



Legality of Virtual Hindu Marriage in the Perspective of National Law in Indonesia

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Abstract

The general purpose of writing in this scientific journal is to find out the legal basis for marriage for Hindus in Bali and specifically to find out the legality of virtual Hindu marriages from the perspective of National Law in Indonesia. The writing method used is descriptive normative legal research using a statutory approach and a case approach. The first research result is the Legal Basis for Hindu Marriage in Bali, which refers to Article 28 paragraph (1) of the 1945 Constitution, Article 1 & Article 2 of Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments Based on Law Number 1 of 1974 concerning Marriage, Rigveda X. 85.23 & Rigveda VI.15.19. The second research result, namely the Legality of Virtual Hindu Marriages in the Perspective of Law Number 1 of 1974 concerning Marriage, is that national norms do not regulate virtual marriages so it can be said to be an empty norm. Viewed from custom, tradition and religion, there are no rules regarding virtual marriage because it can be seen that the conditions that must be met to make a Hindu marriage in Bali valid are one of the witnesses in the mabyakala (wiwaha) ceremony which involves 3 witnesses or Tri Upasaksi, namely the witness god, human witnesses, and bhuta witnesses.

I. Introduction

Article 28A paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "Everyone has the right to form a family and continue their lineage through a legal marriage".

The definition of marriage is also stated in Article 1 of Law Number 1 of 1974 concerning Marriage, which states: "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 One Almighty God." Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states: "A marriage is valid if it is carried out according to the laws of each religion and belief." When viewed from the perspective of Hindu religious law, it can be said that pawiwahan is an inner and outer bond (sakala and niskala) between a man and a woman to form a happy and eternal family which is recognized by State, Religious and Customary law.¹

¹ Elfrida Ade Putri. Keabsahan Perkawinan Berdasarkan Perspektif Hukum Positif di Indonesia, Jurnal Krtha Bhayangkara. 15 No. 1 (2021)., DOI : <https://doi.org/10.31599/krtha.v15i1.541>

Marriage in Hindu society is something very important in human life in society. Marriage is not only related to the relationship between a man and a woman, but also to the parents and families of the man and woman, and even the relationship between one society and another. These relationships are supervised by the Hindu religious norm system that lives and develops in that society.²

Marriage in Hinduism in Bali is regulated by Hindu religious law. Hindu marriage law is the law that regulates the legal interests of Hindus in the field of marriage. However, in its implementation, it is adjusted to the needs, situations and conditions of the supporting community in order to regulate peace, justice and order in the life of the community so that every Hindu in carrying out marriage gets security and peace, so that it can be said that Hindu marriage law is the rules that are guidelines for behavior for Hindus in the field of marriage.

It is our nature as social creatures that every man and woman has 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. In the Hindu religion, as stated in the holy book of the Vedas, marriage is the formation of a family that occurs once in a person's life, this is stated in the book Manava Dharmasastra IX. 101-102 sebagai berikut : "Anyonyasyawayabharoghaweamarnantikah, Esa dharmah samasenajneyah stripumsayoh parah" artinya "Hendaknya supaya hubungan yang setia berlangsung sampai mati, singkatnya ini harus dianggap sebagai hukum tertinggi sebagai suami istri". "Tatha nityam yatayam stripumsau tu kritakriyau, Jatha nabhicaretam tau wiyuktawitaretaram" artinya "Hendaknya laki-laki dan Perempuan yang terikat dalam ikatan perkawinan, mengusahakan dengan tidak jemu-jemunya supaya mereka tidak bercerai dan jangan hendaknya melanggar kesetiaan antara satu dengan yang lain".³

Based on these two verses, it is clear that Hinduism does not want divorce. It is even recommended that eternal marriage should be made the highest goal for married couples. By creating a happy and eternal family, eternal happiness will be achieved. This is in accordance with the teachings of the Vedas in the scriptures Manava Dharmasastra III. 60, sebagai berikut : "Samtusto bharyaya bharta bharta tathaiva ca, Yasminnewa kule nityam kalyanam tatra wai dhruwam" artinya "Pada keluarga dimana suami berbahagia dengan istrinya dan demikian pula sang istri terhadap suaminya, kebahagiaan pasti kekal".⁴

The purpose of *wiwaha* according to Hinduism is to have offspring and atone for the sins of parents by producing a son who is a *Suputra* so that a happy family in the world (*jagadhita*) and eternal happiness (*moksa*) will be created. In the book Manava Dharmasastra III. 21 There are 8 forms of marriage as follows :⁵

1. *Brahma wiwaha* ; a form of marriage carried out by giving a woman to a man who is a Vedic expert and has good behavior who is invited by the woman.
2. *Daiwa wiwaha* ; a form of marriage that is carried out by giving a woman to a priest who leads the ceremony.

