



TECHNIUM
SOCIAL SCIENCES JOURNAL

www.techniumscience.com



Vol. 67/2025
A New Decade for Social Changes

PLUS
COMMUNICATION P



International
Communication & PR

Pasubaya Mawarang in Marriage at Gelahang: A Review Based on Balinese Customary Law

Krishna Satria Nugraha Taira; Made Warka; Tomy Michael

Universitas 17 Agustus 1945 Surabaya

Krishnataira@gmail.com; made@untag-sby.ac.id; tomy@untag-sby.ac.id

Abstract. In the teachings of Catur Asrama *wiwaha* is included in *Grehastha Asrama*, According to Law No. 1 of 1974 article 1 it is explained: Marriage is a physical and spiritual 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 Almighty God. *Wiwaha* in Hinduism is seen as something very noble, as explained in the *Manawa Dharma Sastra* book that the *wiwaha* is sacred and the law is mandatory, in the sense that it must be carried out by a normal person and as an obligation in his life. The main purpose of *wiwaha* is to obtain offspring or *sentana*, especially the *suputra*. It is further explained in the *Manawa Dharmasastra* Book that *wiwaha* is the same as *Samskara* (*Wiwaha Samskara*), which places the position of marriage as an institution that has a close relationship with the Hindu religion. The *wiwaha* ceremony is the peak of *Manusa Yadnya*, as a self-purification ceremony (*Sarira Samskara*). In addition, the *wiwaha* ceremony must be guided by and follow the conditions that have been determined in Hindu law. Legally, the legal basis for marriage in *Gelahang* is a verse in *Manawa Dharmasastra IX. 118* which regulates women's inheritance rights, although it is also stated that men are the heirs. The verse that states that women have the right to inherit is as follows: "*Svebhyom sebhastyu kanya Bhyah pradadyur bhratarah prthak Svat svadamsac caturbhagam Patitah syuraditsavah*". This means "but to female relatives, the brothers will give some of their portions, each one a quarter of their portion; those who refuse to give it will be ostracized.

Keywords. marriage, *padagelahang*; law

Introduction

Traditional forms of marriage There are 2 forms of marriage that are commonly known in Bali, namely ordinary marriage and *nyentana*. Since 2008, marriage in *gelahang* has been introduced.[1] Based on previous research conducted in 2012, 51 married couples were found who married in *gelahang*, where the distribution in each city district in Bali Province is as follows:

Table 1.0: Number of Marriage Couples in Gelahang in Bali (2012)

NO	REGENCY	TOTAL
1.	Jembrana	7
2.	Tabanan	19
3.	Badung	1

4.	Denpasar	6
5.	Gianyar	7
6.	Klungkung	4
7.	Bangli	4
8.	Karangasem	2
9.	Buleleng	1
TOTAL		51

In the teachings of Catur Asrama wiwaha is included in Grehastha Asrama, According to Law No. 1 of 1974 article 1 it is explained: Marriage is a physical and spiritual 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 Almighty God. Wiwaha in Hinduism is seen as something very noble, as explained in the *Manawa Dharma Sastra* book that the wiwaha is sacred and the law is mandatory, in the sense that it must be carried out by a normal person and as an obligation in his life. The main purpose of wiwaha is to obtain offspring or sentana, especially the suputra. It is further explained in the *Manawa Dharmasastra Book* that wiwaha is the same as Samskara (Wiwaha Samskara), which places the position of marriage as an institution that has a close relationship with the Hindu religion. The wiwaha ceremony is the peak of Manusa Yadnya, as a self-purification ceremony (*Sarira Samskara*). In addition, the wiwaha ceremony must be guided by and follow the conditions that have been determined in Hindu law.[2]

The marriage process in gelahang is not much different from the ordinary marriage process, which is carried out by the process of betrothal/marriage, which is previously started with a courtship period. The process of the ceremony in ordinary marriage, generally the man's family is relatively busier when compared to the woman's family. While the process of the marriage ceremony in gelahang is relatively balanced between the man's family and the woman's family. This balance is marked by the existence of the same ceremony at the groom's and bride's houses. This means that in a marriage in gelahang there are two relatively similar ceremonies, between the groom's house and the bride's house.[3]

