



Digital Receipt

This receipt acknowledges that **Turnitin** received your paper. Below you will find the receipt information regarding your submission.

The first page of your submissions is displayed below.

Submission author: I Nyoman Sujana
Assignment title: Journal Article
Submission title: The Dissolution of Descended Caste Marriage and Its Implic...
File name: d_Its_Implication_on_Balinese_Women_Human_Right_Perspe...
File size: 205.07K
Page count: 8
Word count: 6,039
Character count: 31,224
Submission date: 08-Nov-2023 09:36PM (UTC+0700)
Submission ID: 2221698399

RUSIAN LAW JOURNAL Volume 10 (2023) Issue 3

THE DISSOLUTION OF DESCENDED CASTE MARRIAGE AND ITS IMPLICATION ON BALINESE WOMEN: HUMAN RIGHT PERSPECTIVES

I NYOMAN SUJANA¹, FAISAL SANTIAGO², EDY LISDIONO³
Faculty of Law, Universitas Warmadewa, Indonesia¹
Faculty of Law, Universitas Borobudur, Indonesia²
Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia³
nyomanujana2015@gmail.com¹

Abstract - This paper analysis the dissolution of inter-caste marriages, nyered 'descended caste' marriages, and their implications for Balinese women in the perspective of human rights. The focus of this research is the position of Balinese triwangsa caste women (those who are from Brahmana, Ksatriya, and Wesya) whose nyered marriages are dissolved. The method used was the empirical legal research method using a statutory approach, a conceptual approach, an analytical approach, a sociological approach and a human rights approach. As an analytical tool for the legal issues studied, the theory of Human Rights (HAM) was applied because factually the Balinese customary law community is still attached to the recognition of caste even though there has been a Bali DPRD decision Number 11 of 1993 which regulates the implementation Patiwangi ceremony, the ceremony of neutralizing one's caste position. The data used were obtained through direct observation and interviews with informants based on purposive sampling technique. The result of the analysis shows that the existence of caste in the Balinese customary law community is actually a burden for triwangsa women whose marriages are dissolved, because the Balinese triwangsa women who have chosen the nyered marriages are considered out of their original caste, so they can no longer be recognized as part of the triwangsa clan, even though from a human rights perspective the Balinese customary law community highly respects human rights. However, in the event that the marriage was dissolved, socio-culturally it turned out that the elderly people from Puri or Griya, those who belong to triwangsa did not re-recognize the caste of Balinese women who were returning to their home family, even though they were their own biological children. The strong attitude of the elderly people of the Puri or Griya palaces in refusing nyered marriages bring implication that the triwangsa women were afraid and ashamed to return to their original homes/family because they feel they are no longer part of the triwangsa clan.

Keywords: Dissolution of marriage, Descended caste, Balinese women, Human right

INTRODUCTION

Although the island of Bali is known as an international tourist destination, where the influence of globalization is very heavy on Balinese culture and customs, Balinese still maintain the tradition of recognizing and respecting the existence of caste, although empirically until now it still raises pros and cons. This condition can be seen through the situation that on the one hand caste is seen as a color of social life as proposed by Wiana & Santeri (1993), which distinguishes it into 4 (four) color groups, namely: Brahmana clan, those who have high intelligence and task to provide enlightenment about divinity and science; the Kesatria, those who belong to the group of having brave attitudes, honest, agile, and managerial abilities; Watsya, those who have the ability to do business and various other professions; and Sudra, those who have limited intelligence so that they tend to work by relying on physical strength.

Although there are pro and contra understandings about the existence of castes in Bali, empirically the customary law of Balinese community has accepted and acknowledged the existence of the castes. It can be proven that until now the existence of the clans of each caste in Bali is imbued with the teachings of Hinduism through the philosophy of Tri Hita Karana, namely three sources of happiness in the dimensions of harmonious life: harmonious relationship between people their creator, namely God, between people and other people, and people with the environment.

Harmonious relationships between human beings to achieve physical and spiritual happiness can be realized in a marriage. Even though the marriage is from those of different castes or clans, the customary law of Balinese community views marriage as something very sacred because it contains essential values. The intrinsic values of the marriage are inspired by the teachings of the Hindu religion and the Balinese

2045

The Dissolution of Descended Caste Marriage and Its Implication on Balinese Women: Human Right Perspectives

by I Nyoman Sujana

Submission date: 08-Nov-2023 09:36PM (UTC+0700)

Submission ID: 2221698399

File name: d_Its_Implication_on_Balinese_Women_Human_Right_Perspectives.pdf (205.07K)

