

## **WOMEN MARRIAGE WITH KERIS IN BALI IN THREE DIMENSION APPROACHES**

**Dr. Ida Ayu Sadnyini, SH., MH.**

### **ABSTRACT**

Married with a Keris or Keris marriage in Bali occurred since ancient times and still exists today. Kris marriage in Hindu religious dimension and Customary Law Bali is carried out because there is an event in which a pregnant woman with no man is responsible for it. After being pregnant the man broke promises to marry legally. In order to prevent the traditional village is away from impuration, as well as the woman and her baby; it was decided to marry her with a dagger as symbol of men. In Marriage Act dimension, Keris marriage is unregulated, and it is considered to be invalid. In the human rights dimension, this marriage is classified to protect the human rights of women and children being hold in order to obtain legal status in accordance with Hindu religious and Customary Law Bali. But when parents make decisions by forcing a child to marry a dagger, because his girlfriend is from a low caste or because of inheritance, then there has been a violation of human rights.

*Keyword: Married, a dagger, human right, pregnant*

### **I. INTRODUCTION**

Marriage as one of the important stages in human life has a foundation of philosophical, juridical and sociological<sup>1</sup>. The three components become the basis for the implementation of customary law marriages, with the aim that the implementation of the marital run as expected.

The philosophical foundation of marriage is based on the values of Pancasila and the values of Hinduism. As the application of the philosophical foundation, the

---

<sup>1</sup> Ida Ayu Sadnyini, 2015, *Dinamika Sanksi Hukum Adat Dalam Perkawinan Antar-Wangsa Di Bali (Perspektif HAM) (disertasi)* Program Doktor Ilmu Hukum Program Pasca Sarjana Universitas Udayana, h. 1.

marriage is valid if it is conducted according to religion and belief<sup>2</sup>. The juridical basis is the marriage Act No. 1 of 1974 (hereinafter abbreviated to Law No. 4 of 1974) and Government Regulation No. 9 of 1975<sup>3</sup>. That is the formal judicial applicable law is the law of each religion and belief for each of its adherents. Other regulations governing marriage so far been regulated in Law No. 1974 declared null and void. The purpose of the other regulations is customary provisions, so that the provisions which are not in accordance with Act 1 of 1974 becomes null, is no longer valid. Such assuming is only related to formal juridical, sociologically, customary provisions that do not fit are still prevailing in society. But customary law in accordance with Act 1 of 1974 is allowed to live as the values of local wisdom. Sociological grounding of customary law marriage receives recognition from the community.

The grounding of the abovementioned is held with the aims that marriage couple gets happiness. But there is an event when the marriage did not go as expected, so it can lead to family conflicts, conflicts of society, even the inner conflict of those who suffered the fate of marriage that was not as he had hoped. The cause of an unhappy marriage, among others: differences in caste, forced marriage, being pregnant with no man who would be responsible to marry, the marriage is then carried out by families with a way to marry with another man or with a dagger.

Based on the research results in the regencies of Gianyar and Tabanan, marriage cases among women who are already pregnant with a dagger was done for various reasons, such as old age woman who wants to have a child later after being impregnated by her boyfriend does not want to legally perform marriages. The goal is that wealth gained from his efforts alone (*Gunakaya*), can be passed on to his son. There is also a pregnant woman with no man who wants to admit it. There is another woman who does not have a brother after being impregnated by her boyfriend is forbidden to marry by his parents, and then his son mated to maintain the lineage. Strangely after her unborn child was born, the woman was permitted to marry by their parents. Another

---

<sup>2</sup> Soerjono Soekanto, 1992, *Intisari Hukum Keluarga*, (Selanjutnya disebut Soerjono Soekanto I) PT Citra Aditya Bakti, Bandung, p. 5.

<sup>3</sup> *Ibid.* p.8

anomaly is found in *tri wangsa* society<sup>4</sup>, his daughter got pregnant by men is not equal or different religion, different tribes, are not permitted to mate with males who impregnates, because the caste is considered to be inferior, even mated with a *keris*<sup>5</sup> or a *adegan*<sup>6</sup> (pole).

Based on the background above the problems raises with the title "Women Marriage with Kris in Bali" In Three Dimensions. The title can be searched from three basic problems, namely:

- a. How is woman marriage with a dagger from the perspective of Hindu Religious and Customary Law Bali?
- b. How is woman marriage with a dagger seen from the perspective of Law No. 1974 (Marriage Act)?
- c. How is woman marriage with a dagger from the perspective of human rights?

## Research methods

a. The research method applied in this study is kind of empirical law or a model study of the implementation of law in society (socio-legal research)<sup>7</sup>. The location of the research is in Bali Province by taking the case in the village of Sesandan, Tabanan

---

<sup>4</sup> *Tri wangsa* is social stratification of the Hindu community in Bali called *Catur Wangsa* comprising, Brahmin, Ksatria, weisya, and the Sudra dynasty. This division did not show differences in the degree of man, but show differences in offspring that were closely related to conduct worship / reverence for ancestral spirits. So *Tri Wangsa* is a society where the dynasty Sudra is not included in it.

