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THE POSITION OF MULIH DAHA WOMEN IN INSTRUCTION AFTER DIVORCE IN PENARUNGAN VILLAGE, BADUNG, BALI

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Abstract

The Balinese customary law community recognizes kepurusa system; the status of boys is steady, while the status of girls changes, because women after marriage follow their husbands. On that basis, daughters in kepurusa system are never traced or taken into account in inheritance. The purpose of this study is to examine the legal status and the legal position of mulih daha woman in Penarungan Village, Mengwi, Badung, Bali. The method used in this study is an empirical method. Furthermore, this study was carried out by means of field studies, namely by conducting field observations and interviews with respondents and informants. Based on the analysis, the results of this study showed that the legal status of mulih daha woman is received through a procedure with acceptance by the family on a scale and a niskala ceremony is carried out, namely arranging piuning or notification to the ancestral gods that with a divorce from her husband, her daughter has returned to her parents and ask to be accepted back as a damuh or part of her parents' ancestral family so that she can be held accountable again one day when the woman experiences something related to banjar. The legal position of mulih daha women in inheritance is related to the kinship system adopted by the Hindu community in Bali, namely the patrilineal system (fatherhood) where only boys have the right to inherit while girls have no right to inherit but girls can only enjoy the property.

Keywords: inheritance in balinese hinduism; position of girls after mulih daha; status of mulih daha

1. INTRODUCTION

The concept of indigenous peoples was first introduced by Cornelius Van Vollenhoven. Ter Haar as a student of Cornelius Van Vollenhoven explored more deeply about indigenous peoples. Ter Haar provides the following understanding, customary law communities are community groups that are organized, settle in a certain area, have their own power, and have their own wealth in the form of visible and invisible objects, where the members of each unit experience life

in society as a natural thing according to the nature of nature and none of the members has the thought or inclination to dissolve the bonds that have grown or leave in the sense of breaking away from these bonds for good.

The Balinese indigenous people, of course, have a very large role for women with various traditional responsibilities that must be carried out after marriage. These obligations must be carried out by Balinese women to preserve Balinese culture, traditions, customs and the survival of the Balinese people themselves. By adopting a

patrilineal system, women after marriage will enter the male family and follow the male lineage.

Divorce is not justified, both according to religion and according to law. However, many couples have experienced the breakup of their marital relationship due to various conflicts and problems that cannot be reconciled. This will affect the status of women who have entered the male family. Besides that, divorce under Balinese customary law is not easy. All must go through several stages of custom according to their respective regions. In a patrilineal system where Balinese customary law places men as heirs/*purusa*, it seems that Balinese Hindu women are the second group. Balinese Hindu women who have male siblings are mostly married outside of the family clan, thus following the male line from their husband's side. This means that the Balinese Hindu woman loses the right to inherit at the place of her birth (*rumah bajang*). This will also cause new problems if Balinese Hindu women experience divorce due to various complicated things. There is a blurring of legal norms when Balinese Hindu women go through the process of divorce and return to their home of birth, regarding their legal position and inheritance, this is because the Balinese Hindu community adheres to *Purusa* Patrilineal system which takes the lineage from the male side. Based on preliminary observations made, it was found that in Penarungan Village, Mengwi, Badung, Bali, several Balinese Hindu women returned to their original homes.

Several previous related studies conducted a similar study regarding marriage in Bali, especially the position of mulih daha. The study conducted by [Komang et al. \(2018\)](#) examined the position and the role which actually received by mulih daa women in the original family and also in the society, particularly in Desa Pakraman Padangsambian. The result of their study showed that mulih daa women in Padangsambian in the fact, there is in

