



STUDY OF BALINESE CUSTOMARY LAW ON INHERITANCE RIGHTS OF CHILDREN FROM INTERFAITH MARRIAGES

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Abstract

This study aims to determine (1) the study of Balinese customary law on the inheritance rights of children born from interfaith marriages; (2) the status of the heirs of children born from interfaith marriages; and (3) legal consequences for the heirs of children born from interfaith marriages (a case study in the village of Alatgker, District of Buleleng, District of Buleleng). This type of research is an empirical juridical research with a basic research scheme, using a method with a statutory approach and a conceptual approach. sources of primary and secondary legal materials. Legal material collection techniques are carried out by: document studies, field observations (observations), and interviews. The research location is in the village of... using a qualitative descriptive analysis of legal materials. The results of the study show that interfaith marriages in the Marriage Law in Indonesia are not explicitly regulated in the Marriage Law Number 1 of 1974 concerning Juncto Marriage, Law Number 16 of 2019 concerning amendments to the Marriage Law Number 1 of 1974 concerning Marriage. The Marriage Law requires couples of different religions if they want to marry, they must submit to the religion of one of the parties. As for the inheritance rights of children born from marriages of couples of different religions according to Balinese customary law, if the child follows his father's religion, he will be given the right to inherit. However, if the child follows the religion of his mother, he will not get the right to inherit. This is

Kata kunci:

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based on that the Balinese customary inheritance law adheres to the limeusa principle (father line) and inheritance is not only in the form of rights but also certain obligations that can only be carried out by heirs of the same religion as the heir.

Abstrak

Penelitian ini bertujuan mengetahui (1) kajian hukum adat bali terhadap hak waris anak yang lahir dari perkawinan beda agama; (2) status ahli waris anak yang lahir dari perkawinan beda agama; dan (3) akibat hukum bagi ahli waris anak yang lahir dari perkawinan beda agama (studi kasus di *desa alasangker* kecamatan *buleleng*, kabupaten *buleleng*). Jenis penelitian ini adalah penelitian yuridis empiris dengan skema penelitian dasar, menggunakan metode dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual. Sumber bahan hukum primer dan sekunder. Tehnik pengumpulan bahan hukum dilakukan dengan cara: studi dokumen, melakukan pengamatan di lapangan (observasi), dan wawancara. Lokasi penelitian di *desa alasangker* kecamatan *buleleng*, kabupaten *buleleng*. Menggunakan analisis bahan hukum yang bersifat deskripsi kualitatif. Hasil penelitian menunjukkan perkawinan beda agama dalam undang-undang perkawinan di indonesia tidak diatur secara tegas dalam undang-undang perkawinan nomor 1 tahun 1974 tentang perkawinan juncto undang-undang nomor 16 tahun 2019 tentang perubahan atas undang-undang perkawinan nomor 1 tahun 1974 tentang perkawinan. Undang undang perkawinan menghendaki pasangan yang berbeda agama jika ingin melangsungkan perkawinan mestinya menundukkan diri pada agama salah satu pihak. Adapun hak waris anak yang terlahir dari perkawinan pasangan yang berbeda agama menurut hukum adat bali, jika anak mengikuti agama ayahnya maka akan diberikan hak untuk mewaris. Akan tetapi apabila si anak mengikuti agama ibunya maka, tidak akan mendapatkan hak

untuk mewaris. Hal ini didasarkan atas bahwa hukum waris adat Bali menganut asas kapurusa (garis ayah) serta harta warisan tidak saja berupa hak akan tetapi juga selalu melekat kewajiban-kewajiban tertentu yang hanya bisa dilaksanakan oleh ahli waris seagama dengan pewaris.

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INTRODUCTION

Customary law is non-statutory law, most of which is customary law and a small part of customary law in Bali which is influenced by the teachings of Hinduism. Customary law also includes law based on judges' decisions which contain legal principles in the environment where they decide cases. Customary law is rooted in traditional culture. Customary law is living customary law because it embodies the real legal feelings of the people.

Each law is a system, that is, the rules are a unity based on the unity of the mind. Likewise with customary law, customary law is based on the basics of the Indonesian nation's mind. This from generation to generation must run and be maintained properly so that it becomes a tradition that is inherent in socio-cultural life, in the end everything is summarized in the customary law unit that exists in the customary law unit that applies in various tribes in Indonesia as part of positive law, both which is part of written and unwritten environmental law which in the Indonesian legal system is called customary law (Wignjodipuro, 2014: 21). Customary law in Indonesia regulates marriage law, inheritance law, buying and selling and so on. The customary law of inheritance shows a pattern that is indeed derived from the realm of traditional Indonesian thought.

