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Legal consequences of ngerorod marriage according to marriage law

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Abstract. Marriage or *wiwaha* for Hindu society has a special meaning and position in human life, namely the beginning of the *grehasta* level. Marriage is something that is religious (sacred) and obligatory because it is related to a person's obligation to have children and atone for all their sins and marriage itself is highly respected because it can provide an opportunity for ancestors to incarnate into the world. This marriage aims to live prosperously and happily. *Manawadharmasastra* explains that there are three purposes of marriage, namely *dharmasampatti*, *praja* and *rati*. *Dharmasampatti* means together with husband and wife to realize the implementation of *dharma*), *praja* means giving birth to offspring and *rati* means enjoying sexual life and other sensual satisfaction. Legal Consequences of *Ngerorod* Marriage According to the Marriage Law, important points that need to be considered in relation to the concept of a legal state and the practice of *ngerorod* marriage in Bali include: Recognition and Protection in Human Rights: A valid marriage according to law must be carried out with the consent both parties. Law No. 1 of 1974 states that 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 based on Almighty God. In this case, human rights such as the right to choose a partner without coercion are highly respected. In the practice of *ngerorod*, although there seems to be an element of "*escape*," this process is actually also carried out by agreement of both parties. If both parties agree, then *ngerorod* can be seen as a form of cultural expression that doesn't conflict with human rights. However, if there is an element of coercion or disagreement from one of the parties, this can be considered a violation of human rights protected by law.

Keywords. legal; *ngerorod*; *escape*; marriage

Introduction

Marriage or *wiwaha* for Hindu society has a special meaning and position in human life, namely the beginning of the *grehasta* level. Marriage is something that is religious (sacred) and obligatory because it is related to a person's obligation to have children and atone for all their sins and marriage itself is highly respected because it can provide an opportunity for ancestors to incarnate into the world. This marriage aims to live prosperously and happily. *Manawadharmasastra* explains that there are three purposes of marriage, namely *dharmasampatti*, *praja* and *rati*. *Dharmasampatti* means together with husband and wife to realize the implementation of *dharma*), *praja* means giving birth to offspring and *rati* means enjoying sexual life and other sensual satisfaction.

The existence of *wangsa* also influences the marriage that is carried out, generally Balinese people marry someone who has the same *wangsa*, but it is different if the situation is a couple of lovers from different *wangsa* get married, then the procession and customs are different, a different *wangsa* marriage is a marriage that in this study is carried out by a woman from the *triwangsa* with a man from the *jaba wangsa*. In this marriage, the female class of the *tri wangsa* is interpreted as having a higher position or degree compared to the male class of the *jaba wangsa*.

The term in inter-clan marriage itself can be called marriage *Ngerorod*, namely marriage by means of "running away together" marriage, where the man and woman who are going to get married, go together (usually secretly) leaving their respective homes and hiding with another family (third party) and declare themselves to be *Ngerorod*. This kind of marriage is generally not known by the parents beforehand. Even if it is known, the parents pretend not to know, because the *Ngerorod* marriage has lighter customary requirements than the others. This method is carried out because the parents of woman do not approve of the relationship between their daughter and her future husband, or because the man's family cannot afford to go through the marriage method by asking for a hand in marriage and the reason for the difference in clans. *Ngerorod* marriage is also called *ngangkat* marriage. The term *Ngerangkat* marriage is usually used by Balinese people in Buleleng area, while the term *Ngerorod* marriage is generally known to the people in the southern part of Bali such as in the Klungkung, Gianyar, Badung areas and several other areas.

Ngerorod marriage is a form of marriage where the two prospective brides and grooms love each other and agree to build a household, but their relationship encounters obstacles, either from the family or society, which makes them run together, of their mutual will with the aim of carrying out the marriage.