<sup>5</sup> *Keris* is a weapon made of iron with different number of curvatures as a symbol of virility that is used as a male symbol or symbols *Purusa*. *Keris* have supernatural powers for the owner who is believed to bring salvation, luck, and magic, even immune to the holder.

<sup>6</sup> *Adegan* or scene also symbolized as men. The scene is used because not all families have a dagger, so as to find a male symbol can be used as a substitute for a dagger scene. But this time a dagger easily purchased in the market, but a dagger as it does not have supernatural powers, but still can be used as a symbol of male / *purusa*.

<sup>7</sup> **Adrian W. Bedner dkk.**, 2012, *Kajian Sosio-Legal*, Penerjemah Tristam Moelyono, Pustaka Larasan Bekerjasama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, h.3.

regency. The socio-legal approach<sup>8</sup> was applied in this study. The data are of two kinds, primary and secondary data. Primary data were collected through in depth interviews with informants and respondents. Secondary data collection was done with the study documentation using a card system. The data were analyzed using analytical models A. Matthew B. Miles and Huberman<sup>9</sup> that is by the following steps; the first data collection, data reduction, data presentation, final conclusion and verification.

## DISCUSSION

### A. Keris Marriage from Dimension of Hinduism and Customary Law of Bali.

Marriage in Hinduism is part of the *Catur Asrama* (four stages of human life) called *Grehasta* i.e. stage of married life. Validity of a marriage is that the one that has been implemented through a ceremony. The ceremony is one of the Hindu religious frameworks, which is a series of human activities to get closer to Almighty god *Ida Sang Hyang Widhi Wasa*, to invoke safety. The marriage ceremony is one of the *Manusa Yadnya* ceremony accompanied by the testimony, presented to *Ida Sang Hyang Widhi Wasa*, Society and *Bhuta* that is called "*Tri Upa Saksi*".

*Tri Upa Saksi*<sup>10</sup> includes: *Bhuta saksi* is offerings being offered is put on the ground that serves as purification (consisting of *biakaonan*, *pakala-kalaan*, *padengen-dengenan*, offering and so on as a symbol of *bhuta* witness). *Manusa saksi* that is the marriage ceremony is witnessed by the public, in which *prajuru* (traditional village leader) is as representatives of human witnesses. *Dewa saksi* is offerings that is located above, is dedicated to *Betara Surya*, the God of Sun and the ancestral spirits in the family temple, and then the bride and groom do worship as the embodiment of the god witnesses. Thus the order of the marriage ceremony to be performed according to Hindu religion, with

---

<sup>8</sup> Ian Curry-Sumner et al; 2010, *Research Skills*, School of Law Utrecht University, Ars Aequi Libri Nijmegen, p. 6.

<sup>9</sup> Matthew B. Miles and A. Michael Huberman, 1992, *Analisis Data Kualitatif*, UI Press, Jakarta, h.

<sup>10</sup> I Gusti Ketut Kaler, 2005, *Butir-Butir Tercecer Tentang Adat Bali*, CV. Kayumas Agung Denpasar-Bali, h. 120.

no exception to the kuris marriage, the difference in Keri's marriage the position of the man is replaced with a kuris that has been decorated.

Based on the research<sup>11</sup>, the process of *Bhutan sacs* and *Dewar sacs* ceremonies done on the house yard is not allowed to be conducted in the family temple. Therefore, the marriage procession is considered to be *leteh*, thus the marriage ceremony mentioned above is also viewed as purification ceremony to "pregnant woman", are spiritually and physically, to be free of bad influences. *Manusa saksi* is appropriate to be witnessed by indigenous leader and small families. In general, a troubled marriage like a dagger marriage ceremony is not made massive let alone invite a large family, just witnessed by a small family, the most important thing in this case the marriage is considered legitimate by the traditional village member.

The purpose of marriage according to Hindu thought, namely:

1. *Dharmasampatti* means couples should be able to realize the implementation of *dharma* in their everyday life, both related interests as social beings, as well as individuals. The duty of married couples in context as social beings must be able to perform their function as *Krama Desa Adat* 'member of traditional village' in the effort to conceptualize / actualize, activate, and preserve Hinduism, customs, and culture, as well as to conduct duty as a good citizen. As an individual being they must be able to exercise the rights and obligations as a husband and wife who are listed in the *Manawa Dharmacastra* Teaching.
2. *Arta*, realizing household economic prosperity, these obligations are not only borne by the husband, at the time of the emancipation of women a wife is also obliged to make a living for the family.
3. *Praja*, a husband and wife are expected to give birth of *suputra* offspring. In *Manawa Dharmacastra* IX.96 disclosed that "woman was created to be a mother and a man was created to be a father".

---

<sup>11</sup> Ida Bagus Ketut Artawa Wijaya, Pendidikan 1, Status sebagai Walaka, Wawancara hari Selasa, tanggal 15 September 2015, Alamat Gria Jumpung Desa Sesandan Tabanan.

