

Position of Marriage Agreement from the Perspective of Balinese Customary Law

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Abstract: Marriage is a physical and spiritual bond between a man and a woman that is legally valid and often has a religious basis. In Indonesia, marriage is regulated in Law Number 16 of 2019 as an amendment to Law Number 1 of 1974, which defines marriage as a form of union to form an eternal and happy family. Marriage agreements, which are often used to regulate the separation of property, are starting to become widely used in Bali even though this concept clashes with Balinese customs which view marriage as a sacred relationship that unites two individuals as a whole. In Balinese customary law, marriage aims to maintain lineage in accordance with the kinship system, both patrilineal and matrilineal, so that agreements that limit property rights in marriage are often considered taboo. However, developments in the economic needs of society and efforts to legally protect individual assets in marriage encourage the implementation of this agreement, especially with the Constitutional Court decision which legalizes post-nuptial agreements. This article highlights the dilemma of accepting marriage agreements in Balinese traditional society and the need for adjustments that do not conflict with local customary values to achieve a balance between state law and local traditions.

Keywords: *Marriage, Marriage Agreement, Balinese Customary Law, Kinship, Wealth, Sacredness of Marriage.*

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Introduction

Marriage is an institution that binds a man and a woman in a legal relationship and is often based on religious and cultural values. In Indonesia, the legal definition of marriage has been regulated in Law Number 1 of 1974 which was updated by Law Number 16 of 2019. According to this law, marriage is defined as "A physical and spiritual 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 Almighty God" (Law No. 16 of 2019, Article 1 paragraph 1). Thus, marriage is not only seen as a legal agreement but also as a sacred bond based on noble values and spirituality.

In the view of Balinese customary law, marriage has a deeper dimension and touches on aspects of custom and kinship. Marriage is considered an eternal unity and involves a bond between the extended families of both parties. Therefore, in this customary system, the existence of a marriage agreement that separates personal assets is often considered taboo because it is considered contrary to the principle of unity of assets and collective responsibility inherited in the extended family.

According to Ter Haar, customary law not only functions as a civil rule but also includes the values of kinship, culture, and social responsibility that are strengthened through the bonds of marriage (Ter Haar, 1983).

However, with the growing need for legal protection for individuals, marriage agreements or property separation agreements (prenup and postnup) are increasingly popular among couples in Bali. This agreement allows for the separation of personal assets acquired before and during marriage, providing financial security for each party in the event of a divorce. Constitutional Court Decision Number 69/PUU-XIII/2015 also legitimizes postnuptial agreements, expanding the scope of legal protection for married couples. In the context of Balinese customary law, this marriage agreement creates a dilemma because it conflicts with the highly respected values of family unity.

Therefore, it is important to review how marriage agreements can be implemented without violating the customary principles that exist in Balinese society, as well as how state and customary law can achieve balance in order to provide optimal legal protection for individuals.

Problem Research and Method Research

In writing scientific papers, research methods are key elements to obtain valid data and support arguments or results achieved in research. According to Sutrisno Hadi, research methodology is a method to establish accurate outlines and strict requirements so that the scientific knowledge produced has high academic value. In the context of this research, the normative or doctrinal legal method is used by referring to legal materials as the main source. As explained by Hutchinson, normative research involves the systematic exposition of relevant legal rules to explore relationships between rules, identify problems, and predict further legal developments. This research also combines various approaches, including statutory, case, historical, comparative, and conceptual approaches, to construct a more comprehensive understanding of the law.

The sources of research materials used include primary legal materials (such as laws and court decisions), secondary legal materials (such as literature and jurisprudence), and tertiary legal materials as additional support. Data collection techniques are carried out through literature studies and interviews with related legal figures, including notaries and academics in the field of Balinese customary and civil law. The legal material analysis techniques used include descriptive, interpretive, evaluative, and argumentative methods to ensure that the conclusions drawn have a strong and relevant basis. This comprehensive approach is expected to provide an in-depth analysis of the legal issues raised.

Analysis & Discussion

Marriage is a formally recognized institution and has spiritual value in various cultures, including in Indonesia. The terms "marriage" and "marriage" are sometimes used interchangeably, but have different meanings. The word "marriage" comes from "marriage," which means forming a family with the opposite sex through sexual intercourse, whether in plants, animals, or humans. On the other hand, "marriage" specifically refers to the human context, with validity recognized according to national, customary, and religious laws (Al-Jaziri, 1986). Specifically, Al-Jaziri explains that "marriage is a sacred agreement between a man and a woman to form a happy family," where this term indicates a formal agreement or contract between the two parties that is carried out voluntarily. In the context of Indonesian national law, marriage is defined in Law Number 16 of 2019 which amended Law Number 1 of 1974, as "A physical and spiritual 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 Almighty God". This definition emphasizes that the main purpose of marriage is to achieve happiness and well-being, with spiritual values based on the One God, which is the first principle in Pancasila.

R. Subekti stated that, based on Article 26 of the Burgerlijk Wetboek (BW), marriage is an official bond between a man and a woman that lasts a lifetime. However, BW only emphasizes the civil aspect, without taking into account the religious or customary requirements that are formally recognized in Indonesia's diverse society. In this context, Subekti emphasized that a marriage is valid only if it meets the requirements stipulated by law, so that religious and customary aspects are not considered in BW. This is different from Soedharyo Saimin's opinion, which emphasizes that marriage must be based on Godly values, as stated in the first principle of

Pancasila. According to Saimin, marriage is an agreement involving two individuals to form a harmonious and eternal family.

