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POSITION OF PRADANA IN NYEBURIN MARRIAGE REVIEWED FROM THE LAW OF BALI INDIGENOUS HERITAGE IN BANJAR KUTUH DESA SAYAN KECAMATAN UBUD KABUPATEN GIANYAR

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Abstract

The aims of this study are to know the Nyeburin Marriage Inheritance System in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency women as Purusa or nyentana men as Pradana if their inheritance is in the form of land assets and to know the position of social status of men as Pradana in Nyeburin Marriage in indigenous communities in the Village of Sayan Banjar Kutuh, Ubud District, Gianyar Regency. This method uses Empirical legal research. Using the statutory approach, case approach, and conceptual approach. Sources of data are sourced from primary data (field research) and secondary data (library research). Data collection techniques consisted of interview techniques, document study techniques, and literature study techniques. The data collected was analyzed descriptively qualitatively. The author uses the theory of justice, the theory of legal certainty, the theory of reception in complex u. Based on the results of the study it was found that the inheritance of nyeburin marriage in Banjar village is still strong in women because of their status as Purusa and their social status is different if the work of a person who becomes a pradana, for example, a doctor may look higher. The conclusion is that a woman still has the right to inherit because as a purusa and if the inheritance in the form of land remains the right of the woman and in social status remains the head of the household in the community remains the same except for work that makes their social status different.

Keywords: Bali Traditional Inheritance Law; Nyeburin Marriage; Pradana Position

1. INTRODUCTION

Indonesian people who adhere to a variety of different customs, have different family systems. Marriage, marital property, and inheritance are 3 (three) things that cannot be released in human life as citizens, because they are interconnected with one another. The property that will be part of a marriage and then there will be inheritance or inheritance issues. The elements of marriage based on the provisions of article 1 of the marriage law include a life alliance between a man and woman, carried out based on the laws and regulations in force in Indonesia, closely related to religion (Basyir, 2002) (Soemiyati, 1986) However, (Sujana, 2015) said that marriage is only seen in terms of civilization and ignores the religious aspect.

When discussing marital property, of course there is a marriage event that precedes the emergence of property in marriage and then ends with inheritance. Likewise, when talking about inheritance is a consequence of marriage and property in marriage.

Thus it is very apparent that there is a common thread linking the three events. Inheritance law is one of the laws that arise as a result of a marriage process, where the relationship of a man and woman will turn into husband and wife if there is a marriage bond. Marriage is every human right (international human rights conventions) as well as in the 1945 Constitution hereinafter referred to as (1945 Constitution) and Law (Law No. 39 of 1999) concerning Human Rights hereinafter referred to as Human Rights.

Legitimacy of Marriage in Indonesia is specifically regulated in Law No. 1 of 1974 concerning Marriage, where Article 1 states that: Marriage is an inner and physical bond between a man and a woman as husband and wife with the aim of forming a family (household) who is happy and eternal based on the divinity of the Almighty. Marriage system that applies in an area, is influenced by the family system that applies in the area.

The Balinese adhere to the system to the Father or Patrilineal (*Vaderrechtelijk*). The system to the Father or Patrilineal that is calculating kinship through the lineage of the male or *purusa*. The fatherhood system in Bali is evident where a wife enters her husband's family. Likewise, the children will be related to the family of their father (husband) and there is no straight relationship with their mother's family. Obligations of children or grandchildren also fall on the family of his father, and the rights and obligations that he obtained also come from there.

Inheritance law in Indonesia is theoretically very influenced by the principle of lineage that applies in the community concerned, which basically can be classified into three systems of kinship or kinship. The system is a patrilineal, matrilineal and parental or bilateral family system (*Soepomo, 1966*), a patrilineal family is a lineage system that is drawn according to the father line, namely the position of men is higher than the position of women in inheritance.

Matrilineal system is the lineage drawn from the mother's side namely female position from the position of men in inheritance. Parental / Bilateral system is a descendant system drawn according to the lineage of the father or mother so that the position of the two is not distinguished in inheritance. There are three types of inheritance system adopted by indigenous peoples in Indonesia, namely the system of collective inheritance, major inheritance, individual inheritance (*Soerojo, 1995*). It is in line with (*Saragih, 1980*) where there are two inheritance systems in Indonesian society, namely the inheritance system where inheritance can be divided and cannot be divided.

