

## STATUS OF WOMEN AFTER DISMISSED FROM MIXED MARRIAGE IN BALI'S LAW PERSPECTIVE

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### *Abstrak*

Tujuan penelitian ini untuk mengkaji perlindungan hukum terhadap perempuan apabila terjadi perceraian dari perkawinan campuran; Tingkat keberterimaan desa adat terhadap perempuan yang mengalami perceraian dari perkawinan campuran. Pengaruhnya terhadap keberadaan kaum perempuan Bali setelah bercerai dari perkawinan campuran. Metode hukum normatif menggunakan pendekatan peraturan perundang-undangan, pendekatan konsep, pendekatan sejarah dan analisis hukum dengan menggunakan interpretasi hukum. Teori yang digunakan sebagai pisau analisis adalah teori hukum, serta teori pluralisme hukum. Hasil penelitian: Secara filosofis, perlindungan hukum untuk perempuan Bali yang mengalami perceraian akibat perkawinan campuran mulai memperoleh perhatian karena bersinggungan dengan keberadaannya sebagai bagian dari warga desa adat apalagi perempuan yang semula berkasta brahmana tidak bisa kembali ke rumah deha. Merespon keberadaan perempuan yang sudah nyerod (turun kasta) akibat perkawinan campuran, desa adat umumnya mau menerima perempuan yang bersangkutan dengan membayar uang penanjung batu sebagai prasyarat untuk bisa kembali diterima di desa adat sebagaimana layaknya *krama istri* (warga desa adat yang perempuan) lainnya. Secara Hukum, pengaruhnya bagi perempuan Bali terhadap keberadaannya dalam lingkungan sosial di desa adat. Secara sosiologis, sejumlah desa adat menerima kembali dengan tangan terbuka perempuan dengan status bercerai dari perkawinan campuran, terkait kewajibannya ngayah dan haknya mendapatkan pengayoman dari desa adat juga diprioritaskan.

**Kata Kunci:** campuran, desa adat, perempuan, perkawinan

### *Abstract*

The purpose of this study is to examine the legal protection of women in the event of a divorce from the mixed marriage; The level of acceptance of traditional villages for women who experienced divorce from mixed's marriage. Its influence on the existence of Balinese women after divorce from mixed's marriage. The normative legal method uses a statutory approach, conceptual approach, historical approach and legal analysis using legal interpretation. The theory used as an analysis knife is legal

theory, as well as the theory of legal pluralism. Research results: Philosophically, legal protection for Balinese women who experience divorce due to mixed's marriage begins to gain attention because it intersects with its existence as part of traditional village residents, especially women who were originally Brahmin caste cannot return to their homes. Responding to the existence of women who were sick (down the caste) as a result of mixed's marriage, traditional villages generally accepted the women concerned by paying peninsula stones as a prerequisite to being accepted into traditional villages as other krama wives (women traditional villagers). By law, the effect is for Balinese women of Balinese women in their existence in the social environment in traditional villages. Sociologically. a number of traditional villages received back with open arms women with divorced status from mixed's marriage, regarding their obligations and their right to receive protection from traditional villages was also prioritized.

Keywords: mixed's marriage, traditional village, woman

## 1. Introduction

Discussing the relationship between the state and citizens in the life of the nation state is essentially talking about a relationship of power, which is between the ruling (government carrying the power of the state) and being controlled (citizens who are now citizens). In relation to the relationship between the state and citizens, citizens can appear as individuals or can appear as groups.

Theoretically there are 3 (three) state responsibilities, including covering: respecting, protecting, and restoring all aimed at citizens. In realizing its function in the practice of the administration of the Republic of Indonesia, for example, the existence of a state appreciation for the unity of indigenous peoples (KMHA) guaranteed constitutional rights contained in the provisions of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Likewise the state provides fulfillment, protection, respect, and enforcement of human rights (HAM) is a state obligation contained in the provisions of Article 28 I paragraph (4). Article 29 of the 1945 Constitution of the Republic of Indonesia, guaranteeing freedom of religion, including recognizing the existence of religious law in the theory of legal pluralism.

Jimly stated that every citizen has rights that must be recognized (recognized), by the state and must be respected (protected), protected (protected), and facilitated (facilitated), and fulfilled (fulfilled) by the state. Instead citizens have obligations towards the state which is the right of the state to be recognized (respected), respected (respected), and complied (complied) by its citizens (Asshiddiqie, 2006).

