

Can Local Law Prevent Polygamy?

A Case of Local Law Implementation in Bali

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Abstract—The purpose of this research is to describe the regulation of prohibition of polygamy for society as regulated in Balinese custom law that is awig-awig. The method used is empirical with the interview technique to the head of traditional village. The results show that marriage arrangements in awig-awig include an understanding of the marriage itself, prerequisites or marriage procedures, marital cancellation and the prohibition of polygamy. Based on interviews with customary chiefs, each member of the community upholds all the rules of community life in their traditional village, including the provisions on marriage, such as a ban on polygamy. This is because violation of the rules in marriage results in the prudency arising from the imposition of sanctions from local law. This proves that as a customary law, awig-awig has an effective role to apply in the sphere of society in every community.

Keywords—awig-awig; polygamy; prudency

I. INTRODUCTION

Marriage is an important event in the life of a couple of men of different sex to realize the unity of the household in the life of husband and wife. Marriage is the behavior of the creatures of God Almighty so that life in the world of nature is well developed. Because human beings as intelligent beings, marriage is one of the regular culture that follows the development of human culture in the life of society. In a simple society the culture of marriage is also simple, narrow and closed, whereas in advanced societies, the marriage culture will be advanced, wide and open [1]

The culture of marriage and its rules that apply to a society is inseparable from the cultural and environmental influences in which the society resides and the societal community. It is influenced by the knowledge, experience, beliefs and religion of the community concerned. Just as the marriage rule of the Indonesian nation is influenced not only by the cultural customs of the local people, but also influenced by the teachings of Hinduism, Buddhism, Islam and Christianity, even by western marriage culture.

Through the enactment of Law No. 1 of 1974, on the Principles of Marriage, there has been a legal unification in the field of marriage, which means there is a law that regulates the marriage [2]. The marriage law adheres to the principle of monogamy which means that a husband may only have a wife and otherwise a wife may only have a husband. Nevertheless,

polygamy is still possible as long as it meets the requirements prescribed by law. Law No. 1 Year 1974, determine the purpose of marriage, which is to form a family/household that means the eternal, the marriage is meant for eternity without time limit [2].

This legal provision of polygamy is also regulated in Balinese customary law although it is only found in certain areas only. For example, customary law contained in Traditional Pengatipuran Village, Bangli which in its awig-awig determines prohibition for the community for polygamy.

II. METHOD

This study focuses on reviewing marriage regulations based on customary law, awig-awig, especially in the prevention of polygamy for the community. We collected data using a personal-based experience interview method with some indigenous village leaders in Bali. We examined marriage rules using content analysis methods, especially the rules on the prohibition against polygamy in awig-awig. We present results through qualitative descriptive methods.

III. RESULT AND DISCUSSION

A. *The Concept of Marriage*

Marriage is a social bond or interpersonal legal agreement with which it forms a kinship relationship and is an institution within the local culture. In general, marriage is lived with the intention of forming a family. Under the provisions of Article 1 of the Law. No. 1 of 1974 that, marriage is the inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Supreme Godhead [2].

Marriage under the provisions of Law No. 1 of 1974 not only as a civil bond but also a religious commitment because based on these provisions determined the purpose of marriage to form an eternal household based on the Supreme Godhead. Prior to the enactment of Law No. 1 of 1974, in Indonesia applied various marriage laws for various groups of citizens and various regions. Various applicable marriage legislation, include:

- For Muslims the law of religion which has been perceived into customary law is applied;

- For other indigenous Indonesians I am a customary law;
- For indigenous Indonesians who are Christians, the provisions of *Huwelijks Ordonnantie Christen Indonesia (HOCl) STB 1933 NO. 74*;
- For the people of the Foreign Orient of China the provisions of the Civil Code are applied.

