

LEGAL CONSEQUENCES OF DIVORCE OF MARRIAGE IN PADE GELAHANG ACCORDING TO BALINESE CUSTOMARY LAW

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ABSTRACT

Marriage in gelahang is one of the marriage systems in Bali that is different from the usual because both husband and wife act as purusa. The real impact of this marriage system is: husband and wife. Furthermore, of course, it has certain legal consequences, for example related to inheritance and the status of their children. Based on this, the author raises the problem, including how the pade gelahang marriage system is regulated in Balinese customary law and what are the legal consequences if a divorce occurs in a pade gelahang marriage? This research is an empirical research which is of a quantitative nature. Descriptive and using primary and secondary data. Data collection in this study uses observation, interview, and documentation methods, then all the collected data will be analyzed using qualitative data analysis techniques. The implementation of marriage in gelahang in Bali is inseparable from customs and in accordance with Hindu teachings, there is an agreement agreed upon by the parties after the implementation of the marriage in gelahang takes place, both regarding the status of children and socio-religious obligations, and the recording of marriage in gelahang is usually stated in the marriage certificate, both for the male and female parties as purusa, which is not included in ordinary marriages and also does not include nyentana marriages, but the husband and wife remain in the status of kapurusa in their respective homes, so they must carry out two obligations (swadharma), namely continuing the obligations to the wife's family and also continuing the obligations to the husband's family, both physical and spiritual, continuously or for a certain period of time, depending on the agreement of the husband and wife and their families. Marriage in gelahang can save offspring for those who do not have sons, when the groom is also not willing to do nyentana. When a divorce occurs in a marriage in Gelahang, the marriage agreement (Pasoban Mewarang) will be followed. If there are no regulations regarding marital property, the village awig-awig will be used in accordance with Balinese customary law.

Keywords: Divorce, Marriage, Pade Gelahang

1. INTRODUCTION

Marriage law contains basic elements that are psychological and spiritual including physical and spiritual life, humanity and truth. Not infrequently, the result of a marriage based on the unpreparedness of the couple, both from the man and the woman, causes various problems in the household and also causes legal problems after the marriage. (Dewi, Legal Counseling on Organizing Friendships Before Marriage in Nyuh Kuning Village, 2023, p. 1)

The main factor that causes the bride and groom and their families to agree to hold a wedding at gelahang is the concern that the inheritance left by their parents will not be taken care of and/or continued. The inheritance in question can be in the form of responsibility or obligation (swadharma), such as the obligation to care for parents in old age, the obligation to carry out a cremation ceremony for the bodies of

deceased parents, obligations to ancestral spirits in the sanggah/merajan (family place of worship), or in the form of rights (swadikara), such as the right to the wealth left by the testator. (Dyatmikawati, 2011, p. 110)

Marriage in gelahang is one of the marriage systems in Bali that is different from the usual because both husband and wife act as purusa. The real impact of this marriage system is: the husband and wife have a double burden in carrying out obligations in the traditional village such as fathers in the temple, banjar, and the rights of each party. Furthermore, of course, it has certain legal consequences, for example related to inheritance and the status of the child. Therefore, this type of marriage is considered an exception and also a solution to the problem when each prospective bride and groom have the status of an only child. (Candra, 2021, p. 68)

One of the cases of marriage in Gelahang that ever happened in Bali is I Dewa Made Widarma, the Head of Tegalmengkeb Village who has been married to Gelahang for 19 years with Ayu Putu Sudewi, where the marriage was carried out with the Gelahang system because I Dewa Made Widarma is an only child and his future wife, Ayu Putu Sudewi, is an only child. Regarding their customary status, they are included in two Banjar Adat, namely in Banjar Tegalmengkeb Kelod and Banjar Kebon, but one Banjar Dinas, namely Banjar Tegalmengkeb Kelod according to their place of residence. Because in this Gelahang marriage system, no one leaves the house, so during the Pawiwahan Ceremony procession, both of them do not undergo the Ngidih procession as usual, either to the man's or woman's family. It's just that the Natab procession is carried out twice, the first is carried out at Widarma's house in Tangguntiti, and one year later the Natab procession is carried out at his wife's house in Tegalmengkeb. The marriage produced two sons, where in the future the first son would continue the family in Tangguntiti and the second son would continue the family in Tegalmengkeb. (I Putu Suyatra, 2023)

The absence of specific rules governing and recognition by Balinese customary law of marriage in gelahang has caused the unclear position and status of the husband and wife who are married in gelahang. In addition, the fact that this marriage has not been recognized has also caused the unclear obligations of the husband and wife towards their family and society. This also concerns the status of children and the assets obtained in the marriage. Therefore, if this form of marriage does not immediately obtain legal recognition, especially Balinese customary law, then the status of this marriage will be hanging without any legal certainty.