The reciprocal relationship between the state and citizens is in line with the views of Hiariej, and Stokke defines the politics of citizenship as a struggle for membership, legal status, rights and substantive and institutionalized participation, or in other words, as a struggle for cultural, juridical, social and political justice (Hiariej dan Kristian Stokke. 2018). The state as an organization of power organizations that carry out common interests acts to protect, protect and restore citizens. The politics of citizenship in this context is viewed from various perspectives to show how citizens and citizenship are the main focus of the study. Study on the issue of citizen involvement in public affairs. The scope of citizen involvement is actually very diverse when examined from a study of developing multiculturalism with varying characteristics in each region in the archipelago. Multiculturalism can be said simply as a recognition of cultural pluralism. Cultural pluralism is not a "given" but a process of internalizing values in a community (Hanum. 2005).

This citizenship study begins by identifying various forms of collective action, especially social movements, groups of oppressed or excluded individuals or individuals who struggle to claim citizenship. A general understanding is that citizenship is a matter of membership in a society which forms the basis of a formal status of a citizen along with the rights and active citizenship associated with that status (Delanty, G. 2000). According to Delanty, that modern citizenship is formed from four interrelated dimensions: membership, legal status, rights and participation. Meanwhile, the dimensions of membership and legal status are more related to the issue of cultural and juridical inclusion in the community of citizens, rights and participation relating to ownership of rights and acceptance of obligations that arise from the inclusion process.

These four dimensions are key components of citizenship although the weight of the emphasis varies in each approach. This is very clearly demonstrated in the emphasis on individual rights in the liberal citizenship approach, focus on political participation in civic republican approaches, and focus on the process of becoming part of society and participation in a communitarian approach (Dagger, R. 2002).

The membership dimension emphasizes that citizenship is based on a distinction between those within and outside the community, but the meaning of the community itself and the criteria for entry vary according to time and space. The process of fusion of citizenship and nationality makes the nation a universal basis for defining the political community of citizens. However, even this nation community can be formed in a variety of ways. A basic distinction is often made between ethno-cultural and juridical-political constructs of nationality, that is, the nation's community is built through a cultural essence or the formation of a state based on territory. France and Germany are often used as examples of the ideal type of these two models. While nationality in France includes people who live

under the same legal banner and legislative body in a territory, German nationality is based on an idea of an ethnic community with strong ties to the history of the homeland (Hiariej dan Kristian Stokke. 2018).

The model of citizenship of the nation state is assumed to be in harmony with the condition of Indonesia. This model accommodates gender responsive elements of various contextual variations in the formation of nationality. This model also faces challenges because of cultural diversity and political identity under the umbrella of a nation that is considered homogeneous. Sally E. Merry goes on to refer to legal pluralism as *generally defined as a situation in which two or more legal systems coexist in the same social field* (Nurbani. 2013). The view of pluralism by Sally E. Merry, is focused on the application of two or more legal systems that live side by side and develop in social life in society. This means, between state law and local law together in people's lives.

The purpose of this study is to find suitability between legal provisions in the 1945 Constitution of the Republic of Indonesia as a juridical basis for political constitutional legal pluralism. The rule of law joints referred to in Article 1 paragraph (3), both horizontal and vertical (Gede. 2016). Joint law state, the point is the law is the highest source in regulating and determining the mechanism of legal relations between the state and society or between members of the community (Bagir Manan. 2003). Law as the basis of government action must guarantee legal certainty, be made democratically, and guarantee personal rights, justice and dignity, and social welfare (Gede. 2016).

The addition of the formulation of human rights to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) is not solely because it wants to accommodate the development of views on human rights that are increasingly important as a global issue, but because it is one of the requirements of the rule of law . The extent to which the state provides protection against the implementation of human rights, today is often used as an indicator to measure the level of civilization, the level of democracy and the level of progress of a country.

The formulation of human rights included in the 1945 Constitution can be divided into several aspects, namely: 1) human rights relating to life and life, 2) human rights relating to family, 3) human rights relating to education, science and technology, 4) human rights relating to work , 5) Human rights related to freedom of religion and belief in belief, freedom of attitude, opinion, and association, 6) Human rights relating to information and communication, 7) Human rights relating to security and protection from degrading treatment and human dignity, 8) Human Rights related to social welfare, 9) human rights are related to equality and justice, and 10) human rights are obliged to respect the rights of people and other parties.

If the formulation of human rights in the 1945 Constitution has been able to be implemented consistently, both by the state and by the people, the impact that can be caused is the rate of improvement of the quality of civilization, and an increase in the quality of democracy. Moreover, the strengthening of customary law communities (MHA) reappears in the amendments of the Constitution.