² Utomo Laksono, *Hukum Adat*, Rajawali Pers, Jakarta, 2017, hlm. 90

³ Pudja dan Sudharta, *Manava Dharmasastra : Compendium Hukum Hindu*, Paramitha, Surabaya, 2002, hlm. 67

⁴ *Ibid*, hlm. 69

⁵ Relin D, *Filosofis Hukum Perkawinan Masyarakat Hindu di Bali*, Jurnal Fakultas Brahma Widya Institut Hindu Dharma Negeri Denpasar, 2018, hlm. 7

3. Arsa wiwaha ; a form of marriage that occurs because of the mutual will of both parties between the families of the man and the woman by handing over a cow or ox according to the holy book.

Currently, we are benefiting from the development of existing technological advances, so everything can be done more easily via the internet. Most of our daily activities are done via online media, such as learning and work activities. No exception for the marriage process, in Indonesia there have been marriage events that utilize existing technology, namely virtual marriages.

In general, the marriage process is carried out with the presence of the prospective husband and wife in one place, but because there are certain things and other things that require it, it cannot be done properly, namely the distance due to the work of one of the parties working abroad, so it is deemed necessary to do it virtually. A virtual marriage is a marriage that is carried out without direct face-to-face meetings where the bride and groom are not in the same room because they use an application without having to come directly to the event venue.

The validity of a marriage is a very principled matter because it is closely related to the consequences of the marriage.⁶ Therefore, before getting married, the prospective bride and groom should know the requirements for getting married so that its validity is recognized. If one of the conditions or pillars is lacking or not fulfilled then a marriage is considered invalid, conversely if all the conditions or pillars are fulfilled then the marriage can be said to be valid.

Based on the description of the background of the problem, it would be good to conduct research and studies to find certainty in virtual marriage for Hindus in Bali. Therefore, it encourages the author to conduct a study entitled: "Legality of Virtual Hindu Marriage in the Perspective of National Law in Indonesia".

2. Research Methods

The type of research used is normative legal research which is a research method that is of a library law nature. The characteristics of normative legal research are research that starts from the gap in legal principles and norms, does not use hypotheses and uses theoretical foundations, primary, secondary and tertiary legal materials. This research is based on normative legal science (statutory regulations) then observes the reactions and interactions that occur when the norm system works in the community environment.⁷

The research approach used is the legislative approach and the case approach. The legislative approach was chosen because it is related to virtual marriages conducted online in Bali, but in fact, Hindu marriages in Bali should be attended by Tri Upasaksi, where the marriage rules are seen in the Marriage Law, Civil Code, HIR or Rbg. Meanwhile, the case approach starts from the views and doctrines that develop in legal science..⁸

The sources of legal materials used in this writing are secondary data, namely: Primary Legal Materials (UUD 1945, Marriage Law, PP, Permenag, KUHPer, Balinese Traditional Village Regulations), Secondary Legal Materials (legal materials that provide

⁶ *Ibid*, hlm. 12

⁷ Marzuki, Peter Mahmud, *Penelitian Hukum*, Cet. 2, (Jakarta, Kencana, 2008), hlm. 33.

⁸ *Ibid*, hlm. 29.

explanations regarding primary legal materials such as research results, scientific journals and seminar results), Tertiary Legal Materials (supporting materials that include materials that provide instructions and explanations for primary and secondary legal materials such as general dictionaries, legal dictionaries and primary, secondary and tertiary materials outside the relevant legal field and can be used to complete the data).⁹

Legal Material Collection Techniques are those obtained through primary legal materials, namely documents citing articles related to the problems studied, as well as secondary legal materials, namely through recording. The legal material collection technique used in this writing is a technique with documentation and recording of the necessary legal materials that are in accordance with the main problems of the literature books.¹⁰

The method of legal material analysis that is appropriate for this research is to use a qualitative approach, namely by describing, presenting and explaining research materials in a quality manner in the form of regular, structured, coherent and non-overlapping sentences and is effective and facilitates understanding of research materials. Qualitative methods are a way of analyzing research results that produce descriptive data and aim to accurately describe the characteristics to determine whether or not there is a relationship between a symptom and other symptoms in society.¹¹

3. Results and Discussion

3.1 Legal Basis for Hindu Marriage in Bali

Article 28 paragraph (1) of the 1945 Constitution states "Everyone has the right to form a family and continue their lineage through a legal marriage". Based on this, it can be seen that the goal and ideals of the Indonesian state are to advance the welfare of its people by giving every citizen the right to maintain their life, which means having the right to continue their lineage, and everyone has the right to form a family and this is a human right that cannot be reduced.