The similarities between a *gelahang* marriage and a nyentana marriage are: both are alternative marriages, based on mutual love, there are religious witnesses (ceremonial offerings) and social witnesses (society), and both want to have children. While the difference is that in a gelahang marriage, the status of men and women is the same so it is often called *parental*. The position of the children born is the same (balanced/not biased towards one in the context of lineage). The marriage ceremony process is carried out at the husband's house and at the wife's house. An important aspect in a gelahang marriage that is rare in ordinary marriages is that there is an agreement between husband and wife witnessed by the families of both parties. The agreement can be written or verbal with family witnesses.

Based on Supreme Court Decision No. 1331 K/pdt 12010, dated September 30, 2010, revoking Denpasar High Court Decision No. 27/Pdt/20091PT. Dps dated August 8, 2009 which upheld Denpasar District Court Decision No.273/Pdt.G12008/PN.Dps, dated November 6, 2008, stating that marriage in gelahang or marriage with the status of "same purusa" is valid according to law, and stating Marriage Certificate No. 130/MG/1990, dated December 31, 1990 issued by the Population and Civil Registry Office of Karangasem Regency with the status of "same purusa" for the husband and wife couple Lelly Nawaksari and I Ketut Sukarta is valid according to law.

In the marriage in gelahang, the term *pasubaya mawarang* is known, in this case pasubaya is interpreted as an agreement. The agreement is made between the woman's family

and the man's family, the marriage agreement in the marriage in gelahang is made by the prospective husband and wife before or at the time of the marriage. This pasobaya mewarang is also approved and known by the husband and wife, the parents of each party and the prajuru from each region of origin of the parties.

A marriage agreement is needed to regulate the rights and obligations of husband and wife regarding inheritance, descendants of the husband and wife, and rights and obligations towards their ancestors. A marriage agreement in a marriage in Gelahang can be used as a guideline/media in resolving household problems that may arise in the future during the marriage in Gelahang.

The Bali Province PHDI Paruman held on Monday, December 29, 2008, concluded that marriage in gelahang already has a religious basis and according to Hindu law does not conflict with Hindu teachings. Based on Supreme Court Decision No. 1331 K/pdt 12010, dated September 30, 2010, it annulled the Denpasar High Court decision No. 27/Pdt/20091PT. Dps dated August 8, 2009 which upheld the Denpasar District Court decision No.273/Pdt.G12008/PN.Dps, dated November 6, 2008, stating that marriage in gelahang or marriage with the status of "samasama purusa" is valid according to law, and stated that Marriage Deed No. 130/MG/1990, dated 31 December 1990 issued by the Population and Civil Registry Service of Karangasem Regency with the status of "same purusa" for the husband and wife Lelly Nawaksari and I Ketut Sukarta is legally valid.

Apart from the respective positions of husband and wife as described above, there are two things that need to be considered by prospective couples who will choose the form of marriage in Gelahang.[4] Namely: (1) The prospective bride and groom should come from "equal families" (pawiwahan pepadon), in various statuses: such as: sorolt (descent), level of education, economic situation, etc. (2) The prospective bride and groom must obey the principles: forced, lasia, satya. The principle of forced means being aware of the existence of compelling situations and conditions, namely: (a) it is impossible to choose a regular marriage or nyentana marriage, because each prospective bride and groom (male and female) is an only child/pedidi in their family; (b) each prospective bride and groom's parents are adamant about not wanting to have children; (c) each prospective bride and groom are adamant about not wanting to end their relationship or have their marriage cancelled. The principle of lasia means sincerely accepting all the consequences and implications of the choice of marriage form in gelahang. The principle of saty means remaining or not shifting from the initial commitment (force and lasia), forever.

