

Unique Marriage *nyentana* in Balinese Traditional Law

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Abstract: *This study aims to examine nyentanathe unique ways of marriage in traditional Balinese law. The hallmark of marriages of patrilineal societies is honest marriage, which is paid by men to women. While in a nyentana marriage, uniqueness occurs where honesty is paid by the woman to the man. In relation to this legal problem, how are the regulations of marital marriage in Balinese customary law and what legal consequences arise from such marriage? These legal issues are examined using normative legal methods by relying on legal and non-legal materials. In addition, the problem is also examined based on Feminist Legal Theory and also legal system theory. The findings show that the marriage of nyentanais clearly regulated in customary law (awig-awig) as a solution in terms of preventing the loss of heredity. As a result of the marriage the married men will lose their inheritance rights in their original home. This means that customary law is phallogocentric. The conclusion is that the marriage method prevents the extinction of offspring in Balinese customary law and consequently the married man loses inheritance rights in the original house.*

Keywords: *nyentana*, married, unique, customary law, Bali

1. Introduction

Customary law as the living law consists of several fields of law. According to Van Vollenhoven as quoted by Moh Koesnoe in Sukerti it covers: 1. community composition (village, *nagari*, *huta*, *kuria*, clan and so on); 2. Family law; 3. Marital law; 4. Inheritance law; 5. Land and water law; 6. Legal accounts payable and receivable; and 7. The law regarding sin (offense) (Sukerti; 2012: 2). In this paper, the focus is on the field of marriage law. Marriage law is the focus of the study because the Indonesian government has succeeded in making legal unification in the field of marriage law but still provides an opportunity for the entry into force of customary law in the field of marriage. In the study of marital problems cannot be separated from the family system adopted by the community concerned. Indonesian society consisting of tribes, customs, culture, religion and beliefs that are not homogeneous adheres to a family system that is not homogeneous as well. Each family system of a particular community will affect the manner of marriage adopted by the community concerned.

In general, there are three family systems in Indonesia, namely matrilineal, patrilineal and parental. Related to this system, Bhusar Muhammad in Sukerti said that in Indonesia are commonly known as three family systems regarding lineages, namely:

- 1) Ancestral ties are only seen according to the male line or the father line (patrilineal), embraced in Batak, Lampung, Bali, Gayo, in others.
- 2) Ancestral ties are only seen according to the female line or the matrilineal line, followed in Minangkabau, Kerinci and so on.
- 3) Relationship to the descendants seen either according to the line of men (father) or according to the line of women (mother), or according to the line of two sides (father-mother or parental), embraced in the regions of Aceh, Bugis, Riau, Kalimantan and Java (Sukerti; 2012: 4).

The kinship system adopted by a particular society, will affect the form, manner of marriage that it implements and

will also affect the inheritance system. In this study the emphasis is on the way of marriage regulated in Balinese customary law (*awig-awig*). The way of marriage is very unique in order to ward off extinction in the family, so this research becomes important. Related to this, the legal issues; how is the regulation of marital marriage in Balinese customary law and what legal consequences arise from the marriage?

2. Research Methods

Research on the unique ways in traditional Balinese law is normative legal research. This research uses primary and secondary legal materials. Legal material is the form of Marriage Law, *awig-awig* of *adat* village. Secondary legal material is in the form of other written sources that are relevant to this research. The collection of legal materials is carried out by recording techniques using a card system. It is analysed by juridical interpretation techniques, including grammatical interpretation and systematic interpretation.

3. Results and Discussion

1) Definition of Marriage

The Indonesian government has succeeded in making several legal unifications, one of which is the marriage law as stipulated in Law Number 1 of 1974 concerning Marriage (Law Number 1 of 1974). Unification in the field of Marriage Law does not necessarily exclude the validity of customary marriage law. Customary law as a living and unwritten law still applies based on the provisions of Article 66 Law Number 1 of 1974. Therefore, in marriage, there is still a dualism of law, that is, State law and customary law. The validity of the legal dualism is deemed necessary to find a number of definitions of marriage based on the provisions of law Number 1 of 1974 and from several scholars.

Marriage is a 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 Godhead (Article 1). Surojo Wignjodipuro in Wulansari gives the following

definition of marriage: marriage is one of the most important events in the life of the community, because the marriage does not only involve women and men going to the bride, but also parents of both parties, siblings, even their families respectively (Wulansari; 2014: 48). In customary law (Bali), marriage does not only concern those who are still alive, but also concerns those who have died, where the spirits of both parties are expected to give their blessing to the bride and groom so that the marriage runs smooth and lasting to grandparents. While Hazairin gave the understanding that the marriage event was a series of three magical actions aimed at ensuring calmness (*koelte*), happiness (*welvaart*) and fertility (*vruchbaarheid*) (Wulansari; 2014:48). Related to the definition of marriage, A. van Gennep named all the ceremonies as 'rites de passage' (transitional ceremonies). Transitional ceremonies that symbolize a change from the bride and groom, who originally lived separately, after going through the ceremonies meant to become united in a life together as husband and wife. A. van Gennep in Hajati divides Rites de passage into three stages, namely: rites de separation (ceremony of separation from its original status), b. rites de marge (ceremony for travel to a new status), c. rites de aggregation (ceremony for acceptance of new status) (Hajati, et al.; 2019:204). So marriage is very important for human life because it is not only the business the couple but also matters, parents, siblings, society and even become the affairs of the State.

