

# MARRIAGE LAW AND DIVORCE BASED ON ADAT LAW IN BALI

I Gusti Ayu Agung Ariani\*

## Abstract

*Bali with the majority of its population embracing Hindu religion with patrilineal and caste system, In Marital law in force a national law Marriage Act No.1 / 74, which still allows the enforcement of the customary adat law. Those are of course influence the characteristic of the marriage and divorce, especially the type of marriage and the consequences of the status of wife and husband in marriage, right and obligation, authority over the children and properties. Furthermore, the status of wife / women if divorce take place, The women / wife as a widow is not automatically return to her family of origin according to the type of marriage and the caste between husband and wife and many conditions must be fulfilled. If the conditions are not fulfilled, the divorced women will be trapped in uncertain and problematic status position, in which the man / male always get the benefit in all kind of ways.*

**Kata kunci :** Perkawinan, Perceraian , Hukum Adat di Bali

There is no society which does not comprise marriage as of institutions within it. However, the rules in force are different in varying degrees from society. Bali with the majority of its population embracing Hindu religion adopts and practices a patrilineal system. In Matter: concerning marriage there is really a national marital law in force as unifying law. However, the existence of the national law does not close the possibility, especially its provision not covered in national law. In fact the national law still allows the enforcement of customary **adat** law.

The patrilineal family system with its sociocultural system still based on cast system which comprises: the Brahmana cast, the Ksatrya, the Wesya and the Sudra cast.<sup>1</sup>

That is given a special characteristic to its marital law and its turn to status of women alone. However, the patrilineal family system which is base on Hindu religion, in which the family descendant is determine according to the male line, has first and foremost given a particular importance to the son or to male descendant. And more over, with the belief in reincarnation the male descendant really plays a very important role in saving the parents or ancestors from sin and hell. The son or male descendant, who is obliged to give ritual sacrifice to the ancestors in the family temple, becomes the inheritor who assumes the right and obligation of the family.

Against the background described above, this

paper will try to description about : the type of marriage, the legal consequences of marriage , the right and obligation of the wife and husband within the marriage, in relation to children and family, properties and how about divorce, including the status of women in divorce.

## Marriage System In Balinese Customary Adat Law

In the Balinese belief system, marriage is considered to establish physical as well as spiritual ties between men and women in their respective status as husband and wife in household which aims to establish a happy and lasting family under the blessing of God the Almighty.

Marriage become legal when, and only when, it is done in a way which meets the provisions of the existing law according to respective religion or religion faith (article 2, paragraph 1 of act no 1 / 1974)

Within Balinese society, the majority of people are Hindus and the legalization of marriage is conducted through a series of wedding ceremonies held one after another in the following sequence:

- The minor **mebeokaonan** or **mesakapan beten** ceremony. This a small scale or preliminary wedding is conducted at home in the domestic household yard.
- The major **mewidiwidana** or **mesakapan beduwur** ceremony. This is the climax in series of ceremonies and conducted in specially-built

\* Prof. Dr. I Gusti Ayu Agung Ariani, Dosen Fakultas Hukum Universitas Udayana, Denpasar, Bali

1 Gede Pudja , *Sosiologi Hindu Dharma*, 1963, Penerbit Yayasan Pembangunan Pura Pita Maha, Jakarta, hal 77-79.

ceremonial hall.

- Another small scale *mejauman* ceremony. This is conducted at the bride's home with the main purpose of spiritually cutting the bride's bond from her home origin. While at the same it signifies the paying of the first ceremonial visit to the bride's home.

In principle, the types or two variations of marriage can be found in Bali namely:

### (1). Ordinary Marriage

This called ordinary in the sense that it is the type or most commonly adopted and practiced, that is, the type with its wedding ceremony conducted at the bridegroom's home. In this type of marriage, the bride cuts her bond from her home origin, and she therefore, becomes the member of the family of bridegroom and the children born from this type of marriage will continue the family according to the father line, assuming the right and obligation of the family on the father's side.