Such facts are certainly not in accordance with the constitution. In the 1945 Constitution (UUD 1945), which provides a guarantee of protection and fulfillment of human rights for its citizens, and regulates anti-discrimination between citizens, because marriage is one of the human rights recognized in the UUD 1945. In addition, the failure to immediately recognize marriage in gelahang is also not in accordance with Law Number 39 of 1999 concerning Human Rights, which also protects equal rights for every citizen without exception.

It should also be stated that based on the theory of progressive law, the law is not only a written rule in a book or law book, but also what lives in society, as long as it is obeyed and upheld by society. Therefore, when marriage in gelahang is considered a need of today's society, then the form of marriage that is the answer to the facts and aspirations of this society should immediately obtain legal and social recognition. Of course, it cannot be justified just because there are no rules yet, then society is left in uncertainty and legal injustice. (Istanbuli, 2020, p. 17)

Nowadays, there are still pros and cons regarding the form of marriage in Gelahang in Balinese society, both regarding the implementation and implications of this form of marriage in Gelahang, on the one hand there are those who agree with marriage

in Gelahang, on the other hand there are those who disagree. (Igbal, 2019, p. 39) There is a form of marriage that has recently caused pros and cons in the Balinese traditional community, namely marriage in gelahang. In this case, the husband and wife choose an alternative form of marriage outside of the two forms of marriage known and regulated in Balinese customary law. To obtain recognition from the Balinese traditional community requires quite a long time, this is still a polemic among the Balinese traditional community and the legal consequences if a divorce occurs. (Sudantra, 2006, p. 86)

Based on the background description above which has provided a description of the problems, the problems in this study can be formulated as follows: How is the pade gelahang marriage system regulated in Balinese customary law? What are the legal consequences if a divorce occurs in a pade gelahang marriage?

2. RESEARCH METODOLOGY

This type of research uses an empirical type of legal research, namely a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical remains or archives. (Fajar, 2010, p. 280)

3. RESULTS AND DISCUSSION

3.1 Pade Gelahang Marriage System in Balinese Customary Law

The working of Balinese Customary Law, there are several things that need to be known in advance, including: the basics of Hinduism, the family system of kapurusa or purusa, and the existence of customary law communities in Bali with all its uniqueness. The purpose of marriage in the view of Hinduism and Balinese customs, in addition to achieving prosperity and happiness forever (*nemu rahayu kayang riwekas*), is also to have offspring, in order to preserve, take care of, and continue the legacy of parents and ancestors, both in the form of obligations (*swadharma*) and rights (*swadikara*) towards the family and community (traditional village or customary village).

The responsibilities towards family and society in question include:

- 1) Responsibilities of the Parahyangan: carrying out various religious activities in accordance with the Hindu religion, such as maintaining holy places and sacred areas.
- 2) Responsibilities of the pawongan: carrying out various humanitarian activities, such as helping each other among fellow community members, known as *masesana* or *masidikara*, in accordance with Hindu teachings and Balinese customary law.
- 3) Palemahan responsibilities: carrying out various activities related to the management of the natural environment in accordance with Hindu teachings and Balinese customary law.

The kinship or family system is a way to trace lineage, to find out who someone is related by blood and who someone is related to, in order to determine the obligations (*swadharma*) that must be carried out and the rights (*swadikara*) that are obtained. In general, there are three known kinship systems. Patrilineal kinship system (lineage is traced from the father's side). Matrilineal kinship system (lineage is traced from the mother's side). Parental kinship system (lineage is traced from the father and mother, so this system is also called the paternal system).

The customary law community in Bali adheres to a patrilineal kinship system, better known as the kapurusa or purusa system. It should be emphasized that one kinship system is not better than another kinship system, but one system has different legal consequences from other kinship systems in relation to obligations (swadharma) that must be carried out towards the family and community and rights (swadikara) obtained from the family and community. Responsibilities or obligations (parhyangan, pawongan, and palemahan) as described above, are not only carried out towards the family, but must also be carried out towards the customary community (adat village or dessa pakraman).