Law Number 1 of 1974 concerning Marriage is an arrangement that accommodates various matters within the scope of marriage, which includes the basis of marriage, conditions for marriage, marriage prevention, marriage annulment, marriage cancellation, marriage agreements, rights and obligations of husband and wife, property in marriage, termination of marriage and its consequences, child status, rights and obligations between parent and child, representation and other provisions. Marriage as regulated in article 1 of the Marriage Law is a physical 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 Godhead of the Almighty. Legitimate marriages in Indonesia, are marriages that are conducted according to their respective religious laws and beliefs. In addition to being based on religious and religious law, marriage is also inseparable from the customary law inherent in Indonesia. One of them is marriage in Bali. Marriage in Bali itself is always closely related to Customary Law and Balinese culture.

For the Balinese Hindu community, marriage matters have a special meaning and position in the world of their lives. Marriage in Hinduism is expected to be an eternal relationship between husband and wife. The term marriage as found in various literature and the Hindu Law Book (Smriti), is known as Wiwaha. The regulations governing the management of marriages are regulations that are the source and guide in continuing the development of Hindu religious law in the field of marriage (Tjok Rai Sudharta. 1997).

In this type of marriage, marriages are conducted secretly or run together because they are not approved by the women's family. The reason for this marriage being disapproved or not permitted by one of the parents of the bride, one of which is due to the caste / house difference between the male and female parties. So far, the general public knows that there are 4 castes, namely Brahmin, Kshatriya, Vaishya, Sudra. Brahmin, Kshatriya and Vaishya are commonly referred to as Quarter.

The Nyerod marriage which is then discussed here is a marriage in which the condition of the woman has a higher caste (quarterly woman) than the man. In ancient times nyerod marriages were very much avoided and prohibited due to sanctions for those who did (Jiwa Atmaja). With the development of the age known mixed marriages between citizens and foreigners in the realm of the category of marriage in Bali does not enter into each type of marriage because in contexts outside the house or caste

as embraced by the Balinese people in general. This has resulted in consequences for the position of women after divorce from mixed marriages in relation to the acceptance of traditional villages for women who return to their families when they were still as teenage girls.

Study the real conditions on the ground regarding the relationship between human rights and Hindu marriage. At first glance, it seems that there is no significant relationship between human rights and Hindu marriage. Based on the background above, the writer feels it is important to discuss the relationship between human rights and the Hindu marriage system and try to find a Hindu marriage system that is not contrary to human rights and conduct an analysis of the system Hindu marriage is like a mixture which is contrary to the principles of human rights itself. Examine the legal consequences for women who experience divorce from Mixed Marriage.

Based on the background description, the problems that will be examined include:

1. What is the relation between the state and citizens with the citizenship political approach to Mixed Marriage?
2. What is the political approach to citizenship due to the divorce law against women from Mixed Marriage?

The purpose of this study can be formulated into a general purpose, and specific objectives. In general, the aim of the research is to develop legal knowledge in the search for in-depth truth, especially when there is a disharmony of norms in the regulation of the rights of indigenous peoples.

The specific objectives of this study are to: (1) review the laws and regulations which provide recognition of the unity of indigenous and tribal peoples and their rights. Simultaneously, at the same time conducting a study of the laws and regulations that negate the existence of customary law so that it finds the meaning of gender mainstreaming in law as part of the regulation of customary law communities. (2) review and analyze the causes of disharmony in norms in various laws and regulations concerning the recognition of the rights of indigenous peoples. It is urgent to study the relationship between human rights and the Hindu marriage system and try to find a Hindu marriage system that does not conflict with human rights and conduct an analysis of the Hindu marriage system which is contrary to the principles of human rights itself. (3) study and analyze and find a model for regulating the reconstruction of norms that can harmonize the recognition of customary communities' customary rights over the status of the dehaa of the manners of a wife who have been divorced from Mixed Marriage.

## **2. Research Methods**

This study aims to examine whether the philosophical foundation of the position of Balinese women who experience divorce from mixed

marriages from the perspective of Balinese customary law. Types of normative juridical research, namely research on the rules of law itself (legislation, jurisprudence, customary law, or other unwritten laws) and principles of law. The type of approach used is the legislative approach, concept approach, and historical approach. The conceptual approach is used by researchers to be able to find and provide answers to legal issues, especially those related to the legal consequences of divorce on the position of women from mixed caste marriages according to Balinese customary kinship law based on the principle of kinship in Balinese Adat law and also the basic principles of Mixed marriage itself. The historical approach is used by researchers to be able to understand the changes and developments that occur related to the caste system and different caste marriages. In addition this approach is also used by the writer. to trace the development of the rule of law that underpins caste-different marriages and the legal consequences of their divorce. The legal materials used are primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, 1945 Law No. 1 of 1974 concerning Marriage, Manawa dharmasastra, Awig-awig / Perarem. Secondary legal materials used to provide an explanation of primary legal materials, namely: research results, articles, and journals relevant to research.