Inheritance law that exists and applies in Indonesia, until now is still not a legal unification. On the basis of the map of inheritance law which is still so pluralistic, as a result, until now there is no uniformity in the regulation of inheritance issues in Indonesia. However, the pluralistic inheritance law system in Indonesia is not only due to the diverse family system of the community, but also due to the customs of the Indonesian people which are also known to be very varied. Therefore, the existing customary inheritance law system is also diverse and has its own style and characteristics in accordance with the family system of the indigenous peoples.

The diverse Indonesian society does not rule out the possibility of interfaith marriages, where interfaith marriages are not strictly regulated which results in problems related to the validity of marriages and results in inheritance. Inheritance is a term used to express the act of passing on the assets that will be left by the testator or the act of distributing the inheritance to the heirs. This forwarding does not mean the transfer of assets only but also the obligations of the heirs that have not been resolved (Hadikusuma, 2013: 21).

Marriage is included as a basic need (basic) of every human being, the purpose of which is to form a happy and eternal family or household based on the One Godhead (Erwinsyahbana, 2012: 35). The heterogeneity of Indonesian society has led to several laws governing marriage. The enactment of Law Number 16 of 2019 concerning Marriage is the embodiment of the unification of the marriage law to

answer all needs regarding regulations related to marriage in Indonesia. However, it does not contain rules regarding interfaith marriages.

The marriage regulation for the Indonesian people is Law Number 16 of 2019 concerning Marriage, which is officially valid from the date of promulgation, which is October 14, 2019 in Jakarta. The law has been legally valid for the Indonesian people, and has become part of positive law. This marriage law, in addition to laying down principles, also accommodates principles and provides a legal basis as a guide and applies to various groups of Indonesian society. Where in the Act regulates the principles of marriage itself, joint property of husband and wife in marriage and the relationship of parents with children and so on.

The conception of Indonesian law, the issue of marriage has received national legal regulation, namely Law Number 16 of 2019 concerning Marriage (Marriage Law). Along with the increasingly complex development of Indonesian society, the problems that occur are also increasingly complex. Including the complexity of marital problems. Various types or cases of marriage in Indonesia that deserve to be discussed, because marriage is a legal act that causes cause and effect between the couple doing the marriage and the country inhabited by the couple, one of which is interfaith marriage which has recently become a phenomenon in Indonesia, both from within the community. artists and ordinary people, even interfaith dialogue activists and educated clergy.

Marriage between people of different religions and countries, in this paper is called "interfaith marriages." Interfaith marriage is an inner and outer bond between a man and woman of different religions and countries, causing the union of two different regulations regarding the requirements and procedures for implementation according to the laws of their respective religions, with the aim of forming a happy and eternal family based on God Almighty. (Rusli and Tama, 2010: 16) (in Putera, 2014: 7).

Article 2 paragraph (1) of Law no. 16 of 2019, confirms that marriages carried out on the religious basis of interfaith couples are said to be valid. Religious law is a guideline in carrying out marriages that have full force in Indonesia which is decisive. So the Indonesian people are required to obey the applicable law, not to marry outside of religious law.

Regarding the regulation of interfaith couples in Indonesia regarding the legality of marriage, there is no strict regulation that prohibits interfaith marriages, so interfaith marriages can be carried out through ways, namely circumventing the laws that apply in Indonesia through court decisions.

Customary inheritance law is customary law that contains lines of provisions regarding the system and principles of inheritance law, regarding inheritance, heirs and heirs and how the inheritance is transferred to control and ownership from the heir to the heirs (Yulia, 2016: 15).) (in Ritongga, 2020: 1). Therefore, inheritance law is based on the principles and various forms of customary law inheritance systems, the diversity in the form of customary law inheritance systems will have different consequences, then inheritance law must be adapted to the respective customs and cultures that already exist in the area. accompanied by the advantages and disadvantages of the traditional inheritance system.

One of the customary inheritance laws that we can learn is the Balinese Customary Law, the Balinese Indigenous community adheres to a patrilineal or

patrilineal family system. In Bali only adhere to purusa and predana. These two systems are closely related to the system adopted in marriage law and also inheritance law. Inheritance is only given to heirs who are entitled to inherit the property, but if the heirs have different religions then this has a big influence on inheritance.

The influence of this religious conversion has an impact on the inheritance system because most people in Indonesia still adhere to the patrilineal system or the inheritance distribution system from the male lineage (Windia, 2014). Experts argue that the principle of lineage that applies in the community concerned still often influences the customary law of inheritance.

