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NYENTANA MARRIAGE DIVORCE REVIEWED FROM BALINESE CUSTOMARY LAW AND ITS CONSEQUENCES FOR CHILDREN

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Abstract

Marital divorce is a divorce in which the husband returns home. Divorce certainly has an impact on the family, especially the child, especially the status and rights of the child considering the status of the child's inheritance due to divorce of the marriage nyentana different from ordinary marriage. The method of approach is legislation and conceptual approach. The type of research is normative. The data types are primary data (marriage law) and secondary data (research results). Data collection techniques with literature studies. Qualitative methods of analysis. The result of his research that against divorce nyentana marriage reviewed from the customary law of Bali that men will return to their home with the status of mulih teruna. The custody status of the child is in the mother with the consideration that if he in certain matters does not carry out his duties as a mother then custody can be transferred to his father. In terms of inheritance the child will follow his mother's lineage.

Keywords: *Marriage; Divorce; Nyentana; Child.*

A. Introduction

Divorce is an event that can happen anywhere both in your own family environment and elsewhere. Divorce certainly affects the family, especially children. The main consequence of the divorce is how the child is positioned when both parents divorce. Moreover, if the divorce is experienced by a couple who have carried out the customary process of nyentana, where in this process a man joins his wife's family, lives in the wife's house, and all his descendants take the bloodline of the wife, the man was released from his relatives and transferred to the class of the woman's relatives'. Consequently, the child born from the marriage will be the heir of his mother's lineage. (Adnyani 2017) Divorces that occur in couples who exchange status or nyentana will certainly be different from divorces in general, especially related to the status and rights of children born from the marriage. Nyentana marriage, also known as nganten nyeburin. In this case the wife who is kapurusa (still residing in her house), and the husband (who is predana status), left the house and family, and entered into a family member of his wife. The child born follows the bloodline of his mother (who is purusa). It is mandatory to continue the treatment of tri rna for his mother and maternal ancestors, continue the self-sufficiency of parhyangasn, pawongan and palemahan against his mother's pakraman village, and

get rights (self-sufficiency) also from his mother's family (Windia 2018). Especially balinese Hindus, whose inheritance system is patrilineal (fatherly line) marriages that are carried out must really pay attention to the customary system that applies. Many cases in Bali where a boy loses the right to bequeath him because of a marriage that is considered contrary to the prevailing custom, namely due to performing a nyentana marriage. A marriage is one in which a man participates in his wife's family, lives in the wife's house and all his descendants belong to the wife's family (Udytama 2015). If there is no son, then he can raise a boy to be a child or the father can raise his daughter into a sentana.

In a divorce, of course, it will give birth to legal consequences on a child whose parents are divorced. If the parents are separated then the child needs legal certainty with whom he is in foster care. Article 54 paragraph (2) of Law No. 1 of 1974 on Marriage states that parents are obliged to maintain and educate the child as well as possible until the child is married or can stand alone, and that obligation applies continuously even though the marriage of the parent is broken (Indonesia 1974). A child should receive the attention and protection of both parents, including the right to freedom of life as a child. Freedom to taste education, the fulfillment of clothing and food accompanied by love saying because these are their basic rights that they should enjoy (Edisi 2018). Children are the ones who feel the most impact of divorce and are very often victimized. Therefore, the child needs to get protection for the sake of his survival and future. The right of protection is in accordance with law number 35 of 2014 concerning child protection (Sukadi 2013). Therefore in accordance with the background above, the author wants to raise about how the divorce of marriage nyentana and the status and rights of children due to divorce of marriage nyentana reviewed from the customary law of Bali which in the process is quite complicated because it has to find a common thread in the local customary regulations in the hope that the verdict is a verdict that can give a sense of justice for all parties.

The theories used in this study are the Legal Protection Theory and the Marriage Theory.