The discussion steps are carried out using deductive-inductive reasoning. Besides that, discussion with prescriptive interpretation is also used. Therefore, this research is intended to produce arguments of new theories or concepts as an explanation in solving the problem at hand. Because in the scientific nature of the descriptive answer expected is true or false. While the answers expected in legal research are right, appropriate, inappropriate, or wrong, so that in legal research already contains value (Mahmud Marzuki, 2005).

### **3. Discussion**

#### **The Citizenship Political Approach to Mixed Marriage**

The reflection of legal pluralism is seen from the dimension of religious life that is not strictly regulated by the state law because religion itself has its own rules. These regulations are a form of religious law, which regulates religious communities, in accordance with the teachings of the scriptures. However, the existence of Hindu law itself is still a material that is constantly being investigated. Research conducted by various scholars has sufficiently guaranteed the possibility of the existence of Hindu law, which then manifests in various forms of customary law.

Scholars agree that Manawadharmasastra is a collection of laws that have been copied and composed in various forms of literary books (science) that discuss legal issues that apply to Hindu society, which in ancient times were known as Saiwapaksa. If we look at Manawadharmasastra this is a book of law whose system is divided from

chapter to chapter, which consists of twelve chapters or books called *adhyaya*. The term chapter or *adhyaya* is used more correctly when translated with the term book, so as such the *Manawadharmaśāstra* can be said to consist of twelve books, which contain various legal regulations which are usually referred to as *vyawahara* (legal titles), both regarding the field of procedure religious, civil and criminal, in addition to general teachings and judicial proceedings (Sudharta Tjok Rai, 1993).

Based on tradition, or customary law that prevailed in Bali prior to Law Number 1 of 1974, no marriage certificate was made by a uniform government agency for Hindus. The letter to ratify the marriage can be requested from the subdistrict head or village head (*prebikel*) because the official is present at the marriage ceremony which is witnessed by all members of the *banjar* where the groom is a member.

Marriage ceremonies led by *sulinggih* (leaders in Hindu religious ceremonies) are already legal marriages, both in religious and state terms because they are witnessed by the village head (*prebikel*) and sub-district heads and especially the community itself. Such is the strong role of *adat* in Bali, although there are no written provisions. After the ceremony is held at the groom's house, it must also be done at the bride's house so that the community in the village is convinced that one of the women from that place has married a man from another place.

Based on tradition or customary law in force in Bali, there are four marriage systems that can be done, besides that there is a marriage system that is prohibited from practicing because if it is done it can violate human rights and can be threatened with criminal penalties and marriages committed can be null and void by law.

The abolition of *Paswara* in 1910 did not change the way of thinking of the Balinese Hindu community regarding the marriage of different *nyerod* caste precisely a mixture of marriages between girls (women) from the Brahma dynasty caste with men from the Ksatria caste. The Balinese are much more likely to engage in intimate marriage than intermarriage. In its development there are still many Brahmin caste who cannot accept this mixed marriage. From this issue arises a problem that occurs in mixed marriages, namely how the fate of the perpetrators of mixed marriages when they have to divorce. From this arises a problem that occurs in mixed marriages, namely how the fate of the perpetrators of mixed marriages when they have to divorce. If in a normal marriage, someone gets divorced then both parties will return to their respective homes but in a mixed marriage if there is a divorce the woman cannot return to her house / house again but instead the man can return to his house again. This certainly causes problems for women, especially those related to the position of the woman both in her home family and in the community.



Furthermore, the issue of the rights and protection of these citizens must be positioned appropriately within the framework of protecting human rights without disturbing the sovereignty of the Unitary State of the Republic of Indonesia (Moh. Mahfud MD, 2010). Therefore, legal development must be carried out above the legal awareness of the community so that legal products that are born in accordance with legal behavior that live in the community, in turn can bring welfare to the community. According to Sudikno Mertokusumo (Nurhasan Ismail, 2006) "every law that is born through the mutual awareness of the people will become a social value that lives between them, in turn will become a guide for behavior, from which can be formulated legal principles and will further become the basis for the formulation of legal norms. "With words others, the principle of law reduces values to legal norms. In line with Satjipto Rahardjo's view, legal norms are spiritual meanings, and the spirit of the law is outlined in the principle of law (Satjipto Rahardjo. 2006). The implication of the legal principle of channeling spirits to legal norms causes the rule of law to have acceptance (legitimacy). Thus it can be concluded that community legal awareness is the main aspect in the formulation of legal norms. This legal fact can be understood by borrowing the triangular model of legal pluralism as stated by Werner Menski, namely there are three main types of law created by society, the state, and through religion / ethics / morality. In turn, each of the three elements is also plural in nature, that is, each element contains elements from the other two elements (Arniati, I. A. K. 2017). Pluralism of political law seeks to be an alternative way to unite elements of state law, ethics / morals / religion, and society in order to achieve a sense of community justice, where laws that accommodate gender responsive elements, women who have divorced from mixed marriages are entitled to legal protection related his role as wife's manners in a traditional village.