Furthermore, the concept of an agreement in marriage law is also an important basis in determining the rights and obligations of husband and wife. Article 1313 of the Civil Code defines an agreement as "an act by which one or more people bind themselves to one or more people." Subekti clarifies that this agreement involves a legal relationship that binds both parties to fulfill certain demands. Sri Soedewi Masjehoen Sofwan also defines an agreement as "a legal act in which one or more people bind themselves to one or more people." In a marriage agreement, the principle of freedom of contract allows couples to agree on their rights and obligations, including the separation of property, which is often the basis for a marriage agreement.

However, the implementation of marriage agreements in indigenous communities, especially in Bali, faces its own challenges. According to Eugen Ehrlich's theory of living law, living law does not only come from laws or court decisions, but also from customs and social norms followed by society. In Bali, the concept of living law is manifested in customary rules such as *awig-awig*, which regulate various aspects of Balinese life, including marriage. Ehrlich explains that living law in society is stronger because it is formed from customs that continue to develop in accordance with social life.

From the perspective of Balinese customary law, marriage has a very high sacred value, involving ceremonies and the unity of the extended family of both parties. Marriage agreements that separate property are often considered contrary to the principles of family unity and inherited collective responsibility. As stated by Van Vallenhove, customary law is a set of rules of conduct that apply to indigenous people and have customary sanctions even though they are not codified. In Bali, for example, in a patrilineal kinship system, property is often inherited to the eldest son, while in a matrilineal society, lineage and property are inherited through the mother. Therefore, the division of assets in a marriage agreement may conflict with the principles of customary inheritance.

Along with the development of economic needs and the protection of individual rights, couples in Bali have begun to implement marriage agreements to secure their personal assets. Constitutional Court Decision Number 69/PUU-XIII/2015 has expanded the scope of the law by allowing couples to make postnuptial agreements. This provides a strong legal basis for couples to regulate the separation of assets during marriage without neglecting customary inheritance rights. However, the acceptance of this concept by indigenous people is still limited because it is considered to be contrary to the unity of the extended family and the inheritance system that has long been upheld in Bali.

In the context of Balinese customary law, the sanctity of marriage is seen as a bond that is deeper than just a relationship between two individuals; marriage involves extended family ties and shared responsibilities that must be respected by the husband and wife. As explained by Bushar Muhammad, customary law is a system of regulations that regulates the behavior of people in their social relationships, which aims to maintain harmony and preserve traditional values.

Although a marriage agreement can provide significant legal protection for couples, especially in terms of the division of

property, its implementation in Balinese society needs to pay attention to customary values that prioritize the integrity and solidarity of the extended family. This difficulty reflects the challenge of aligning state law with customary law that lives in society. Thus, the successful implementation of a marriage agreement in Bali requires not only a strong legal basis, but also a deep understanding of the cultural and social context of Balinese society in order to create harmony between national law and local customary norms.

Conclusion

Marriage in Indonesia, both in the context of state law and customary law, has broad dimensions, involving legal, social, and spiritual aspects. From a state law perspective, marriage is regulated in Law Number 16 of 2019, which emphasizes that the purpose of marriage is to form a happy and eternal family based on the One Almighty God. This definition emphasizes that marriage is a legally recognized bond, which provides rights and obligations for husband and wife to support each other, both materially and spiritually. In the view of civil law, marriage is an official bond between a man and a woman for a long period of time, which regulates civil relations between the two parties.

However, on the other hand, in Balinese customary society, marriage has a deeper meaning and is not only limited to relationships between individuals, but also involves extended families and strong kinship values. Marriage in Balinese custom is seen as a sacred bond that connects not only husband and wife, but also two extended families. Therefore, the separation of property in a marriage agreement is often considered contrary to Balinese customary values that emphasize family unity and collective solidarity.

Marriage agreements, both prenuptial and postnuptial, are valid legal instruments in Indonesia and can provide legal protection for the assets of a couple. Article 29 of the Marriage Law provides a legal basis for couples to regulate matters related to assets and obligations during marriage, as long as they do not conflict with the principles of law, religion, and morality. Constitutional Court Decision Number 69/PUU-XIII/2015 which legalized postnuptial agreements increased the scope of this law, making it easier for couples who want to draw up agreements that regulate their assets, both before and during marriage.

However, the implementation of marriage agreements in Bali faces major challenges due to the fundamental differences between state law and Balinese customary law. In Balinese customary society, marriage is not only seen as a civil legal bond, but also as a spiritual relationship that binds both parties in an extended family unit. Therefore, agreements that separate assets in marriage are often considered to be contrary to the basic principles of Balinese customary society which prioritizes family unity and solidarity. The concept of living law put forward by Eugen Ehrlich shows that Balinese customary law developed from customs and norms that live in society, and has a very large role in solving social and legal problems locally. Living law leads to the understanding that the law that applies in society is not only limited to written laws, but also to laws that develop through customs and values carried out by the community itself.

In addition, Balinese customary law, through awig-awig and other traditions, regulates all aspects of social life, including marriage and the obligations that accompany it. Therefore,

although a marriage agreement is recognized by state law, its application in Bali must take into account strong customary norms and customs. This shows that there needs to be harmonization between state law and customary law so that both can run side by side without conflicting with each other, thus providing effective legal protection for couples who enter into a marriage agreement.

Overall, a marriage agreement in Bali must be seen as a valid instrument according to state law, but must also be understood in the cultural and social context of Balinese society. The adjustment between the two is very important to achieve a balance between individual rights regulated in state law and collective values upheld in Balinese customary law. Therefore, it is important for legal practitioners, especially in the field of notary, to understand both aspects of state law and customary law in drafting and validating a marriage agreement, in order to ensure optimal protection for couples who marry in Bali.

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