Word count: 6039

Character count: 31224

THE DISSOLUTION OF DESCENDED CASTE MARRIAGE AND ITS IMPLICATION ON BALINESE WOMEN: HUMAN RIGHT PERSPECTIVES

I NYOMAN SUJANA¹, FAISAL SANTIAGO², EDY LISDIONO³

Faculty of Law, Universitas Warmadewa, Indonesia¹

Faculty of Law, Universitas Borobudur, Indonesia²

Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia³

nyomansujanaa2015@gmail.com¹

Abstract - This paper analysis the dissolution of inter-caste marriages, *nyerod* 'descended caste' marriages, and their implications for Balinese women in the perspective of human rights. The focus of this research is the position of Balinese *triwangsa* caste women (those who are from *Brahmana*, *Ksatriya*, and *Wesya*) whose *nyerod* marriages are dissolved. The method used was the empirical legal research method using a statutory approach, a conceptual approach, an analytical approach, a sociological approach and a human rights approach. As an analytical tool for the legal issues studied, the theory of Human Rights (HAM) was applied because factually the Balinese customary law community is still attached to the recognition of caste even though there has been a Bali DPRD decision Number 11 of 1951 which negates the implementation *Patiwangi* ceremony, the ceremony of neutralizing one's caste position. The data used were obtained through direct observation and interviews with informants based on purposive sampling technique. The result of the analysis shows that the existence of caste in the Balinese customary law community is actually a burden for *triwangsa* women whose marriages are dissolved, because the Balinese *triwangsa* women who have chosen the *nyerod* marriages are considered out of their original caste, so they can no longer be recognized as part of the *triwangsa* clan, even though from a human rights perspective the Balinese customary law community highly respects human rights. However, in the event that the marriage was dissolved, socio-culturally it turned out that the elderly people from *Puri* or *Griya*, those who belong to *triwangsa* did not re-recognize the caste of Balinese women who were returning to their home family, even though they were their own biological children. The strong attitude of the elderly people of the *Puri* or *Griya* palaces in refusing *nyerod* marriages bring implication that the *triwangsa* women were afraid and ashamed to return to their original homes/family because they feel they are no longer part of the *triwangsa* clan.

Keywords: Dissolution of marriage, Descended caste, Balinese women, Human right

INTRODUCTION

Although the island of Bali is known as an international tourist destination, where the influence of globalization is very heavy on Balinese culture and customs, Balinese still maintain the tradition of recognizing and respecting the existence of caste, although empirically until now it still raises pros and cons. This condition can be seen through the situation that on the one hand caste is seen as a color of social life as proposed by Wiana & Santeri (1993), which distinguishes it into 4 (four) color groups, namely: *Brahmana* clan, those who have high intelligence and task to provide enlightenment about divinity and science; the *Kesatria*, those who belong to the group of having brave attitudes, honest, agile, and managerial abilities; *Waisya*, those who have the ability to do business and various other professions; and *Sudra*, those who have limited intelligence so that they tend to work by relying on physical strength.

Although there are pro and contra understandings about the existence of castes in Bali, empirically the customary law of Balinese community has accepted and acknowledged the existence of the castes. It can be proven that until now the existence of the clans of each caste in Bali is imbued with the teachings of Hinduism through the philosophy of *Tri Hita Karana*, namely three sources of happiness in the dimensions of harmonious life; harmonious relationship between people their creator, namely God, between people and other people, and people with the environment.

Harmonious relationships between human beings to achieve physical and spiritual happiness can be realized in a marriage. Even though the marriage is from those of different castes or clans, the customary law of Balinese community views marriage as something very sacred because it contains essential values. The intrinsic values of the marriage are inspired by the teachings of the Hindu religion and the Balinese

indigenous people respect and uphold human rights. This can be seen through the tendency that the Balinese Hindu community form a family (household) through legal marriage, even though they are of different castes. Marriage occurs, of course, based on the intention of each prospective bride and groom and their family as long as they follow the patrilineal kinship line or known as the male transmission (*Purusa*), except for those who choose the form of *sentana rajeg* marriage, a marriage in which the bride acts as the male (Putri, 2019). In their daily life, the Balinese customary law still respects the existence of 4 (four) castes known as *caturwangsa*, namely: 1. Brahmin; 2. Ksatriya; 3. Wesya; and; 4. Sudra. The castes which are often referred to as *wangsa* bring a big gap and make them different in their social status, and children of a higher caste should be exalted.