Children from marriages in gelahang are given the responsibility to serve in two places, namely the father's family and the mother's family. This creates a situation where the child must manage customary and social obligations in both families simultaneously. If the family has more than one child, it is better to place one child in the mother's family and another in the father's family to share the responsibilities. Problems arise when the child's social status overlaps with his obligations in both families, especially if he is not fully accepted by one of the families. This injustice can cause the child to feel burdened and depressed, so that he demands justice from his parents.

Research Method

The writing in this journal is included in normative juridical legal research.[5]

Result and Discussion

Characteristics of Marriage in Gelahang from a Gender Perspective

Philosophically, the belief in the obligation for every Hindu community to have offspring is the story of Sang Jaratkaru contained in the Upanishad (a book containing the teachings of the Rsi/Hindu holy men). Based on the story of Sang Jaratkaru contained in the Upanishad or the teachings of Hindu holy men, the community believes that they will not be able to enter heaven and reincarnate back into the world if they do not have offspring. Their souls will hang on a bamboo petung that is being bitten by a rat and below it there is a deep ravine that is unimaginably deep and dark. This teaching builds the concept in Balinese society, that every child must fulfill their obligations to their parents to continue their offspring, both boys and girls. While according to tradition, girls are not recognized to be successors and heirs, except in several villages in the South Bali area.[4]

That is if there is a man who wants to be invited to marry and is willing to break the clan ties to his ancestors and join the wife's clan (matrilineal). This condition actually causes many families, especially those who do not have male descendants or whose sons love only daughters to experience problems related to the continuation of descendants and inheritance. Based on this reality, a marriage model is needed that is able to provide equality of rights and obligations between women and men, without eliminating the patrilineal essence that has become fanaticism in Balinese society.[6]

This is in line with Titib, the purpose of marriage is to realize 3 things, namely: (1) dharmasampati, the bride and groom together carry out Dharma which includes all religious activities and obligations such as carrying out yadnya (sincere and holy offerings to God), because in the grhastalah yadnya activities can be carried out perfectly, (2) praja, the bride and groom are able to give birth to offspring who will continue the mandate and obligations to the ancestors. Through yadnya and the birth of a son who is a suputra, a child will be able to pay off the debt of service to the ancestors (pitra rna), to the Gods (dewa rna) and to the teachers (rsi rna), and (3) rati, the bride and groom can enjoy sexual satisfaction and other satisfactions (artha and kama) that do not conflict and are based on dharma. Meanwhile, sociologically the gender responsive marriage model (in gelahang) was built because of the reality of customary law which requires people who do not have offspring or have daughters but do not carry out matrilineal marriages to be continued by brothers or descendants of brothers.[7]

This process can be done in two ways, namely: (1) by adopting a child from a brother, with the consent of the nuclear family, and (2) inherited by a brother or nephew automatically, because he is no longer able to carry out social and customary duties (banjar/traditional village) or has died. When the continuation of the lineage is carried out by the male family or the son of a brother (keurusa), then the management of parents who do not have heirs is also carried out by the brother or son of the brother. In connection with the rights and obligations of inheritance and continuation of lineage according to customary law, the successor to the lineage must carry out the obligations as his duties like a biological child who is inherited and he bears the obligations in the banjar/village as the successor to the obligations of the parents he inherited in the banjar/village.[8]

Legally, the legal basis for marriage in Gelahang is a verse in Manawa Dharmasastra IX. 118 which regulates women's inheritance rights, although it is also stated that men are the heirs. The verse stating that women have the right to inherit is as follows: "*Svebhyom sebhyastu kanya Bhyah pradadyur bhratarah prthak Svat svadamsac caturbhagam Patitah syuraditsavah*". This means "but to the sisters, the brothers will give some parts of their share, each one a quarter of their share; those who refuse to give it will be ostracized.

Implications of Pasubaya Mewarang in Marriage in Gelahang from a Gender Perspective

Pasobaya mewarang is made with the aim of being a guide if a problem arises in the future. Although a husband and wife hope that there will be no conflict in the household, pasobaya mewarang can be a guideline for finding family solutions when problems arise. Thus, each party has the capacity to recognize their rights and responsibilities. In pasobaya mewarang, the will of both parties must be in line with religious norms, public order laws, and morality.

