

The Position of Children Born from Keris Marriages in Balinese Customary Law Inheritance

Ni Kadek FEBRIANA¹, I Nyoman SUJANA², Ni Komang Arini SETYAWATI³

^{1,2,3}Master of Notary Study Program, Postgraduate Faculty, Warmadewa University, Denpasar, Indonesia

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Abstract:

Purpose:

The existence of Keri's Marriage impacts the child who is born, where the child's position in terms of inheritance is questionable. It happens because first, the child who is born does not have a father who is responsible for his actions, so the mother of the child must carry out the keris marriage procession or second, the child gets recognition from his father and only during the marriage procession is his father symbolized by a keris because of his inability to attend the marriage procession or third, the child who is born carries out a peperasa or adoption ceremony.

Methodology:

In this study, the author uses an empirical legal research method using a statutory approach, a legal sociological approach and a case approach. Two types of data are used in empirical legal research: primary and secondary. Data collection for the preparation of this study was carried out in a village in Tabanan Regency.

Findings:

The research findings explain the results of research data processing, which do not include numbers but explain in detail the results carried out between research variables. They also explain the implications of research where research has a direct impact.

Implication:

In the case that occurred in Pandak Gede Village, the marriage procession was continued again after the arrival of the male party, so the child was administratively recognized by his biological father. In terms of inheritance, the child had the right to inherit because he received recognition from his biological father.

Keyword:

Keris Marriage, Position of Children, Inheritance

Corresponding Author:

Ni Kadek Febriana

Email:

dekfebriana25@gmail.com

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INTRODUCTION

In general, marriage is carried out between a man and a woman. However, in reality, in various countries as we know, there are various types of marriages other than marriages carried out between men and women namely there are several cases in the world including people who choose to marry animals, marry inanimate objects and marry the same sex. Most people do this because of trauma in previous relationships, because of the attraction to objects, animals or the same sex or because of urgent matters.

It does not happen only abroad because, in some countries, there are already regulations that regulate it and have also received permission from the government, unlike in Indonesia. However, it is also a taboo or strange thing if this happens because the Indonesian state only knows and recognizes marriage between a man and a woman.

Marriage with an object occurred in Indonesia, particularly in the Province of Bali, Tabanan Regency. The object used is a keris, which is believed to symbolize a substitute for a man. Marriage with a keris is held where the man is replaced or symbolized as a keris because the keris symbolizes purusa in Bali.

The symbols of purusha are related to high objects (mountains), above (akasa), facing down (akasa mudra) (Andika et al., 2022), pointed (tumpeng, keris), long (sate) (Pradnya, 2017). Keris can be used as a symbol of purusa in implementing keris marriage because a keris symbolizes the power of Sang Hyang Purusa (lingga power). When viewed from a worldly perspective, the word purusa becomes kapurusan and finally as a man (Sudarsana, 2008).

Keris marriages occur due to several factors, including the woman being pregnant outside of marriage and the man being reluctant to take responsibility. The second factor is the man passing away before the previously planned marriage ceremony and being followed by the woman who is already pregnant. The third factor is when the woman is already pregnant, and the marriage must be held before the birth of the child, but the man cannot return home due to work problems that cannot be left.

For this reason, the marriage procession used the keris symbol. Marriage with keris has existed since the kingdom era in Bali. At that time, inter-caste marriage was strictly prohibited. So, when the king wanted to propose to a girl of a lower caste to be a concubine or wife, a policy was made to replace the king's position with a keris as a symbol in his marriage procession.

In the Hindu order in Bali, Keris is a symbol of male masculinity or purusa. When the king marries a girl who is considered inappropriate (different caste), then what is married is not the king's crude form, but his symbolism in a keris from there. This method is widely adapted by Balinese krama today and is used as awig-awig for special events, such as pregnancy out of wedlock (Wedana et al., 2021).

One of the cases in Tabanan Regency involved a man who was reluctant to take responsibility for marrying the woman because the man did not fulfill the woman's request for Montana. At that time, the woman had the status of Santana Rajeg in her family. A Santana Rajeg is a girl born into a family and confirmed as the successor to the descendants or purusa (Adnyani, 2016).