Nyerod marriage is one type of marriage that is legalized in Balinese traditional marriages, although in practice this marriage must be carried out by carrying a bride running away from her house secretly. The choice of this type of marriage is one of them due to the influence of a strong caste and mixed in Balinese traditional marriage. The term caste itself is actually not found in the teachings of Hinduism. In Hinduism only know the term *color* which means use and *kama*, namely the classification of a person based on talent or ability to choose his job. In India itself as a place of development of Hinduism the term *color* is also known and refers to one's talents and professions. Even in BHISAMA SABHA PANDITA PARISADA HINDU DHARMA INDONESIA CENTER Number: 03 / Bhisama / Sabha Pandita Parisada Center / X / 2002 in the weighing section explained very clearly about the color, caste and dynasty as follows: "That the Chess Vama is a teaching about the division of tasks and community obligations based on the use (talent) and karma (work) in

accordance with his life choices. That in the history of the development of Hinduism there has been a deviation of the teachings of Chess Vama into a caste or house based on one's birth (descendant / family)".

This caste system was brought to life by the Dutch in 1910, after successfully conquering Bali. The caste system was brought to life through the Government Conference (Bestuurconferentie) which took place in Singaraja on 15, 16 and 17 September 1910. The minutes of this conference later became the legal basis for the prohibition of inter-caste marriages. Nyerod marriage of this different caste or known as a mixture of upstream reefs is arranged in the Paswara Resident of Bali and Lombok in 1910 which was later changed by the resident of Bali and Lombok about. April 11, 1927, No.352, JI. C.2 and henceforth it is only called Paswara 1927. At that time, the prohibition was very strong and strict in Balinese society, aside from being sociologically the caste problem was deeply rooted in society, also because this prohibition was contained in a rule of law which had power compel.

Caste marriages at that time had very severe legal consequences for those who carried them out for both the bride and groom. The legal consequences in question starts from the reduction of the caste for the bride according to the groom's caste, the punishment of throwing it out of Bali, known as the selong for the bride and groom, even to the gni and stone slab punishment. This rock and stone slab is a death sentence carried out at that time.

Development in the field of inheritance law through legal reform, legal codification, and legal unification. The relevance of the three aspects above to the development of inheritance law that accommodates elements of gender responsiveness in the midst of patrilineal kinship (plates to purusa) is essentially a follow-up to the improvement of the national legal system through the improvement of legal substance, legal structure (institutional), and culture (culture) law. These three elements are referred to by Friedman as elements of the legal system or *three elements of legal system* (Lawrence Meir Freidman).

1951 was a very monumental year for the development of inter-caste marriages. The Bali DPRD boldly abolished the provisions on forbidden marriages of mixed uplifted coral or known as caste-different marriages. Through Paswara No.11 / DPRD dated July 12, 1951, the Bali DPRD revoked the Paswara 1910 which was later changed to become a resident of the Resident of Bali and Lombok. April 11, 1927, No.352, JI.C.2 as far as the mixture of stepping upstream reefs. In the preamble, the DPRD firmly stated that the two types of marriage (mixed and stepping upstream) must be removed because it was not in line with the changes that led to one nation, one language and one country and also the prohibited marriage was no longer compatible with state of the times. With the abolition of the provisions regarding inter-caste marriages, the

ceremonial caste / patiwangi reduction ceremony should also not be carried out anymore. This was later confirmed again in the Decree of Pasamuhan Agung III dated October 15, 2010 issued by the Pakraman Village Assembly. In the Decree of Pasamuhan Agung III in the section on Customary Law, it is explained about the implementation of marriage and divorce, in which it is stressed that the patiwangi ceremony is no longer held related to the implementation of the marriage ceremony.

Marriage in Indonesia was only regulated in a statutory regulation in 1974 with the issuance of Law Number 1 of 1974 concerning Marriage. Before the entry into force of Law Number 1 of 1974 concerning Marriage, marriage law in Indonesia was divided into various groups of citizens and various regions. This marriage itself cannot be separated from the culture that developed in society, especially as we know that Indonesia consists of various cultures, ethnicities, races and religions. Every culture, ethnicity, race and religion in Indonesia has its own form and way of conducting marriage. Like marriage in the scope of customary law in general in Indonesia does not only mean a civil engagement, but also a customary engagement and at the same time kinship and neighborhood.