A caste of a person is owned based on his or her heredity, heredity of the male that is *purusa* transmission line. In the teachings of Hinduism, *purusa* means maleline and *predana* means femaleline. It is believed that these two groups are essentially created by Ida Sang Hyang Widhi Wasa/God Almighty with their respective roles so that men and women have equality and complement each other. Having offspring from marital relations with men of high caste are highly respected. On the contrary, Balinese women of high caste, those from the *triwangsa* group (Brahmins, Ksatriyas and Wesyas), who marry the men of the *Sudra* caste or switch their religion into other are considered to release their blue blood. *Sudra* men who marry women of the *triwangsa* caste are considered to have violated the Balinese customary law called *Alangiti Karangulu* so that if it happens that their marriages break up, the caste women are very difficult to be recognized and accepted back as part of the family of the original caste because they have chosen a *nyerod* marriage, a marriage of a woman of high caste with *sudra* man. This marriage is often called down marriage.

In Bali the inter-caste marriage, particularly the *nyerod* marriage poses quite a complicated problem for Balinese women because of the *gugon towon* habit that has been followed since the days of the Balinese kingdom. According to Balinese Hindu Customary Law, a caste or *wangsa* of a person is obtained from his or her descent and every member of the caste must obey the obligations (*dharma*) that are closely related to the caste: disgracing the *dharma* or norms of the caste can result in the caste disowned (*nyerod* is considered to be disgracing her own caste so that she cannot return to her original caste, there is no caste restoration ceremony) (Agung, 2016). Even, she is not allowed to call her own father with *ajik*, the word used to call father for high castes. She then should call or greet her father like those from *sudra* caste greeting the higher caste. This condition has been accepted by the Balinese customary law even though there has been a Bali DPRD decision number 11 of 1951 which revoked the 1910 *paswaran* or norms amended by the Bali and Lombok Residents Decree dated 13 April 1927 Number 532 stating that the inter-caste marriages had been abolished including eliminating the implementation of the *patiwangi* ceremony (the ceremony to restore the caste that was previously owned so that she was in her husband's caste). This decision has also been supported by the big meeting of Majelis Utama Desa Pekraman (MUDP), main assembly of traditional village, which explains that *nyerod* or different castes marriages are considered as ordinary marriages. However, in the Balinese customary law until now the recognition of the existence of the high caste (*triwangsa*) is actually preserved. Even, the Balinese customary law consider it as something very sacred that is why it needs to be protected and respected (Sudiana et al., 2018).

In this world nothing lasts forever. It also happens in the case of marriage. The dissolution of inter-caste marriages is possible to happen. Balinese women of high caste who do *nyerod* marriages and for some reason their marriages turn break up, they must return to their original family of *purusa* line (because Balinese apply patrilineal kinship). The return of high-caste Balinese women (*triwangsa*) who did the *nyerod* marriage to their original family will be the focus of this study. It has been informed previously that based on the Balinese customary law the *tri wangsa*/high caste women are not allowed to have the name of their original castes for they have tarnished the norms of their caste (Panetje, 1989; Sukandia, 2019).

Although the Balinese customary law highly respects human rights, in the case of dissolution of inter-caste marriages, it turns out that the rights of high-caste Balinese women who have chosen men of low caste (*Sudra* caste) as their husbands, those who have done the *nyerod* marriage, are no longer recognized as part of a clan belonging to the high caste so that it seems there has been a violation of the state constitution, especially the provisions of Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the provision which states that "Every child has the right to survive, grow, and

develop" and they are entitled to protection from violence and discrimination" when there is discriminatory treatment against *triwangsa* women who want to return to their original castes as before they were married.

Based on the description of the background above, due to the empirical facts of the violation of the rights of Balinese women from *triwangsa* men who adhere to the patrilineal kinship line), a research on divorce and the juridical implication of the inter-caste marriage is necessary to be explained. The focus of this study is the juridical implications of the dissolution of inter-caste marriages on the human rights of Balinese women from the *triwangsa* who adhere to patrilineal kinship lines (*purusa*). The goal of this paper is to achieve or find out the mechanism for restoring the human rights of Balinese women from the *triwangsa* who want to be back to their original family after the divorce of inter-caste marriages.

METHOD

This paper is an empirical legal study that analyzes the dissolution of inter-caste marriages and their implications for Balinese women who come from the *triwangsa* group seen from the perspective of human rights. The empirical characteristic of this paper is that this paper is in line with what was stated by Irwansyah (2020) stating that empirical legal research makes social facts, social phenomena, or social problem in relation to a reciprocal relationship with law as the object of research or the starting point with a focus on the studies of attitudes and behaviour of individuals, groups, communities, institutions, and countries. This research uses human rights theory as an analytical tool for the legal issues studied completed with a statutory approach, a conceptual approach, an analytical approach, and a sociological approach. The data used in this paper is primary data with direct interview techniques with the informants selected through purposive sampling conducted in the territory of the Balinese customary law of East and West Bali.