The status of a *pradana* girl is not entitled to receive inheritance from her parents because after marriage she must leave her family and enter the her husband's family so that it cannot continue or carry out the responsibilities that are imposed on boys.

If in a family only has a single daughter, then it can be attempted by implementing a *sentent diligent*, namely in a marriage the bride is the one who pulls her husband out of *purusa* ties and into the ties of his wife's family.

In general, each inheritance is assumed to fulfill elements consisting of heirs, inheritance and heirs (*Ali, 2008*). The concept of inheritance in Balinese indigenous communities is still relevant to be maintained, but the position of women needs attention in inheritance. In the case of inheritance which has magical value and cannot be divided, and assets which are inherited from ancestors (*hereditary*), must still bequeathed to boys. The fact in the community shows that there are people who die *kedaton* (leaving responsibilities in the family) but within certain limits it is still possible to carry out *swadharma* as Hindus (*Agung, 2016*).

In the arrangement of kinship that tends to maintain male lineage (*patrilineal*), Balinese Customary Law recognizes several rules about inheritance from 1900 until now. *Paswara* 13 October 1900, *awig - awig* written in *Pakraman Village*, and the Great MUDP Bali Supper Decree Number 01 / KEP / PSM / -3 / MDP Bali / X / 2010.

Nyeburin marriage is still considered a taboo for the people of Bali because it collides with customs in Bali (*Pratyaksa, Sukirno, & Triyono, 2017*). In the Community in *Sayan Banjar Kutuh Village, Ubud District, Gianyar Regency*, Inheritance in *Nyeburin* Marriage is still confusing, because In Inheritance, if the inheritance is in the form of land, the name of the land is initially in the name of the heir and on behalf of the man - this is due to weak women. so women cannot sell the land. *Nyeburin's* marriage is all inversely proportional to a man who usually becomes *Purusa* (heir), in *Nyeburin's* marriage a man changes his status to *Pradana*, while a woman who usually becomes *Pradana*, in his marriage, *Nyeburin* changes his status to *Purusa*.

In terms of inheritance the opinions of the people differ because a *Pradana*, a man in a marriage, does more activities than a *purusa*, that is a woman, because there is more activity for a man, for example, such as mutual cooperation, *ayar banjar*, etc. As well as how the position of a *pradana's* social status in marriage is in the *Sayan Banjar Kutuh village, Ubud District, Gianyar Regency*.

The problem in this research is

regarding the position of the Inheritance system, especially inheritance of land in the marriage of Nyeburin in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency and the position of the social status of men as Pradana in Nyeburin Marriage in the indigenous community in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency.

Based on the background description above, the aims of this study are to know the Nyeburin Marriage Inheritance System in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency women as Purusa or nyentana men as Pradana if their inheritance is in the form of land assets and to know the position of social status of men as Pradana in Nyeburin Marriage in indigenous communities in the Village of Sayan Banjar Kutuh, Ubud District, Gianyar Regency.

2. METHOD

This research is a type of empirical legal research, namely research on existing legal norms in the community (Soekanto & Mamudji, 2003). This research was carried out in Banjar Kutuh, Sayan village, Sub-district of Ubud, Gianyar Regency. The type of approach in this research is the statue approach (Marzuki, 2005) and philosophical approach. Sources of data needed to discuss the problems formulated in this study are sourced from primary data (field research) and secondary data (library research). Data collection techniques consisted of interview techniques, document study techniques, and literature study techniques. The data collected was analyzed descriptive qualitatively.

3. DISCUSSION

Position of the Nyeburin Marriage Inheritance System in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency.

