

Mesamsam Ceremony for the Validity of Divorce for the Krama of Kubu Traditional Village, Bangli District, Bali-Indonesia



Diah Gayatri Sudibya¹; Kadek Richa Mulyawati²

^{1,2} Fakultas Hukum, Universitas Warmadewa Denpasar, Bali-Indonesia

ABSTRACT: It is human nature as social creatures that every man and woman have the instinct to love each other and need each other in all areas. As a sign that someone has entered this period, it begins with the marriage process. Marriage is a sacred event and obligation for Hindus because God has said in Manava Dharmasastra IX.96 as follows: To be a mother, women were created and to be fathers, men were created. Religious ceremonies are prescribed in the Vedas to be performed by husband and wife. Such is the importance of marriage that it can only take place after various requirements specified in State law (Law No. 16 of 2019) concerning marriage according to national law and customary law (in this case Balinese customary law), are fulfilled by a series of ceremonies for both candidates. Bride and groom with the intention that the marriage can run smoothly and last forever as a husband and wife couple. However, it cannot be denied that in marriage conflicts can arise resulting in divorce between the two parties, which of course is carried out through the district court process so that a divorce certificate will be issued. Especially in Bali, namely in Kubu Bangli Village, you cannot accept only court decisions, but there are also decisions from traditional villages, namely by carrying out the Mesamsam Ceremony to legalize the divorce. So the problem formulation emerged as to what the divorce procedure is for village manners in the Kubu Bangli Traditional Village and how legal divorce is for village manners in the Kubu Bangli Traditional Village. The method used in this research is an empirical legal research method by looking at the facts that occur in the field by synchronizing the application of positive law and customary law.

KEYWORDS: Divorce, Mesamsam Ceremony, Kubu Bangli Traditional Village.

I. INTRODUCTION

Marriage is a form of worship whose purity needs to be maintained by both parties, both husband and wife. Marriage aims to form a happy, prosperous and eternal family. Marriage requires physical and mental maturity and preparation because marriage or marriage is something sacred and can determine a person's life path. According to Law no. 1 of 1974 states that marriage is valid if it is carried out according to the laws of each religion and belief. According to article 1 of Law no. 1 of 1974 states that the purpose of marriage is to form a happy and eternal family based on belief in the Almighty God. The happiness that is meant is inner and outer happiness, where happiness and eternity must be fostered throughout time because happiness in the family (household) is not only the accumulation of material possessions, but the fulfillment of reasonable physical and spiritual needs. Therefore, husband and wife need to complement each other, so that each can develop their personality to help and achieve spiritual and material prosperity. Marriage as the beginning of the Grhastha period is the most important period in human life.

Marriage or Vivaha for Hindu society has a special meaning and position in human life, namely the beginning of the Grhastha level. In the book Manawa Dharmasastra it is explained that marriage is religious (sacred) and is obligatory by law. Marriage (Grhastha) is highly respected because it can give children or descendants the opportunity to fuse the sins of their ancestors so that they can be reincarnated or reincarnated into the world. This ritual aims to ensure that divorced villagers return legally to the customs of the Kubu Traditional Village. Etymologically, Mesamsam comes from the word samsam which means to restore purity or eliminate Cuntaka. In the traditional marriage system in Bali, it is generally known that there are several marriage procedures, namely Mepadik and Nyentana (Nyeburin) marriages, while the Melegandang marriage system, Ngerorod marriage is a marriage procedure that is still a question mark, often associated with cases of legal irregularities in this case become a complaint offense. If there are parties who object to the child or their relatives being forced to marry off and submit it to the jurisdiction, it could become a criminal case (Titib, 1996). Regarding the treatment of Ngerorod's marriage (elopement) is still a matter of debate between whether or not the two of them really like each other. Kaler noted that there are procedures or requirements for the Balinese traditional marriage system so that the Ngerorod marriage can become a legal marriage according to Balinese customary law. The traditions of Krama Desa in Bali from ancient times until now, in line with the development of globalization that has hit all corners of Balinese