The informants used as the data were the widows of the *nyerod* marriages, *pedandas* 'priests' as the representatives of Brahmana caste, *Sulinggih*, *Resi*, *Begawan* 'priests' as the representatives of *Ksatria* and *Wesya* castes, and *Sri-empu* 'priests' as the representatives of *sudra* caste (Diantha, 2016). The secondary data were taken from the primary legal materials in the form of Marriage Law, Human Rights Laws and other laws related to marriage and the Protection of Women; secondary law materials in the form of scientific articles, journals, books on marriage, tertiary legal materials: legal dictionaries, encyclopaedia.

The technique used for collecting the legal materials was a literature study technique. The data were obtained through direct interviews informants and literature searches, that was understanding and studying more deeply about the literature and laws and regulations that have a correlation with direct or indirect discussions concerning the inter-caste marriages and their implications for women's human rights in the Balinese customary law community. The analysis was then carried out to obtain the final argument in the form of answers to research problems.

RESULT AND DISCUSSION

The existence of the Balinese customary law which is imbued with the teachings of Hinduism through the *Tri Hita Karana* philosophy, namely the three sources of happiness in the dimensions of harmonious relationship between humans and with the Almighty God, between humans and other humans and relationship between humans with nature.

Therefore, the Balinese customary law is always oriented to the life of the real world and the spiritual-religious-magical world which is reflected in the *awig-awig* as the signs of interaction in the society. In relation to the relationship between humans and others, the Balinese customary law community until now still recognizes the existence of high caste community groups and this recognition is still maintained. This harmonious relationship between castes has been manifested in the inter-caste marriage ties.

The main purpose of a marriage for every marriage couple in forming the household, including inter-caste marriages, is to find happiness in their marriage, A harmonious and harmonious relationship to find happiness.

Although the purpose of a marriage is to form a happy and eternal household, in this world there is nothing eternal, a marriage will one day end or dissolve either because of death, a divorce, or because of a court decision so that the dissolution of a marriage is certain to happen even though it has been knitted together on the basis of mutual love. Dissolve in this case means to formally end a marriage.

Article 38 of the Marriage Law states that: "A marriage can end because of: a death; b. divorce; and c court's decision (Adnyani, 2019; Pramatih, 2021).

Juridically, the dissolution of a marriage means the dissolution of the marriage which results in the termination of the relationship as husband and wife or the completion of the duties of husband and wife. The Marriage Law does not use the term dissolution of marriage, but end of marriage. The rule of positive law regarding the dissolution of a marriage shows the existence of:

1. Legal action that can be taken by a husband or wife to break the marital relationship between them;
2. The event that breaks the relationship between husband and wife, namely the death of the husband or wife in question, which is a definite and direct provision determined by God Almighty;
3. A legal decision declared by the court which results in the legal termination of the marital relationship between husband and wife.

According to the doctrine expressed by Muhammad (2000), the dissolution of a marriage due to death is called a "death divorce", while the dissolution of a marriage due to divorce has 2 (two) terms, namely: a. sued divorce (*khulu*) and b. *talak* divorce (a divorce based on the intention of the husband). The dissolution of a marriage due to a court decision is referred to as "annual divorce"; The terms used for the dissolution of marriage are based on the following reasons:

1. The use of the terms "divorce and divorce" does not indicate that there is a dispute between husband and wife;
2. The use of the term "divorce sue (*khulu*) and divorce *talak*" shows the impression of a dispute between husband and wife;
3. The dissolution of a marriage, whether due to a court decision or divorce, must be based on a court decision.

Ghofur (2006; 2011) explained that the dissolution of a marriage means the end of the relationship between husband and wife. The dissolution of the marriage is depended upon who actually intends to break the marriage. In this case there are 4 (four) possibilities, namely:

1. The dissolution of a marriage because of God's own will through the death of one of the marriage couple. The death causes the marriage to end automatically;
2. The termination of a marriage is at the will of the husband due to certain reasons and his intention is stated in certain words. Divorce in this form is called *talak*;
3. The termination of a marriage is based on the will of the wife because the wife sees something that requires the termination of the marriage, while the husband does not want it. The intention of breaking up the marriage conveyed in a certain way by the wife then is accepted by the husband and followed by his words saying to break the marriage. The dissolution of a marriage in this way is called "khulu".
4. The termination of the marriage at the will of the judge as a third party after seeing something in the husband and/or wife which indicates that the marital relationship cannot be carried out to continue. The dissolution of a marriage in this form is known as *fasach*.