The Inheritance Distribution System in Indonesia, namely Inheritance means replacing the place of someone who died in the legal relationship of their assets legal relations in family law In another editorial, (Shiddieqy, n.d.) argued, inheritance law is a law that regulates who inherits and does not inherit, the portion of each heir's acceptance and the ways of its distribution. In contrast to the two definitions above, (Prodjodikoro, 1991) explained, inheritance is a matter of what and how various rights and obligations regarding one's wealth when he dies will

be transferred to another person who is still alive.

In Indonesian inheritance is called heirloom, which is property and rights left by the dead to be distributed to those entitled to receive it. According to (Hamid, 2011) that the definition of inheritance is the transfer of rights and obligations for everything both property and dependents of people who have died to their families who are still alive. The system of Civil Law West (europe) wetboek (Civil Code) book II of the twelfth chapter up to the eighth chapter, articles 830 to 1130.

The application of western civil inheritance law for Indonesians is stipulated based on the provisions of article 131 i.s jo Staatsblad 1917 Number 12 Jo staatsblad 1924 number 557 concerning submission to European law which states that western civil law applies to:

Europeans and those who are Europeans

Eastern Chinese foreigners

Other foreign easterners and Indonesians who submit themselves to European law.

The definition of inheritance law in the Civil Code in the Civil Code is not contained explicitly, but the legal experts provide or express the definition of inheritance law Civil Code. According to legal experts, specifically regarding Civil inheritance law as follows:

(Pitlo, 1979) stated that the Inheritance Law is a collection of regulations governing the law regarding wealth due to someone's death, namely regarding the transfer of wealth left by the dead and the consequences of their relationship with them, as well as in their relationship with third parties.

(Prodjodikoro, 1991), former Chairman of the Supreme Court of the Republic of Indonesia, stated that inheritance law is the laws or regulations governing whether and how various rights and obligations regarding one's wealth when he dies will be transferred to others who still alive

In his book (Sudarsono, 1991) contains several definitions of inheritance law according to legal experts, namely:

Mr. Dr.H.D.M.Knol, said that inheritance law regulates the provisions concerning the transfer of inheritance from a deceased person to an heir or more.

A. Winkler Prins, argues that

inheritance law is all regulations governing inheritance, determining the extent and manner of legal relations of a person who has died passing on to others, and thus it can be continued by his descendants.

(Vollmar, 1989) argues that inheritance law is the transfer of a complete asset, so the whole rights and obligations, of the person who inherits it to his inheritance.

Customary inheritance system, which is a diverse customary inheritance legal system, the system is influenced by ethnic forms in various areas of the customary law environment, for example the matrilineal system in Minangkabau, patrilineal in Batak, bilateral in Java, and unilateral alternaten (unilateral alternating system) such as in Lebong or Lampung papadon rejang, which is treated to Indonesians who are still closely related to the relevant customary law community. The diversity of the inheritance legal system aside from being related to the family system mentioned above, there is also a view that the types and assets to be inherited also influence the diversity of the customary inheritance laws. The definition of inheritance law from the point of customary law is often given by legal experts who have a background in customary law or whose scientific writings highlight customary law, including the following: (Haar, 1983) defines customary inheritance law as the rules of law concerning the manner in which from the past century the continuation and transfer of tangible and intangible assets from generations to generations. (Soepomo, 1966) defines customary inheritance law as inheritance customary law contains regulations governing the process of passing on and passing objects that are intangible objects (*immateriele goderen*) from a human force (*generatie*) to their descendants Islamic Inheritance Legal System, namely Islamic inheritance legal system is characterized by pluralism of teachings, such as the inheritance of *ahlus sunnah wal jama'ah*, Shiite teachings and Indonesian Hazairin teachings. The dominant teachings adopted are the teachings of *Ahlus sunnaj wal jama'ah* which consists of the Shafi'i schools, hanafi, hambali and maliki where the most dominant in Indonesia among the four schools is the Shafi'ite school, in addition to Hazairin teachings which began to influence since the year 1950 in Indonesia, as an *ijtihad* to decipher inheritance law in the Koran bilaterally.

Marriage is closely related to the kinship system which can be seen based on lineage. In Bali lineage calculations are determined by patrilineal principles. Its main value is the idea that only men are recognized as connectors in the lineage (Candrasari & Sadnyini, 2018). It continued that in Balinese society which adopts a patrilineal family system, children follow the lineage of the father's side (Hemamalini & Suhardi, 2015).