Mesamsam Ceremony for the Validity of Divorce for the Krama of Kubu Traditional Village, Bangli District, Bali-Indonesia

people's lives, still exists and still upholds regional arts, customs, traditions and traditional culture so that they do not become extinct. The uniqueness of Balinese culture means that the island of Bali cannot distance itself from the flow of globalization. Balinese people as part of Indonesian society adhere to various traditions which are characteristic of maintaining a sense of awareness of the unity of Balinese culture. Bali is a blood of pluralism which has a diversity of customs, procedures and systems adopted to complete the ceremonial processes that are carried out. This also tends to be influenced by the customary laws that apply in certain areas (I Gusti Ketut Kaler, 1994).

According to Hilman Hadikusuma, customary law is original Indonesian law which is not written in the form of the Indonesian Constitution which regulates religious elements (Hilman Hadikusuma, 1995). Meanwhile, Artadi stated that the life of traditional community groups in Bali is based on a Hindu religious philosophy called Tri Hita Karana. This philosophy has deeply colored the life or lifestyle of the Balinese people. The Tri Hita Karana philosophy regulates the harmonization of human relationships with humans, humans with nature and humans with God. The term Tri Hita Karana comes from Sanskrit from the word "Tri" which means three, "Hita" which means prosperity and "Karana" which means three kinds of things that cause prosperity and prosperity (I Ketut Artadi, 2003). One of the formal manifestations of customary law in Bali is awig-awig which applies in traditional villages in Bali. Awig - awig who plays a very important role in regulating people's lives in Bali, both in the fields of religion and culture. Wiadnyana in Windia states that, like customary law in general, awig-awig applies in accordance with developments over time (Windia, 1994).

In marriages that are in accordance with the implementation of Marriage Law no. 16 of 2019, amendments to the 1974 Law and also in accordance with customary law provisions, the bride and groom and each family definitely want the marriage to last forever until death do them part? But in reality, in society, disagreements often occur, leading to the breakdown of marriages (divorce). The breakdown of a marriage or divorce is a problem that is not expected by several parties, both the husband and the wife, because the breakdown of the marriage will cause psychological risks for their children and even for themselves. According to Law no. 1 of 1974 concerning marriage, article 38 Marriage breakdown or divorce can occur for several reasons:

- (1) Due to death, that is, one of the husband or wife dies. The breakdown of a marriage because of this usually does not start with a dispute or misunderstanding,
- (2) Due to divorce, that is, if the court tries with all its might to no avail to reconcile the family to live in harmony, then the family files for divorce with the court,
- (3) Because of the court's decision, what is meant by the dissolution of the marriage due to the court's decision is the divorce process itself.

One of the traditions in Bali, especially in the Kubu Bangli Traditional Village, is the Mesamsam tradition. Mesamsam or divorce ceremony for the customs of the Kubu Bangli Traditional Village. The Mesamsam ceremony is a divorce according to religion and traditional customs in the Kubu Bangli Traditional Village. Philosophically, the Mesamsam ritual has the meaning of carrying out cleansing in the wewidangan or territory of Pakraman Kubu Village. Apart from that, it aims to clean up personal manners after divorce so that they are accepted again according to custom.

II. METHOD

The type of research used is empirical legal research. Empirical legal research is a legal research method that functions to see the law in real teachings or can be said to see it directly, examining how the law works in the social environment. Empirical legal research can be said to be sociological legal research, that legal research is taken from facts that exist in a society, the effectiveness of general rules, implementation of general rules, the role of legal institutions or institutions in enforcing laws on social problems (Suratman and Philips Dillah, 2013). Regarding the characteristics of Empirical Legal Science, it is described, namely:

1. Empirical Legal Science distinguishes clearly between facts and norms, between normative (prescriptive) and descriptive (descriptive) propositions.
2. Legal phenomena are seen as empirical (factual) phenomena which are purely "societal facts" (social facts) like other social facts that can be observed sensorily.
3. These symptoms which are "societal facts" must be studied and researched using empirical methods. This means that positive law is explained or described as it is, analyzed and especially explained (explanation).
4. Empirical Legal Science is a science that is value-free and neutral, meaning that its "studies" (its practitioners) do not take a judgmental or critical stance at all regarding the legal phenomena they study and explain.
5. Thus, Empirical Legal Science not only separates law from ethics-morals, but also sharply separates law and politics.