Marriage, according to customary law, does not only mean a civil engagement but also customary engagement as well as kinship and neighbor engagement. Thus the occurrence of a marriage bond does not merely bring consequences to civic relationships (such as the rights and obligations of husband and wife, common property, the position of the child, the rights and obligations of the parents,) but also includes the relationship of customs of inheritance, kinship, kinship, as well as concerning traditional and religious ceremonies [1]. (8) The marriage, according to Balinese customary law, is termed *pawiwahan*. *Pawiwahan* ceremony is no other than the *panca yadnya*, namely *manusa yadnya* [3].

A marriage in the sense of a customary engagement is a marriage that has legal consequences to the customary law prevailing in the society concerned. The consequences of this law have existed since before the marriage took place, for example by the existence of a relationship of marriage that is a rasan relatives (children relationship, girl bachelor) and tuha rasan (relationship between the parents of the family of the prospective husband and wife). Once the bond is established, the rights and obligations of parents (including family members/relatives) according to local customary law arise, namely in the implementation of traditional ceremonies and subsequently in the role of fostering and maintaining harmony, integrity, sustainability of the lives of their children who are bound in marriage [1].

In legal provision of Article 1 of Law Number 1 of 1974, it is determined that the purpose of marriage of a husband and a wife is to establish an eternal family based on the One Supreme God [2]. For that husband and wife need to help each other and equip so that each can develop his personality to help and achieve spiritual and material welfare.

The purpose of marriage for a kinship-customary law community is to defend and continue the offspring according to paternal or maternal or paternal lines, for the happiness of family households/relatives, to obtain cultural and peaceful values, and to maintain inheritance. Because the system of descendants and kinship among ethnic groups in Indonesia that one and the other vary including the environment and religion are held differently, the purpose of customary marriage for indigenous peoples vary among tribes and tribes of different nations, regions one and the other are different, and the consequences of law and marriage ceremonies vary.

According to Hindu marital law, the purpose of marriage is to obtain offspring and to atone for the sins of the parents by lowering a son (who will save his parent's soul from hell) [4]. Hindu marital law adheres to the monogamous principle that permits polygamy. For the socio-economic group such as *Waisya*, *Ksatria*, and *Brahmana* may have polygamy up to four

wives, but for the weak, socially economically weak class (*Sudra*).

In the community of indigenous peoples, marriage shall take place on the basis of the request and consent of the parent/guardian/relative of both parties. The issue of this proposal is governed by customary law and Islamic law, but is not regulated in law. No. 1 of 1974 [2]. If the approval of a girl to marry a parent rejected, or the application of one of the parties rejected the other or because of other reasons such as dowry is too high or the woman in the courtship has been pregnant, then things so it can cause elopement.

The legitimate marriage under the law is regulated in Article 2 paragraph (1) of Law No.1 of 1974 which determines "marriage is legal if done according to the law of their respective religion and belief" [2]. Thus a legal marriage according to national marriage law is a marriage carried out according to the rule of law applicable in Islam, Christian/Catholic, Hindu, Buddhist and Kong Hu cu. The word 'law of each religion' means the law of one's own religion so that it does not mean 'its respective religious law' i.e., the religious law adopted by the bride or family.

The law of marriage according to customary law for indigenous and tribal peoples in Indonesia generally depends on the religion of the traditional community concerned. That is if it has been implemented according to the rules of religious law then the marriage is already legal according to customary law [1].

According to the legal provision of Article 3 paragraph 1 of Law No. 1 year 1974 in principle in a marriage, a man can only have a wife [2]. A woman may have only a husband. Thus, Law No. 1 of 1974 embraced the principle of monogamy [2]. The rule in chapter 3 (1) is somewhat similar to the article 27 of the Criminal Code which states that "at the same time a man may only have one woman as his wife, a woman is only one male as her husband".

The difference lies in the provision of Article 3 (2) of Law No. 1 of 1974 which states that "the court may grant a husband a permission to take more than one wife if the parties wish" [2]. Therefore, this article means that the Marriage Law embraces the principle of open monogamy, because it is not impossible in a state of forced husband to do polygamy that is closed or polygamy that cannot be opened without supervision of judges.