Marriage is regulated in Law Number 1 of 1974 concerning Marriage regulated in Chapter I concerning the Basis of Marriage. Article 1 of Law Number 1 of 1974 concerning Marriage 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 (household) based on the Almighty God". From the explanation of the article, the marriage must obtain permission from both parents of each partner because it may not be carried out if there is coercion or influence from others.

The validity of a marriage must be properly and correctly understood and appreciated. Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage explains that a marriage is said to be valid if it is carried out according to the laws of each religion and belief. The religion and belief referred to are the religion or belief adhered to by each

⁹ *Ibid*, hlm. 36

¹⁰ *Ibid*. hlm. 32

¹¹ *Ibid*. hlm. 34

prospective bride and groom, so that the marriage can be carried out and declared valid and registered at the civil registry office.¹²

The consideration is that as a country based on Pancasila where the first principle is Belief in One Almighty God, marriage has a very close relationship with religion or spirituality, so that marriage not only has a physical or physical element, but an inner or spiritual element also has an important role. The phrase religion and spirituality, if seen in the traditional and cultural customs in Bali, will become a necessity or obligation that needs to be obeyed by the parties who are holding a marriage.

The legal basis for marriage is also stated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. A valid marriage if carried out according to the laws of each religion and belief, is registered according to the laws and regulations. Changes to the norms in Law Number 1 of 1974 concerning Marriage cover the age limit for marriage, improvements to the norms cover by increasing the minimum age limit for marriage for women. In this case, the minimum age limit for marriage for women is the same as the minimum age limit for marriage for men, which is 19 (nineteen) years. The age limit in question is considered to be mature in body and soul to be able to carry out marriage in order to realize the goals of marriage properly without ending in divorce and having healthy and quality offspring. It is also hoped that increasing the age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. In addition, children's rights can be fulfilled so as to optimize children's growth and development, including parental guidance and providing children with access to the highest possible education.

For Hindus, marriage is not only considered as a union between a man and a woman with the purpose of living as husband and wife or just a relationship between a man and a woman who live together, produce children and build a family. The definition of family here is a bond of devotion between husband, wife and children. So the family here is a unity that is established between all family members in the context of "Devotion" to the mission or basic mandate, which must be carried out by the family members concerned. Marriage is a much deeper bond. Physical relationships are an important part of marriage that is equally important is the emotional bond that will bring the couple towards a spiritual bond.

Marriage or Vivaha in Hinduism is enshrined based on the Vedas, because marriage is one of the Sarira Samskara, namely self-purification through Grhastha Asrama. Marriage is a ritual that provides a legitimate or illegitimate position for a person in living together between a man and a woman, so it can be said that marriage is a form of Yajna.¹³

According to Hindu tradition, a marriage is an irrevocable, pure, and religious relationship. Through marriage, two individuals sacrifice their individual identities to form a united family where both parties benefit from each other's emotional support and abilities. In the Vedic literature, Rshi Shvetktu states that to maintain the honor of the

¹² *Ibid*, hlm. 18

¹³ Herwandi. Upacara Perkawinan Menurut Hukum Hindu Kaharingan di Desa Tewang Manyangen. *Satya Dharma: Jurnal Ilmu Hukum* 4 No. 1, (2021). DOI : <https://doi.org/10.33363/sd.v4i1.921>

appropriate behavior between a man and a woman, which determines the evolution of the institution of marriage. Since then, marriage has stood the test of time.¹⁴

One of the purposes of marriage in Hinduism is to aspire to a prosperous and happy life. In the book *Mnanavadharmasastra* it states that the purpose of marriage includes:¹⁵

1. Dharmasampatti (together, husband and wife realize the implementation of dharma);
2. Praja (give birth to offspring);
3. Rati (enjoy sexual life and other sensory satisfactions).