4. Rati means to realize psychological happiness in this case how to realize the full household atmosphere of togetherness, harmony, mutual love, mutual respect, intimate, joy and love each other and enjoy sexual life.

Having known the meaning of the purpose of marriage according to Hindu view, the marriage occurred among pregnant women with a dagger in Bali is not in accordance with the teachings of Hinduism. Thus marriage according to Hindu view is essentially the existence of emotional and physical bond between the men who are called husbands and the woman called as a wife. In the case of marriage with a Keris, men who had been invited by a married woman do not exist, so consequently the marriage is considered invalid.

For the validity of customary and religious marriages, the marriage system with a dagger is the best solution. In the Dharmacastra teaching, marriage with a dagger is not any mentioned, but the explanation in *Atho Dacamodhyayah* of book X.5<sup>12</sup>, it is mentioned that the sacred marriage is a valid marriage according to religious law, while children born of the invalid marriage is considered to *candala* / the abject. So the purpose of marriage is done with a dagger so that the born child does not become a *pariah* or in Bali he is called *bebinjat* child.

In the customary law, *awig awig* is not mentioning of marriage with a dagger, but there is some *awig-awig* set if there is a pregnant woman without being admitted by a man, it is arranged in the *Awig-Awig* of Traditional Village of Panjer Denpasar, article V, section 2, related to *Nyapian* sub-section 70 are set:

- (1) If there is pregnant woman outside of marriage, the woman must be first confirmed who the man has impregnated her
- (2) The question was conducted by his parents, the sub-village head and customary village head, this process must be done carefully and confidentially.
- (3) When it is known, marriage ceremony must be done so as to get legitimation according to tradition and religion.
- (4) If the man does not want to do the marriage ceremony, then the case is delivered indigenous villages.

---

<sup>12</sup> Gede Pudja dan Tjokorda Rai Sudarta, 1978, *Manawa Dharmacastra atau Weda Smrti Compendium Hukum Hindu*, Lembaga Penerjemah Kitab Suci Weda, p. 619.

- (5) If a man is not willing to perform the marriage ceremony, the parents of the woman is obliged to adopt the child who is born to be his granddaughter.
- (6) If the man has a wife and does not want to marry legally, he is obliged to admit it and adoption of the baby can also be done.
- (7) If the woman is not willing to marry, parents are required to adopt the child as his grandchild.
- (8) If the man is from outside the region, he should be forced to marry her, if he is not willing to, he must be reported to the authorities<sup>13</sup>.

In the *Awig-Awig* (customary laws) of the Village of Sasetan Denpasar<sup>14</sup>, it does not set the subject of a pregnant woman. *Awig-awig* of Medahan Village of Gianyar<sup>15</sup> regency is slightly set in the *Pancamas Sargah, Sukerta Tata Pawongan* article 3 concerning *Sentana Pawos* 55 (3), which reads in case the marriage is not valid until the birth, in order that the children are not called *babinjat* or *astra*, the ceremony should be performed. In the *Awig-Awig* of Kesiman Customary Village it is set in *Pancama Sargah Sukerta Pawongan* article 1 concerning *Pawiwahan Pawos* 59 (2) which reads: If there is *lokika Sanggraha*, the marriage ceremony must be carried out for the woman who is pregnant outside the marriage.

Based on some of the above *awig-awig*, it was not found any marriage performed with a *keris* 'dagger', but in practice to marry women who are pregnant without a man according to local custom was performed by using a dagger as a symbol of male to endorse the fetus / child in the womb. The goal is that the customary village is not be defiled, as well as to the pregnant women. After the ceremony being carried out, the babies born to be holy, so it will not be called a bastard or *bebinjat*. Children outside the marriage process are of two kinds, namely: children born from women *sudra* caste are called "*bebinjat* child ", while children born from *tri-wangsa* are called "astra child"<sup>16</sup> ".

---

<sup>13</sup> Customary Law of Panjer Village 1988

<sup>14</sup> Customary Law of Sasetan Village, Sub-district of South Denpasar, 2002

<sup>15</sup> Customary Law of Medahan Village, Sub-district of Belahbatuh Gianyar, 2009

<sup>16</sup> Gede Panetja, 1989, *Aneka catatan Tentang Hukum Adat Bali*, Guna Agung, p.26



VE. Korn<sup>17</sup> obscure the understanding of *bebinjat* and *astra*, but I Gede Wayan Pangkat clearly distinguishes between *astra* children from *bebinjat* children. *Bebinjat* child is a child whose biological father is unknown, while the *astra* child is a child whose biological father is known.

In Bali the deeds of men who do not want to be responsible towards women being impregnated according to Widnyana is considered to be customary decency offense<sup>18</sup> called "*lokika Sanggraha*", which can be punishable by using Article 359 of the Book of *Adi Gama*, with a fine of 24 000 pieces of Chinese coin.