Marriage in the sense of customary ties according to Hilman Hadikusuma itself has a legal effect on customary law in force in the community concerned. The legal consequences of this have existed since before the marriage took place, for example with the relationship of marriage which is a flat of relatives (the relationship of children, single girl) and rasan tuha (the relationship between parents of the family of the prospective husband and wife) (Hilman Hadikusuma) After this marital bond occurs the rights and obligations of parents (including family members/relatives) according to local customary law, namely in the implementation of the ceremony. In general, all religions assume that marriage is a sacred thing that must be done by fulfilling the commands and teachings of each religion. According to Hindu law, marriage is a bond between a man and woman as husband and wife to arrange proper sexual relations in order to get offspring of a son who will save the spirits of his parents from the Fire Put, which directs them to ritual ceremonies according to Hindu Vedic religion. Smrti. If this marriage is not carried out with a ceremony according to Hindu law then the marriage is considered invalid (G. Pudja).

Marriage as a legal event will certainly have legal consequences for husband and wife in marriage. If seen in Law No. 1 of 1974 concerning Marriage, this effect will arise in various aspects in household matters, such as related to the rights and obligations of husband and wife, joint property in marriage and the position of children born from the marriage. The rights and obligations of husband and wife are very clearly regulated in Law No. 1 of 1974 concerning Marriage in Chapter IV, starting from article 30 to article 34.

Law No.1 of 1974 concerning Marriage is seen as accommodating modern forms of family which are no longer rigid as in traditional law, such as husband and wife have the same position in the household. This is certainly different from what happens in customary law, we often see positions between husband and wife that are not the same. There is a custom that determines the position of a more dominant husband, there is also a custom that determines the position of a more dominant wife. But with the development of the times, customary law also began to adjust to existing changes. The position of the wife begins to be aligned with the position of the husband so that the wife is not only considered a complement to the husband.

In addition to national law and customary law, religious law also has a view of the rights and obligations of husband and wife. Broadly speaking, all religions hold that the wife must serve the husband, be able to respect and also respect the husband, and vice versa what the husband does to the wife. In Hinduism, the obligations of husband and wife are described in the book Manu Dharmasastra (Weda Smrti) chapter IX.

Apart from the rights and obligations of husband and wife, joint property is also a result of marriage. The joint assets themselves are property obtained during the marriage, while the inheritance of the husband and wife, either as gifts or inheritance, is under the control of each other as long as the parties determine otherwise. Regarding joint property, a husband or wife can act with the agreement of both parties, while the inherited property of each husband and wife has full rights to carry out legal actions regarding his property. If the marriage is broken because of divorce, the joint property is regulated according to their respective laws. What is meant by each law is religious law, customary law and other laws. In customary law the sharing of shared assets in the event of divorce is influenced by the kinship system, so that each kinship system has different characteristics, as well as in terms of religious law.

Likewise in relation to children born in the marriage. Legitimate children are children born in or as a result of a legal marriage. Regarding the child's position, it is regulated in Law No. 1 of 1974 concerning Marriage in Chapter IX Article 42 to Article 44. In addition to the Marriage Law, adat also regulates the problem of children. In the scope of adat, the child's position is also influenced by the family system adopted. In the patrilineal system, boys are an important element for continuing male bloodlines. This often causes if a family does not have a son or has no children at all then they will raise their daughter as a male (in Bali called nyentana) or raise another person's son to become the successor to the offspring equal position with the child himself.

In the matrilineal system, children are more likely to respect their mother and mother than their own father. This is because the responsibility of the mother is greater than the responsibility of the father

to his nephew. Whereas in the parental system which is the most kinship system in Indonesia, it has different characteristics regarding the position of children. This is influenced by the culture and religion that developed in the area.

### **The Political Approach of Citizenship as a Result of Divorce Laws Against Women from Mixed Marriage**

When talking about women in Bali, there will be an impression that the position of women in Bali in some respects is only considered as a complement in relation to the position of men. Indeed, in the past, Balinese customs still strongly enforced patriarchal culture, that is, culture that placed men more dominant than women (Ketut Wiana). In the case of marriage, the position of women is said to be *predana* and the position of a man is as a *purusa*. *Purusa* and *pradana* have meaning as body and soul.

The weak position of women in different caste marriages does not stop there. If a woman who marries a different caste is divorced then the position of this woman will oscillate obscure both in the family and in the community. In the case of caste-different marriages, the divorce will have an enormous impact on the position of women. In the period of *Paswara* 1910 until it was changed to *Paswara* 1927, the position of women who committed divorce was very alarming. During the *Paswara* period 1910 and *Paswara* 1927, women who performed inter-caste marriages had to perform a *patiwangi* ceremony which was a ceremony to reduce the title of the woman's quarter to the equivalent of her husband. This *patiwangi* ceremony will cause quarterly women to lose their titles so that they are no longer entitled to use the name that contains the title of the quarter.