### (2). Nyeburin Marriage

This tipe of marriage happens much more rarely. This type of marriage happens with the family who has no male descendant. In order to maintain the continuation of the family according to patrilineal line, the only daughters born in the family is married with a man from, ideally, a family of the same cast as that of the girl. Contrary to the ordinary married system described above, with this, *Nyeburin* marriage the wedding ceremony is held at the home of the bride, and cutting of the spiritual bond take place between the bridegroom and his family at his home origin.

In this case it is the bride then who assumes the status of *purusa* (means as a man / male, that is who assumes the role of male. Consequently, the children born from this type of marriage belong to the family or their mother line and are obliged to maintain the family continuation on their mother's side with all its right and obligation.

Due the cast system still adopted in Bali, and when therefore intercast marriage takes place, there are two types of this marriage then, namely: *anuloma* and *patriloma* marriage.<sup>2</sup> In *anuloma* marriage the wife or the bride is of the lower cast than the husband

or the bridegroom.

In this case the status of wife will be a bit elevated (not to the extent that she changes her cast to that of her husband). And besides, she will change her name with a new one derived from names of flowers or any name suitable for her bride's status.

In *patriloma* marriage on the other hand, the brides is of higher cast than that of bridegroom and consequences of her marriage with her husband (whose cast is lower than hers), her original cast supposed to be cancelled and it that way she assumes the cast of her husband (which is lower than her original cast).

As the types of marriage mention above, the marriage can be done:

1. Marriage by elopement ( *kawin lari* = local name *ngerorod* )

Elopment without a formal engagement or proposal is common in the areas of patrilineal system. Its aim is to avoid the obligation which an engagement brings about. And of course, it gets around the meddling and apportion of parent and relatives. Actually, however, the relative do not always disapprove of elopement.<sup>3</sup> In *Adat* Law, Especially in Bali, with Patrilineal system, marriage is not only the concern of those who get married, but also for the parents and relatives.<sup>4</sup> Marriage by this way is commonly happened with following reasons:

- 1) The parents (lady's parent) not agree about the married.
- 2) More simple or practice
- 3) Economics

2. Marriage by proposal

This way, usually begin with love to another, it means in local name *megegelan* (*medemenan*), and both the boy's and girl's parent (Through negotiation) agree if they are together. The way more complicated than marriage by elopement, because a certain step must be followed. Firstly, one party, usually the boy's parent or family representatives negotiating with the parent of the girl about the procedure, about the time or good day, when and how the marriage will be held, how about bride prize etc. where more time and money is consumed. Here the parties commonly

2 Ibid, hal. 55

3 Ter Haar Bzn, 1962, *Asas - Asa s dan Susunan Hukum Adat ( Beginselen en Stelsel van Het Adatrecht )*, Penerbit Pradnya Paramita, Jakarta, hal. 183

4 Hillman Hadikusuma, 1983, *Hukum Perkawinan Adat*, Penerbit Alumni, Bandung, hal. 22-23; baca juga Tolib Setiady, 2008, *Intisari Hukum Adat Indonesia*, Penerbit Alfabeta Bandung, hal.221-223 ;baca juga Soerjono Soekanto, 2001, *Hukum Adat Indonesia*, PT Raja Grafindo Persada, Jakarta, hal 236.

whether she still belongs to her husband's family or to her family origin. She may be accepted by neither. Clearly, a woman who finds herself in this situation has really got to be able to support herself economically. It is partly from the possibility of socially destabilizing events such as this that Balinese women derive their strong working ethos. Today, as more and more women in Bali are involved in paid work, a divorced woman has far more choice about whether to return to her family origin. It has become possible for such a woman to make herself economically independent. Depending on her earning capacity she may even be able to live in home which she owns herself. Some divorced women are not accepted with the status of *mulih daa* back to their families of origin because their caste has changed to that of their husband (usually a lower caste). They may be accepted back into the extended family network in their status as outsiders. It is not uncommon to find divorced women in this situation becoming housemaids to their own relatives.