Balinese people highly respect the value of the sanctity of (religious), and then the entire disharmony that occurs is always closed with a ceremony<sup>19</sup>. Religious ceremonies conducted so-called "*pawidi Widana*" is intended to cleanse / purify a pregnant woman without a husband, also aims to restore the balance that has been disrupted by the actions that violate the norms of regulated religious and customary laws, the *awig-awig* of traditional village. The marriage of pregnant women without husbands can also be done by borrowing a man who is ready to be a temporary husband during the ceremony. This marriage is called "*pseudo*"<sup>20</sup> marriage because men are not legally responsible / not have an obligation as a husband in general. The ceremony aims to balance the spiritual community has been disrupted. The ceremony also serves as the sanctions imposed on women mated with a pole of traditional houses building or to be signed by the struck of *kulkul* as a sign of the village resentful<sup>21</sup>.

Looking into the matter, the one who is punished by the public is a pregnant girl who is the victim of the male persuasion. Indigenous peoples and the rules are more

---

<sup>17</sup> VE Korn, 1978, *Hukum Adat Kekeluargaan di Bali* (translated by I Gde Wayan Pangkat). Biro Dokumentasi dan Publikasi Hukum Fakultas Hukum dan Pengetahuan Masyarakat Universitas Udayana, h. 1.

<sup>18</sup> I Made Widnyana, 1987, *Eksistensi Delik Adat Lokika Sanggraha Dalam Pembangunan Hukum Pidana Nasional*, Disampaikan pada Orasi Imiah Dalam Rangka Jubellium Universitas Udayana, Tanggal 29 September 1987.

<sup>19</sup> I Ketut Artadi, 2006, *Hukum Dalam Perspektif Kebudayaan*, (Selanjutnya disebut Artadi I), Pustaka Bali Post Denpasar, h. 71.

<sup>20</sup> VE. Korn Op.Cit., 27

<sup>21</sup> I Ketut Artadi, 2007, *Hukum Adat Bali Dengan Aneka Masalahnya*, dilengkapi dengan Yurisprudensi, (Selanjutnya disebut Artadi II), Pustaka Bali Post, h. 225.



inclined to punish the victim, rather than punishing the causer<sup>22</sup>. Customary laws still discriminate against women by men, according to history the laws were created by man, so that man can dominate women.

Based on Yurisprudensi <sup>23</sup>*Raad Kerta Denpasar Decision* dated June 9 1938 93 / Civeil, gives children who are born of the "forced" marriage the inheritance rights of inheritance transmitted from *Pancar Wadu*, the grandfather from his mother. *Tabanan Kerta Raad* decision dated August 7, 1947 No. 17 / Civiell, considered that children born to mothers who got married after being pregnant, is the legitimate child of her legitimate husband. It means that man who marries the mother is considered the father of the baby.

#### **B. Kris Marriage Seen from Dimension of Act 1 of 1974.**

Since the issuance of Law No. 1 of 1974, then this law applies nationwide including for Hindus in Bali. However, the Act 1 of 1974 is a unique unification because they appreciate and respect the diversity of socio-cultural conditions of Indonesian society; it is referred to the legal pluralism in the law of marriage. Legal pluralism is a situation where one or more of the applicable legal system in place and the same time<sup>24</sup>. That is the implementation of customary legal system, religion, and national legal system simultaneously.

In Article 1 of Law 1 of 1974, marriage is the emotional and physical bond between a man and a woman as husband and wife for the purpose of forming an eternal happy family based on the believe of God ". Religious basis in a marriage is expected to strengthen the institution of marriage itself with the purpose that marriage can be achieved. Article 2 states that "marriage is lawful when it is conducted in accordance with the law of each religion and belief". Thus for Hindu marriage should be legalized in accordance with the provisions of the Hindu law. However, the procedure for approval of marriage for Hindus in Indonesia is not the same, because it is influenced by the local culture. Similarly, the procedure for approval of marriage for Hindus in Bali

---

<sup>22</sup> ibid

<sup>23</sup> Gede Panetja Op.Cit p.27

<sup>24</sup> Rikardo Simarmata, 2013, *Pluralisme Hukum Dan Isu-Isu Yang Menyertainya*, Perkumpulan Huma, p.7.

also varies; it is greatly influenced by of *panyangaskara* the presence of *tri upasaksi* the marriage ceremony as described above.