For a woman who has a higher dynasty when paired, especially with a man who has a lower dynasty or is called *jaba*, then the woman is called *Nyerod*. However, the term was often interpreted in ancient times. The term *Nyerod* marriage has been abolished, during the 1995 *Paswara* at the DPRD meeting at that time which resulted in an agreement, that *Nyerod* marriage or marriage with a different dynasty was abolished. He continued, it is no longer relevant in today's era, including the implementation of *Patiwangi* ceremony which should have been abolished and was held by the Pasamuhan Agung Majelis Desa Pakraman which discussed *Nyerod* marriage. In the paruman it resulted in a decision that *Nyerod* marriage or different dynasty was considered an ordinary marriage. In fact, all the ceremonial processions should take place normally but the problem is after the marriage or when a woman who has *Nyerod* divorces. Then there will be a polemic. Even often in society it is considered to have floating descendants. Especially if the house of origin is not given by the extended family.

The legal consequences of inter-clan marriage tend to be detrimental to women (psychologically). According to Republic of Indonesia Law Number 39 of 1999 concerning Human Rights, it is prohibited to cause misery to other people in any way. According to Law No. 1 of 1974 and Government Regulation No. 9 of 1975 concerning Marriage itself, there is no application of rules or sanctions for inter-clan marriage. So as long as the couple's requirements are met as stated in the Regulation. By losing her *triwangsa* title as a woman, this woman will not return to her original family so that if there is a legal separation, the woman may be abandoned, because there is no place to live either in her ex-husband's house or her original place of residence. also cannot return, this term is called throwing away the body or *ngumbang*.

In the case of *ngerorod*, generally the prospective bride feels that she comes from a higher caste, while the prospective groom is considered to come from a lower caste. Or the prospective bride feels that she has a higher caste, but socio-economically the prospective groom feels that his caste is higher. According to Hinduism, *ngerorod* marriages are still recognized as valid, and the existence of *ngerorod* marriage institution has been recognized by legal considerations in Denpasar District Court decision Number 43/PN.Dps/Pdt/1976 which among other things reads: "*considering that in general elopement (ngerorod) is undertaken by the bride and groom if the girl's family does not approve of their daughter's marriage for reasons of differences in lineage or socio-economic background*". *Ngerorod* marriages have legal consequences in customary contracts both according to religion, administrative systems guarantee legal certainty.

The wife's caste being higher than her husband's caste, before 1951 was an obstacle for the husband to marry and was even a violation of the law. After 1951, caste differences between husband and wife were no longer an obstacle. This abolition was carried out by the Decree of the Governor of the Head of the Bali Region, which also simultaneously abolished the legal consequences of caste differences in Balinese Hindu society. The abolition of the legal consequences of social interaction between groups from different castes, but the abolition should have been carried out by law. The validity of marriage has been clearly regulated systematically in Law No. 1 of 1974, and marriage is also a legal act of agreement in the field of family law.

The problem is about the interpretation to understand the intent and content of the provisions in Law Number 1 of 1974 in conjunction with Government Regulation Number 9 of 1975 concerning marriage regarding the validity of marriage and considering that marriage is also a legal act that occurs because of an agreement in the field of family law, then the problem can be determined how the validity of a marriage as regulated in Law Number 1 of 1974 is reviewed from the perspective of contract law, with the hope that clarity can be obtained regarding correct interpretation of the validity a marriage; so that confusion in understanding the validity of a marriage can be resolved.

In this *Ngerorod* marriage, the most important element is the element of mutual consent, if it is not fulfilled or there is evidence of coercion against the woman to do the *Ngerorod*, the man can be charged with the crime in Article 332 paragraph (1) number 2. The need for this element of mutual consent will also strengthen the nature of the joint elopement. Because here it will be seen that in the marriage they run away together, no party runs away and no party feels like they are being run away. If the provisions above are implemented, of course the *Ngerorod marriage* process can continue to be carried out.

Although the *ngerorod* marriage and other forms of marriage in Bali are both considered valid as long as they meet the applicable customary and religious procedures, the implementation process for both is different. Marriage is usually carried out with the approval and blessing of the family and official registration, while the *Ngerorod* marriage is carried out without official notification to the family or registration authorities, often through escape. In addition, *ngerorod* marriage also requires the role of human witnesses, where human witnesses play a key role in ensuring the validity of the ceremony where even though this marriage does not involve official notification or initial registration, human witnesses still have an important role in the customary ceremony that may be carried out after the couple returns and informs the family. The customary ceremony carried out afterwards may also require the presence and approval of human witnesses to complete the ceremony that is recognized by custom and religion. This causes significant differences in social and procedural recognition. This study is

directed at understanding more deeply the legal consequences of *ngerorod marriage* according to Law Number 1 of 1974 concerning Marriage.