Subekti (2005) stated that a divorce is the abolition of marriage by a judge's decision or the demands of one of the parties to the marriage. Meanwhile, Isnaeni (2016) called the dissolution of marriage with the term dissolution of marriage. What is meant by terms for the dissolution of marriage described above, is as the following:

"a legal event and/or legal act that breaks the physical and spiritual ties between a person. a man and a woman as husband and wife with legal reasons, legal processes and certain legal consequences that must be stated explicitly through a court decision".

Related to the focus of this study, which concerns the dissolution of inter-caste marriages and their implications for high-caste Balinese women in the perspective of human rights. Balinese women referred to in this paper are women who come from or are born from the *triwangsa* groups (*Brahmana*, *Ksatriya* and *Wesya*) abbreviated as "*triwangsa* women" who perform down-caste marriages, hereinafter referred to as *nyerod* marriages, but for some reasons the marriage is dissolved, either because of death, divorce or because of a court decision. This is very interesting to study in depth because in the millennial and



globalization era in which the economic aspect is very influential nowadays, in the Balinese customary law community there is a lot of *nyerod* marriage phenomenon from Balinese *triwangsa* women. In this millennial era, it seems there is a change of behaviour from the Balinese *triwangsa* women in choosing male candidates for their beloved husbands. It seems they give more priority to their prospective husband's economic establishment than maintaining caste status. Many *triwangsa* women married men from *sudra* case.

My view is in line with the results of Dewi's research (2014) which states that different caste marriages are caused by internal factors, namely the personal feelings of the woman and external factors, namely environmental influences. Empirical facts show that *nyerod* marriages of Balinese women, from the *triwangsa* groups to the lower ones, have proved that "love is blind", A marriage is basically love for love. When we are in love, it doesn't matter who we marry, it doesn't matter whether the one we marry is of a different caste, religion or not. If the marriage is a marriage of different castes or religions, then the marriage becomes crucial because Bali adheres to the patrilineal customary system. This kind of marriage certainly brings a very complex impact on all parties, especially the women who come from the *triwangsa* if the marriage is dissolved (Budiana & Wiguna, 2021).

Based on the empirical facts, there have been many women from the *triwangsa* group in Bali who out of love got married through violating the customary law of the Balinese which is greatly respected and has been passed down from generation to generation. In this millennial era, the result of direct interviews with the women from the *triwangsa* group who did *nyerod* married or down caste showed that there been pro and contra attitudes to that condition. There are those who consider *nyerod* or down caste marriage to be a violation of honour of the castes and those who consider it not because there has a Bali DPRD decision number 11 of 1951 which revoked the 1910 Paswara which was amended by the Bali and Lombok Residents' Beslit dated April 13, 1927 Number 532, which stated that inter-caste marriages had been abolished, including the abolition of the *patiwangi* ceremony (ceremony of eliminating high caste). This decision has also been supported by the Pesamuan Agung Pekraman Village Main Assembly (MUDP) which explains that *nyerod* or different castes marriages are considered normal marriages (Aditi, 2019).

The research that the author did was conducted in the Balinese customary law community in the areas of East Bali and West Bali. It uses the theory of Human Rights (HAM) with a sociological approach by selecting informants directly from the women of *triwangsa* group who have done the *nyerod* marriage (Tumpa et al., 2010). This research also uses purposive sampling techniques. The informants were selected from the religious leaders who have the status as *sulinggih* or priests from high castes (*triwangsa*), *triwangsa* female women whose marriages were dissolved either because of death, divorce or because of a court decision who intended to go back, *mulih daha*, to their origin castes; that was to the *Griya* family for the Brahmin class and *Puri* for the *Kesatria* and *Wesya* castes. The result shows that there is a shift in the view of Balinese women from the *triwangsa* group in choosing men as potential husbands if we look at the view of Balinese women from the 1960s to 2000s compared to those born in the 2000s and above.

From the perspective of women born between the 1960s and 2000s, it can be seen that they still respect the advice of their elders regarding choosing men for their husbands. In this case, as much as possible they try to look for men of the same caste for their husbands. Meanwhile, for those who were born in the millennial era over the 2000s, it is not uncommon for these *triwangsa* women to marry men of different castes. This can be business purposes they prioritize social status regardless of caste differences. They even prioritize men who are well-established rather than maintaining fanaticism of respect for caste. They consider that the economic aspect establishment of men from the *Sudra* caste are more respected than men of high caste but do not have social status establishment. The women who choose to marry *nyerod* mostly come from the moderate *Griya* and/or *Puri* groups where the "elders" are no longer fanatical about caste to maintain traditional culture, considering that this era is millennial where it is very difficult to stick to traditional behaviour. They are very concerned with fulfilling economic needs rather than maintaining their caste fanaticism. However, in some *Puris* or *Griyas*, those who are fanatical about their caste, view that *nyerod* (downgrading) marriages performed by the *triwangsa* women are considered as the act or behaviour of injuring the dharma of the high castes so that they are no longer considered to belong to *Gerya* or *Puri* family.