2) Marriage Form and System

In Indonesia, there are several forms of marriage that are still held until now. Djaren Saragih in Utomo distinguishing forms by looking at the kinship system adopted by the community as follows (Utomo; 2016:93):

a) Unilateral society consisting of patrilineal society and matrilineal society, namely:

- Patrilineal Society.

In patrilineal societies the form of marriage adopted is "honest marriage", meaning that the form of marriage aims to consistently continue the descendants of the male (father). In this honest marriage, the man must submit something called "honest" to the bride with the aim of releasing the bride from her parents' clan membership, then being included in the groom's clan membership. So the men have an important and decisive role in all matters. Honest function; a. In legal terms to change the clan membership status of the bride, b. economically bring a shift in wealth, c. socially the act of honest submission means that the woman has a respected position (Utomo; 2016: 93, Pide; 2014:25-28). Honestly, the bride breaks up the legal relationship (civil) with her parents. In Bali this is even interpreted incorrectly, where there is honesty in view of the breakdown of the legal relationship as a whole, including the breaking up of the ancestors, so that the public's view that women who are married already belong to their husbands. It must be stressed that women cannot be owned by anyone because women are not goods that can be owned by someone, but he is a human being the same as men

- Matrilineal Society.

In matrilineal societies there is no honest payment from men. The characteristic form of marriage is "semendo marriage". Semendo marriage is aimed at consistently

continuing the descent from the wife (mother). Thus the mother has a very important position and plays a role in all matters. Semendo mating can be divided into two types, namely:

- Semendo marriage as a necessity is semendo marriage which is carried out in matrilineal society.
- Semendo marriages as deviations from patrilineal societies who are supposed to have an honest marriage.

b) Bilateral Society

In bilateral societies descendants are drawn from two lines namely the father and mother lines. The typical style of marriage is "free marriage". Children born in free marriages do not differentiate in looking at families, both families of fathers and mothers, as in unilateral societies which sharply distinguish family status from one of the parties. Marriage has the aim to continue the descent; therefore the marriage system is determined by the kinship system adopted by the local community. Djaren Saragih in Utomo argued that in drawing the lineage was divided into two types namely: unilateral and bilateral, therefore, in the marriage system also divided into two types namely:

- Marriage in a unilateral society, the system is exogamy, namely the prohibition of marriage between members of the clan or the necessity of marrying with another clan.
- Marriage to a bilateral community, the system is not bound by exogamy (Utomo; 2016:93).

Related to the marriage system, Hilman Hadikusumain Utomo distinguishes it into three types, namely: the endogamy system, the exogamy system and the eleuthero gamy system (Utomo; 2016:97). The endogamy system is a marriage system that requires a prospective bride and groom to marry. Deviations from these necessities result in the removal of the deviant from the family members. It was adopted by Bali but limited to the endogamy of the non-caste dynasty because the Balinese actually did not know caste as in India. The exogamy system is a marriage system that requires men to look for potential wives outside the clan or is prohibited from marrying with other clan members. Non-compliance with these rules can exclude the man concerned from his clan membership. The eleuthero gamy system is a marriage system that does not prohibit or require the bride to come from one clan or clan. The bride and groom are free to choose a potential partner.

c) Methods of Marriage

Sukerti argues, there are three ways of conducting marriages, namely: 1. marry marriage, elope and take away (Sukerti;2012:24), while Windia distinguishes the way of marriage into two types, namely marriage and *memadik* and *ngerorod* (Windia;2016:113), related to this matter, Suwitra Pradnya distinguishes it into an inward and outward marriage (Suwitra Pradnya; 2017: 31). Married marriage is a marriage that is done by way of application from the male to the female. In this way there is formal engagement (not dating) to get to know each other more deeply. Generally it is carried out by the men of the woman who is equal in all aspects such as social status, economy, and education and of course also the house. Proposal can also be carried out on women whose social status is lower but it is highly unlikely that a woman may be nominated by women with higher social status and citizenship. Winning in Bali is called

