their position has provisions according to local customary law, the implementation of marriage of a man and woman where the age is classified as immature. Even though the marriage is carried out with the age of majority which must be based on the permission of parents / family. The existence of a divorce there are things that can be done and there are things that cannot be done (forbidden) between husband and wife which can result in the breaking of kinship relations between the parties and their position becomes balanced as the provisions of applicable customary law.

In the perspective of Balinese customary law, it states that there is pluralism in addition to complementing certain parts stated that religious and customary laws that are firmly positioned in the provisions have been outlined in accordance with the Marriage Law. This is evidenced by the existence of rules that provide regulations regarding requirements in marriage and the return of a marriage bond to parties who have gone through divorce.

The marriage provisions regarding long-divorced couples as stipulated in *awig-awig* as in *awig-awig Angantaka Village, Abianseml District, Badung Regency* dated October 6, 1997. in Pawos 85 (1-2) which regulates marriages that are broken up again (*palas adung malih*) states, namely:

1. *Yan wenten palas mekurenan macihna adung malih patut ngawitin malih ngalaksanayang whidi widana/Pewiwahan* (If there is a separation of marriage, you want to refer again, you should start again carrying out *Whidi Widana/Marriage*).
2. *Yan wenten ring ajeng angka 1 keni jatma ika kedanda agung/alit manut pararem.* (If there is a number 1 in front of the human being, it is fined large / small based on *pararem*).

The theory of pluralism is contained in the differences regarding marriage law in each place as well as the provisions in customary law there which ended cannot survive after the enactment of the marriage law. The provisions as in Article 66 of the Marriage Law regulate if in marriage and all matters that have to do with a marriage with marriage based on this Law, so that the existence of such arrangements in accordance with the provisions has been regulated in the Civil Code and other rules regarding marriage.

The provisions of Article 66 of the Law related to the enforceability of customary marriage law function dually, on the one hand functioning as the legal basis for the enactment of customary marriage law but on the other hand as a limitation on the enactment of customary marriage law if the Marriage Law has been regulated.

In Bali, customary law recognizes 4 (four) systems for marriage, namely:

1. Mepadik System: Mepadik system marriage is a system in a marriage based on the love of the bride and groom and has the blessing to carry out the marriage from the parties.
2. The Ngerorod system is a marriage carried out on the basis of affection with the blessing obtained from one of the parents or the bride and groom and the implementation of the marriage system is based on the idea of implementation and financing, the implementation of this marriage is circulated on the ownership that the parties do not have family members or one of the parties does not have a family.
3. The Nyentana (Nyeburin) system in marriage with the system of obtaining consent by the families of the parties because the execution in the male party will follow the female side.
4. The type of marriage Mekaro Lemah (Medua Umah) is a marriage system that is almost the same as nyentana but each party will still get inheritance from his family or in both houses, that is, as the implementation of marriage is stiffened in both places of residence of the parties.

3.2 Breakup of marriage

The act of a broken marriage is a term that is often used in the Marriage Law in providing an explanation of the end of the relationship between a man and a woman throughout his life as a married couple or also known as divorce.

Based on the Civil Code and the Marriage Law regarding broken marriages, among others:

1. A marriage that breaks up due to death is a natural one because death cannot be avoided by man.
2. Due to absence (Articles 493-495 of the Civil Code), it is required that the implementation of the fulfillment of certain conditions of the party who has been abandoned by the other party within a period of 10 years from the departing party does not give news and there must be permission from the District Court from the place of joint residence and execution to one of the parties who leaves his place of residence for 3 consecutive times, namely every 3 months, if in the execution of the summons there remains no news, then the Court gives permission to one party to execute the marriage to one of the parties regarding the execution of a new marriage. If the other party is not present or appears before the new marriage is consummated, then the judge's decision given becomes void. However, if the absent party appears after the marriage, the absent party can be present and can perform marriage with another person.
3. Separate table and bed (Article 200-206 of the Civil Code). Many reasons can be requested related to the separation of tables and beds as stipulated in Article

233 and Article 236 of the Civil Code, namely in reasons such as divorce actions (Article 209 of the Civil Code) based on actions that have exceeded the limit, such as domestic violence or unpleasant acts to other parties without clear reasons (Article 236 of the Civil Code). So that there is a separation of bed and table, the marriage cannot be dissolved but the husband and wife are not obliged to live together anymore. A husband or wife can apply for divorce if after 5 years separate the table and bed.

4. Due to divorce (Articles 207-232 of the Civil Code). As Article 209 of the Civil Code which provides 4 welds of a person divorced, namely: Adultery, leaving the other party for no apparent reason for 5 consecutive years, punishable by imprisonment for 5 years or more after the occurrence of marriage and the commission of persecution that threatens the safety of the other party's life..