The result of the interview with Anak Agung Oka Wisnu, one of the old men from *Puri Kanganan Klungkung*, it was stated that *triwangsa* women who would marry down caste or *nyerod* get severe sanctions from the palace, the man may not propose to *Puri* but the woman must take the elopement or *nyerod* married. Likewise, in the case of *nyerod* marriages, if it turns out that in the future the



marriage is dissolved, then humanly this *triwangsa* women can still be accepted but according to tradition they are no longer belong to *triwangsa* caste. Penglingsir Puri Klungkung's view still respects the natural rights of this *triwangsa* women even though their marriages are dissolved. Because Bali adheres to a patrilineal kinship line (the *purusa* line), the return of the *triwangsa* women to thier home in Puri or Griya are still recognized based on thier destiny as a human being (human rights are rights that belong to all human being at all times and in all places by virtue of being born as human beings). However, in the case of returning to obtain the status as a woman of the *triwangsa* caste, it cannot be accepted in any way because according to Ida Pendanda Nabe Griya Aan Klungkung, in Hinduism there are no ceremonies or offerings or mantras that can restore caste or dynasty.

When they are allowed to return to the homes of Puri or Griya family, they are no longer women of *triwangsa*, but their status is as a servant or Balinese people call it *wangjero*, or *penyeroan*. The *nyerod* women could no longer call their biological father "Aji" 'father', but instead they have to call their father "Ratu Aji". With regard to the shift in the view of millennials, and considering that the focus of this study is regarding the dissolution of inter-caste marriages and their implications for Balinese women in the perspective of Human Rights in the Balinese customary law community, in marriage matters male lineage is prioritized, while the female side is often marginalized. Therefore, the government must pay attention to the values of justice and legal certainty for the position of *triwangsa* Balinese women whose marriages dissolved. The government must also treat equal rights between women and men with regard to human rights. This is because men and women, whether they are from *triwangsa* or not, they are creatures of God who certainly have the right to live decently and have the same position.

Based on the interview with Anak Agung Oka Wisnu, the elderly person from Puri Kanginan Klungkung as the sample representing the Puri's view from East Bali region; and I Gusti Ngurah Bagus Danendra, the elderly person from Puri Gede Penebel Tabanan representing the view of the *triwangsa* clan from West Bali region, it was found that when the marriage is dissolved either because of death or because of the intention of both parties, or because of a court decision, the when the *triwangsa* women who did *nyerod* marriage wanted to return to their homes where there were born, as God's creatures who have been provided with basic rights from birth, such as recognition and guarantees for the protection of human rights, they can be reinstated as part of the Puri family or Griya because they are also God's creatures. (Abdullah, 2004).

Human rights are basic rights that humans bring since birth as a gift from God Almighty. The elderly people from Puri or Griya can accept back those who are divorced solely based on the recognition of these human rights, not from the state and law, but solely from God as the creator of the universe and its contents, so that human rights cannot be reduced (non derogable right). Humanly, the divorced *triwangsa* women can be accepted back into their parents' homes in the Puri or Griya, but in the socio-religious kinship relationship which is attached to the caste or dynasty, these *triwangsa* women cannot be accepted back as part of the Puri or Griya family because they have separated themselves from their original caste and chose the caste of their husbands. This happens because Bali follows patrilineal kinship lines.

With regard to a marriage in Bali, the Balinese customary law community highly respects human rights which are characterized by basic freedoms to live in an environment of indigenous people imbued with Hinduism which has the philosophy of Tri Hita Karana, namely three ways to find happiness. Recognition of the fundamental rights to form a household by choosing either a husband from caste family or non-caste family is still highly respected, and the Balinese traditional community with a Hindu religious nuance guarantees these human rights. In relation to the legal protection of the human rights of women born from the *triwangsa* group who have done *nyerod* marriages, but for some reason the marriage dissolved and wanted to return to the house of origin of birth, the guarantee of human rights is accommodated through equal recognition of the position of sons and daughters. male and female children in a statutory regulation that truly provides equal treatment, without any discriminatory, as well as treatment that is not appropriate for humanity, especially in determining the nature of legal status for children born to those who are of high caste or who are not, low caste or no caste.