1. The theory of marriage according to Article 1 of Law 1 of 1974 on Marriage that marriage is a bond of birth between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the Supreme Godhead (Indonesia 1974). Marriage is an institutionalized process, in which men and women initiate and maintain the reciprocal relationships that are the basis for a family. This will give rise to rights and obligations both among men and women and with children who are then born (Artadi 2017). Based on the two theories above it can be concluded that custody of children who are victims of marital divorce where because of the birth and inner bond between their parents so as to get children, but because of divorce, the child is entitled to protection considering the child still needs affection and attention from his parents.
2. The Theory of Legal Protection is a theory that According to Philip M. Hadjon in the Dutch legal literature legal protection of law is interpreted by "*rechtbesherming van de burgers*" The meaning of the word protection, there is an effort to give the rights of the protected party in accordance with the obligations that have been carried out (Desak kadek dewi ayu purnamawati 2018). According to Satjipto Rahardjo the protection of law is an attempt to protect a person's interests by

allocating a human right to him to act in his interests. According to Setiono the protection of the law is an act or attempt to protect society from arbitrary acts by rulers that are not in accordance with the rule of law, to realize order and tranquility so as to allow man to enjoy his dignity as a human being. According to Muchsin, legal protection is an activity to protect individuals by spreading the relationship of values or rules incarnated in attitudes and actions in creating order in the association of life between human beings (Sihombing 2017)

There are several writings in scientific journals and previous theses that are similar to this title but in substance the analysis is different and the problems studied are different. The article included:

1. "Hak Memelihara Anak Setelah Putusnya Perkawinan Karena Perceraian Menurut Hukum Adat Bali" oleh I Wayan Ery Prayana Murtiawan, I Nyoman Putu Budiarta dan Diah Gayatri Sudibya (Fakultas Hukum Universitas Warmadewa Denpasar) 2020 (Murtiawan, Putu Budiarta, and Sudibya 2020).
2. "Pengaruh Prosedur Perceraian Dalam Perkawinan *Nyentana* Terhadap Kedudukan Duda *Mulih Truna* dalam Keluarga dan Waris Menurut Hukum Adat Bali" oleh Desak Kadek Dewi Ayu Purnamawati (Program Studi Magister Kenotariatan Fakultas Hukum Universitas Udayana) 2018 (Desak kadek dewi ayu purnamawati 2018).

The problem that arises as a result of marital divorce *nyentana* is the status and rights of the child, where the child is a victim and will be the care of one of his parents so that this research is conducted with the aim of knowing how the divorce of the marriage *nyentana* and the status and rights of the child due to the divorce of the marriage *nyentana* is reviewed from the Customary Law of Bali so that the author tries to analyze the problem.

B. Literature Review

From the results of the research of several previous authors can be described the analysis, namely as follows:

1. "Right to Care for Children After The Termination of Marriage Due to Divorce According to Balinese Customary Law" by I Wayan Ery Prayana Murtiawan, I Nyoman Putu Budiarta and Diah Gayatri Sudibya (Faculty of Law, Warmadewa University Denpasar) 2020.

This research raises the formulation of the problem, namely how the right to care for children after the breakup of marriage due to divorce and the position of children according to Balinese customary law. This type of research is Normative research. The object of the study is the local Customary Law and PN Gianyar Decree No: 114/Pdt.G/2011/PN. Gir.

The results of the author's thoughts on the results of this study are more emphasis on the right of child care according to Balinese customary law and the position of the child as an heir after the breakup of an ordinary marriage.

2. "The Effect of Divorce Procedure in *Nyentana* Marriage on the Position of Duda *Mulih Truna* in Family and Inheritance According to Balinese Customary

Law" by Desak Kadek Dewi Ayu Purnamawati (Master of Notary Study Program of Faculty of Law Udayana University) 2018.

This research raises the formulation of the problem, namely the divorce procedure that must be fulfilled for a man in nyentana marriage according to Balinese customary law and the consequences of the divorce procedure nyentana to the position of widower mulih truna in the family and heirs according to balinese customary law. This type of research is Normative Juridical. The object of the study is an example of a case in several regions in Bali Province.

The results of the author's thoughts on the results of this study are more emphasis on the mechanism of marriage breakup due to divorce so that the emergence of the status of mulih used for men and other legal consequences are the right to inheritance and relationship with self-sufficiency.