Polygamy, according to Indonesian dictionary means marriage bond which one party has/marries several opposite sex at the same time. While polygyny means a marriage system that allows a man to marry several women at the same time [5]. The provisions of Article 3 of Law No. 1 Year 1974 mentions that, basically in a marriage a man may have only a wife and otherwise a woman may only have a husband [2]. However, the court may grant a husband permission to take more than one wife if the person wishes to.

B. Marital Regulation within Awig-Awig

Customary peoples in Indonesia in the past had generally known the marriage of a husband with many wives, especially among kings, nobles, in various regions of both Hindu and other societies. According to Korn in his book *Het Adatrecht*

van Bali, a man is allowed to have only one wife from his own caste and one from each caste under his own caste [6]. Therefore, a brahmin is allowed to have four wives, a knight 3 (three), two wesya and a sudra.

The rules in the present are mostly abandoned, even there is a tendency to have followed the national law of following the principle of monogamy. The collapse of polygamy in relation to the dignity of indigenous peoples since the enactment of Law No. 1 of 1974 in the area of Bali is done because there has been an understanding of positive law.

Marriage in addition to being regulated in positive law also arranged in customary law, as in Balinese customary law which can be found in awig-awig. Awig-awig is a written or unwritten rule that is the result of its members' deliberations [7]. Usually the matter of marriage is regulated in a separate chapter on the pawiwawahan indik palet (regarding marriage).

Based on the result of research in the field, the matter of marriage arranged in awig-awig Penglipuran Village is sargah V, palet 1 pawos 54 indik pawiwahan says:

- Tan lepas ring uger-uger guru wisesa utawi dresta
- Tan lepas ring kecaping agama
- Kaupakara saha sidan manut dresta
- Atur uning ring prajuru
- The meaning of freedom is that marriage in traditional village must be:
- Not deviating the provisions / regulations issued by the government or local culture;
- Not deviating religious provisions;
- Made into a ceremony as best as custom;
- Reporting to customary head.

Pawos 54 verse 2 says:

“Pawiwahan patut kaurungan yen ten manut geguet ring ajeng utawi sejeroning awig-awig punika”.

The free translation is:

The marriage shall be canceled if it is not in accordance with the above provisions or the provisions set forth in the awig-awig.

Furthermore, the provision in pawos 55 says:

Indik pengrorodan kadi ring sor:

- 1) *Sang ngerorod pastika patut medasar keadungan manut dresta.*
- 2) *Prade pemargine manut dresta sang nampi lawan ngerorod patut polih pesayuban.*
- 3) *Sang ngerorod utawi sang nampi jatma ngerorod patut digelis atur uningan ring prajuru lan kelian adat.*
- 4) *Yen pemargine ten manut dresta:*

- a) *kengin neserep pacang natas pengererede saduluran pesadok ring prajuru adat lan kelian dinas mangda kaicen panuntun indik pemargin sepatutnyane manut dresta.*
 - b) *Prajuru saha kelian dinas patut digelis lumaksana nulungin sang katibanan numusang ring sang rumawos, manut uger-uger ring guru wisesa.*
- 5) *Pamidanda sane katiwakang yen ten manut pemargine:*
 - a) *Sang ngerorod kadanda manut perarem.*
 - b) *Sang nampi kasungguh seroro ring corah, kadanda kadi patut.*
 - c) *Sang kaliha dura cara mamiseka kakenenin pamerascita adat manut perarem.*
 - 6) *Yening wenten warga desa adat lanang/wadon ngemaduang keni pamidanda manut dresta.*

The free translation of the provision of awig-awig pawos 55 is that the matter of marriage is regulated as follows:

- 1) The party conducting the elopement must be adapted to the custom.
- 2) Provided that the implementation of elopement in accordance with the custom, then the recipient of elopement must be protected.
- 3) The perpetrator eloped and the party receiving the elopement must immediately report to the customary board and the kelian service.
- 4) If the implementation of elopement is not in accordance with the habits:
 - a) On the event, after a report to the board of customs and kelian offices, then to him must be given advice in accordance with applicable provisions.
 - b) Customary administrators and graduates of the duty service should immediately assist the affected persons according to government regulations.
- 5) Sanctions will be granted if not compliant:
 - a) The marriage is fined according to the decision of the meeting;
 - b) Allegedly cheated, fined the right;
 - c) Both parties are charged a cleaning ceremony according to the decision of the meeting.
- 6) If indigenous peoples of both men and women marry, they will be subject to sanctions in accordance with the provisions of customary law or the decision of the meeting.