Marriage of pregnant women with a dagger is not equal to marriage in general. This marriage according to Law 1 of 1974 is an invalid marriage, because of the absence of emotional and physical bond, the absence of men as husbands, thus Article 2, paragraph 2 of the registration of marriages also cannot be done. If he did a second marriage later, she does not need to be divorced, and widowed so that both customary marriages are the first marriage according to Law No. 1 1974. As a result of the law of children born just have a civil relationship with her mother. The birth certificate was made on the basis of Certificate of local officials stating that the child was the son of a woman. As experienced by Brahmin woman named Ida Ayu Egayani<sup>25</sup>, with the child who is born in a birth certificate referred to Ida Ayu Andira Nika Perti. Egayani cases occur because of a lower-caste of the boy-friend, so the relationship was forcibly terminated by her parents. Such events occur also in Gianyar against *ksatria* woman named Desak Putu Indahyani. His parents prefer their daughter to marry with a dagger to being married with *sudra* caste male. The hidden goal is to get offspring to maintain the patrilineal system / *kapurusa* that heritage does not fall on the family side. Events maintaining legacy systems of *purusa* order not to fall into the hands of families side was also experienced by Ni Nengah Astini, the case is purely because her mother, Ni Wayan Sukarini<sup>26</sup> wanted descendants will become as a successor to his legacy at a later date, she was willing to marry a dagger on the instructions of legal structures (elders). After having delivery, Astini re-married her initially partner, I Gede Agus from the same village, Banjar Sekartaji. Her marriage certificate is based on second marriage. In the national law the right of children is born of the second marriage. However Sukarini believes that his grandson would be the legal heirs in the future. The same case also related to the inheritance also occurred to Ni Ketut Nandri<sup>27</sup>. Other Kris marries case,

---

<sup>25</sup> Ida Ayu Egayani, Umur 44 Tahun, Pendidikan SMP, Kawin Keris Tahun 2011 (tidak memiliki akta perkawinan), melahirkan anak 16 Juni 2011, Akta Kelahiran Anak tertanggal 30 Mei 2012.

<sup>26</sup> <sup>26</sup> Ni Wayan Sukarini, Umur 60 Tahun, Pendidikan SD, Pekerjaan Dagang, Alamat Banjar Sandan Tengah Desa Sesandan Tabanan.

<sup>27</sup> I Putu Andi, Umur 40 Tahun, Pendidikan S1, Anak dari Ibu Ni Ketut Nandri Br Sandan Tengah Desa Sesandan Tabanan

purely due to pregnancy with no one wants to take responsibility. After her son was born and then raised by his grandfather and made the birth certificate of his grandfather by the Marriage Act. The event is not in accordance with the customary law, *awig awig Desa Pakraman* that his mother is registered as the baby's sisters; the grandchild is adopted as a son. There is a special ways that is implemented by indigenous peoples in protecting the dignity of babies born without a father, that's the point the law was changed after the beginning of community members create changes itself. Kris marriage cases then occurred in the village of Timpag<sup>28</sup>, Meliling<sup>29</sup> and Sesandan Tabanan<sup>30</sup>.

Children born within non valid marriage are termed outside marriage children of whom they only have a civil relationship with his mother and his mother's family<sup>31</sup>. Those children are stipulated in Article 43 paragraph 1 and 2 of Law 1 of 1974. The position of such children set out in paragraph 2, promises to be regulated further by Government Regulation, but until now this regulation have not appeared. Until finally the case of Hj Aisyah Mochtar alias Machica<sup>32</sup> raised to the surface up to the Constitutional Court. Constitutional Justice Maria Farida Indrati found in the perspective of legislation, differences in the treatment of children because of specific reasons was not caused by the actions of the child in question, can be categorized as discriminatory. The provision is the possibility for children to have a civil relationship with his biological father. It is the risk of a marriage that is not recorded or marriages conducted according to the Marriage Act. Thus the Act 1 of 1974 it seems still ambiguous in determining the validity of a marriage. That is if keris marriage is legitimate according to custom and religion, marriage should be registered. In this study, it was not found the Marriage Act which states that a dagger symbol of man as a

---

<sup>28</sup> Gusti Ayu Sri, Umur 30 tahun, Pendidikan SMA, Kawin keris dilakukan pada umur 17 tahun Desa Timpag Tabanan

<sup>29</sup> Ni Wayan Sriasih, Umur 23 tahun, Kawin Keris dilakukan pada umur 16 tahun Desa Meliling Tabanan.

<sup>30</sup> <sup>30</sup>Ni Made Tiwi dengan anaknya Ni Ptu Intan, Gusti Ayu Asriani dengan anaknya Gusti Ayu Sri.

<sup>31</sup> I Ketut Sudantra, I Gusti Ngurah Sudiana, Komang Narendra, 2011, *Perkawinan Menurut Adat Bali*, Udayana University Press, Denpasar Bali, h. 135.

<sup>32</sup> Taufiqurrohman Syahuri, 2013, *Legislasi Hukum Perkawinan Di Indonesia, Pro-Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi*, Kencana Prenada Media Group, h. 199-200.

husband. The field findings only indicate a birth certificate by a Certificate from the official authorities in the village, stating that the child is the child of a woman. Consequences of Keris marriage in child's birth certificate do not mention the name of his father, meaning that children will only have a civil relationship with her mother.

### C. Kris Marriage Seen from Human Rights Dimension.

If you look at the dimensions of Hindu Religious and Customary Law of Bali, the Hindu community has been seeking how to protect the baby to be borne by pregnant women not to violate Human Rights (hereinafter called HAM). Similarly, pregnant women are not considered to contaminate traditional village. In the year 1950 the women and children who have bad luck, being pregnant without a husband and was born without a father was labeled negatively by the public, so that along his lifetime the label permanently attached to him, he will always be reminded by the offense he had done previously.