After the enactment of the Marriage Law, the reasons for divorce have been listed in the explanation to Article 39 of the Marriage Law. In front of the law, divorce cannot be done just like that there is a legally justified reason in carrying out a divorce because there must be a reason that causes a divorce.

Ideally, the breakup of a marriage by death or divorce will have a legal effect on the position of husband and wife on the life of children, on family and relatives and joint property, property brought into marriage, gifts, inheritance, or inheritance.

Joint property is also contained in Balinese customary law which after divorce the amount of division cannot be made but must get a fair division between the parties who have divorced [19]. In accordance with Balinese customary law regarding the group of joint property called the right to get rich, while for congenital property has other meanings according to each acquisition of the source of the property obtained. If the property is generated from the business done by the husband and wife before the marriage takes place, it is called as rich; Meanwhile, if the property given by parents at the time of marriage is called *Jiwadana*. These innate properties are also called organized terms. Marital property acquired due to inheritance in Balinese customary law is called *tetamian*.

In Angantaka Village there are several wives who have been left dead by their husbands and consequently in terms of inheritance according to *Jro Bendesa Adat Angantaka* if the former married couple has sons and especially daughters who are still unmarried, then their rights and obligations remain as heirs of their parents and get heirs also because until the end of the verse do not marry [20]. While girls who marry out (*ninggal kedaton limited*) do not get inheritance or are called *guwak ngutang taluh* (crow leaves eggs), still the next generation of sons who are heirs while daughters if they marry out completely (*ninggal kedaton full*) also do not get inheritance and *dhana* soul from their parents, but there are some who are given *dhana* soul based on the family agreement.

3.3 Inheritance Rights of Girls in Angantaka Village

The family system as adopted by the community in Bali is the patrilineal system [21]. So that it has the right to inherit, namely to sons, not to daughters. The existence of a patrilineal system in the life of indigenous people in Bali states that sons have

responsibilities in carrying out all the obligations of their parents as well as maintaining and safeguarding the rights and obligations of the heirs. In addition, settlement in all obligations in the performance of ceremonies for parents at the time of death until after death. It is called reasonable if only sons have the right to inherit against those who have been abandoned by their parents.

For example, in Angantaka Village, according to the results of an interview with a wife who has been left dead by her husband, does not get an inheritance and a daughter who marries out (limited kedaton ninggal) also does not get an inheritance from her parents, but the inheritance still falls to a son (Purusa). Then in the case of girls who marry out (full kedaton death) most do not get dhana soul, but there are some who get dhana soul from the family on the basis of family agreement.

4 Closing

4.1 Conclusion

The marriage system based on Balinese customary law other than based on positive law or law as affirmed in Article 2 Paragraphs 1 and 2 of the Marriage Law states if the validity of a marriage is:

1. A marriage is valid if it is performed in accordance with the religious laws and beliefs.
2. Each marriage will be disabled as the provisions of the applicable law are also regulated by customary law carried out and carried out for generations by their indigenous peoples by carrying out special traditions. Traditional marriage in Bali is very sacred because every marriage has been seen as something based on the way in releasing the suffering of parents / ancestors. In terms of Hindu law, it describes the essence of marriage in the same way with various forms. The nature of marriage can translate that marriage can break up for various reasons.

The legal consequences of the breakup of marriage due to death on the rights of girls in Angantaka Village in Balinese customary law, as well as the system of inheritance distribution that has been equated with men to girls are often involved in a social inequality. In Angantaka Village, a wife who has been left dead by her husband does not get an heir and a daughter who marries out (limited kedaton ninggal) also does not get an inheritance from her parents, but the inheritance still falls to the son (Purusa), because in Angantaka Village the son is definitely the heir and the daughter who marries out does not become the heir.

Meanwhile, related to the Supreme Decree regarding the right of girls to receive inheritance in Angantaka Village has not been enforced, because it has not been accommodated in advance in awig-awig and also because of the paternalistic culture that has crystallized, so its application is very difficult and there are words "early keto start children" (indeed here like that), then in the case of girls who marry out (full kedaton death) most do not get Dhana's soul, however, there are some who get Dhana's soul from the family on the basis of the family's agreement.

4.2 Suggestion

For the Government to conduct socialization on an ongoing basis or continuously and carefully examine the applicable regulations and especially the Decree of the Main Council of Pakraman Village (MUDP) Bali Year 2010 so that the right to inherit for Balinese girls can be fully realized in Bali and socialize by going directly to the Customary Village until finally the community accepts the contents of the paruman decision

For the community in order for the function of the MUDP Bali Institute to run well, it must apply the principle of togetherness and accommodate / record the Supreme Connection Decision in *awig-awig* and/or *pararem* so that the decision that has been outlined in the contents of the MUDP Bali III Supreme Connection can be implemented.

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