The approach used in this research is sociological and also legal, namely where the approach is carried out by examining all statutory regulations related to the problem (legal issue being faced), while the conceptual approach is an approach that departs from the views and doctrines that develop in legal science to clarify ideas by providing legal definitions, legal concepts and legal principles that are relevant to the problem. As well as the case approach which is an approach taken by examining cases related to the legal issues being faced (I Dewa Gede Atmajda and I Nyoman Putu Budiarta, 2018).

III. RESULTS AND DISCUSSION

One of the formal manifestations of customary law in Bali is awig-awig which applies in traditional villages in Bali. Awig-awig plays a very important role in regulating people's lives in Bali, both in the fields of religion and culture. In his book, Windia states that, like customary law in general, most of the awig-awig are not written down but are obeyed by the community, where the awig-awig applies in accordance with developments over time (Windia, 1994).

Certainty has the meaning of "provisions, decrees" whereas if the word certainty is combined with the word law it becomes legal certainty, which means "a legal instrument of a country that is able to guarantee the rights and obligations of every citizen" (I Nyoman Putu Budiarta, 2016). Legal certainty does not always concern the legal relationship between citizens and the state, or is not solely related to the state, because the essence of legal certainty is a matter of protection from arbitrary actions. Actors who can commit arbitrariness are not limited to the state alone but also by a group of parties other than the state. Legal certainty is a value that in principle provides legal protection for every citizen from arbitrary power, so that the law gives the state the responsibility to implement it. In this case, the relationship between the issue of legal certainty and the state can be seen (I Nyoman Putu Budiarta, 2016).

As a consequence of unwritten rules, it is easier for awig-awig to adapt to developments in society, meaning that provisions that are no longer in accordance with the current state of society will be abandoned and at the same time other provisions will emerge that are felt to better reflect the actual situation. In relation to the implementation of awig-awig, the role of community leaders or traditional village prajuru is very determining because it is the traditional village prajuru who assesses whether or not the customary rules (awig-awig) are appropriate to the current development of society, including customary sanctions within the customary community as an effort to maintain orders together.

3.1. Divorce Procedures for Krama Desa in the Kubu Bangli Traditional Village

Along with advances in technology and developments over time, this tradition is still carried out, although there is some that is still maintained as long as it does not reduce the meaning of the Mesamsam Ceremony. This ceremony is very sacred by village etiquette, therefore if the manners of those who have been divorced are legally divorced but according to customary manners those who have not carried out the pesamsaman ceremony are still considered legally husband and wife according to custom and are still considered members of the bale megebeg. Bale megebeg means that those who have not had a traditional divorce or mesasaman still receive guidance or fatherhood.

The Mesamsam Ceremony process is an obligation that is followed by men and women before giving up their social status on a regular basis and carrying out Niskala cleansing, according to information from Jero Bendesa Adat Kubu Krama Desa who will carry out the Mesamsam Ceremony first reporting to the village officials the results of the decision from Bangli religious court stated that both parties had been declared legally divorced by the state. Before carrying out the Mesamsam Ceremony, the traditional prajuru first go to Sulinggih or Jero Mangku to look for a good day before carrying out the Mesamsam Ceremony. After getting a good day, the traditional prajuru perform paum in the community hall which is attended by the couple who will carry out the traditional divorce.

After obtaining agreement from the results of the peparuman (meeting), the Mesamsam Ceremony process was then held. Before the Mesamsam Ceremony begins, the couples who will take part in the Mesamsam Ceremony are first gathered in the community hall and bring the parents or guardians of both parties and kelihan kawitan as companions. Kelian kawitan serves as a representative for parties who convey household problems. The witnesses in the mediation process meeting held by Jero Bendesa were: Head of Kubu Village, Head of Environment, Pecalang, Yowana, Jero Mangku Tri Kayangan Tiga, Jero Mangku Dang Kayangan, and Krama Desa Adat Kubu.