Interfaith marriages can cause problems or differences of opinion in terms of inheritance distribution. Related to research by (Sudiatmaka, Adnyani and Wulandari, 2016: 705), concluded that in Hinduism, the heirs who are prioritized are men and have certain criteria and the inheritance system is the patrilineal principle (transfer of inheritance through one direction only from the line men only), whereas in Islam it is a bilateral principle (transfer of property through two directions from the male and female lines). Interfaith marriages have occurred in various regions in Indonesia, even giving rise to various differences of opinion, these differences of opinion can be seen in terms of inheritance regarding inheritance. Based on data obtained through statistics at the Department of Religion of Buleleng Regency in 2020, in the village of ± 21 person or 4,51% Buddhists in the village.

Interfaith marriages invite a lot of debate in the community, many parties oppose the occurrence of interfaith marriages, because it is feared that interfaith marriages will cause problems that are difficult to resolve. One of the problems that will arise is related to the validity of marriages and inheritance from interfaith marriages. There are various differences in views regarding interfaith marriage, so in this research with the Basic Research scheme, we examine more deeply about interfaith marriages in the village of Alatkger, especially from the perspective of Balinese Customary Law. The findings of this study are expected to be recommended as a form of mutual consensus in Balinese Customary Law on the inheritance rights of children born from interfaith marriages in Bali in general and in the village of Alatkger, Buleleng District, Buleleng Regency in particular. .

METHOD

The type of research used is empirical juridical research, namely legal research that puts the law as a building system of norms. The norm system that is built is about principles, norms, rules from laws and regulations, court decisions, agreements, and doctrines (teachings) related to the problems to be discussed, and also a field approach to obtain information as supporting material (Fajar and Yulianto , 2017: 33). The type of research used by the author in this study is a type of empirical legal research, namely research that looks at a legal reality in society. To obtain the necessary information or legal materials that are relevant and relevant to the issue of inheritance rights for children born of interfaith marriages (Case Study in Reasons Village, Buleleng District, Buleleng Regency).

This type of research is an empirical juridical research with the Undiksha DIPA Basic Research scheme. This study uses the approach method, which consists of: the legislation approach and the conceptual approach. 1. Legislative approach (Statute

Approach), which is an approach that examines laws and regulations related to the problems that will be discussed in this research. The Legislative Approach (Statute Approach), is carried out by examining all laws and regulations related to the issues discussed, in the statutory approach it is necessary to understand the hierarchy and principles in the legislation (Marzuki, 2014: 136). 2. Legal concept analysis approach (The Analytical and Conceptual), which is an approach that departs from the views and doctrines that develop in the science of law.

The views/doctrines will clarify ideas by providing legal understandings, legal concepts, and legal principles relevant to the issue of inheritance rights for children born from interfaith marriages (Case Study in Reasons Village, Buleleng District, Buleleng Regency). Sources of legal materials in this study consist of: 1. The primary legal material used in this research is data obtained directly from field research. This research was conducted by conducting interviews with informants at the research location. Informants are people or individuals who provide data information needed by researchers to the extent that they know. Related interviews were at the Ministry of Religion of Buleleng Regency and the community in the village of Alatgker, Buleleng District, Buleleng Regency, namely children born from interfaith marriages and families who carried out interfaith marriages. 2. Secondary sources of legal materials are data obtained from library research, namely by collecting data and laws and regulations, scientific books, and expert opinions related to the issues discussed. In this study, secondary legal materials are sourced from: 1) the 1945 Constitution of the Republic of Indonesia; 2) Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration; 3) Civil Code, Burgerlijk Wetboek voor Indonesia 4) IS (Indische Staatsregeling) paragraph 2 b (Staateblad1925 No. 415 Juncto. 577); and 5) Balinese Traditional Inheritance Law.

The technique of collecting legal materials has a close relationship with the sources of legal materials, because with the collection of legal materials, the necessary supporting legal materials will be obtained which will then be analyzed and adjusted to the expected goals or desires. Viewed from the perspective of its nature, the specifications used in this study are descriptive analytical research, namely research that aims to describe the real situation, then the legal material obtained is analyzed qualitatively. The point is that research that describes the reality that happened is analyzed so as to produce legal research materials based on facts in the field. 1) Document Study Techniques The technique of collecting legal materials with this document study is closely related to the sources of data used, legal materials obtained by reading, identifying, and understanding legal materials in the form of literature, laws and regulations that have relevance to research problems related to inheritance rights. children born from interfaith marriages (Case Study in Reasons Village, Buleleng District, Buleleng Regency). 2) Observation/Observation Techniques The observation technique is an observation that is carried out intentionally and directly to obtain information that you want to study relating to the inheritance rights of children born from interfaith marriages (Case Study in Reasons Village, Buleleng District, Buleleng Regency).

