Legal Protection for Widow Without Child in Bali Inheritance Adat Law

Sahat Maruli Tua Situmeang, Arinita Sandria, Febilita Wulan Sari

Indonesian Computer University, Indonesia

Abstract

Marriage is a bond inwardly and outwardly between a man and a woman as husband and wife with the aim of forming a family or household that is happy and eternally based on God. Some people in Indonesia still holds strong Adat Law. If there are children in the marriage, then the property will be inherited by the husband and children in the marriage but if there are no children then the property will become the property of the husband's family. Legal protection should be provided to all citizens without exception, including the Balinese women. Currently, The Adat Law is thus considered to be very unfair for Balinese women, therefore, the issues raised in this article are: 1) How is the implementation of legal protection for the widow without child in Bali Inheritance Adat Law; and 2) What legal action can be taken by a widow without child in the community Adat Law Bali to seek the right for property "gono-gini". This study was conducted descriptive analysis, as well as the use of normative juridical approach, a method in which the law conceived as norms, rules, principles or dogma. This research was conducted in two stages, namely the library research and field data. Data collection techniques in this research is done in two ways, namely, the study of documents and interviews. Data analysis was conducted using qualitative methods of analysis juridical. The conclusions that can be drawn are: 1) Adat Inheritance Law of Bali not provide legal protection for widow without child, where the childless widow did not get the gono-gini property; and 2) The legal efforts can be reach by a widow without child in the community Bali Adat Law to seek the rights for gono gini property is to file a lawsuit on Bali Inheritance Adat Law to the District Court on the basis that the Bali Inheritance Adat Law does not provide legal protection and justice for women of Bali.

Keywords: Legal Protection, Widow, Inheritance Law, Adat Law of Bali

INTRODUCTION

The existence of law in society is a means to achieve peace and order in society, so that the interests of one individual to another individual in society can be maintained and do not pose a conflict of interest (Ambikai and Zahira, 2016). Law is a set of regulations, rules or norms of general and normative. General law as they apply to everyone and normative for determining what should and should not to be done by a person and determine how to implement the compliance and

adherence to norms or the rules (Boniface, 2016)

The role of law in society is to provide legal protection to all members of society whose interests are impaired. Disputes that occur in the community should be resolved by the applicable law so that it can be prevented vigilante behavior. The main objective of the law on the protection of human interests is to create an orderly social order so as to manifest a balanced and harmonious life. Sudikno Mertokusumo argues that the purpose of the law is that the achievement of the expected order within the community so that the interests of all members of society would be protected. While Subekti argues that the purpose of the law is to subserve to the destination country which is to achieve prosperity and happines for all people. This is in line with the opinion of Jeremy Bentham stating that the great happiness for the great people.

Adat law is a positive law in Indonesia. Adat law is a legal system that is known within the social life in Indonesia and other Asian countries such as Japan, India and China. Adat law as a branch of jurisprudence stand alone nature of mind engendered by the west and not by the mind of the Indonesian people themselves.

Adat law is unwritten law which is a guideline for most people of Indonesia and maintained in everyday social life, both in cities and in villages (Friedman, 1975). Adat law continues to grow from a real necessities of life, way of life and way of life of which is a culture of the communities where customary law was valid (Suharti and Pramono, 2016).

Adat law is a part of the Indonesian culture and therefore the study of customary law means have been studied as a part of the Indonesian culture. The term of Adat Law is a translation of the Dutch language, Adatrecht. The person who first used the term Adatrecht is Snouck Hurgronje in his book, De Atjehers and het Gayoland written by Snouck Hurgronje.

The legal basis for the enactment of customary law in Indonesia can be seen both in terms of the philosophical, sociological and juridical. If the terms of the juridical basis of entry into force of Adat Law can be found in Article 18B Paragraph 2 of UUD 1945 which states that :

> “The state recognizes and respects units of indigenous communities and their traditional rights as long as they live and in accordance with the development of society and the

principles of the Republic of Indonesia which is regulated by law."

One of the Adat Law is still valid until today in Indonesia is Bali Adat Law. Customary law Bali has its own characteristics that are different from other Adat Law in Indonesia, nameli Bali Adat Law is influenced by various concepts in Hinduism such as Tri Hita Karana, Vasudeiva Kutumbhakam and Tat Tvam Asi. One thing that is set in Bali Adat Law is a matter of inheritance. Issues of inheritance is the hardest part of Bali Adat Law. This is partly due to the diversity of objects that may be inherited, many objects may be inherited and others.

Bali adat law is parental, where lineage is taken from the men. Men are suputra child which would prevent her parents go to hell. Customary inheritance in Bali only boys can inherit. This is due to inherit in Bali not only bequeath property but also inherit various obligations which can only be done by men. Daughters only will inherit if not married. If married, the girls will go to families of men and lose inheritance rights in the family. Similarly, if a woman was married but had no children, when her husband died, the widow will return to his family without an inheritance from her husband.

This is what is currently perceived as an injustice for women in Bali. Therefore, researchers are interested in writing an article titled "legal protection for widow without children in Bali inheritance adat law".

Problems :

Issues raised in this case are :

1. How the implementation of legal protection for the childless widow in Bali Adat Inheritance ?
2. What legal action can be taken by a widow without children in the community Bali Adat Law to seek redress for "gono-gini" property ?

Materials and methods

Research specification : this research was conducted a descriptive analysis which gives an idea as carefully as possible about the facts that exist related to the research.

Method approach : this study uses normative juridical approach, a method in which the law conceived as norms, rules, principles or dogma.

Stage research : this research was conducted in two stages, namely the library research and field data.

Data collection techniques : data collection techniques in this research is done in two ways, namely, the study of documents and interviews

Method of data analysis : data analysis was conducted using qualitative juridical analysis method.