The purpose of marriage is not only limited to sensual pleasure but also to create the foundation of a home, have children and form a family. So the main purpose of marriage is to carry out dharma. In marriage, husband and wife should try not to let the bonds of marriage crack or come loose. Husband and wife should realize happiness, be inseparable, play happily with their children and grandchildren. The Vedas also explain: Sam Jaspatyari suyamam astu devah. (Rgveda X. 85.23) "Ya, para dewata, semoga kehidupan perkawinan kami berbahagia dan tentram". Asthuri no garhapyani santu. (Rgveda VI.15.19) "Hendaknyalah hubungan suami istri tidak bisa putus berlangsung abadi".¹⁶

3.2 Legality of Virtual Hindu Marriage in the Perspective of National Law in Indonesia

Every country has its own legal system. The legal system in force in Indonesia is known as three systems, namely Customary Law, Islamic Law, Western Law, especially the laws of the Netherlands.

Marriage is an inevitability in human life. According to customary law in general in Indonesia, marriage not only has consequences for civil relations, such as the rights and obligations of husband and wife, joint property, the position of children and the rights and obligations of parents, but also concerns customary relations, family, kinship and neighbors as well as concerning traditional and religious ceremonies.¹⁷

Hinduism recognizes the teachings of Panca Yadnya which means five holy sacrifices that are sincere. Parts of Panca Yadnya are Dewa Yadnya, Pitra Yadnya, Rsi Yadnya, Manusa Yadnya and Bhuta Yadnya. Hinduism also recognizes the teachings of Catur Asrama and Catur Purusa Artha. The teachings of Catur Asrama are brahmachari, grahastha, wanaprastha, and bhiksuka or sanyasin and Catur Purusa Artha are dharma, Artha, kama, and moksa. Entering the Grahastha period begins with a ceremony called *Wiwaha Samskara* (marriage ceremony). The *Pawiwahan* ceremony is included in the

¹⁴ Asmaniar. *Perkawinan Adat Minangkabau*. Binamulia Hukum 7, no. 2. (2018). <https://doi.org/10.37893/jbh.v7i2.23>

¹⁵ I Made Hartaka, dan I Wayan Tirta Gunawijaya. *Legalitas Upacara Sudhi Wadhani Dalam Hukum Hindu*. Pariksa: Jurnal Hukum Agama Hindu 1. No. 1. (2020). <https://doi.org/10.55115/pariksa.v1i1.633>

¹⁶ I Made Gami Sandi Untara. *Pola Pembinaan Keagamaan Masyarakat Pasca Sudhi Wadhani Dalam Meningkatkan Sradha dan Bhakti di Kecamatan Baturiti Kabupaten Tabanan*. Caraka: Jurnal Pengabdian Kepada Masyarakat 2, No. 1, (2022). <https://stahnmpukuturan.ac.id/jurnal/index.php/caraka/article/view/2166>

¹⁷ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, Penerbit CV. Mandar Maju, Bandung, 2007, hlm. 8

implementation of the Manusa Yadnya ceremony which means a series of actions or deeds that are bound by rules based on customs, religion, and beliefs.¹⁸

The implementation of Samskara Vivaha according to religion is carried out with the following main events: a). Proposing, namely the man's family (Purusa) asks the daughter of the woman's family (Pradhana) to be married to the son of the man's family, b). Determining the time after the woman's family fulfills or accepts the request of the man's family, then usually continued by determining the implementation; Samskara Vivaha which is regulated according to local customs, c). Marriage ceremony as a follow-up to the determination of the day earlier, then a marriage ceremony is held according to local tradition. The marriage ceremony is led by a Priest or Pinandita, witnessed by the local community and continued with the signing of the marriage certificate according to religion by the bride and groom, Pandita/Pinandita and witnesses, d). Transferring family status is finally held a ceremony according to their respective traditions to be included in the Purusa party, 8). The marriage is held on the appointed day (the determination of the day is according to the village, kala, patra), 9). Those who act as witnesses in the marriage ceremony are two people who are over 21 years old and in good health, 10). The place where the marriage ceremony is held can be held at the home of the bride or groom, 11). After the marriage ceremony is held, it is continued with the signing of the Marriage Certificate provided by the officer. This signing is done first by the bride and groom then by the two witnesses and finally by the Marriage Registrar Officer who is present, 12) By signing the marriage certificate, it means that the marriage is valid and officially recorded according to the Hindu religion.¹⁹