The authority or the right over the children remains in the hand of the husband or the husband's family.

As for the family properties, the national marriage act states that should a divorce take place the common properties should be treated accordingly under respective laws. The act does not contain a clear provision concerning the status of common properties. It is because of this that customary *adat* law holds way in Bali. Under civil law properties accumulated or obtained during married life become common properties. However, nothing is mentioned as to who obtains those properties after divorce. And it is also said that if a divorce takes place these properties are divided into two. However due to the existing gender stereotype, in which the husband considered the income earner while the wife is a domestic worker (house wife), the woman is there for considered not contribute in accumulation of the common properties. This is why when divorce takes place the wife does not concern herself too much with such properties though, in fact, she has helped contribute in the accumulation of those properties. This is especially true when she has got some children from her marriage, which she thinks will share in use of those properties.

So far the discussion has been focused on divorce. We must also consider what happens when a

woman becomes single due to the death of her husband. In analyzing the status of women as a widow, the analysis must be related to status or the system of marriage already adopted. In the case of ordinary marriage the wife becomes a member of the husband's family. When a woman becomes a widow, she has the right over the common properties, that over those properties obtained by the couple during her married life. However, for any properties derived from inheritance on her husband's side, the widow has rights only in so far as using these properties to support her life. The children, if any, have greater right over these properties than their widowed mother.

The widow can use this property for purpose of holding ceremonies for her husband. For this she needs the concern of the children. In always she is bound condition that she remains faithful to her obligations and duties as a widow. This is she must not commit adultery or get married again.<sup>5</sup>

In the case of Marriage, in which the wife assumes the status of the male or *purusa*, the widow has the whole right and authority over all properties, regardless of whether they are common properties or properties derived from parents or either marriage partner. Moreover, as the living parents the widow has a greater right over those properties than the children. The children obtain those properties as inheritance only when the widows die. We can see to what extent *nyeburin* marriage reverses the traditional status of men and women, in marriage.

### Conclusion

In marriage law in force national law and customary adapt law. According to the customary adapt law, adopts and practices the patrilineal family system and caste system, that given a special characteristic to its marital law and divorce in Bali. Wife and husband is equal partner in marriage, over marriage property, the authority over the child according to national marriage law, but rather different based on adapt law, according to the type of marriage and cast of the wife and husband. In divorce, the common property divided two, and the authority over the children remains with the father or the family line on the father side. In inter-caste marriage, especially in *patriloma* marriage, if divorce takes place, divorced women do not automatically go back to her origin family. If the condition are not fulfilling, the

5 Mahendra, A.A., 1995, *Laporan Penelitian Perkembangan Hukum Waris Janda dan Anak Perempuan dalam Masyarakat Bali*, Kerjasama Fakultas Hukum Universitas Udayana dan Badan Pembinaan Hukum Nasional, Departemen Kehakiman R.I., hal.34

came from the same level / caste or the boy from a higher caste.

### 1. Right And Obligation Of Wife And Husband In Marriage

In the national law, that is, in the marriage act (Act No 1 / 74), the right and obligation of wife and husband in marriage find their provision in article 31, paragraphs 1, 2 and 3. Paragraph 1 state that the right and the status of the wife is equal to those of the husband both in their marriage life and in society. According to paragraph 2 both side have equal right to carry out legal action. Paragraph 3 states that the husband is the head of household and the wife is a house wife.

Article 34 of Act No 1 / 74 also mentions the equal status of wife and husband. Paragraph 1 article of article 34 states that the husband is obliged to protect the wife and to meet any and all of the household's needs in accordance with his ability to do so. In Paragraph 2 it is stated that the wife is obliged to manage domestic matter in the possible way.

### 2. Right And Obligation Of Parent Toward Children

Article 45 of the marriage act No 1 / 74 states that two parents are obliged to bring up and educated their children in the best possible way until they are married or can support their own living. This obligation persists despite, for example a divorce on the part of parents.