A case of human rights violations that happened in the village of Sesandan, in 1958 was born a boy without a father was given the name *I Butuhan* by the people; his mother named was named Men Butuhan. During his lifetime he has never seen the world because being blind as a result of failed abortion by his mother. During his life he was forbidden to pray at the temples in local environment because they are considered impure. According to Ni Nyoman Buda<sup>33</sup>, he was resigned to the situation because in ancient times families did not conduct a Keris marriage for her, so she and her son are considered impure until this study was conducted.

Pregnant women are forced to marry with the Keris is not because men who impregnate irresponsible for the fact, but because of the caste of men is lower. There are also women who mated with a dagger to meet the wishes of the parents so that their inheritance do not fall on the family legacy of another is contrary to human rights. As it was narrated by Ni Wayan Sukarini<sup>34</sup> "I deliberately mated children with a dagger that

---

<sup>33</sup> Ni Nyoman Buda, age 75 years, illiterate (no educational back ground) Address Banjar Sandan Sesandan Lebah Tabanan.

<sup>34</sup> Ni Wayan Sukarini, age 60, Elemntaray School, Occupation seller, interviewed September 15,2015. Address Banjar Sandan Sesandan Lebah Tabanan.

my grandchildren would become experts, so as not sued by his father. After giving birth to my grandson then I let my daughter marry her boyfriend back. Kris marriage was also triggered by differences in castes that level of the men who impregnate the woman is lower than that of the women, as the case of Egayani described above.

Having learnt about Keris marriage, of which it means women who became pregnant without having the responsibilities of men who impregnate them, means that the man broke his promise and would not perform legal marriage. From the human rights dimensions of the battery men violated Article 10 of Law No. 39 of 1999 on Human Rights (hereinafter called the Human Rights Act). Paragraph 1 set everyone has the right to form a family and continue the descent through legal marriage. Paragraph 2 valid marriages can only take place on the free will of the prospective husband and wife candidates are concerned, in accordance with the provisions of the legislation. In addition to the above article men also violate the rights of children set out in Article 52 paragraph 1 every child is entitled to protection of the elderly family, community and country. Paragraph 2 Children's rights are human rights and for the interests of children's rights that are recognized and protected by law since he was in the womb.

In this case the Customary Law of Bali has done legal protection for unborn children in a way to legalize marriage with a dagger, so that children are legitimate according to custom and religion. Article 53 paragraphs 2 since birth, have the right to a name and citizenship status. This is in accordance with the teachings of Hindu that arrange Relations among Human that is so-called Tat Wam Asi doctrine<sup>35</sup>.

Cases of pregnant women being forced by parents to marry a dagger due to the caste of the men is lower than that of the woman or it is caused as inheritance, then from the point of view of human rights his parents who violate the human rights of children and grandchildren, article 10, paragraph 2, Article 52, Article 53 for its own sake, do not understand the feelings of children who become pregnant without a husband but also the fate of her grandchildren were born, will have the birth of black history.

The case of Keris Marriage as desired by parents is a social development in the field of traditional marriage laws in Bali since the Age of Reform which will bring

---

<sup>35</sup> I Made Suastawa Dharmayudha, I Wayan Koti Cantika, 1991, *Filsafat Adat Bali*, Upada Sastra, p. 27.

changes to the law. Prior to the developments in question, the parents do not want to take the risk of severe, because it involves both the child and grandchild names will be blackened forever. Social change is more apt to occur<sup>36</sup> when people often hold contacts to other people or have an advanced education system, the social layer open system. Therefore, based on Sadnyini<sup>37</sup> research social stratification of Hindu society, namely the caste system changes lead to a color system that is both horizontal and open.

In a situation of social change, the legal function should be reflective<sup>38</sup> means that the law can reflect the wishes of society so that the law is neutral impartiality, so that no violations and discrimination. The law will affect marital problems, divorce, reproductive rights, rape, and violence against women<sup>39</sup>.<sup>40</sup> Pancasila can be used as collateral to ensure harmony prevailing regulations<sup>41</sup>, so there is no contradiction with the existing regulations, both vertically and horizontally. Dasi Astawa declared legal products such as laws; regulations may be changed or enhanced in accordance with the dynamics of the development of civilization and the people of Bali. But when law is faced with culture and local genius of Balinese, especially in contact with customs and religions, many obstacles occur. In this case the legal structures are expected to apply intelligent and wise, which can adjust the applicable law with local wisdom.

Criteria of living customary law, which is in accordance with indigenous peoples in the legal sense of the atmosphere of freedom is clear in the criteria, that is Pancasila values and principles contained in the 1945 Constitution that led to the human

---

<sup>36</sup> Hendrojono, 2005, *Sosiologi Hukum Pengaruh perubahan Masyarakat dan Hukum*, Srkandi Surabaya, p. 50.