The form of Hindu wedding ceremony in Bali is carried out based on dresta or local customs according to the concept of Desa Kala Patra which means place, time and identity. Although each region has different ways in terms of language, food and customs, the basic essence of Hindu marriage remains the same. Wedding ceremonies in Bali are also divided into 3 levels, namely: Nista (small), Madya (medium / medium), Utama (large / high).²⁰

If we look at the existing problem, namely the Legality of Virtual Hindu Marriage in the Perspective of Law Number 1 of 1974 concerning Marriage, that in terms of national norms, it does not regulate virtual marriage so that it can be said that this is an empty norm. If we look at customs, traditions and religion, there are also no rules governing virtual marriage, because we can see the requirements that must be met to make a Hindu marriage in Bali valid, one of which is the presence of witnesses. In the mabyakala (wiwaha) ceremony, there are 3 types of witnesses that must be involved and are known as Tri Upasaksi (three witnesses) yaitu dewa saksi, manusa saksi, dan bhuta saksi.²¹

Dewa Saksi is a divine witness (Ida Sang Hyang Widhi Wasa/God Almighty) who is asked to witness the pawiwahan ceremony. Manusa Saksi is that all the people who come to the pawiwahan event can be said to be the main witnesses, namely the Bendesa Adat, Kelian Adat, Kelian Dinas, Pemangku who muput pawiwahan and so on. Bhuta

¹⁸ Luh Sukma Ningsih. *Upacara Pawiwahan Dalam Agama Hindu*. Jurnal Widya Sastra Pendidikan Agama Hindu 3, No. 2 (2020): 1907-9559

¹⁹ *Ibid*

²⁰ Mutiarany, Dsk Putu Ayu Leni Agustini. *Sudhi Wadani Dalam Perkawinan Hukum Adat Bali*. Justice Voice 1 No. 2 (2022). DOI : 10.37893/jv.vli2.193

²¹ I Gede Made Suarnada. *Pola Perkawinan Umat Hindu Dengan Umat Beragama Lain di Kota Palu* 5 No. 1 (2014). DOI : <https://doi.org/10.36417/widyagenitri.v5i1>

Saksi is a witness of the bhuta kala, where in the mabyakala ceremony we burn tetimpug (several bamboo segments where both segments are still there) so that it makes an explosion sound. The sound of the tetimpug is a symbol to call the bhuta kala to attend the ceremony, then given a treat so as not to disturb the ceremony. After completing the mabyakala ceremony (wiwaha) then they have legally become husband and wife and are required to carry out the duties/obligations in the Grehastha level.²²

Marriage is not just about having a biological relationship to fulfill a desire that has legal legitimacy, but marriage is a strong spiritual bond between a man and a woman based on religion. In Hindu teachings, a marriage is said to be valid if it has performed the mabyakala ceremony. Mabyakala is a ceremony in the Hindu traditional marriage tradition in Bali which aims to cleanse the bride and groom physically and mentally. This ceremony is carried out to purify the seeds of the bride and groom, namely sukla (sperm) from the groom and swanita (ovum) from the bride. Where the Mabyakala ceremony is also part of the panca yajna ceremony, namely five yajnas consisting of dewa yajna, pitra yajna, rsi yajna, manusa yajna, and Bhuta yajna. In carrying out the panca yajna ceremony, Hindus use upakara or banten as supporters.

4. Kesimpulan

The legal basis for Hindu marriage in Bali refers to Article 28 paragraph (1) of the 1945 Constitution, Article 1 & Article 2 of Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Rgveda X. 85.23 & Rgveda VI.15.19.

Legality of Virtual Hindu Marriage in the Perspective of National Law in Indonesia, that national norms do not regulate virtual marriage so that it can be said to be an empty norm. Viewed from a custom, tradition and religion perspective, there are no rules regarding virtual marriage because it can be seen that the requirements that must be met to make a Hindu marriage in Bali valid include the presence of witnesses in the mabyakala (wiwaha) ceremony involving 3 witnesses or Tri Upasaksi yaitu dewa saksi, manusa saksi, dan bhuta saksi.

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²² Kadek Agus Wardana, Ni Made Sukrawati, Ni Kadek Ayu Kristini Putri. (2023). Teo-Pedagogi Perkawinan Hindu di Bali, *Jurnal Ilmiah Sains Sosial Kewirausahaan dan Kebudayaan*. Vol. 01 No. 01, <https://s.id/JISSiwirabuda>, DOI: <https://doi.org/00.00000>

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