"*memadik*. Marriage runs together, in this way there is no formal engagement between single girls where prospective couples agree to run together to get married, basically like and like. This method is called "*ngerorod*", not deviating from the provisions of Article 6 of the Marriage Law. This was done because there was no blessing from the parents of one of the parties or even from both parties, avoiding the necessity of custom and most importantly to shorten the time and save money. Marriage carries away, in this way there is an element of coercion from one party, generally coercion is done by men to the girl. This has been very common in the past, but in this day and age it is difficult to find and even almost nothing else. This, besides being also a violation of human rights of women and also not in accordance with the provisions of Article 6 of the Marriage Law. Marriage in Bali is called "*melegandang*" a kind of rape love.

d) *Nyentana* Marriage in Customary Law of Bali

In an honest marriage that is characteristic of patrilineal society, where honesty is paid by the men to the women. This means that the bride has honestly broken her legal relationship with her parents, siblings and family. Specifically for Bali the severance of the relationship even reached its ancestors by means of certain ceremonies. Regarding honest payments, what about marriage in Balinese traditional law?

Pangkatin Sukerti suggests that *nyentana* is where a man who marries a *sentana luh* comes to the *sentana luh* to his house and settles (*inlijkuwelijk*) (Sukerti; 2013: 171). While Adhi revealed that a marriage of *nyentana* or *nyeburin* was a marriage where the husband followed his wife, as if the customary settled marriage was an uxirilokal where the newlyweds settled around the residence of the relatives of the wife and the husband relinquished the rights and obligations in his home (Sukerti; 2013:171). The same thing was also stated by Kaleran in Sukerti that the marital marriage was a marriage in which the marriage ceremony was held by the family the wife in her own home (Sukerti; 2012:27). Marriage *nyentana* or *nyeburin* is a unique way of marriage that is only found in Balinese society which is very thick defending the status quo of men or patrilineal power system. It can be seen that the provisions of *awig-awig* of adat village, for example *Awig-Awig* of Susutadat village, regulates the marriage of peace in Pawos 52 (2). The same thing is also regulated in Pawos 71 *Awig-Awig* Tangeb Indigenous Village. *Nyentana* is clearly regulated in Balinese customary law (*awig-awig*). This in a gender perspective is a reflection of gender bias because to be a woman as a continuation of offspring must do legal actions through marriage marriages. Sukerti said that the truth was that this aim was to maintain the patrilineal family system in Bali (Sukerti; 2013: 172). WirtaGriadhi in Budawati elaborated that intermittent marital marriage received rejection from the community (brahmana community group) (Budawati; 2016:303). The procedure for a marital marriage is the opposite of the usual marital procedure, namely a marriage out in Bali where the wife honestly leaves her family membership then follows the husband and enters the husband's family, but in a marital marriage, the husband goes to outside of his family then follows his wife and enters his family. This method is taken, to continue the descent from the wife. As a result of this marriage the wife's legal

status (*purusa*) is limited to civil rights while the husband's legal status is female (*predana*). Children born from marriage follow the mother's line and as a continuation of the maternal descent and carry out the obligations on the part of the mother and of course also will receive their rights as a result of carrying out the obligations. Another result is that the husband dropped the right of inheritance at home. It should be underlined, not every Balinese woman can do a marital marriage because there are some things that must be fulfilled such as not having a son. Related to that, Sukerti explained that in Tabanan Regency, intermittent marriages could be carried out by families who already had sons) (Sukerti; 2002: 24). Marriage by means of such a move, relevant reviewed from Feminist Legal Theory. Feminist Legal Theory views that law (including customary law) is the order of the Adam, which marginalizes women, factual law built and constructed in male logic. The implication is that men strengthen patriarchal socio-juridical relations. Relationships are based on male norms, experiences and powers and ignore women's experiences. Thus to a certain degree the law has contributed to the oppression of women (Sulistiyowati Irianto; 2000: 324). This can be seen from the existence of a marital marriage to prevent the extinction of the offspring of the wife. The way marital marriage is a result of laws made based on the logic and experience of men so that in a certain degree gave birth to oppression of women, including in preventing the occurrence of family extinction must carry out certain legal acts that gave birth to gender biases against women. It is also relevant to be studied based on the Law System Theory of Lawrence M. Friedman in Ali which states that law consists of three components namely the legal structure, legal substance and legal culture (Ali; 2001:9). The three components of the law have not changed. This reflects that the law (*adat*) as a construction of men still survives until now and it clearly reflects the gender bias towards women.

4. Conclusion

From the overall explanation above it can be concluded that the marriage of *nyentana* is clearly regulated in *awig-awig* at village and is a unique way of marriage in Balinese customary law. The aim is to prevent the extinction of offspring in the family. The uniqueness of the marriage lies in the way of application and honest payment made by the party to the party of the man. As a result of marital marriages, where married men lose inheritance rights at home and children born following the maternal line. So that *nyentana* marriage is maintaining the status quo of men in the patrilineal kinship system so that it gives birth to a gender bias against women.

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