<sup>37</sup> Ida Ayu Sadnyini, Op.Cit.p.192

<sup>38</sup> Munir Fuady, 2007, *Sosiologi Hukum Konterporer Interaksi Hukum, Kekuasaan dan Masyarakat*, PT Citra Aditya Bakti, Bandung, p. 58.

<sup>39</sup> Niken Savitri, 2008, *HAM Perempuan Kritik Teori Feminis Terhadap KUHP*, Refika Aditama, Bandung, p.27

<sup>40</sup> Kaelan, 2010, *Pendidikan Pancasila, Pendidikan Untuk Mewujudkan Nilai-Nilai Pancasila, Rasa Kebangsaan Dan Cinta, Tanah Air, Sesuai dengan SK. Dirijen Dikti No. 43/DIKTI/Kep/2006. Proses Reformasi UUD Negara Aman Demen 2002, Pancasila Sebagai Filsafat, Pancasila Sebagai Etika Politik, Paradigma masyarakat, Berbangsa dan Bernegara*, Paradima Yogyakarta, p. 245.

<sup>41</sup> I Nengah Dasi Astawa, 2009, *Kearifan Lokal Dan Pembangunan Suatu Model Pembangunan Ekonomi Bali Berkelanjutan*, Pustaka Larasan Denpasar-Bali, p. 172.

rights values<sup>42</sup>. But the performance of the rules of human rights and women will depend on factors of lawmakers, community stakeholders, as well as law enforcement<sup>43</sup>. This is consistent with the theory of the working of the Law in the Society of William Chambliss and Robert B. Seidman<sup>44</sup>.<sup>45</sup> In contrast to the theory of Lawrence M. Friedman Legal System, which prioritizes the legal culture of society? If the law is upheld in the society's, legal culture of lawmakers, judges legal culture and legal culture of society should be in harmony or in one direction in upholding human rights and gender.

As gender fighters,<sup>46</sup> Sudarmi argued that female is not only squeezed socially but also economically, namely the inheritance rights of indigenous people of Bali, only male heirs. The author agrees with the above opinion because of the persistence of discrimination between women and men socially in this context women squeezed by the will of people who become more selfish in maintaining caste and wealth. Women also pushed by hubris men who do not want to be responsible for women who are pregnant. During pregnancy shame cannot be hidden, because of her pregnancy speak for themselves about their way of life with a negative given label of a society.

## CLOSING

### A. Conclusion

---

<sup>42</sup> Md Pasek Diantha, SH.,MS. I Gede Pasek Eka Wisanjaya, SH.,MH., 2010, *Kasta Dalam Perspektif Hukum dan HAM*, Universitas Udayana Press, h. 132.

<sup>43</sup> Muladi, 2009, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*, Refika Aditama, Bandung, p. 89.

<sup>44</sup> William J. Chamblis dan Robert B. Seidman *Law, Order, and Power, Reading, an*, 1971, Mess Addison, Wesley, p. 12.

<sup>45</sup> Lawrence M. Friedman, 1969, *The Legal System : A Social Science Perspective*, Russel Sage Foundation, New York, p. 16.

<sup>46</sup> I Nyoman Darma Putra, 2007, *Wanita Bali Tempo Doeloe perspektif Masa Kini*, Pustaka Larasan Denpasar Bali, h. 121.



1. Keris Marriage in the dimension of Hinduism and Customary Law of Bali is valid. Such marriage progressed of which originally caused by the breaking of promise of a male after causing the woman being pregnant and doesn't ready to marry legally. Further developments of this marriage imposed by parents are due to differences of caste and descent necessity in maintaining heritage.
2. Keris Marriage in the Act dimension No. Tahun 1974 is considered invalid marriage. This marriage is not recorded pursuant to Article 2, paragraph 2. However, children born gets birth certificate, and the deed mentioned as the son of a woman.
3. Keris Marriage in the human rights dimension, the solution has been done based on Hinduism and Customary Law to legalize keris marriage in Bali as a result of the actions of men who are not responsible and it aims to protect women and unborn children be in conformity with human rights principles. However, when the breakup is imposed by parents because of differences of caste and descent to maintain legacy purposes, it is the violations against women and children in the womb.

## **B. Suggestions**

The suggestion being recommended is that the central and local governments have to give special attention to the reality that exists in society, since invalid marriage is getting increased in number. Regulations would need to be made in order that women and children born of the invalid marriage will get the justice in accordance with human right principles.

## **REFERENCE**

### **Books**

Artadi, I Ketut, 2006, *Hukum Dalam Perspektif Kebudayaan*, Pustaka Bali Post Denpasar.

Artadi, I Ketut, 2007, *Hukum Adat Bali Dengan Aneka Masalahnya*, dilengkapi dengan Yurisprudensi, Pustaka Bali Post.

Camblis William J. dan Robert B. Seidman *Law, Order, and Power, Reading, an*, 1971, Mess Addison, Wesly.