In the presence of the krama witnesses who will carry out the pesamsaman, they will feel embarrassed because they cannot maintain the integrity of the household that has been built over many years. The traditional village head, as the village head, will convey and read out the results of the court's decision and is accompanied by the village chief of the village's seperikan and sedehan. After reading the decision from the court, the village head will call one by one the couples who are going to divorce and give them a betel leaf (cane) tied with thread. Betel leaves function as a notification to the couple who will carry out the Mesamsam Ceremony. This procession must be carried out by all village people because residents who have been legally divorced but have not participated in the Mesamsam Ceremony are still considered husband and wife according to custom. According to Jero Bendesa Kubu Adat's statement, in the process of the Mesamsam Ceremony, the resident is still subject to the mungkul father, whereas if they are divorced and it is legal according to custom, the person concerned will be subject to the balu father, apart from that, if the resident has not carried out the pesamsaman, the couple may not remarry, including those who divorced because he died.

The event of the pesamsaman ceremony is usually motivated by several factors. Divorce is a method that must be taken by married couples when there are problems in their marital relationship that cannot be resolved well. Divorce is not the final destination of a marriage, but a disaster that strikes a marriage between a husband and wife. According to Artadi, there are several factors that cause divorce, namely as follows

Mesamsam Ceremony for the Validity of Divorce for the Krama of Kubu Traditional Village, Bangli District, Bali-Indonesia

- 1 Domestic violence Domestic violence or domestic violence (KDRT) refers to forms of behaviour carried out with the intention of hurting or injuring a family member. There are two forms of violence, namely verbal and non-verbal violence. Verbal violence is abuse carried out by one partner against another partner. A form of verbal violence is using words, harsh expressions, disrespect, mocking, insulting, insulting, hurting feelings and degrading one's dignity and worth. Physical violence is rough treatment carried out by a partner who sometimes makes excessive physical contact to abuse starting from hitting, grabbing, and kicking and so on which ultimately causes major trauma for those who experience it. The consequences of listening to and facing the behaviour of one's spouse can make a person feel humiliated, emotionally hurt, physically tormented due to harsh treatment (physical contact) and unable to live side by side in marriage, so it is clear that what is better is divorced.
- 2 Economic problems. Economy is also an indicator that determines whether or not a family can carry out its socio-economic functions in society. According to Friedman, economic conditions are social conditions or facts that occur in how a person survives with the economic conditions they have. Life's needs will be well met if a husband and wife have adequate financial resources. In traditional and modern societies, a husband still plays a big role in supporting the family's economy, so like it or not a husband has to work in order to have an income. Therefore, with these finances, you will be able to meet your family's economic needs. On the other hand, financial or economic problems will have bad consequences, such as the family's needs not being met properly, children experiencing hunger, getting sick easily, easily causing conflict between husband and wife, and ultimately having a bad impact with the emergence of divorce. On the other hand, there are families who are financially sufficient, but the husband has bad behaviour, namely trying to limit his wife's financial resources, which is called economic violence. Economic violence is a condition of financial life that makes it difficult to carry out household activities, due to deliberate treatment by one's partner, especially the husband. Even though a husband has an adequate income, he limits his giving of money for household economic activities, so that the family feels deprived and suffers financially.
- 3 Early marriage age and its implications for divorce, based on post-pregnancy marriage facts, include; the number continues to increase, many of which affect elementary school, middle school and high school children. The perpetrators are usually friends and girlfriends. Married couples from this marriage are threatened by socio-economic problems and are very vulnerable to divorce because they are not ready to build a household.
- 4 Education is one of the biggest contributions to how a person behaves and makes decisions. Married couples who have low education are vulnerable to divorce if there is a dispute between them because of their less rational mind-set without thinking about the impact of the divorce that will occur later (Artadi, 2003).

