

The Philosophy of Negen Dadua Marriage as a Form of Gender Equality in Perspective the Value of Hinduism in Bali

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Abstract

Noting the journey of human life, a human as social beings experience three important stages, that is, birth, marriage, and death that will cause a certain legal effect. With birth one is referred to as the subject of law, or even before birth if the law requires it. Marriage can result in two people being bound to be husband and wife and aiming to form a happy family and childbirth. While in the third stage, death will arise due to the law of opening of inheritance. When viewed from its form, the kinship system existing in indigenous and adat society in Indonesia are three namely patrilineal (fatherhood), matrilineal (motherhood) and parental (parenthood). The Balinese customary law community is synonymous with Hinduism because most of the people are Hindus, embracing the patrilineal family system, or fatherhood, or better known in Balinese indigenous people as *kepurusa* or *purusa*. The existing form of marriage in Bali in general there are two, namely ordinary marriage form and marriage *nyentana* (*nyeburin*) form. In the implementation of patrilineal kinship system is precisely the emergence of patriarchal culture (male domination) in everyday life. To erode the gender inequality, there was a positive cultural shift that is the form of marriage of *negen dadua* expected to be able to equate Balinese men and women as the successor and an heir of their family.

Keywords: Negen Dadua Marriage, Gender Equality, Balinese Hindu Values

1. Introduction

1.1 Background of Study

There are various rules governing marriage in Indonesia, including marriage according to Customary Law, Marriage according to religious law, and marriage according to Civil Code. Given the many regulations governing marriage, it is necessary to unification. The various regulations governing marriage in Indonesia are unified into Law No. 1 of 1974 on Marriage. However, despite the efforts to uniform marriage law by the Government of Indonesia, the legal requirements of marriage will be returned to the customary and religious provisions or beliefs of each party. Therefore Law No. 1 of 1974 can also be referred to as legal unification with differentiation. Herein lies the unique Law of Marriage in Indonesia.

In Article 1 of Law No.1 of 1974 concerning marriage, marriage is defined as the inner bond between a man and a woman as a wife to the purpose of forming a happy and eternal family or household based on the One Supreme Godhead. For the marriage according to the law This law is a legal marriage if done according to the law of their respective religions and beliefs.

Kinship system prevailing in Indonesia is very diverse, which is influenced by the plurality of socio-cultural conditions of Indonesian society, concerning tribe, ethnicity, race, religion, and others. In general, Indonesian society is known for three kinds of legal partnership based on blood relation or kinship system, such as patrilineal family system, matrilineal family system, and parental familial system. In accordance with the general principles adhered to in the patrilineal family system. There are at least three basic principles embraced in the familial *purusa* system, among which descendants may be known from the male or father line, in a woman's marriage released from her legal relationship with her family of origin, Due to marriage is the formation of a nuclear family that ideally consists of father, mother and child.²

The definition and purpose of marriage by customary law sharply and expressly contains gender differences, because the primary purpose of marriage is to obtain offspring, continuing kinship. If that goal is not achieved the husband can polygamy or divorce his wife. In customary law is determined by drawing a lineage that gives a stronger role to the husband by making the head of the family. In Islam as well as Hinduism, giving understanding and purpose of marriage gives the burden to the wife to give offspring, marriage does not apply to those who have sex the same one. In Protestant and Catholic Christianity give equal rights to husband and wife, because marriage is a communion of life, serving each other, and the purpose of marriage is not solely to obtain offspring / children. So the wife who does not have children is not a reason to divorce his wife or polygamy husband, because in Christian adopt closed monogamy system. The purpose of marriage in Buddhism to obtain

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²Wayan P. Windiadan Ketut Sudantra, 2006, Pengantar Hukum Adat Bali, Lembaga Dokumentasi dan Publikasi Fakultas Hukum Universitas Udayana, Denpasar, h. 78.

happiness, the child is not the main purpose in marriage, and apply monogamy.¹

In Balinese custom, the descendants are very important. Given that marriage aims to continue the offspring and is meant here is the offspring of a son, because only boys can become heirs. The purpose of marriage according to the Hindu worldview, in addition to a happy and eternal family, also to get offspring, to continue the responsibilities of parents and ancestors. The responsibilities in question consist of responsibility to parhyangan (human to God), responsibility to pawongan (human to human), responsibility for palemahan (human to environment).²