returned with the status of head of the family and there are incoming only as a family member, in which those who choose the status as head of the family more have a role in society rather than just being a member of the family. The impact caused is the firstly, positive impact, where with the return of mulih daa women to the origin family provides assistance and power in the terms of economy, and secondly, the negative impact is culture increasingly cornered the women in the scope of its social function, especially for those who have status as a member of the family. The study carried out by [Suaristwayani et al. \(2020\)](#) also conducted a similar study that examined the procedure for the return of a Balinese woman with the status of mulih daha and their customary position in Banjar Munggu Mengwi Badung. The results of this study revealed that a woman with mulih daha status as a result of divorce does not have the right to inherit from her husband's assets and/or that of their parents', except joint assets in inheritance. In Banjar Munggu Mengwi, the inheritance provisions for women with mulih daha status are clearly stipulated in Awig-Awig of Banjar Adat, stipulating that every woman with the status of mulih daha is prohibited from joining the village organisation. Another similar study also conducted by [Kardila et al. \(2021\)](#) that examined the legal status of Mulih Daha woman is and the legal consequences for the child brought by Mulih Daha woman to her home. The results of this study indicate that mulih daha women have no right to claim back the right to inherit in their home of origin. The rights and obligations of parents who have divorced their children must still be carried out as stipulated in Article 26 paragraphs (1) and (2) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002.

Based on the previous studies above, it can be asserted that the status of mulih daha woman in Penarungan Village, Badung have not been done yet. Thus, this study aims to examine the legal status

and the legal position of mulih daha woman in Penarungan Village, Mengwi, Badung, Bali.

2. METHODS

The method used in this study is empirical legal research. Furthermore, according to [Wignjosoebroto \(1974\)](#) empirical research is non-doctrinal research, namely in the form of research to find theories regarding the process of occurrence and about the process of working law in society. This typology of research is often also called social legal research ([Wignjosoebroto, 1974](#)). As empirical legal research, this study is based on library research in order to obtain secondary data in the field of law. The data collection technique used in this research is to collect primary data, conduct field studies, namely by conducting field observations and interviews with respondents and informants. In obtaining the necessary data, the free guided interview method is comprehensive (in-depth) using writing instruments ([Ashshofa, 2004](#)). The secondary data is collected by means of a literature study (documentation), which is a series of efforts to obtain data by reading, studying, classifying, identifying and understanding legal materials in the form of legislation and literature books that have relevance to research problem ([Soemitro, 1988](#)). The research location is in Penarungan Mengwi Village, Badung, Bali. The theory used is the theory of Legal Protection and the theory of Legal Certainty. Legal protection is a protection given to legal subjects, namely individuals or legal entities in the form of devices, both preventive and repressive, both verbally and in writing. The theory of legal protection provides protection for recovering women in Penarungan Village, Mengwi, Badung, Bali. Legal certainty means that anyone can demand that the law be enforced and that demand be fulfilled and that violations of the law will be prosecuted and subject to legal sanctions as well ([Magnis-Suseno, 1988](#)).

3. RESULT AND DISCUSSION

Legal Status of Mulih Daha Woman in Penarungan Village, Mengwi, Badung, Bali.

Article 1 of Law no. 1 of 1974 concerning marriage which states that marriage is an outer and inner 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 Godhead. A divorce is a legal event whose consequences are regulated by law or a legal event that has legal consequences. Divorce has legal consequences for the dissolution of marriage. In addition, there are several further legal consequences as regulated in Article 41 of Law no. 1 of 1974 namely:

Both father and mother are still obliged to maintain and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children, the court will give its decision.

The father is responsible for all the maintenance and education costs needed by the child if the father is in fact unable to provide these obligations. The court can determine that the mother shares in the costs.

The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Based on this article, it can be emphasized that divorce has legal consequences for children and ex-husbands or wives. In addition, divorce also has legal consequences for joint assets as regulated in Article 37 of Law no. 1 of 1974 choosing to divorce according to Budi Susilo means having to face the courts.

Based on it, the legal consequences of divorce according to Law Number 1 of 1974 concerning marriage are:

The legal consequences of divorce on the position of husband and wife, rights and obligations of the ex-husband/wife according to Article 41 of Law no. 1 of

1974 in accordance with Islamic law. According to Mahmud Yunus' explanation, if there is a divorce between a husband and wife according to Islamic law, the legal consequence is the ex-husband's obligation to give his ex-wife an appropriate mut'ah in the form of money or goods and to provide a living, clothing and residence for the ex-wife. during the iddah period and pay off the dowry, ta'lik talak agreement and other agreements (Yunus, 2008).