RESULTS AND DISCUSSION

Inheritance Rights of Children Born from Marriage Couples of Different Religions Marriages

Inheritance rights of children born from marriage couples of different religions marriages done without based on similarities in terms of embracing religion very prone to problems a very strange problem that will faced by the husband and wife or a third party for example the nuclear family or the extended family of the husband and wife. The most strange and certain problem will be faced is the issue of inheritance rights for children born in different marriages that belief. Shared assets produced in a real marriage depending on whether or not marriage as the legal basis. That matter cause a child born in an illegitimate marriage can only have legal relationship with his mother just like that regulated in article 43 paragraph (1) of the Law Number 1 of 1974 concerning Marriage regulates children born outside marriage only has a civil relationship with his mother, his mother's family, then all rights son against his father will be lost and not recognized by law. Descendants in the narrow sense are equated with child. Children are a dream for every couple who do marriage, because the purpose of marriage is to procreate.

During marriage which is based on the rules of marriage, then the child is a legitimate child. This is regulated in the provisions of Article 42 up to 43 of Law Number 1 of 1974 About Marriage in conjunction with the Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Regarding children's rights as regulated in Law Number 23 of 2002 Regarding Child Protection in conjunction with the Law Law Number 35 of 2014 concerning Amendments to Laws Law Number 23 of 2002 concerning Child Protection, it is determined that the child have the right to worship according to their religion. Children born to married couples different religions, of course there will be no double religion but the child might follow religion of one of his parents or can determine the choice of belief when you have mature.

Cultural and religious diversity Indonesian people, along with progress growing technology lead to human interaction other. Marriage of a couple of different religions contains the same elements as marriage in general, it's just that there are differences in religion and belief, then according to law will result in the emergence of legal consequences in marriage as follows: 1. There is a legal relationship between husband and wife wife, marriage that gives rise to rights and the same obligations as a husband wife with a balanced position because each has a responsibility. If the marriage is not registered, then there will be losses to children and property together which are difficult to share fairly; 2. There is a legal relationship between parents and children, descendants are the next generation family, then a valid marriage becomes the birth of a legitimate child for marriage need to be listed as complete administratively, if it is not registered it will result in inheritance and rights should be accepted by the child; 3. Property issues, in law In marriage, there are two kinds of property, namely: common property and property. If marriage does not follow the rules is considered never existed by the State, then it is difficult to apply for the distribution of joint property to court. In addition to talking about the type of inheritance, in civil law, precisely in the book *The Civil Law Act* regulates regarding two types of inheritance, namely: 1. inheritance by law; 2. inheritance based on a will.

Legality of Interfaith Marriage according to Positive Law In Indonesia, legally

Marriage in Indonesia is regulated in the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage. The product of this legislation regulates issues related to marriage, including inter-religious marriages. In the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage Article 2 paragraph (1) it is stated: "Marriage is legal, if it is carried out according to the law of each religion and belief." The substance of this formulation is known that there is no marriage outside the law of each religion and belief, as follows: Article 4: "Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law Number 16 of 2019 concerning Marriage". Article 40: It is forbidden to carry out a marriage between a man and a woman due to certain circumstances; a. Because the woman in question is still bound by one marriage to another man; b. A woman who is still in the period of iddah with another man; Thus, according to the explanation of these articles, every marriage carried out within the jurisdiction of Indonesia must be carried out in one religious line, it is not permissible for marriages of each religion to take place, and if this occurs, it is a violation of the constitution. So, it can be concluded that marriage must be carried out in a religious way.