In a marriage of Balinese customary law that embraces a patrilineal paternity system that draws male lineage can actually be said to be compatible with Hindu and Balinese Culture because marriage will have certain legal consequences associated with future inheritance. In Hinduism, especially the Balinese customs inheritance is not only in the form of objects (material), but also involves immaterial obligations. In Bali that embraces the patrilineal family system, in general the heir is male. But it is also possible that a girl can also be an heir. If a child is born to a boy, then it is clear that the child will be the heirs of his parents. If the child born in the marriage is a boy and a girl, then only that boy will be the heir. Though girls can actually also become heirs with the appointment status of a boy (*sentanarajeg*), by both parents. This is the form of gender inequality in Bali. But this is widely considered taboo by Balinese people

1.2 Formulation of the Problem:

Based on the background of the above problems, it can be formulated as follows:

1. How is the effort to address gender inequality in Bali especially in terms of inheritance in Bali?
2. Is the marriage of *NegenDadua* in Bali in accordance with the legal requirements of marriage under the law of Marriage in Indonesia?

1.3 Research Methods :

The scientific value of a discussion and problem solving on the legal issue under study may depend on the approach used.³ This research uses normative legal research, as characteristic of law science is its normative nature. Normative legal research examines the written law of various aspects including the principles of law, theoretical, philosophical, legal systematic, the synchronization of the law, the scope and the material, the consistency, the general elucidation of chapters, the formalities and the binding force of a law, Legal language used, comparative law or legal history. However, normative legal research does not examine the applied aspect or its implementation.⁴ In relation to normative legal research, several approaches can be used, such as statute approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach, and case approach. The approach used in this study is the statute approach, and the historical approach.

2. Discussion

2.1 Efforts To Overcoming Gender's Inquiry In Bali In The Inheritance

Before proceeding further in terms of gender equity in inheritance, it is better to know in advance the general principle adopted in the patrilineal familial system in Bali, or better known as *purusa*.

- Descendants traced from the male line (father). Legally individuals who come from a father of origin (*wit*) are counted as family, both nuclear family and extended family. People who are included in this line is commonly called family *sakingpurusa*. While the people of the family of the mother party that is commonly called the family *sakingpradana*, not counted as a family. That is why the value or degree of relationship between a relative from a *purusa* line (*sakingpurusa*) is more important than the relationship with relatives of the mother.
- The second principle in this *purusa* system is that in marriage (except in the form of *kaceburin*) a woman is released from her legal relationship with her family of origin and then entirely enters into her husband's family. A married daughter or a son who marries *nyeburin* no longer counts the rights and obligations both material and immaterial, in the family of origin but fully taken into account in the family of her husband (marriage in) or his wife (if a son marriage with *nyeburin* system-marriage in).
- The result of marriage is the formation of a nuclear family that ideally consists of father, mother, and child. The child born from the marriage gets relatives or relatives (extended family) from the father, whereas with relatives from the mother (*sakingpradana*) the child has no legal relationship.⁵

In Balinese society there are two forms of marriage that determine the status of husband and wife and children born of marriage in family and inheritance. The two forms of marriage are:

¹EndangSumiarni, 2004, *KajianHukumPerkawinan Yang BerkeadilanJender*, Wonder Publishing Company, Yogyakarta, h. 5.

²Wayan P. Windia, dkk, 2009, *PerkawinanPadaGelajah di Bali*, Udayana University Press, h. 5.

³Johny Ibrahim, 2006, *TeoridanMetodologiPenelitianHukumNormatif*, Bayumedia Advertising, Jakarta, h. 299.

⁴Abdulkadir Muhammad, 2004, *HukumdanPenelitianHukum*, PT. Citra Aditya Bakti, Bandung, h. 101.