If a family (husband and wife) deny or do not carry out the obligation in a proper manner, they can be subject to real sanctions (sekala) or according to belief (niskala). Moreover, according to the patrilineal family system (kapurusa) that is adopted, the responsibility or obligation (swadharma) in question should be carried out by people who come from the kapurusa lineage. This is one of the reasons why every husband and wife and every parent want to have descendants based on the kapurusa line and avoid kaputungan or putung (not having descendants).

Next, it is compared with the obligations of husband and wife as regulated in Law Number 1 of 1974 concerning Marriage. This is different from Balinese customary law which emphasizes that the responsibility of husband and wife towards family and society consists of sekala or reality responsibility and niskala responsibility (belief, such as Tri Rna). Law Number 1 of 1974 concerning Marriage states that, the social spiritual responsibility of a husband and wife according to Balinese customary law consists of responsibility towards parhyangan, pawongan and palemahan, which must be carried out together, without distinguishing which has the status of kapurusa and which has predana.

In fact, if we observe carefully the drafters of Law Number 1 of 1974 concerning Marriage, there is a desire to accommodate the diversity of society throughout Indonesia. This is based on the realization that the law can be enforced nationally, without distinguishing between ethnicity, religion, race, and so on. Thus, this law is expected to be more able to meet the needs of its people, especially related to marriage. However, it must be realized that in the regulation of marriage there is an imbalance of rights between husband and wife, especially concerning the issue of the position and status of each party. The substance of Law Number 1 of 1974 concerning Marriage compared to the substance of the customary village laws as one of the sources of Balinese customary law as long as it regulates marriage and the responsibilities of husband and wife, it appears that the provisions of Law Number 1 of 1974 concerning Marriage are more in accordance with the principles of a state of law. This is in line with one of the elements of a state of law, namely the guarantee of human and citizen rights.

The prohibitions on marriage in Gelahang are generally the same as marriage in general, such as blood relations, in a straight line up and down, siblings, marriage guardians, guardians of one of the prospective bride and groom. Thus, marriage in Gelahang cannot be carried out and of course results in the invalidity of a marriage.

The requirements for a valid marriage according to the ancient dresta (traditional customs in the past) in Bali include the absence of any party objecting to the marriage taking place, witnessed by local customary officials, and the existence of a byakaonan ceremony (validation ceremony) carried out in accordance with the Hindu religion. Thus, a marriage in Gelahang becomes valid when it has fulfilled the specified elements.

In general, the requirements for carrying out a marriage in gelahang are not much different from the implementation of ordinary marriage forms or nyentana marriage

forms. Marriage requirements are regulated in articles 6 to 12 of Law Number 1 of 1974 concerning marriage. In general, it can be stated that marriage requirements consist of:

- 1) there is agreement between the bride and groom,
- 2) permission from parents, and
- 3) provisions regarding the age limit for marriage.

Even if there is a difference, the difference is seen in the *pasobayan mawarang*, namely the agreement between the bride and groom and their respective families regarding the form and implementation of the marriage and the various consequences of responsibility that accompany the marriage in the future, both those related to *parhyangan* (religious belief activities) *pawongan* (humanitarian activities according to Hinduism) and *palemahan* (natural environmental activities according to Hinduism) in *sekala* (reality) and *nisekala* (belief or supernatural). To make it easier to understand the position of the parties and the responsibilities that must be carried out by the parties after the marriage takes place, the following is a partial quote from the *pasobayan mawarang*. (Sumiarni, 2005, p. 45)

After the marriage is carried out, it basically does not change the status and position of each party who is carrying out the marriage, the first party (husband) and the second party (wife) remain in the position of *purusa* in their respective homes in their family environment, with all the obligations and rights of a *purusa*, according to Balinese customary law and the *awig-awig* applicable in the local traditional village. Therefore, this marriage is a new form of marriage, which is different from previous marriages, especially *nyentana* marriages. As is known, in this form of *nyentana* marriage, the status of the husband changes to a woman, while the status of the woman becomes a man. The Consequences of the Position of *Purusa* on the Obligations and Rights of the First Party have full obligations and rights as a *purusa* towards the continuation of the *parhyangan*, *pawongan* and *palemahan* of the parents and ancestors of the First Party, according to Balinese customary law and the *awig-awig* applicable in the traditional village of the First Party, while the Second Party has the position of *predana* with all the *swadharma* that should be carried out as a *predana*. Furthermore, the Second Party has full obligations and rights as a *purusa* regarding the continuation of the *parhyangan*, *pawongan* and *palemahan* of the parents and ancestors of the Second Party, in accordance with Balinese customary law and the *awig-awig* applicable in the traditional village of the Second Party, while the First Party has the position of *predana* with all the *swadharma* that should be carried out as a *predana*.