As a result of joint property, the explanation of Article 35 of Law no. 1 of 1974 that if the marriage breaks up, then the joint property is regulated according to their respective laws. The article has a wider scope than Article 37, which limits itself, if the marriage is broken up due to divorce, joint property is regulated according to their respective laws. The split of mind resulting from a fight between general conditions (break up) and specific conditions (break up due to divorce) is increasing because it is found in Law no. 1 of 1974, there is a provision regarding joint property if the marriage breaks up not because of divorce.

The legal consequences of divorce on children. The legal consequences of divorce on children of course only apply to husbands and wives who have children in their marriage but do not apply to husbands and wives who do not have children in their marriage.

According to information from Jero Bendesa Adat in Penarungan Village, divorce can be carried out in the following stages: if the husband and wife are not compatible with each other, the divorce process usually begins by conveying the problem of incompatibility to their respective families and at the same time conveying their intention to divorce. Therefore, the wife usually does not want to return to her husband's house. He will settle in the house of his parents or other close families. This is known as Nyala (in today's expression it is better known as bed separation).

The first step taken by each family after receiving a complaint from one of the couples who want to separate is to try to reconcile and persuade the husband and wife concerned to get along again. If they insist that they do not want to get along, the family has no other choice but to take the matter to Prajuru Adat, (village leadership apparatus) to ask for a solution.

Based on the complaint, the village officer will then call the married couple who want to divorce to come to the Village Hall at the appointed time. At the Village Hall and in front of the Village Prajuru, each party was asked for information about the problems they happened to face, including their intention to divorce. After that, the village officer will direct both parties to avoid divorce and return to live in harmony as husband and wife. If both parties say it is impossible to reconcile, then the trial will be adjourned for a few days or weeks. The point is to give the husband and wife the opportunity to think more clearly. If they persist in their intention to divorce, the trial will continue with hearing statements from their respective families. If in the following meeting Bendesa (the top leader of the traditional prajuru) comes to the conclusion that they are absolutely unanimous in going to divorce, the divorce will be approved and the husband and wife will be considered divorced.

At that time, Bendesa also explained the various consequences that accompanied the divorce, such as inheritance, joint property (guna-kaya) and children. Usually, these problems are resolved amicably (resolved peacefully based on customary law). After the content of this peace was agreed. The next step is an announcement (pasobyahan) by village prajuru in a village meeting held the following month. Divorce officially after the announcement (pasobyahan) of the divorce of the spouse in question, in front of the village meeting (paruman). After that, whether they want to remarry or have the status of a widow (balu luh) or widower (*balu muani*), there

is no problem.

Legal Position of *Mulih Daha* Woman in Inheritance in Penarungan Village, Mengwi, Badung Bali.

Balinese Hindu women after divorce have several life choices that can be made regarding their position and inheritance. There are those who choose to stay at their husband's house, there are also those who return to their original homes with the term *Mulih Daha*. The definition of *mulih daha* itself is basically the return of a married woman to her family of origin because of a divorce. The attitude was well received by the family of origin of the woman who returned home after a divorce (Sukerti, 2012).

In connection with the family system adopted by the Balinese indigenous peoples is the patrilineal system, namely the lineage based on the father's line, then the son who has the right to inherit is the son (*sentana*). In the event of a marriage, the woman breaks her relationship with her family and enters the man's family. With a patrilineal family system linked to inheritance law, it is the son who becomes the original heir, because the son is the successor of obligations, both obligations to his own parents and obligations related to customs and religion in the community concerned, in accordance with the position of boys in the patrilineal family system (Hadikusuma, 2003).