⁵Wayan P. WindiadanKetutSudantra, op. cit., h. 79

- Ordinary marriage
As the name implies ordinary marriage, this form of marriage is most common (most ordinary) held by Balinese indigenous people. Ordinary marriage is a marriage that takes place between a man and a woman and the woman leaves her home, to establish a marriage ceremony at her husband's residence, and then take full responsibility for continuing the duties (swadharma) of her parents and her husband's ancestors,), Or *niskala* (the occult). This marriage is considered an ordinary marriage because it is held in accordance with the kinship system adopted in Bali, namely patrilineal (purusa).¹
- Marriage *nyentana* (*nyeburin*)

In addition to the usual form of marriage, also known as the form of marriage *nyentana* (*nyeburin*). The main difference between the two forms of marriage lies in the legal status of the bride. In ordinary marriage the bride is domiciled as *kapurusa*, whereas in the marriage *nyentana* (*nyeburin*) the bride is domiciled as *purusa* (male). The marriage of *nyentana* is a marriage between a man and a woman, where the man leaves his house for a marriage ceremony at his wife's residence and then takes full responsibility for continuing the (swadharma) duty of the parents and the ancestors of his wife, in *sekala* (real life), or *niskala* (natural unseen-magical life).²This form of marriage is chosen in the event that a family is endowed with only daughters, without a son. In such circumstances, one of his daughters, or perhaps all of them, if desired by his parents, will be confirmed as a son. A daughter who is a son known as *SentanaRajeg*.

When a *SentanaRajeg* marries a man from a family of several sons, he will not leave his home, and join his family, but her husband who will follow his wife, lives in her palace. In this case her husband calls *meawakluh* (woman status or *predana*), while his wife status *kapurusa* (male status).

In Bali, which adheres to the patrilineal family system, in general the inheritors are male. But actually there is a possibility of daughter can also be an heir. If a child is born to a son, then it is clear that the child will be the heir of his parents. If a child born in marriage is a boy and a girl, then the only son will be the heir. While the daughter is getting married, getting into her husband's family and causing separation of legal relations with her family of origin. In fact, girls can actually also be the heir status of men (*sentanarajeg*) by both parents. In the law of inheritance is what is often sued as the rule of unequal gender.³

In one of the Hindu scriptures, *Manawa Dharmasastra* I.32 states that man and woman are both created by God. In Hinduism it is not known that the woman came from a male rib, or it can be said that in this sloka, men and women should be equal. Furthermore, in the Book of *Manawa Dharmasastra* IX.132 states that a daughter can be appointed as the heir of her parents. In the next sloka 133 it is stated that there is no difference between the sons and daughters who are appointed as inheritors. But in its application in the customary law of Bali is not the case.

In Balinese Customary Law based on the familial system, people who can be counted as heirs in the main line of virtue and substitute line are men in the family. The groups of people who are included in the first priority line as heirs are descendants of the downright straight heirs, namely the sons or daughters who are upgraded as hereditary (*sentanarajeg*), and adopted children (*sentanapaperasan*).⁴

Marriage *nyentana* is one of the efforts in avoiding gender unequal in terms of inheritance in Bali. This is because women can be appointed status as status *kapurusa* (status of men) by both parents or who is called *SentanaRajeg*. In addition to the form of marriage *nyentana*, there is a positive cultural shift that is the form of marriage "*negendadua*". The Marriage of the *NegenDadua* is a marriage which is held in accordance with the Hindu and Balinese Adat(Customary) Laws, which does not include ordinary marriage (also known as marriage outward) and does not belong to the marriage of *nyentana* (*nyeburin* marriage-marriage in).

The *NegenDadua* marriage which is one of the efforts to overcome gender inequality in Bali has actually existed, but not yet known to the public, became known by the people after the Decision of ParumanParisada Hindu Dharma Bali Province, dated 29 December 2008 on the Implementation of the PancaKrama Bali 2009, *NegenDadua* Marriage, and the Establishment of Hindu Education Development Institute. On the Decision it essentially ruled that:

- *NegenDadua* marriage is marriage which is held in accordance with the teachings of Hindu religion and Balinese custom which do not include ordinary marriage (marry out), and also not including marriage *nyentana* (*nyeburin*-marriage in), but husband and wife remain *kapurusa* status in their respective homes so it must bear two responsibilities obligations (*Swadharma*) from the wife and husband, both in *sekala* (real life) and *niskala* (the occult-unseen life).
- *NegenDadua* Marriage is according to Hindu law can be justified because it is not contrary to the

¹Wayan P. Windia, op. cit, h. 18.

² Ibid.