According to Jero Bendesa Kubu Traditional Village, the divorce that occurred in Kubu Traditional Village was also inseparable from the four factors above, and when carrying out the Mesamsam Ceremony, Banten was used as a means. Banten is also a tool that has strength, energy, and encouragement for Hindus to connect themselves or become one with Ida Sang Hyang Widhi Wasa. Based on the results of interviews with Jero Bendesa Adat Kubu Drs. I Nyoman Nadi on Monday, January 17 2022 explained several types which include the following. Each implementation will use facilities. The means used are donations. There are several offerings used in the Mesamsam Ceremony, namely:

1. *Pejati* which is offered as a means of piuning in the sacred place of Pura Puseh Bale Agung.
2. *Pejati* which was expressed in the meeting procession
3. *Prasista Duur Manggala*
4. Kepeng money totaling 33
5. White thread
6. Yellow rice mixed with temen leaves (Samsam)

The banten is charged to each Kubu traditional village who divorces and carries out the pesamsaman ceremony with the aim of making the divorce valid in accordance with the customary provisions in the Kubu Traditional Village, even though there has been a court decision that preceded the divorce process.

According to the book Catur Yajna, it is stated that offerings or offerings are offerings that are offered in such a way that they have a symbolic meaning and a certain function in a ceremony and are easy to see. Meanwhile, based on the basic elements or ingredients of an offering, they are divided into several types, namely: water or Tirta, fire censer, canang flower or offerings.

Flowers, water, fire, leaves are the main tools that play a very important role in carrying out any ceremony and are symbols of all natural contents which are intended as symbols of devotion and gratitude for what the Creator has bestowed upon us.

3.2. The Legality of Divorce for Krama Desa in the Kubu Bangli Traditional Village

The principles of marriage are contained in Law no. 1 of 1974 concerning Marriage which reads as follows:

- 1 The purpose of marriage is to form a happy and eternal family based on belief in the Almighty God. This means that only eternal marriage can form a happy and prosperous family. The principle of eternal marriage can be found in Article 1 of Law

Mesamsam Ceremony for the Validity of Divorce for the Krama of Kubu Traditional Village, Bangli District, Bali-Indonesia

Number 1 of 1974 which states that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God. The Almighty."

- 2 For a marriage to be valid, it must be carried out based on the religion and beliefs of those who will be carrying out the marriage. This means that a marriage is considered valid if it is carried out according to religious law or the respective religious beliefs held by the prospective bride and groom. This can be found in Article 2 paragraph (1) of Law Number 1 of 1974 which determines that marriage is valid if it is carried out according to the laws of each religion and belief.
- 3 Marriage events must be recorded based on existing regulations. This means that every marriage carried out according to the laws of each religion and belief will be considered to have legal force if it is recorded according to the applicable regulations. A marriage that is not registered has no legal force. This is contained in Article 2 paragraph (2) of Law Number 1 of 1974 which states "Every marriage must be recorded according to the applicable laws and regulations".
- 4 The position of husband and wife is balanced in the household and social life together in society. This means that the rights and positions of husband and wife in domestic life and society are balanced. The husband is the head of the household and the wife is the housewife. In deciding something, it is negotiated jointly between husband and wife. This principle is further explained in Article 31 of Law Number 1 of 1974 concerning Marriage. 5) Based on certain reasons and conditions as well as court permission, a man may have more than one wife (monogamy principle). This means that a husband may have more than one wife, if certain conditions are met, and decided by the court. This is in accordance with Article 3 paragraph (2), Article 4, Article 5 of Law Number 1 of 1974 concerning Marriage. 6) To be able to enter into a marriage, a minimum age limit is determined for men, 19 years and for women, 19 years (Article 7 paragraph (1) of Law Number 1 of 1974) and parental permission is still required until the person wishing to enter into a marriage reaches the age of 21 (two twenty-one) years (Article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage). Article 38 of the Marriage Law Chapter VII concerns the dissolution of a marriage and its consequences confirms that a marriage can be dissolved because:

1. Death;
2. Divorce; And
3. Based on court decisions (Sudarsono, 2005).

Dissolution of marriage is a legal term that is often used in the Marriage Law to explain the end of a marriage relationship between a man and a woman who have been husband and wife throughout their lives.