Based on natural law theory, thoughts related to human rights include:

1. Human rights are owned naturally by everyone based on the idea that a person is born as a human being who has freedom;
2. Human rights can be applied universally to everyone regardless of their geographical location;
3. Human rights do not require actions or programs from other parties, whether they are individuals, groups or governments.



Todung Mulya Lubis in El-Muhtaj (2013) mentions that there are four theories of human rights, they are:

1. Natural rights, holding the view that human rights are rights that are owned by all human beings at all times and places based on their destiny as human beings (human rights are rights that belong to all human beings at all times and in all places by virtue of of being born as human beings);
2. The positivist theory, which holds that because rights must be contained in real law, they are seen as rights through constitutional guarantees (right, then should be created and granted by constitution, laws and contracts). The view actually comes from Bentham's expression which says, rights is a child of law, laws of nature, come imaginary rights. Natural rights is simple nonsense, natura; and imprecible rights rhetorical nonsense, nonsensupon still.
3. The cultural relativist theory (cultural relativist theory. This theory is one form of antithesis from the theory of natural rights). This theory holds the view that assuming that rights are universal is a violation of one cultural dimension against another cultural dimension or called the cultural imperialism (cultural imperialism). What is emphasized in this theory is that humans are social and cultural interactions and differences contain different ways of being human. Therefore, adherents of this theory state that rights belong to all human beings. at all times in all places would be the rights of dosocialized and deculturized beings.
4. Marxist doctrine (Marxist doctrine and human rights). Marxist doctrine rejects the theory of natural rights because the State or collectivity is the source of all rights (responsitory of all rights). Rights are recognized as individual rights, if they have received recognition from the state and the collective. In other words, all rights derive from the state, and are not naturally processed by human being by virtue of having been born. Viewed from the principles of human rights and positivist theory, based on the natural rights of legal protection for women, Balinese *triwangsa* women who did the *nyerod* married (down caste married) but then dissolved for some reasons, they did not receive discriminatory treatment both in society and in the state. As humans, as creatures created by God, based on their destiny as creatures created by God, they all have the right to fulfill their needs.

However, the recognition of legal status in an effort to obtain their rights to establish a marital relationship between a woman of the *triwangsa* caste and a man of the *triwangsa* level or from the Sudra caste, based on positivist theory, such kind of situation must be stated in real law. that is as a right guaranteed in the state constitution. Thus, the human right to life, including the human right for *triwangsa* caste women who wish to return to their original homes after their *nyerod* marriage is dissolved, must be treated in the same way to those of non-caste Balinese women who are divorced by caste men. In order not to be treated differently by those born from *triwangsa* caste descent, the principle of human rights to provide guarantees of justice and legal certainty for Balinese women who are caste with Balinese women who are not must be treated the same their marriage is dissolved. For this reason, what is stipulated in the state constitution as regulated in Article 28I has been realized, namely the existence of "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person." before the law, and the right not to be prosecuted on the basis of retroactive law is a human right that cannot be reduced under any circumstances."

CONCLUSION

In the Balinese customary law community, the dissolution of inter-caste marriages for Balinese women who carry out *nyerod* marriages has become a separate burden for the women from the *triwangsa* group because in the Balinese customary law there is a recognition that for generations male descendants are the successors of family clans. Then as a consequence, the Balinese *triwangsa* women who choose to marry *nyerod* (descended caste) and if the marriage is dissolved and they want to return to their home family in the *puri* or *griya*, they can no longer be accepted as a *triwangsa* clan. The elderly people of the *puri* or *griya* in Bali from the *triwangsa* socio-culturally cannot accept and re-recognize the caste status of Balinese women who have done the *nyerod* marriage, descended caste marriage, even though the human rights inherent in natural rights are still recognized.