Legality of Interfaith Marriages at Marriage Registration Institutions In Indonesia

There are two institutions that register marriages, namely the Office of Religious Affairs (KUA), for people who are Muslim and the Civil Registry Office (KCS), for people who are non-Muslims. Based on Law no. 16 of 2019 concerning Marriage, marriage is defined as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on God Almighty. Therefore, marriage is legal if it is carried out according to the laws of each religion and belief and has been recorded according to the applicable laws and regulations. But what about interfaith marriages? Interfaith marriages are not mixed marriages in the sense of our national law because mixed marriages according to the Marriage Law are referred to as marriages that occur between Indonesian citizens and foreigners, not different religions. In a pluralistic society, such as in Indonesia, it is very possible for marriages to occur between two people of different religions. Some of those who have material abundance may not be too bothered by being able to marry in another country, but what about those whose economic conditions are mediocre, of course this creates a legal problem. There are two ways to address the legality of interfaith marriages: First, one of the parties can convert, but this could mean legal smuggling, because what happened was only to legally circumvent the provisions of Law no. 16 of 2019 concerning Marriage. However, after the marriage took place, each party reverted to their respective religions. This method is not recommended. Second, based on the Supreme Court Decision No. 1400 K/Pdt/1986 The Civil Registry Office is allowed to hold interfaith marriages. This case began with the marriage that Lidya Kandau (female/Christian) wanted to register with Jamal Mirdad (male/Muslim). The Supreme Court's decision stated that by submitting a marriage registration at KCS Jamal Mirdad, he had ignored the Islamic religious regulations regarding marriage and therefore it must be considered that he wanted his marriage not to be carried out according to the

Islamic religion. Thus, if they are not Muslim, KCS must carry out the marriage. On a contrario basis, KUA is obliged to carry out their marriage, because Christian women no longer care about their Christian status. Therefore, make clear legal submissions to all Islamic laws related to marriage. Thus, from the beginning, couples of different religions do not need to smuggle the law by temporarily changing their religion, but they can get married without changing their religion.

The findings of this study are the reality in the community of Sarangker Village regarding the religious status received by interfaith couples, which can be seen from the procedures for carrying out marriages. Based on the provisions of Article 2 paragraph 1 of Law Number 16 of 2019 it must be based on the religious law of each partner. Interfaith marriages that are not recognized are a barrier on the basis of religion where the Constitution provides freedom for everyone to embrace religion and worship according to their religion. The religious provisions in the community of Sarangker Village make marriages guided by the rules of each religion, so to determine a valid marriage it must be based on the religion of the couple, if the marriage is not based on religion and is not in accordance with applicable rules, then the marriage is considered to have never happened and there is no marital bond (Nuruddin and Tarigan, 2004). The innovation in this research, the study focused on the consensus that needs to be built from the community of Sarangker Village who are Hindu, Muslim, Christian, Buddhist and Catholic to carry out interfaith marriages before there must be an agreement from the couple. Which religious law will be used to fulfill the provisions of the law of each religion so that marriages can be legalized religiously. There is a pluralistic influence of the customary inheritance law system caused by the diversity of indigenous peoples in Indonesia. The issue of inheritance is a sensitive issue. This is related to the worldly nature of inheritance, where if the distribution is deemed unfair, it will result in a dispute between the parties who feel more entitled or receive more inheritance. The distribution of inheritance can basically be done with an atmosphere of deliberation and agreement between family members, but sometimes it can cause divisions between family members. If an agreement is not reached in an atmosphere of deliberation, certain parties in the family will usually sue the other party in a judicial institution. Problems like this require a solution from the research team of experts to prevent conflicts of inheritance from interfaith marriages and seek mutual consensus for any resolution of the problem of inheritance distribution for the heirs of children born from interfaith marriages.

CONCLUSION

The urgency of the research is to reveal the clarity of the status of the heirs of children from interfaith marriages. Finding a bright spot to what extent Customary Law is able to bridge the inheritance system related to interfaith marriages to the heirs of children born from such marriages. Reviewing in more detail the court decision regarding the clarity of heirs from interfaith marriages and reviewing the administrative order that must be met in realizing the clarity of the status of child heirs from interfaith marriages. This research is also urgent to answer the problem where interfaith marriages must be registered, if interfaith marriages are carried out by court order, then they are registered at the Civil Registry Office (KCS). This study is specifically related to the existence of Balinese

Customary Law and national law in dissecting the issue of children's inheritance rights from interfaith marriages, where interfaith marriages are for example between Hindu and non-Hindu religious couples, it is clear that the recording is done at the Civil Registry Office (KCS).). Bearing in mind that the regulation on the registration of interfaith marriages in Indonesia is currently mentioned in Article 35 letter a jo. Elucidation of Article 35 of Law Number 23 of 2006 concerning Population Administration ("UU Adminduk") as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. Article 35 letter a of the Adminduk Law states that the registration of marriages regulated in Article 34 of the Adminduk Law also applies to marriages determined by the Court. Meanwhile, what is meant by "marriage determined by the court" can be seen in the explanation of Article 35 letter a of the Adminduk Law, namely marriages carried out between people of different religions.

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