³ Ariani, I Gusti Ayu Agung, 2004. *Bias Jender Dalam Hukum Perkawinan (UU No, 1 Tahun 1974) Tinjauan Dialektik: Peter.L. Berger.* Dalam *Krtapatrika* Vol.29 No.1 Januari Tahun 2004. Fakultas Hukum Unud Denpasar

⁴Gde Panetja, 1989, *Aneka Catatan Tentang Hukum Adat Bali*, Guna Agung, Denpasar, h. 164.

teachings of Hindu religion.

- The result of the marriage of the *NegenDadua* is the bride of the status of *purusa*, so it is the progenitor of the blood of the parent's childbirth, and so is the groom with the status of *purusa*, so that it is a continuation of the blood of the parent's childbirth.¹

2.2 Perkawinan Negen Dadua Dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

Law Number 1 Year 1974 on Marriage, Article 2 paragraph (1) regulates the validity of marriage, stating that:

(1) Marriage is said to be valid if it is done according to the law of each religion and belief.

According to Hindus, Marriage is not just a biological relationship that gets legality through state law so they can freely meet their sex needs. Marriage or *wiwaha* is identical with *yadnya* ceremony, which causes the position of marriage institution as an institution that is not integral with the Law of Religion and make Hindu law as the basic requirements, among others the witness called *TriUpasakti* namely:

1. *DewaSaksi* is a witness of God (Ida Sang Hyang Widhi Wasa)
2. *ManusaSaksi* are human witnesses
3. *Bhuta Saksi* is the witness of the *bhuta kala* (unseen people)

Furthermore, in Article 2 paragraph (2) states that:

(2) Each marriage shall be recorded in accordance with applicable legislation. Marriage is lawful if done according to the laws of their respective religions and beliefs.

When viewed from the sound of the article, it can be concluded that every marriage must meet the publicity requirement that is with the recording. This is also to ensure the legal certainty of the marriage, guaranteeing the status of children born in the marriage. Because if not recorded, then the child born from the marriage will only have a legal relationship with his mother only.

Furthermore, the terms of marriage in Article 6, namely:

- (1) The marriage is based on the approval of the two prospective brides;
- (2) In order to marry a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents.
- (3) In the event that one of the two parents passes or is unable to state their will, the permission referred to in paragraph (2) of this article is sufficient to be obtained from a living parent or from a parent capable of expressing his wish
- (4) in the case of both parents having died or being unable to express their will, the consent shall be obtained from the guardian of the nurturing person or family of blood relatives in straight lineage as long as they are alive and in declared of their will.
- (5) In the event of any discrepancy between persons referred to in paragraphs (2), (3) and (4) of this article, or one or more of them not expressing their opinion, the Court in the area of residence of the person who will carry on Marriage at the request of the person may grant permission after first hearing the persons referred to in paragraphs (2), (3) and (4) in this article.
- (6) The provisions of paragraphs (1) to paragraph (5) of this article shall be in force as long as the respective religious law and beliefs of the other do not specify otherwise.

Furthermore, concerning underage couples, provided for in Article 7, provides that:

If the prospective groom is under 21 years of age, then:

- (1) Marriage is permitted only when a man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.
- (2) In the case of irregularities in paragraph (1) of this article may require dispensation to the Court or any other official requested by either the male or the female parent.

Thus, it can be said that the marriage of the second parent that occurred in Balinese society, is not contradictory to Law Number 1 Year 1974 about Marriage in Indonesia.

3. Conclusion

Based on the above explanation, the following conclusions can be made:

1. Efforts to address gender inequality in Bali, particularly in the case of inheritance in Bali, can be pursued through the implementation of *NegenDadua* marriage in the community. Given that the *NegenDadua* Marriage is a positive cultural shift, that the *NegenDadua* marriage has raised the rights of daughter in Bali to get the inheritance rights of their parents. So it can be said is a respect for human rights, especially against children born of women and can seek gender equality in the field of inheritance law in Bali.

¹Keputusan Paruman Parisada Hindu Dharma Provinsi Bali, tertanggal 29 Desember 2008 tentang Pelaksanaan Panca Bali Krama 2009, Perkawinan Negen Dadua, dan Pembentukan Lembaga Pengembangan Pendidikan Hindu.

2. The marriage of the *NegenDadua* who occurs in the Hindu society In Bali, it is not contradictory to Law Number 1 Year 1974 concerning Marriage because it has fulfilled the legal requirements of marriage according to the religious law and the laws of the State / legal marriage applicable in Indonesia.

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