Regarding the existence of provisions relating to polygamy, the perpetrator is subjected to customary sanctions on the basis of perarem, i.e., the perpetrator shall dwell in a special place

provided by the traditional village. This special land is empty land located at the end of the village area. Anyone who dares to polygamy must occupy the land provided free of charge by the village.

According to I Wayan Supat explanation as the Bendesa of Adat Penglipuran, until now no inhabitant violating the ban on polygamy. Furthermore, it is said that until now Penglipuran villagers still respect the norms set in their awig-awig so it will feel ashamed and abstinence if violate awig-awig. Shame when violating awig-awig is closely related to the atmosphere of life in the village in a humorous atmosphere because the people are homogeneous. Not only that, in Penglipuran Village until now there has been no violation of awig-awig, both parahyangan, pawongan and palemahan. Based on this, it can be said that the observance of the citizens will be very awig-awig so that the awig-awig effectiveness is very effective.

In general, humans have a desire to live orderly, it's just that each person has their own stance on the regular life. If in life, there exists a rule then there must be a mechanism to enforce it. This means that the rules are obeyed by every person must through a mechanism often called the social control system to educate, invite and even force citizens to obey the rules and values prevailing in society [8].

The effectiveness of a rule depends on the substance of its law, its law enforcement, its enforcement, its society, and its legal culture. To see the reason for the effectiveness of awig-awig, it means that the content of Awig-awig of Penglipuran Village in terms of substance is considered adequate to the needs and values of the local people's life. Second, from the side of society, Penglipuran society is very modest even though they have been touched by the progress of the world of tourism, both domestic and foreign tourists. Third, judging from the legal culture of Penglipuran Village community is a society that has high legal awareness, at least when viewed from their adherence to the customary law (awig-awig).

IV. CONCLUSION

There is a synergy of marriage arrangement between the provisions of national law [2] with customary law because in awig awig, Penglipuran Traditional Village is also set about marriage. The arrangement of marriage in awig-awig includes the definition of marriage, marriage terms, marriage cancellation, and the process of conducting elopement including the prohibition for polygamy in line with the intent of the law.

Against the prohibition of polygamy as regulated in awig-adat Penglipuran Village, Bangli that until now none of the indigenous people dare to do polygamy. With the provision of a special place for indigenous people who will be doing polygamy, citizens are just ashamed to do so. Therefore, the role of customary law to prevent the occurrence of polygamy is very effective.

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Hopefully this paper can be useful theoretically and practically for the addition and development of knowledge, especially in the field of legal science.

REFERENCES

- [1] H. Hadikusuma, *Hukum Perkawinan Indonesia, Menurut Perundangan, Hukum Adat, Hukum Agama*, Mandar Maju, Bandung. 2007.
- [2] Undang-Undang No.1 Tahun 1974 Tentang Pokok-Pokok Perkawinan
- [3] W. Windia, *Meluruskan Adat-Adat yang Bengkok*, Bali Post, Denpasar. 1994.
- [4] G. Pudja. *Hukum Kewarisa Hindu yang Diresepir ke dalam Hukum Adat di Bali dan Lombok*, CV.Junasco, Jakarta.
- [5] Departemen Pendidikan dan Kebudayaan, 1990. *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta.
- [6] V. E. Korn, *Het adatrecht van Bali*. G. Naeff, 1932.
- [7] Dinas Pendidikan dan Kebudayaan, *Kamus Bali-Indonesia*. 1993.
- [8] S. Soekanto, *Hukum Adat Indonesia*, Raja Grafindo Persada, Jakarta, 1983.