Marriage in *Gelahang* is a Necessity of Balinese Customary Law Society In Balinese customary marriage, one of the important phases that must be passed before entering the marriage stage is called *magelanan* (dating or getting engaged). *Gelan* means boyfriend or fiancé. If the *magelanan* (dating) process goes smoothly, a marriage will be chosen by way of *memadik* (proposing). On the other hand, if the *magelanan* process does not go smoothly (two lovebirds love each other, but their relationship is not approved by the parents of one party), then they will carry out the marriage by way of *ngarorod* (running away together).

Law Number 1 of 1974 concerning Marriage, which came into effect on October 1, 1975, aims to establish regulations in the field of marriage nationally. The definition of marriage in Law Number 1 of 1974 concerning marriage is formulated as follows. Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God (Article 1 of Law Number 1 of 1974 concerning Marriage). Based on this definition, it appears that the purpose of marriage is to form a happy and eternal family (household) based on the One Almighty God. In this case, it

means that a husband and wife who are getting married must aim to create a happy, material and spiritual family (household) in order to achieve an eternal and everlasting marriage. For this reason, husband and wife must help and complement each other so that each develops their personality to achieve prosperity and happiness based on the One Almighty God. (Fajar, Dualism of Legal Research: Normative and Empirical, 2010, p. 56)

The validity of a marriage according to customary law in society generally depends on the religion of the indigenous community concerned. This means that if it has been carried out according to the rules of its religion, then the marriage is valid according to custom. Marriage according to customary law is valid if it is carried out according to religion and beliefs. However, even though it is valid according to the religion of the indigenous community, it does not necessarily mean that it is valid to become a customary citizen of the indigenous community concerned. (Isnaeni, 2016)

Based on the results of the interview with I Made Suwarsa as Kelian Adat Padang Sambian, the existing Balinese traditional marriage system, namely marriage at gelahang or druwenang sareng is a marriage that negen dua banjar. This means that the bride and groom do not need to leave or mapamit in their respective homes. So the husband and wife remain in the status of kapurusa in their respective homes, so they must bear two responsibilities and obligations (swadharma). According to the agreement of the two families and witnessed by the banjar and the traditional village and government. At gelahang or jointly owned, is a solution for couples who want to get married but do not want nyentana. In connection with the implementation of marriage, according to Balinese Customary Law, the position of ahli wars or descendants is very important, because it is related to the continuation of the responsibilities of parents and ancestors, both in the form of obligations (swadharma) and rights (swadikara) in life in society, as well as in relation to association with the local community (pasidikaraan). Families who choose the form of marriage in gelahang, basically want the swadharma, swadikara, and pasidikaraan of the family to be carried out. Marriage in gelahang brings the family system closer to the parental family pattern, where the family that is formed in a balanced way has a relationship with the father's family and the mother's family. Obligations that must be carried out by a married couple. (Suwarsa, 2023)

3.2 Legal Consequences of Divorce in Pade Gelahang Marriages

Regardless of how it is expressed or formulated, in principle the agreement made by both parties, whether verbally or in writing, contains the same substance that the marriage in gelahang is carried out with the intention that the families of both parties have descendants (children and grandchildren), who are later expected to be able to take care of and continue the inheritance left by the parents of both parties, both in the form of responsibility (swadharma) and in the form of rights (swadikara), in relation to parhyangan, paawongan and palemahan in the family and society.

Consequences of Divorce

Before the enactment of Law Number 1 of 1974 concerning Marriage, marriage and divorce for Hindus in Bali could be said to be valid if carried out according to Balinese customary law (witnessed by the head of the banjar or traditional village) and the Hindu religion. According to Article 2 paragraph (1) of the Marriage Law, marriage for Hindus in Bali can be said to be valid if carried out according to Balinese customary law, the Hindu religion, while divorce can only be said to be valid if carried out in a district court according to the provisions of the Marriage Law.

If we look at the description above, it is clear that the Marriage Law does not give equal respect to Balinese customary law and Hinduism, in relation to the implementation of marriage and divorce for Hindus. The provisions of Balinese customary law and Hindu teachings have a proper place in the implementation of marriage, but this is not the case in divorce. Evidently, divorce is said to be valid after a court decision, without mentioning the role of Balinese customary law (prajuru desa adat) and Hindu teachings.