The constitution, namely the 1945 Constitution of the Republic of Indonesia, guarantees the protection and fulfillment of basic rights, including the right to marry which is recognized as a human right according to the 1945 Constitution. Rejection of same-sex marriage can also be considered a violation of the provisions of Law Number 39 of 1999 concerning Human Rights, which guarantees equal rights for all citizens. The law is not only limited to written norms in laws, but is also reflected in the daily practices of society that are respected and applied.[9]

Conclusion

Legally, the legal basis for marriage in Gelahang is a verse in Manawa Dharmasastra IX. 118 which regulates women's inheritance rights, although it is also stated that men are the heirs. The verse that states that women have the right to inherit is as follows: "*Svebhyom sebhyastu kanya Bhyah pradadyur bhratarah prthak Svat svadamsac caturbhagam Patitah syuraditsavah*". This means "but to female relatives, the brothers will give some of their portions, each one a quarter of their portion; those who refuse to give it will be ostracized.

This verse gives women the authority to become heirs for their families, both materially and non-materially. Automatically, a woman can also become the successor to her family, if she does not have a brother. This provision is also reinforced by the Decree of the Bali Regional Land Reform Committee dated May 28, 1962 No. 2/Sk./XX/1962 and the results of the meeting of the Ad Hoc Committee of the Bali Level I Regional Land Reform Committee on 1 October 1962 formulated that those who are classified as heirs are widows, children, both male and female, or boys and girls have the same rights.

References

- [1] G. A. Siswadi, "PERKAWINAN PADA GELAHANG DI BALI DALAM PERSPEKTIF DEONTOLOGI IMMANUEL KANT," *VIDYA SAMHITA: Jurnal Penelitian Agama*, vol. 8, no. 1, 2022, doi: 10.25078/vs.v8i1.194.
- [2] J. Jany, "Hindu Law," in *Ius Gentium*, vol. 80, 2020. doi: 10.1007/978-3-030-43728-2_8.
- [3] I. G. P. Mantra, I. G. Januariawan, and N. P. L. Megayanti, "Perjanjian Perkawinan Dalam Perkawinan Pada Gelahang," *VYAVAHARA DUTA*, vol. 25, no. 2, 2020.
- [4] E. Djuniarti, "Perkawinan 'Pada Gelahang' Serta Aspek Hukum Pembagian Harta Warisannya di Bali," *Jurnal Penelitian Hukum De Jure*, vol. 20, no. 3, 2020, doi: 10.30641/dejure.2020.v20.459-471.
- [5] D. A. P. Nugrohadiputri and T. Michael, "The Concept of The Principle of Non-Retroactive In Crime Human Rights In Indonesia," *International Journal of Social Sciences and Humanities*, vol. 2, no. 2, pp. 81–92, Jun. 2024, doi: 10.55681/IJSSH.V2I2.1319.
- [6] K. Ananda Putra and D. Wagian, "TINJAUAN YURIDIS PERKAWINAN PADA GELAHANG DALAM PERSPEKTIF HUKUM POSITIF INDONESIA," *Private Law*, vol. 1, no. 2, 2021, doi: 10.29303/prlw.v1i2.268.

- [7] R. Bayu, P. Mogadi, and T. Michael, "Legal Protection Against the Police in Applying Force Means During Demonstrations Which Are Ongoing Anarchy," *International Journal of Social Sciences and Humanities*, vol. 2, no. 1, pp. 15–21, Feb. 2024, doi: 10.55681/IJSSH.V2I1.1286.
- [8] N. P. E. Y. Puspitasari and M. D. Lestari, "Penyesuaian Diri Pasangan dengan Perkawinan Pada Gelahang di Masyarakat Hindu Bali," *Jurnal Psikologi Udayana*, vol. 6, no. 1, 2019.
- [9] A. A. S. Sanjiwani and T. D. Valentina, "KEPUASAN PERKAWINAN PASANGAN PADA GELAHANG," *Jurnal Psikologi Udayana*, vol. 4, no. 1, 2017, doi: 10.24843/jpu.2017.v04.i01.p19.