As for the parents authority over their children no clear provision is found in the national marriage act, although according to customary adapt law still in force in Bali to day, parent authority over their children is practiced according to patrilineal family system. That is, children are under the authority of the father and of the male line.

### 3. Wife And Husband Toward Family Properties

Provisions for family properties can be found in article 35, 36 and 37 of Marriage No.1 / 74. Article 35 states that properties obtained during married life become common properties, while properties belonging respectively to wife and husband, and those obtained as gifts or inheritance, and remain the respective positions of the wife and the husband, except when each wants them to be treated otherwise.

According to article 36, the article on common properties, the wife or husband may make use of the common properties under the agreement of both

parties.

As for their own properties, both partners have the right to carry out any legal action they want over those properties.

### 4. Divorce

Marriage is supposed to establish physical as well as spiritual bonds toward the establishment of happy and lasting family. However, the reality does not always match with what is expected.

In the marriage act No.1 / 74, in article 39, paragraph 1, states that the divorce must be filed to the court. The court must try to resolve peacefully between two parties. And divorce decision do if its reasonable ( i.e. the couple cannot to life together again).

The consequences of divorce can be find in article 41 paragraph a) that the parent (wife and husband), still obliged to care and educate their child, that is important thing for the child. Paragraph b) states that the father is obliged to provide the expenditure for the children and education. If the father does not do that that, the court can decision that the mother must support the child too. Paragraph c) states that the husband must support the wife after divorce.

In Bali the status of women in divorce is determined by several factors: the circumstances of the separation, the type or status of marriage conducted, the membership of those who got married, and whether there was concern from relatives, especially those from the bride's side. In this latter case variation is also found.

In ordinary marriage (with the wife becoming a member of the husband's family) divorce does not automatically return the women to her family of origin. Conditions have to be fulfilled, namely the formal returning of the women by husband's family and formal accept and of that women by her family of origin. It is more likely to happen if the husband and wife are from the same cast. The divorce itself must be formally announced in the village **Banjar** (traditional community meeting). When all those conditions have been fulfilled, the divorce women can be accepted back into her family of origin ( *mulih daa* ). Her status will be similar to the status she enjoyed before she got married. In the effect she returns to the status of young women.

In cases where the conditions mentioned above are not fulfilled, the divorce women will be trapped in uncertain and problematic position. It is not certain

divorce women will be trapped in uncertain and problematic status position. In which the man / male always get the benefit in all kind of ways.

#### References Lists

- A.A.Oka Mahendra d.k.k., 1995, *Laporan Penelitian Perkembangan Hukum Waris Janda dan Anak Perempuan dalam Masyarakat Bali*, Kerjasama Fakultas Hukum Universitas Udayana dan Badan Pembinaan Hukum Nasional, Departemen Kehakiman R.I
- B. Ter Haar Bzn, 1960, *Asas-Asas dan Susunan Hukum Adat ( Beginselen en Stelsel van Het Adatrecht)*, Jakarta; Pradnya Paramita
- Gede Pudja, 1963, *Sosiologi Hindu Dharma*, Jakarta: Yayasan Pembangunan Pura Pita Maha.
- Hilman Hadikusuma, 1983, *Hukum Perkawinan Adat*, Bandung: Penerbit Alumni
- I Gusti Ayu Agung Ariani, 1989, *Status Wanita Akibat Perceraian dalam System Kekeluargaan Patrilineal di Bali*, Studi Kasus, Denpasar, Udayana University
- Soerjono Soekanto, 2001, *Hukum Adat Indonesia*, Cet. Keempat, Jakarta : P.T. Raja Grafindo Persada
- Sudarsono, 2005, *Hukum Perkawinan Nasional*, Jakarta: P.T. Rineka Cipta.
- Tolib Setiady, 2008, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, Bandung : Alfabeta.