From the two studies mentioned above can be summarized that the study emphasizes more on the rights and position of children as heirs after the breakup of ordinary marriages and more emphasis on the mechanism of the breakup of marriage due to divorce so that the status of the longest mulih appears for men and the other legal consequences are the right to inheritance and relationship with swadharma. In contrast to the author's research that emphasizes more on how marriage occurs and how children's rights result from marital divorce nyentana.

C. Methods

The approach methods used in this research are *the Statute Approach* and the *Conceptual Approach*. This type of research is normative legal research that examines laws and regulations and also norms or rules that live in the community. The type of data used is primary data derived from legislation or regulations and literature, namely marriage laws and secondary data in the form of research results related to the problems studied.

The data collection technique used in this study is literature studies by tracing and reviewing literature, journals and books relevant to marital divorce and its consequences on children. The analysis method used in this study starts from studying all the data that has been collected from several sources, namely from the literature study to further reduce the data so that the main thing can be summarized systematically by using qualitative data analysis that aims to give an overview (description) by interpreting the data / legal materials that have been processed.

D. Results and Discussions

1. Nyentana Marriage

The customary law of the Balinese people is famous for the customary village or pakraman village, the rules of the customary village that are widely encountered are related to marriage, marriage is quite important because it relates to the responsibility or swadharma of a person in relation to ancestors or indigenous, in balinese Hindu communities the family system embraced is patrilineal or kapurusa. With the inclusion of patrilineal family system or kapurusa is influential on the implementation of marriage in Balinese Hindu communities, in balinese

traditional villages there are several types of marriages, namely ordinary marriage, *pade gelahan* marriage, *nyentana* marriage or *nyeburin* marriage. Ordinary marriage is a marriage between a man and a woman that is as common as marriage in Indonesia in general where the woman leaves her family and falls into the family of a man or husband. The second is *pade gelahan* marriage, this kind of marriage can be said to be not common in Bali because it is a new marriage system and the terms used vary there are those who call it by *negen* two, some call it with *perkawinan mepanak* together, *magelar warang* and sometimes referred to by the term *weak makaro* in the village *pakraman Gianyar*.

The marriage of this *gelahan pade* both couples domiciled *asi purusa* in their respective homes as well as in the environment of the customary village and the village of *pakraman* both have a position as a man or *purusa* according to the rights and obligations of a *purusa* in general. Next is the marriage of *nyentana* or *nyeburin*. In marriage *nyentana* or *nyeburin* the male side has the status of *predana* or woman or commonly called *mawak luh* and conversely the female side *hassatatus purusa* or male and commonly called *mawak luh*.

In all types of marriages either ordinary marriages, marriages or marriages *nyeburin* / *nyentana* certainly give birth to legal consequences, especially related to child custody when the married couple agrees to separate or divorce. According to Balinese customary law, the author saw from the case that occurred in *abian semal* village, *Badung Regency of Bali Province*, the child was domiciled as the successor to his mother's family because his father's status in *nyentana* marriage was as a woman who entered his mother's caste so that by itself out of his original family ties. This type of marriage does cause a lot of problems in the future, especially if there is a divorce. But even so, many people choose to use this *nyentana* marriage system to continue the family offspring because in Balinese Hindu society the position of boys is very important because it is considered as the heir to the customary village or continues to be in the city. *Nyentana* is a term given to the husband and wife where the husband is moved or requested by the wife's family where usually in Balinese family the husband must ask the wife because in Bali adheres to the patrilineal system or fatherhood. Then why did the bride's family ask the man? This is because the woman does not have a brother who will later be expected to be the successor in the family, so they have to ask for a husband. But often the problem is that not all families or parents who allow their sons to go out or be moved by a female family, this happens because the male side will automatically give up their rights and obligations to be refuted by the old and become citizens of the new refuted. *Nyentana* is customary law is not a Hindu rule, there may be little to do with the tradition in Bali, namely *pradana* and *purusa*, the rights and obligations of husbands and wives who perform marriage *nyentana* is the husband gets the right to inherit from the wife's parents but also obliged to take care of the wife's parents in old age, obliged to carry out *ngaben* ceremonies against parents who have died, Must carry out obligations to *banjar* or village, while the right of the wife is to get status as *sentana rajeg* or *purusa* or male status. Offspring born from *nyentana* marriage will follow the maternal lineage, and the obligation of a wife who performs *nyentana* marriage is to remain the same as the wife in general.