By losing her title as a quarterly woman, this woman cannot return to her original family so that if there is a divorce the woman will be displaced because she cannot live in her ex-husband's house and cannot return to her original home or is commonly referred to as a sports debt or donation. So than that at that time there were rarely women who did marriages of different castes decided to divorce. Treated as bad and as rude as any woman will survive because if this woman divorced she would be displaced. With the abandonment of this woman, she will lose all forms of rights and obligations.

In 1951 after the revocation of *Paswara* 1927 concerning the mixture of the upstream reefs, the inter-caste marriage was not prohibited and the *patiwangi* ceremony was no longer held. By no longer holding the *patiwangi* ceremony, the woman who will marry a different caste does not need to lose her caste. This becomes very significant for quarterly women who do caste different marriages, because if divorce occurs they can still return to their original homes because they still hold the title of the quarterly and the position of this quarterly woman is still accepted as part of the family. The position referred to here is related to the rights and

obligations of the women of this quarter. In general it can be said that these obligations (swadharma) include religious activities in accordance with the teachings of Hinduism and holy places (parahyangan) both in the family and society, obligations relating to humanitarian activities (pawongan) both for one's own family and society and obligations related to activities maintaining the natural environment (palemahan) both for the benefit of family and society. Related to their rights (swadharma) it has to do with the continuation of family and ancestral assets and the use of Pakraman village owned facilities such as village land, holy sites, graves (setra) (Wayan P. Windia dan Ketut Sudantra. 2006). With the return of these quarterly women home, there is no longer any such thing as displaced women as a result of divorce from mixed marriages.

The position of women after divorce from caste marriages is further clarified in the Decree of Pasamuhan Agung III issued by the Pakraman Village Assembly in 2010. As a result of divorce on the position of women according to the Decree of the Great Pasamuhan III, quarterly women divorced from caste marriages will return to his home with a status of mulih deha (back girl). By returning to the status of a virtuous deha, swadharma and swadikara in his parents' house will return as they were when they were still unmarried<sup>19</sup>. In this case the family of the quarterly woman must be willing to accept the return of this quarterly woman to the house, even though there is no rule that provides sanctions if the family does not want to accept the presence of the quarterly woman again. Associated with joint property or property will be shared equally with the principle of General Guidelines. This is certainly different from the distribution of wealth used in ancient times, where only the men who benefit in the distribution of shared property. But now the distribution of rich assets must be shared equally between the two parties.

Regarding childcare at this time or after the issuance of the Decree of Pasamuhan Agung III has been considered capable of respecting the position of a woman as a mother. In the past, childcare was the right and responsibility of the family from his father, because it was based on a patrilineal system. With a divorce, a mother has no legal relationship with her child. But after the decision of the Great Pasamuhan III, after the divorce, the child born can be cared for by his mother, without breaking the legal relationship and the child's relationship with the family purusa, and therefore the child is guaranteed life from the purusa.

#### **4. Conclusions**

The political approach to citizenship as a basis for consideration of studies of Hindu Marriage such as Mixed in examining the relationship and legal consequences for women who experience divorce from Mixed Marriage. Legal protection for Balinese women who experience divorce and genuine relief from mixed marriages philosophically reflects

substantive justice. Juridically, the guarantee of rights for women is in accordance with the human rights that safeguard equality. Sociologically, the equality between men and women is in accordance with the times. The position of women after their divorce from caste marriages must be divided into several periods. In the period of 1910 until before 1951, a quarterly woman who carried out a divorce would become an abandoned woman because she had to leave her husband's house and could not return to her home so that the woman's position in the family and community was not considered. In the period of 1951 after the Paswara 1910/1927 was revoked, the patiwangi ceremony was also no longer performed so that quarterly women who married different caste would not lose their title. With no loss of the title, then this woman can return to her hometown if divorced later and will return to having Swadharma and Swadikara as before marriage. During the year 2010 with the issuance of the Decree of Pasamuhan Agung III, the position of a quarterly woman after divorcing from a different caste marriage would be able to return to her original home, followed by the right to shared property and also custody of children. The decision of Pasamuhan Agung III was a follow-up to the 1951 Bali DPRD Paswara.

The results of this study should be able to solve problems related to the guarantee of state legal protection for citizens, namely Balinese women regarding the divorce law of Mixed Marriage. As input for policy makers including legal drafter about gender responsive elements for women in the customary law community. For the general public and specifically the customary law community unit, the results of this study can provide legal protection both for settlement in the event of a conflict of norms, as well as an irregular recovery that becomes harmonious.