Research Method

The writing in this journal is included in normative *juridical legal research*.

Result and Discussion

Pros and Cons of Ngerorod Marriage in Bali

Ngerorod marriage is one form of traditional marriage that is still practiced in Bali. In this system, marriage begins with a symbolic "kidnapping" process by the groom of the prospective bride, which is usually done without the knowledge or official permission of the woman's family. Although *ngerorod* is recognized and has a place in Balinese customs, this practice also raises various pros and cons among the community and academics.

From the positive things that people see regarding *Ngerorod Marriage*, there are also opposing views, namely as follows:

- a. *Potential for Inequality and Coercion*
- b. Risk of Inter-Family Conflict
- c. Legal Uncertainty and Social Status
- d. Psychological Impact on Women
- e. Social Stigma
- f. Human Rights Violations
- g. Lack of Education on Individual Rights
- h. Challenges in Integrating with Modern Values
- i. Difficult Conflict Resolution

Ngerorod Marriage Perspective of Marriage Law

Ngerorod marriage is a form of traditional marriage in Bali that involves the symbolic "kidnapping" of the bride by the groom as a way to conduct the marriage without a large traditional ceremony. Although recognized in Balinese customary law, *ngerorod* marriage raises various questions when confronted with the Marriage Law in force in Indonesia. This article will examine how the practice of *ngerorod* marriage is viewed from a national legal perspective, especially in relation to Law Number 1 of 1974 concerning Marriage.

Law Number 1 of 1974 concerning Marriage regulates various aspects related to marriage in Indonesia, with the aim of ensuring that marriages are conducted legally, fairly, and meet the requirements set by law. Some of basic principles regulated in this law include the consent of both parties, registration of marriages, and protection of the rights husband and wife and children born from the marriage. According to Article 2 Paragraph (1) of the Marriage Law, "A marriage is valid if it is conducted according to the laws of each religion and its beliefs." This article acknowledges that marriages must be in accordance with the provisions of the religion and customs adhered to by the parties to the marriage. However, Article 2 Paragraph (2) adds that, "Each marriage is recorded according to the applicable laws and regulations." This registration is important to provide legal protection for couples and their children.

In the case of a *Ngerorod Marriage* to be carried out by prospective brides and grooms who are not yet 21 years old, if the marriage has not been carried out, then the parents or guardians who have the right can prevent the marriage so that the marriage is void and cannot be carried out until the prevention is revoked or abolished. If it turns out that the marriage has been carried out, the only way is to cancel the *ngerorod* marriage that has been carried out.

In other words, a marriage that is carried out by ignoring the conditions and prohibitions on marriage as described above will remain valid if it has been carried out according to religious and belief law, unless there is a decision to revoke/remove the prevention of marriage or there is a decision to cancel the marriage. Article 2 of Law Number 1 of 1974 concerning Marriage regulates the validity of a marriage, which in the explanation of Article 2 paragraph (1) states: "there is no marriage outside the law of each religion and belief in accordance with the 1945 Constitution", such as a *Ngerorod* marriage if it is not prevented or canceled, the *Ngerorod* marriage remains valid because the *Ngerorod* marriage that was carried out has been carried out according to Hindu law.

Conclusion

Legal Consequences of *Ngerorod* Marriage According to the Marriage Law, important points that need to be considered in relation to the concept of a legal state and the practice of *ngerorod* marriage in Bali include: Recognition and Protection in Human Rights: A valid marriage according to law must be carried out with the consent both parties. Law No. 1 of 1974 states that 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 based on Almighty God. In this case, human rights such as the right to choose a partner without coercion are highly respected. In the practice of *ngerorod*, although there seems to be an element of "escape," this process is actually also carried out by agreement of both parties. If both parties agree, then *ngerorod* can be seen as a form of cultural expression that doesn't conflict with human rights. However, if there is an element of coercion or disagreement from one of the parties, this can be considered a violation of human rights protected by law.

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