In the community, the krama balu (widower) will be the general community in the traditional village but their social status is different. Assuming a new social status, village krama who have divorced in district court and performed the Mesamsam Ceremony have legally given up their status as krama pengarep. Older village manners will again be accepted by the general public without ostracizing old village manners. Meanwhile, the women will return to Daha's house or will return to their parents' house with the status (widow), the women who are Mulih Daha will not return to the organization that used to be Sekha Teruna Teruni (Sukerti, 2012).

The patrilineal kinship system adopted by Balinese society, after marriage, the woman as wife will live with her husband, enter as a member of the husband's family and form a household (pekurenan) in the man's (husband's) family. If there is separation in the household (pekurenan) due to the death of the husband (divorce), usually the woman will continue to live in her husband's house or husband's family because the woman has become part of the husband's family, but it is also possible for them to return to their family of origin. . Meanwhile, if the divorce occurs as a result of a separation that is deliberately carried out without death (living divorce), of course the woman will return home to her family of origin.

In the opinion of Jro Bendesa Adat Kubu (Drs. I Nyoman Nadi) that the position of children of married couples who have divorced and have carried out the Mesamsam Ceremony, the custody of the children will fall to the wife even though they are divorced and they will still be responsible for all the care and education required by them..

IV. CONCLUSION

Based on the descriptions of the chapter above, conclusions can be drawn, namely:

1. The divorce procedure for krama in the Kubu Bangli Traditional Village, namely waiting for the district court's decision regarding divorce and in accordance with the Kubu Traditional Village, namely carrying out the Mesamsam Ceremony which is carried out at the Puseh Temple in the Kubu Bangli Traditional Village which is borne by the divorcing party and its implementation. Periodic and no-scale cleaning based on awig - awig. In general, those who carry out the Mesamsam Ceremony restore the social status of both men and women so that they are accepted in the community, while in general, men and women carry out cleansing from Cuntaka or leteh (dirty) and so that they are accepted as good manners. Those who perform the Mesamsam Ceremony no longer have any physical or spiritual ties.
2. Divorce is legal for Village etiquette in the Kubu Bangli Traditional Village, apart from submitting a judicial process and having a court decision, you must also obey Pararem Pawos 43 and Pawos 44, namely carrying out the Mesamsam Ceremony.

Mesamsam Ceremony for the Validity of Divorce for the Krama of Kubu Traditional Village, Bangli District, Bali-Indonesia

The Mesamsam Ceremony is a periodic and noetic cleansing ceremony to remove Cuntaka or leteh (dirty) which is witnessed by the family and traditional warriors.

REFERENCES

- 1) Artadi, I Ketut. (2003). Hukum Adat Dengan Aneka Masalahnya. *Pustaka Bali Post*. Denpasar.
- 2) Atmajda, I Dewa Gede dan I Nyoman Putu Budiarta. (2018). Teori-Teori Hukum. *Setara Press*. Malang.
- 3) Budiarta, I Nyoman Putu. (2016). Hukum Outsourcing. *Setara Press*. Malang.
- 4) Hilman Hadikusuma. (1995). Hukum Waris Di Indonesia Menurut Peraturan Perundang-Undang Hukum Adat Hindu-Islam. *Citra Aditya Bakti*. Bandung.
- 5) Kaler, I Gusti Ketut. (1994). Butir-Butir Tercecer Tentang Hukum Adat Bali. *Kayu Mas Agung*. Denpasar.
- 6) Sudarsono. (2005). Hukum Perkawinan Nasional. *Rineka Cipta*. Jakarta
- 7) Sukerti. (2012). Hak Mewaris Perempuan dalam Hukum Adat Bali Sebuah Studi Kritis, Denpasar. *Udayana University Press*. Denpasar.
- 8) Suratman dan Philips Dillah. (2013). Metode Penelitian Hukum, Alfabeta, Bandung.
- 9) Titib. (1996). Perkawinan Pada Gelahang CV. Kayumas Agung. Denpasar.
- 10) Windia. (1994). Meluruskan *Awig-awig* yang Bengkok. *Cetakan pertama, PT BP*. Denpasar.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.