As a result, there are some residents who have been legally divorced based on a court decision, but are not known by most of the villagers (residents) and cannot be immediately known by the customary village officials. This fact has negative consequences for the existence of Balinese customary law and makes it difficult for village officials to determine the swadharma or responsibility of the relevant village officials. Based on the Pasamuhan Agung III, the Main Council of the Balinese Customary Village decided as follows:

1. The Patiwangi ceremony is no longer carried out in connection with the implementation of the marriage ceremony.
2. For prospective brides and grooms who due to circumstances do not allow them to hold a regular or nyeburin (nyentana) wedding, it is possible to hold a wedding at a gelahang based on an agreement between the interested parties.
3. In order for the divorce process to be in line with the marriage process, divorce should be carried out with the following provisions:
 - a. A married couple who are going to divorce must convey their wishes to the head of the banjar or traditional village. The head is required to provide advice to prevent divorce.
 - b. If a divorce occurs, it must first be resolved through customary processes, then continued by submitting it to the district court to obtain a decision.
 - c. Submitting a copy of the divorce decision or divorce certificate to the head of the banjar or traditional village. At the same time, the head of the banjar or traditional village advises the divorced residents to carry out a divorce ceremony in accordance with the Hindu religion.
 - d. The Prajuru announces (nyobya-hang) in the paruman of the banjar or traditional village, that the husband and wife in question have legally divorced, according to national law and Balinese customary law, while also explaining the swadharma of the former husband and wife in the banjar or traditional village, after the divorce.

Based on the results of the interview with I Komang Kembar Supriadi and Ni Kadek Eli Hermawati, as the parties who carried out the Pade Gelahang Marriage but in the process of divorce, the legal consequences if a divorce occurs are that in the event of a divorce due to death, the joint assets and belongings of the deceased will be controlled by the surviving spouse as long as he or she carries out his or her responsibilities in the deceased's family. Similar to marital property, the position of the child also depends on the marriage agreement (Pasoban Mewarang, even stronger position of Pasoban Mewarang than the awig-awig in the village. This is proven in the case of I Komang Kembar Supriadi and Ni Kadek Eli Hermawati who are still in the process of divorce. Although the village awig-awig explains that after divorce the first child will be cared for and become the successor of the male party's descendants, what happened was the opposite, the first and only child was actually cared for by the female party and continued the female party's descendants, because it had been regulated in the marriage agreement (Pasoban Mewarang). Regarding inheritance, specifically for children born in marriage in Gelahang, the child only has the right to inherit from the family where he continues the purusa, not in both purusa lines. (Hermawati, 2023)

4. CONCLUSION

The implementation of marriage in gelahang in Bali cannot be separated from customs and in accordance with Hindu teachings, there is an agreement agreed upon by the parties after the implementation of the marriage in gelahang takes place, both regarding the status of children and socio-religious obligations, and the registration of marriage in gelahang is usually stated in the marriage certificate, both for the male and female parties as purusa, which is not included in ordinary marriages and also does not include nyentana marriages, but the husband and wife remain in the status of kapurusa in their respective homes, so they must carry out two obligations (swadharma), namely continuing the obligations to the wife's family and also continuing the obligations to the husband's family, both in sekala and niskala, continuously or for a certain period of time, depending on the agreement of the husband and wife and their families.

Marriage in Gelahang can save offspring for those who do not have sons, when the groom is also not willing to nyentana. when a divorce occurs in a marriage in Gelahang, then it will follow the marriage agreement (Pasoban Mewarang), if it has not been regulated regarding marital property, then it will use the village awig-awig in accordance with Balinese customary law, namely the gunakaya property will be divided pedum pada or equally, while for tetadan and tetamian will be brought back by each party. In the event of a divorce due to death, then the joint property and the deceased's belongings will be controlled by the surviving partner as long as he carries out his responsibilities in the deceased's family. Similar to marital property, the position of the child also depends on the marriage agreement (Pasoban Mewarang, even stronger the position of Pasoban Mewarang than the awig-awig in the village.

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Based on an interview with I Komang Kembar Supriadi and Ni Kadek Eli Hermawati, as the parties who carried out the Pade Gelahang Marriage, on May 26, 2023, at 04.55 WITA.

Based on an interview with I Made Suwarsa, as the Head of Padang Sambian Customary Law, on May 26, 2023, at 04.05 WITA.

The 1945 Constitution of the Republic of Indonesia
Civil Code

Law Number 1 of 1974 Concerning Marriage

The Third Great Assembly/2010 MUDP