For *mulih daha* women who return home at a young age, where their parents are still able to help and other family members are also not yet married, it is found that they receive the rights and obligations that should be well. Although there is no excessive claim of rights, but the obligations they carry out as family members go well. In relation to their position and role, the obligations they carry out in the family help their parents more in terms of the economy. This is actually not much different from what they did before when they were not married, the most basic difference is that they have become parents, who have responsibility

for the children who are invited to return to their original homes. Their role then is not only as children but also as parents. In addition, related to their rights as daughters who are *mulih daha*, they are not so demanded in the family. Bali itself is an area with customs and rules and culture that exist in every aspect of life. The position and role in the family affect what they will do in society. In a patrilineal Balinese family, because a woman is considered to be leaving after marriage, her rights and obligations at home are not taken into account.

In *Awig-Awig*, Penarungan Village, Mengwi, Badung, Bali, it is regulated about inheritance, which is actually passed down to boys. Although basically there are related regulations that regulate the rights of girls, in fact, what I have encountered in the field is that these *mulih daha* women do not demand their rights. Rights in Balinese culture are more emphasized on inheritance, not only in material form, but inheritance also brings obligations that must be carried out both within the family and indigenous peoples. *Mulih Daha* women who choose to live with their families in their original homes are not so demanding of their rights, the reason is that apart from not wanting to be bothered with other obligations that come with accepting rights, they also agree to the rules in their social system where boys should be men who receive rights related to family inheritance.

4. CONCLUSION

Building upon the results explained above, thus it can be concluded that (1) the legal status of *mulih daha* woman is accepted through a procedure with acceptance by the family on a scale and a *niskala* ceremony is carried out, namely arranging *piuning* or notification to the ancestral gods that with the divorce from her husband her daughter has returned to her parents and asks to be accepted back as *damuh* or part of the ancestral family of her parents. In the *piuning* arrangement, a ceremony for the legality of marriage is

also carried out called *mebiakala* and *maprayascita*. The purpose of the ceremony is to cleanse the woman from all the stains she carries so that she becomes holy again and is notified to the public so that she becomes officially again villagers and get their rights and obligations, a woman who has mulih daha is required to hold a ceremony and the procedure has been arranged and determined in banjar munggu. The purpose of the ceremony is to inform the ancestors and in his parents that there will be a woman who has married out again to her original residence (her parents) to live again and can be accepted back in the environment by bringing in customary kelian and banjar kelian to witness that indeed a woman is holding mulih daha so that can be held accountable again one day the woman will experience things related to banjar. (2) The legal position of mulih daha women in inheritance is related to the family system adopted by the Hindu community in Bali, namely the Patrilineal system (fatherhood) where only boys have the right to inherit while girls have no right to inherit. This seriously injures the sense of justice and is not in accordance with human rights. So that the provisions of Balinese customary law that do not give daughters to inherit the inheritance of their parents are in accordance with the provisions of the family system adopted and do not conflict with applicable customary law. However, nowadays, the provision that does not give girls the right to inherit the inheritance of their parents is related to progress in social relations where emancipation equality and gender equality are being actively pursued between men and women based on the principles of justice, fairness and justice. social security, legal certainty and legal protection for all communities, the provisions of customary law that do not give inheritance rights to girls are contrary to the principle of justice and eliminate the rights of girls. Although in customary law that applies in Balinese society where girls do not have the right to inherit the inheritance of their parents, it is possible for heirs (parents who are) to

make various efforts or ways so that their daughters can inherit or get part of the inheritance of other old people in several ways, namely: (a) by giving a grant, part of his property becomes his property. It can also be done by giving gifts when their daughters marry out called Jiwa Dana, namely giving a share of the property to the daughter before or after marriage while her parents are still alive, which is called Jiwa Dana and Tatatadan or Bebaktan. (b) The position of women after a divorce is entitled to joint property (gunakaya) according to Balinese Customary Law has developed from the past the distribution of joint property was two to one, while now it is starting to develop into an equal distribution, namely half for husband and a half for a wife. In the field of inheritance in the home of origin, the widow mulih daha is not an heir because her position is only as an unmarried daughter, but it is possible to be given property by her parents but her name is not an inheritance but dharmadana or grant.

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