Marriage of *nyentana* or *nyeburin*, in this case the man (woman or *predana* status) and leave his family to enter into his wife's family member (Dyatmikawati, 2011). Men in society are called *purusa*. The position of men as *Pradana* and women as *Purusa* in *Nyeburin* marriage in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency in terms of inheritance, namely adopting the Patrilineal (*kapurusa*) family system adopted by Balinese Hindus, causing only *kapurusa* status offspring who are considered to be able to care for and continue *swadharma* (responsibility) of the family, both in relation to *parahyangan* (Hindu beliefs), *pawongan* (Hindus), and *palemahan* (preservation of the natural environment in accordance with Hindu beliefs). Consequently, only descendants of the status of *kapurusa* alone have self-ownership of inheritance. A descendant of *pradana* status cannot possibly continue *swadharma*, so it is likened to someone who leaves family responsibilities (died *cadaton*). And, therefore, considered not entitled to inheritance in the family.

A daughter who has changed her status by having a *nyeburin/nyentana* marriage, where the male after marriage takes part (*nyeburin/nyentana*) to his wife's family so that his position is no longer as a *purusa*, but he is domiciled. Instead, the bride is domiciled as a *purusa* party. *Nyentana* means that girls can be made as heirs (Adnyani, 2016).

In the case of children born from *nyeburin* marriages will enter the family clan of the mother status *purusa*, and he as a continuation of her mother's descendants and ancestors in a straight line upward from her mother, therefore he is as his mother's heir. This is because the mother is in the position of *purusa*, while the father (husband) is in the position of *pradana*. That means the child has no relationship with the family from his father. Then this child will have rights and obligations towards the mother and family in a straight line to the mother.

Inheritance in Balinese customary law, besides giving birth (swadikara) rights to inheritance, is also accompanied by the birth of an obligation (swadharma) for the heirs. The form of an heir's obligation is both material and immaterial. The obligations referred to in this matter include:

the obligation to look after parents in old age;

obligation to continue generation;

the obligation to carry out burial or ceremonial cremation on the bodies of parents who have died

Obligations to the spirits of the ancestors who reside in the sanggah / merajan (family worship place), and

community obligations, such as carrying out obligations to the customary community (banjar/pakraman/subak) where the family is a member.

Abandonment of the obligation (swadharma), commonly used as an excuse to disqualify someone's status as an heir. With the existence of these obligations, identify the problems that will be faced by a child who will get married. Especially if there are circumstances where a family does not have a son, who will fulfill these obligations in the future? From this inheritance problem, then the form of marriage becomes so flexible as the development of the situation at hand, where initially only known as ordinary marriage, then a form of marriage marriage develops.

Inheritance system position, especially land inheritance, in Nyeburin Marriage in Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency which, in the inheritance which is inherited from women (Purusa) is because women are domiciled as Purusa while men as Pradana, are not entitled to the inheritance, although in Nyeburin's marriage in Banjar Kutuh, Sayan Village, the men as pradana mostly carried out activities for example, like doing banjar banjar/traditional village, mutual cooperation, and other activities. In ordinary marriages entitled to land are men who are purusa due to following the lineage of the father while in Nyeburin marriages who are entitled to the name of the land are still women or who are domiciled as purusa because they follow the lineage of mothers whose status is Purusa. The statement is a traditional regulation (awig - awig / perarem Desa Sayan Banjar Kutuh) Pawos 55 (Article 55) which states that if a family does not have

an heir it is the authority of the Prajuru (correcting the precepts or maintaining family rules and informing that:

Heirs of the men

From the companion if there is no heir

If there are no articles 1 and 2 can be from the wife

The results of the Grand Supper III MUDP Bali which states that Balinese women have the right to inherit, so in Nyeburin's marriage that is entitled to women inheritance because in the marriage the woman is located as Purusa while the men are domiciled, so the marriage is inversely proportional to marriages such as usually. The return of decisions in relation to women has the right to inherit, the customary village is very appreciative of the policies of the customary family/manners of the village and each dadia, unless they ask for assistance from the customary village to participate in the settlement.