Research location : location of research to obtain the data in this papaer are the libraries and institutions related to the research.

RESULT AND DISCUSSION

Implementation of The Law for The Protection of Widow Without Child in Indigenous Inheritance of Bali

In essence relations between subjects of law with the object of law protected by the law and the rights and obligations. The rights and obligation arising out of legal relationships should be protected by law, so that all members of society feel secure in carrying out its interests. Therefore, the protection of the law can be interpreted as a provision of a guarantee or assurance that someone will get what is rightfully and obligation (Alshehhi, 2016)

Philip M. Hadjon distinguish forms of legal protection into 2, namely the preventive legal protection and refressive legal protection. Preventive legal protection is the protection of the law in which the public and opportunity to file an objection or opinion before a government decision received definitive form.

Legal protection should be given to all existing legal system in Indonesia, including in the system of adat law. Bali is one of the provinces in Indonesia which still retains Adat law. One part of the Adat Law is the law of Inheritance. Inheritance law related to the person who died, leaving the estate and have heirs. Group heir in the Adat Law of Bali is the biological child or children's cemetery. Biological childrean entitled to inherit is a boy. Girls are not entitled to inherit unless the girls becomes a child cemetery.

Bali Adat Inheritance Law did not give inheritance rights to girls. Daughters inherit with very limited rights which can only enjoy the fruits of the estate but does not have the rights to own or sell the inherited property from theirs parents. When girls are married then the girl left her family and the loss

of inheritance rights of his family and went into her husband's family.

In civil law, martial property known gono gini where in case of divorce, the gono gini property will be divided between husband and wife. If the husband died, the wife is one of the heirs of her husband. However, in Bali Adat Inheritance Law, if the husband dies, the wife will not be disinherited. Legacy will fall into hands of the boy. If there are children in the marriage, then the inheritance will fall to the husband's family and his wife will return to her family.

When viewed in terms of legal protection, women, either widowed daughter, do not get legal protection from Bali Adat Inheritance Law. However, Adat Law is a legal system that goes from generation to generation in a society and be recognized and respected by the community concerned.

Remedies to taken by widow without children in Bali of Indigenous People to het his rights over gono gini property:

Adat law has three distinctive pattern, namely: Adat law contains properties that are very traditional. Implies that the traditional nature of customary law systems from the will of eminent ancestors and the will of the gods that are considered sacred. The presumption is usually constructed in legends or stories handed down whether written or not.

Adat law can be changed :

Adat law can be changed in accordance with the development of society. These changes occur in general not for their deletion or removal of a rules official but because of changes in conditions, place and time, or the emergence of new provisions to be decided authoritative institutions. The ability to change and developing states is the general nature of the unwritten law and not codificated like customary law.

Adat law be able to conform :

Customary law, therefore has sides, on the one hand, the indigenous traditional law ancestral tradition continuing for maintaining a pattern that has been formed. On the other hand, customary law always follow the development of society.

According Djojodigoeno said that adat law has several distinctive features as an unwritten rule. Adat law have the nature of living and thriving, dynamic. Adat law can follow the development of society requires a change of society.

One example of the application of Adat Law is a dynamic look at the judge's decision making patterns. The judge allowed him to take a different decision within the same legal issue to be tried in a different time. This is based on the principles of law is always evolving according to the development of society.

Therefore, legal remedies that can be done by a childless widow in Bali Adat Inheritance Law is to file legal action to the district court. Widows without children can claim the inheritance rights of her husband based on the principle of justice and legal protection for all citizens without exceptions. One of the legal basis which can be used is the jurisprudence of the District Court in North Sumatra which provides inheritance rights to girls and widows.

CONCLUSION

Implementation of The Law for The Protection of Widows Without Child in Indigenous Inheritance of Bali

Bali adat inheritance law does not provide legal protection for the daughter or widow. Inheritance rights for women are very limited which is limited to enjoy the inheritance without may have and sell the inheritance. This is because the heir in Bali Customary Inheritance not only inherit but inherit various oblligations, both to the family, community, ancestors and God.

Legal Efforts to Taken by Widow Without Children in Bali of Indigenous People to Get his Rights over gono gini property

Adat law applies hereditary and adhered to by the indigenous peoples concerned. As long as people feel that deliver justice there Adat Law will not change but iff there is a community member who was not getting justice in the Adat Law can be changed. Widows who feel not get justice in Bali Adat Inheritance can make an effort to submit the matter to the district court. The judge is supposed to consider the values that live in the community and jurisprudence would give inheritance rights for widows in Bali Adat Inheritance Law.

SUGGESTIONS

Adat inheritance of Bali must be change where both girls and boys have the right of inheritance and widow inheritance from her husband. Require socialization within the community of Bali adat law regarding changes in the system of Bali Adat Inheritance.

REFERENCES

Alshehhi, A.S., 2016. Organizational knowledge systems. Intl. J. Bus. Administrative Stud., 2: 193-200.

Ambikai and I. Zahira, 2016. Comparative analysis of law on tort of deviant behaviors in Malaysia and India. J. Adv. Humanities Soc. Sci., 2: 243-249.

Boniface, A.E., 2016. Animals objects or sentient beings? A comparative perspective of the South African law. J. Adv. Humanities Soc. Sci., 2: 143-155.

Friedman, L.M., 1975. The Legal System a Social Science Perspective. Russell Sage Foundation, New York, USA., Pages: 337.

Suharti, L and A. Pramono, 2016. Cultural Intelligence Among Indonesian Students: Role Of International Experiences And Their Impact On The Development Of Sosial Network And Adaptive Performance. J. Adv. Humanities Sosial Sci., 2: 182-194.