**Adrian** W. Bedner dkk., 2012, *Kajian Sosio-Legal*, Penerjemah Tristam Moelyono, Pustaka Larasan Bekerjasama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, h.3.

**Ian** Curry-Sumner et al; 2010, *Research Skills*, School of Law Utrecht University, Ars Aequi Libri Nijmegen, p. 6.

**Matthew** B. Miles and A. Michael Huberman, 1992, *Analisis Data Kualitatif*, UI Press, Jakarta, h. 11.

Darma Putra, I Nyoman, 2007, *Wanita Bali Tempo Doeloe perspektif Masa Kini*, Pustaka Larasan Denpasar Bali.

Dasi Astawa, I Nengah, 2009, *Kearifan Lokal Dan Pembangunan Suatu Model Pembangunan Ekonomi Bali Berkelanjutan*, Pustaka Larasan Denpasar-Bali.

Diantha, Md Pasek, I Gede Pasek Eka Wisanjaya, 2010, *Kasta Dalam Perspektif Hukum dan HAM*, Universitas Udayana Press.

Friedman, Lawrence M. 1969, *The Legal System : A Social Science Perspective*, Russel Sage Foundation, New York.

Fuady, Munir, 2007, *Sosiologi Hukum Konterporer Interaksi Hukum, Kekuasaan dan Masyarakat*, PT Citra Aditya Bakti, Bandung.

Hendrojono, 2005, *Sosiologi Hukum Pengaruh perubahan Masyarakat dan Hukum*, Srkandi Surabaya.

Kaelan, 2010, *Pendidikan Pancasila, Pendidikan Untuk Mewujudkan Nilai-Nilai Pancasila, Rasa Kebangsaan Dan Cinta, Tanah Air, Sesuai dengan SK. Dirijen Dikti No. 43/DIKTI/Kep/2006. Proses Reformasi UUD Negara Aman Demen 2002, Pancasila Sebagai Filsafat, Pancasila Sebagai Etika Politik, Paradigma masyarakat, Berbangsa dan Bernegara*, Paradima Yogyakarta.

Kaler, I Gusti Ketut, 2005, *Butir-Butir Tercecer Tentang Adat Bali*, CV. Kayumas Agung Denpasar-Bali.

- Korn, VE, 1978, *Hukum Adat Kekeluargaan di Bali* (diterjemahkan dan diberi penjelasan oleh I Gde Wayan Pangkat). Biro Dokumentasi dan Publikasi Hukum Fakultas Hukum dan Pengetahuan Masyarakat Universitas Udayana.
- Muladi, 2009, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*, Refika Aditama, Bandung.
- Panetja, Gde 1989, *Aneka Catatan Tentang Hukum Adat Bali*, Guna Agung.
- Pudja, I Gede dan Tjokorda Rai Sudarta, 1978, *Manawa Dharmacastra atau Weda Smrti Compendium Hukum Hindu*, Lembaga Penerjemah Kitab Suci Weda.
- Sadnyini, Ida Ayu, 2015, *Dinamika Sanksi Hukum Adat Dalam Perkawinan Antar-Wangsa Di Bali (Perspektif HAM) (disertasi)* Program Doktor Ilmu Hukum Program Pasca Sarjan Universitas Udayana.
- Savitri, Niken, 2008, *HAM Perempuan Kritik Teori Feminis Terhadap KUHP*, Refika Aditama, Bandung.
- Simarmata, Rikardo, 2013, *Pluralisme Hukum Dan Isu-Isu Yang Menyertainya*, Perkumpulan Huma.
- Soerjono Soekanto, 1992, *Intisari Hukum Keluarga*, (Selanjutnya disebut Soerjono Soekanto I) PT Citra Aditya Bakti, Bandung.
- Suastawa Dharmayudha, I Made, I Wayan Koti Cantika, 1991, *Filsafat Adat Bali*, Upada Sastra.
- Sudantra, I Ketut, I Gusti Ngurah Suidiana, Komang Narendra, 2011, *Perkawinan Menurut Adat Bali*, Udayana University Press, Denpasar Bali.
- Syahuri, Taufiqurrohman, 2013, *Legislasi Hukum Perkawinan Di Indonesia, Pro-Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi*, Kencana Prenada Media Group.

Widnyana, I Made, 1987, Eksistensi Delik Adat Lokika Sanggraha Dalam Pembangunan Hukum Pidana Nasional, Disampaikan pada Orasi Imiah Dalam Rangka Jubellium Universitas Udayana, Tanggal 29 September 1987.

#### Ragulation

Ragulation No. 1 Year 1974 on marriage

Ragulation No. 39 Year 1999 on Human rights

#### Customary Law

Customary Law Traditional Village Adat Panjer Tahun 1988.

Customary Law Traditional Village Sub-district of South-Denpasar, Denpasar City, 2002.

Customary Law Traditional Village of Medahan Sub-district of Blahbatuh Gianyar Regency, 2009.