## References

### Book:

- Bagir Manan. 2003. *Teori dan Politik Konstitusi*. Yogyakarta: FH UII Press.
- Brubaker (1992) dalam Hiarij dan Kristian Stokke. 2018. *Politik Kewargaan di Indonesia*. Jakarta: Yayasan Pustaka Obor Indonesia bekerjasama dengan PolGov Fisipol UGM dan Oslo, Norwegia.
- Dagger, R. 2002. Republican Citizenship. Dalam E.F. Isin dan B. S.Torner (ed.) *Handbook of Citizenship Studies*. London: Sage.
- Delanty, G. 2000. *Citizenship in a Global Age: Society, Culture, Politics*. Buckingham: Open University Press.
- G. Pudja. 1974. *Pengantar tentang Perkawinan menurut Hukum Hindu (didasarkan Manusmriti)*. Dirjen Bimas Hindu & Budha Depag.
- Hiarij dan Kristian Stokke. 2018. *Politik Kewargaan di Indonesia*. Jakarta: Yayasan Pustaka Obor Indonesia bekerjasama dengan PolGov Fisipol UGM dan Oslo, Norwegia.
- Hilman Hadikusuma. 1977. *Hukum Perkawinan Adat*. Bandung: Alumni.

- Jimly Asshiddiqie. 2006. *Pengantar Ilmu Hukum Tata Negara Jilid II*. Jakarta: Konstitusi Pers.
- Jiwa Atmaja. 2008. *Bias Gender Perkawinan Terlarang Pada Masyarakat Bali*. Denpasar: Udayana University Press.
- Lawrence Meir Freidman. *American Law: an Introduction*. Edisi Kedua, terjemahan Wishnu Basuki dengan judul, *Hukum Amerika: Sebuah Pegantar*. Cetakan I. 2001,.Jakarta: PT Tatanusa,
- Marhaendra Wija Atmaja, Gede. 2016. *Politik Pluralisme Hukum: Arah Pengakuan Kesatuan Masyarakat Hukum Adat dengan Peraturan Daerah*. Denpasar: Penerbit Percetakan Bali.
- Moh. Mahfud MD. 2010. *Konstitusi dan Hukum dalam Kontroversi Isu*. Jakarta: Rajawali Pers.
- Peter Mahmud Marzuki. 2005. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Sally E. dalam Salim H.S dan Elies Septiana Nurbani. 2013. *Penerapan Teori Hukum dalam Penelitian Tesis dan Disertasi*. Jakarta: PT. RajaGrafindo Persada.
- Tjok Rai Sudharta. *Manusia Hindu dari Kandungan sampai Perkawinan*. Denpasar: Yayasan Dharma Naradha.
- 1997. *Manusia Hindu: Dari Kandungan Sampai Perkawinan*. Denpasar: Yayasan Dharma Naradha.
- Wayan P. Windia dan Ketut Sudantra. 2006. *Pengantar Hukum Adat Bali*, Denpasar: Lembaga Dokumentai dan Publikasi Fakultas Hukum Universitas Udayana.

#### **Scientific Journal / Scientific Article:**

- Nurhasan Ismail. 2006. *Perkembangan Hukum Pertanahan Indonesia: Suatu Pendekatan Ekonomi Politik*, Ringkasan Disertasi, UGM, Yogyakarta.
- Ketut Wiana, Jurnal, *Perempuan Bali Menurut Pandangan Hindu*.

#### **Laws and regulations:**

- Penetapan Presiden Republik Indonesia Nomor 1/PNPS Tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama, Penjelasan Pasal 1

#### **Lecture Material / Seminar on Research Results**

- Farida Hanum. 2005. Fenomena Pendidikan Multikural pada Mahasiswa Aktivis UNY. *Laporan Penelitian*.Yogyakarta: Lemlit UNY.
- Gede Mahendra Wija Atmaja, 2018, *Bhinneka Tunggal Ika Sebagai Sumber Identitas Politik Bangsa Dalam Pembentukan Hukum*, FGD "Menemukan Sumber Identitas Politik Bangsa", Lembaga Pengkajian Majelis Permusyawaratan Republik Indonesia, Kuta



Bali, Sabtu, 10 Maret 2018. Diakses pada hari Kamis, tanggal 28 Maret 2019, pukul 16.16 Wita.

..... 2019. *Rekonstruksi Relasi Negara Dan Warga Negara, Narasi Pengantar Kuliah Hukum Penyelenggaraan Negara Program Doktor Ilmu Hukum*. Denpasar: Program Pasca Sarjana Universitas Udayana.

Tim Penyusun, 2012 *Panduan Pemasyarakatan UUD NKRI Tahun 1945 dan Ketetapan MPR RI*, Sekretariat Jendral MPR RI, Jakarta.