The contents of the Great Supper III, to be implemented, it is felt that there is a need for perarem in each of the customary villages to awig awig members, namely the addition or change of awig -awig that has been owned and applied. Customary judges as Mediation Judges and peace have a juridical basis for stand when there are cases of inheritance related to women's inheritance rights. The rules and materials of Awig - Awig are based on Bhisama, Dresta, and Parar Village Parar, or Parar Village Parar, but the decision of the Great Pesamuan III Bali MUDP has strengths that are Juridical Formal, arguing that the Bali MUDP is a legitimate customary institution of existence, and is supported by jurisprudence of the Bali High Court, so that customary karma considers it legitimate and binding.

Status of Social Community Status as A Pradana In Nyeburin Marriage in Indigenous Communities in Banjar Kutuh Desa Sayan Sub-District Of Ubud Gianyar District

Nyentana marriage (Nyeburin) and inheritance rights, namely Nyeburin, in a term can be interpreted as: "the name of a type / form of marriage according to Hinduism in Bali in which the woman is determined as purusa. Based on the above definitions and definitions, it can be seen that nyeburin is a form of marriage according to Hinduism in Bali in which the woman is the purusa and the man is the pradana and the main purpose of this

marriage is to continue the lineage of the woman. That is, the bride is the one pulling her husband out of the Purusa bond of his mother's father and siblings, and the bridegroom is legally entered into the purusa bond of his wife's family. According to the Balinese Customary law, whether or not a child/sentana, to receive inheritance is determined by the extent to which he has carry out its obligations. Sentana has the meaning of offspring which includes children, grandchildren, great-grandchildren, and so on (Kaler, 2005) in addition biological sons are also commonly called sentana (Windia, 2004). Obligations as karma banjar, caring for parents (including caring for illness, cremation, worship, etc.), then what is not important, the obligation to maintain and continue the existence of a holy place (rebuttal, temple, etc.). Again, this is according to the law of Bali. All of these obligations, it is not possible for you to carry out for your original family if you marry unrest. Therefore, by itself the opportunity to get inheritance is also lost.

Even so it does not mean you are free from all the obligations of the sesana son. Similar obligations will be carried out in the new place to parents / ancestors, the community and the service / temple, your wife's family. Of course, holding hands shoulder to shoulder with a loved wife. Because the obligation is carried out at the wife's house, then by itself in this place you also have the opportunity to enjoy the inheritance. As long as you are patient and smart to bring yourself, as a newcomer. Balinese women and inheritance are famous Balinese women who are persistent, hard-working, respecting the dignity of the family. However, a well-known Balinese woman resigned herself to accepting a bad situation, even she didn't inherit. Even sadder, there is still an assumption that being born as a woman is born as a second-class human being. If the family's education fund is not enough, the daughter is not schooled, or forced to stop going to school. What for high school, after someone else was taken by others.

The bad luck of the Balinese woman is now being fought for by many traditional institutions and religious institutions. The traditional institution is the Bali Pekraman Village Main Assembly (MUDP) and the religious institution is the Parisada Hindu Dharma Indonesia (PHDI). Even what is rarely known by Balinese is the existence of Pesamuhan III MUDP Bali in 2010 which decided to give inheritance to daughters, who had been unable to do anything.

It is also interesting that the basis used is the "tradition of transporting goods", where boys usually carry (negen) goods, so in both parts there are goods. While girls only carry (nyuwun) things. So it is definitely the contents of the pikulan (apenegen) twice of the contents that are served (asuun). Is this sought after who knows, the clear basis of religious literature does not exist in the distribution of inheritance. In the introduction, the manoka Dharmasastra I.32, which basically is male and female, is created by God with a single and equal position. The difference is its role in this stage of life. Sentana marriage or nyentana in Balinese customs has long been a concern. For example, writes sentana in the context of a daughter being made a 'family successor'. Balinese customs are generally patrilineal (Haar, 1983). According (Haar, 1983), only boys do can continue the legacy of his father and can continue his position as head of the family. If there is no son, then a son can be taken, both by the father and by his widow on his behalf if the father dies.