Nyentana is not as scary as it is in the minds of the public, most people consider that if a boy nyentana then he will get bad treatment in the women's house because the man is a wife in the female home, the community also considers the position of the man is humbled when doing marriage nyentana because all the work will be devolved to him, there are also those who have high prestige if the son is moved. By the female family, all the reasons for the opposition to the men as said earlier are not always wrong, even in fact the opposite for men who do their marriage will even be privileged in the house of the woman because it has saved their offspring, with men will not lose their level especially as the head of the family, he will still be a purusa in a family.

Nyentana to the family of Hindu women who do not have an heir is one of the noble things done by Hindu men in Bali. But it cannot be denied there is another side that is feared in nyentana is where when the husband and wife divorced and the husband returned to his original family home, and no longer have the right to bequeath because it has come out and relinquished the right to bequeath it as a descendant of women who follow the husband's family or who convert. Unlike women, men who widow from marriage nyentana will have difficulty finding a soul mate again because he in his family is no longer purusa status and holds inheritance rights, unless he again finds a soul mate who needs a soul mate. A person who should get the approval in advance of all the citizens of dadia or soroh from men and women because the man will give up his rights and obligations refuted long ago atu purusa and become a new citizen dis refuted new or pradana, men who nyentana usually worship the 2 kawitan old kawitan and his wife's tweet, nyentana marriage can take place happily depending on how the assumption and wife can create a paradise in the future. his home life. So there is nothing wrong with nyentana the most important thing is how to build a home life to always be harmonious.

2. Status and Rights of Children in Nyentana Marriage

The status of the child born to this nyentana couple is attached to the mother's lineage so that if things happen that are not desirable as well as the doubt then the child should remain in his mother who has become a princess, but it is different if the divorce is motivated by the fault of the woman in this case his wife as it happened in the village abian semal Kabupaten Badung where divorce can not be avoided anymore because of fatal case on the part of the woman who proved to have an illicit relationship with other men and during the marriage she did not take care of the child properly.

If divorce can no longer be avoided then the man will return to his original home with the status of mulih teruna. Which is where for the next they will carry out their rights and obligations in the family of origin again, and for the status of children resulting from marriage of divorced couples who should be responsible for women to care for and make them as the successor of the offspring of the woman, but with the consideration that if the female party has made a fatal mistake that causes the destruction of the household that is having an illicit relationship with other men and never taking care of the child like a mother to her child then the man here who is a husband who feels aggrieved and feels that his child is more deserving of being nurtured by him so that his future is better. This of course causes conflict and drags both major families each, if the dispute in the marriage

nyentana can not be resolved by deliberation by both parties of the family, then the community will bring the case before the customary village court. The customary village court is an open people's court, and it is the community that imposes the punishment on the offender in question.

In the case that occurred in the village of Abian semal has been taken the decision that the child of the marriage of the divorced nyentana couple is in the care of his father with the consideration that the child is old enough and not as dependent on his mother as the baby who still needs his mother's breast milk. In addition, another consideration is that his mother will soon marry another man so it is feared that not necessarily his stepfather can treat the child well like his biological father. With these considerations, the customary village court ruled that the custody of the child was entirely in the hands of his father on the condition that his mother still had the right to meet and raise together with the agreements they agreed together.

E. Conclusion

Based on the description above can be concluded that against marital divorce nyentana reviewed from balinese customary law that men will return to their original homes with the status of mulih teruna. Where they will further exercise their rights and obligations in the family of origin again, and for the status of the child of the marriage will be the responsibility of the woman (mother) to care for and make her as the successor of the offspring of the female side in terms of inheritance rights, but with the consideration that if the female side (mother) in certain matters if the mother does not carry out her obligations as her mother custody can turn to her father.

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