REFERENCES

- [1] Abdullah, R. (2004). *Perkembangan HAM dan Keberadaan Peradilan HAM di Indonesia*. Bogor: Galia Indonesia.
- [2] Aditi, I. G. A. (2019). *Problematic and alternative solutions of different wangsa marriage at Balinese community in Lombok*. *International Journal of Social Sciences and Humanities*, 3(2), 84-94.
- [3] Adnyani, N. K. S. (2019). *Status of Women After Dismissed from Mixed Marriage in Bali's Law Perspective*. *Ganesha Law Review*, 1(2), 73-89.
- [4] Agung, A. A. I. (2016). *Makna purusa dan pradana dalam putusan hakim mengenai sengketa waris adat Bali*. Malang: Universitas Brawijaya (Doctoral dissertation).
- [5] Budiana, I. N., & Wiguna, M. O. C. (2021). *Researching Social Change in Bali Indigenous Marriage Private*. *Sociological Jurisprudence Journal*, 4(2), 75-85.
- [6] Dewi, I. A. M. L. (2014). *Implikasi perkawinan beda kasta dalam perspektif hukum, sosial-budaya dan religius di Banjar Brahmana Bukit, Kecamatan Bangli, Kabupaten Bangli*. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 2(2). <https://ejournal.undiksha.ac.id>.
- [7] Diantha, I. M. P. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Jakarta: Prenada Media.
- [8] El-Muhtaj, M. (2013). *Dimensi-dimensi HAM: mengurai hak ekonomi, sosial, dan budaya*. Jakarta: Rajawali Press.
- [9] Ghofur, A. A. (2006). *Filsafat Hukum Sejarah, Aliran dan Pemaknaan*. Yogyakarta: Gajah Mada University Press;
- [10] Ghofur, A. A. (2011). *Hukum Perkawinan Islam: Perspektif Fikih dan Hukum Positif*. Yogyakarta: UII Press.
- [11] Irwansyah, I. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media.
- [12] Isnaeni, M. (2016). *Hukum Perkawinan Indonesia*. Bandung: Refika Aditama.
- [13] Muhammad, A. (2000). *Hukum acara perdata Indonesia*. Bandung: PT.Citra Aditya Bakti,
- [14] Panetje, G. (1989). *Aneka catatan tentang hukum adat Bali*. Bali: Guna Agung.
- [15] Praminatih, G. A. (2021). *Shifting Speech Levels: Exploring Balinese Women's Language in Inter-Caste Marriage Communication Contexts*. *Jurnal Kajian Bali (Journal of Bali Studies)*, 11(1), 61-76.
- [16] Putri, D. (2019). *Fenomena Pernikahan beda kasta di Bali dan Perawan Tua*. Available: <https://bali.idntimes.com/life/women/diantari-putri/pernikahan-beda-kasta-di-bali-dan-perawan-tua> (Accessed, April 29, 2022).
- [17] Subekti, R. (2005). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- [18] Sudiana, I. G. N., Relin, D. E., Kartika, N. G. A., & Ningrat, J. A. (2018). *Upacara Pati Wangi Pada Perkawinan Antar Klen Di Bali*. Bali: IHDN Press
- [19] Sukandia, I. N. (2019). *Lembaga perkreditan desa: berbasis masyarakat hukum adat di Bali*. Malang: Nuswantara.
- [20] Tumpa, H. A., Halim, H., Sampurno, S., & Jurdi, F. (2010). *Peluang & tantangan eksistensi pengadilan HAM di Indonesia*. Jakarta: Kencana.
- [21] Wiana, K., & Santeri, R. (1993). *Kasta dalam Hindu: Kesalahpahaman berabad-abad*. Denpasar: Yayasan Dharma Naradha.

The Dissolution of Descended Caste Marriage and Its Implication on Balinese Women: Human Right Perspectives

ORIGINALITY REPORT

4%

SIMILARITY INDEX

2%

INTERNET SOURCES

4%

PUBLICATIONS

1%

STUDENT PAPERS

PRIMARY SOURCES

1	Nyoman Sujana. "The Implication of the Divorce of Unregistered Marriages for Divorcees' in Bali: Assessing Status, Right and Duty", <i>Fiat Justisia: Jurnal Ilmu Hukum</i> , 2023 Publication	2%
2	Submitted to Van Lang University Student Paper	1%
3	ojs.unud.ac.id Internet Source	1%
4	jurnal.bundamedia grup.co.id Internet Source	<1%
5	rjoas.com Internet Source	<1%
6	journal.uinsgd.ac.id Internet Source	<1%
7	Susi Susilawati, Baliana Amir, Muhammad Ikbal, Rafika Nur, Sitti Fatimah Maddusila. "Manifestations of Gender Injustice in	<1%

Divorced Marriages: The Kabalutan Tradition", Jambura Law Review, 2023

Publication

8

dokumen.pub

Internet Source

<1 %

9

Nuvazria Achir. "Fulfillment of The
Constitutional Rights of Abandoned Children
Victims of Economic Exploitation", Jambura
Law Review, 2022

Publication

<1 %

10

Landmann, Alexandra (Dr. des. / MA phil.).
"Hindu class and Hindu education system in
Bali: Emergence, organization, and
conception in the context of Indonesian
educational and religious policies",
Publikationsserver der Goethe-Universität
Frankfurt am Main, 2012.

Publication

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On