Instead, the father can raise his daughter to be sentana. The girl was given the rights and obligations as an eldest son in a case such as the Nyeburin Marriage. The main motive for nyentana is the concern that there is no continuation of heredity. This is related to the high appreciation of Balinese culture on a patrilineal basis. At the very least, (Subekti, 1989) contained the Supreme Court jurisprudence which established the patrilineal system. MA Decision No. 200K / Sip / 1958 asserts that according to Balinese customary law, in the case of a father having a son, this son is the only heir.

Nyentana marriage is a form of marriage based on changes in purusa status on the part of women and as pradana on the part of men. In a marital marriage, a man joins his wife's family, lives in the wife's house, and all her offspring take the wife's bloodline. (Dijk, 1960) wrote that the man 'was released from the group of relatives and moved into the group of relatives of the woman'. Consequently, a child born from a marital marriage will be the heir of his mother's line. "Become a member who continues the father-in-law's clan," wrote (Dijk, 1960).

(Hadikusuma, 2003) stressed the legality of the marriage said in Law No. 1 of 1974 concerning Marriage does not

regulate how the customary order done by the bride to carry out the marriage.

Legitimate marriage according to customary law for the customary law community of Indonesia, especially for adherents of certain religions, depends on the religion generally adopted by the indigenous people. As said in the theory of *Receptio in complexu* where people embrace a religion must obey the theory. If carried out according to religious law, then the marriage is usually considered to be legally customary.

The Marriage Law, according to (Hadikusuma, 2003), places religious law as one of the factors that determines the validity of a marriage. If it is not carried out according to religious law, then the marriage is not legal. In Balinese Hindu custom, marriage is generally done through religious ceremonies called *mekala-kalaan* led by *pinandita*. Law N.23 of 2006 concerning Population Administration has been revised. Law No.24 of 2013 emphasizes that legal marriages based on statutory regulations must be reported to the implementing agency (in this case civil registration no later than 60 days from the date of marriage). In the position of customary social status, a man who becomes a Pradana in a nyeburin marriage or with a marriage in general in Sayan Banjar Kutuh Village, Ubud District, Gianyar Regency is a man or domiciled as Pradana in a marriage of nyeburin that is to be the head of the family in his household who replaces his in-laws but is not entitled to inheritance. In society there is nothing specific to their status, within these differences only in the inheritance system or descendants following the status of *purusa*, then for social status it is also attached to their work, for example the Pradana is a doctor, police, army and so on, it could be considered to have a higher social status.

4. CONCLUSION

Based on the explanation above, especially those relating to the problem, the following conclusions can be drawn:

Inheritance of the Nyeburin Marriage In Banjar Kutuh, Sayan Village, Ubud District, Gianyar Regency, is inherited whether women or men are the princes as Pradana if the inheritance is in the form of land assets, bearing in mind that the land must be in the name, the heirs will be inherited from women (*Purusa*) This is because women are located as *Purusa* while men as Pradana, are not entitled to the

inheritance, even though in the marriage of Nyeburin in Banjar Kutuh, Sayan Village, men as pradana mostly carry out activities such as carrying out the banjar / adat village, mutual cooperation, and other activities. In ordinary marriages entitled to land are men who are *purusa* due to following the lineage of the father while in Nyeburin marriages who are entitled to the name of the land are still women or who are domiciled as *purusa* because they follow the lineage of the mother *purusa*, her siblings, and the bridegroom is legally entered into the *purusa* bond of his wife's family.

In the position of the social status of customary social life a man who becomes a Pradana in a nyeburin marriage or with a marriage in general in Sayan Banjar Kutuh Village, Ubud District, Gianyar Regency, namely a pradana or man will be the head of the household in the family who will replace the family in-law while in society there is nothing special for their status, the difference is only in the inheritance system or the descendants of the *purusa* status, then for their social status is also attached to their work, for example Pradana is a doctor, police, army and so forth, it could be considered to have a higher social status.

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