Santana Rajeg is a change in status from a girl to a boy that has been approved and legalized by the Traditional Head so that the girl who has been confirmed as a Santana Rajeg according to custom in determining the inheritance of the woman as Santana Rajeg or who has changed status to a man is entitled to all inheritance rights of her family.

As we know, in Tabanan Regency, it has become a characteristic of the regency for those seeking Santana. The majority in Tabanan Regency only have female descendants, so women who are appointed as Santana rajeg will be confirmed as purusa in their family and are obliged to continue the rights and obligations of their heirs.

In a sentence, rajeg marries a man with several brothers so that the man's status will change to prana in the family of the woman he is marrying. The status of the Santana rajeg in the family is purusa. It can happen because the sentence Rajeg's purpose is to carry out and continue the obligations in his family.

In addition to not wanting to be Montana, Keris marriages occur due to a man's inability to attend a traditional wedding ceremony, either because he is in a different world (deceased) or because the man is still under a work contract abroad that cannot be left just like that. However, the marriage procession must still run according to the plan of the man's and woman's families, which had been prepared long before the child's birth in the womb.

The purpose of holding a keris marriage is to avoid the birth of an illegitimate child (child outside of marriage). An illegitimate child (child outside of marriage) is a child who comes from an illegitimate biological relationship or is not based on a marriage procession according to religious rules and the absence of marriage registration with the government.

If the child is born without a marriage ceremony, it is called an illegitimate child. It can result in the letter (dirty) of the traditional village so that the family is subject to customary sanctions to perform a large ceremony, namely meprayascita luwih at the bale agung and care at the bale Agung, where both ceremonies have the same purpose, namely to cleanse the local traditional village which was initially leteh (dirty) due to the birth of an illegitimate child.

For example, in Timpag Village, a keris marriage was held because the groom did not want to take responsibility. In Antapan Village, a keris marriage was held because the prospective husband died. Then, in Pandak Gede Village, a keris marriage was held because the groom could not attend the wedding ceremony because the groom was still abroad. His work contract was still ongoing and could not be left where these three factors were carried out to avoid illegitimate children who would result in the leteh (dirty) of the local traditional village.

A person subject to the sanction of leteh (dirty) is prohibited from entering holy places and performing prayers at the Pura Kahyangan Tiga (Pura Puseh, Pura Desa and Pura Dalem). The sanction for women who are pregnant outside of marriage ends when a valid marriage ceremony has been carried out according to national law and customary law. The sanction for anak bebinjat (children born out of wedlock) ends when the adoption ceremony (meperas) for anak bebinjat (children born out of wedlock) has been carried out.

Balinese Hindu society believes marriage is a sacred and holy relationship between a man and a woman in carrying out their dharma bhakti as a whole human being. Ideally, a marriage will be considered valid and legal according to customary law if it is approved by both the bride and groom, blessed and witnessed by the families of both parties in the spiritual sense and carried out following the customary ceremony procession.

According to Balinese Customary Law, marriage can be declared valid after a by-Akala or byakaon is held. The by-akala ceremony includes three elements of witnessing: Tri Upasaksi, the god witness, the bhuta witness, and the manus witness.

If marriage with keris is seen from a legal perspective, then reflecting on Article 1 number 1 of the Marriage Law, marriage can only be carried out by a woman with a man. Not carrying out marriage between a woman and a woman (lesbian), not carrying out marriage between a man and a man (homosexual), not carrying out marriage between humans and animals, and not carrying out marriage between humans and inanimate objects, which in this case is a keris.

The existence of Keri's Marriage impacts the child who is born, where the child's position in terms of inheritance is questionable. It happens because first, the child who is born does not have a father who is responsible for his actions, so the mother of the child must carry out the keris marriage procession or second, the child gets recognition from his father and only during the marriage procession is his father symbolized by a keris because of his inability to attend the marriage procession or third, the child who is born carries out a peperasa or adoption ceremony.

The first thing that must be determined is to know one of the three causes of a keris marriage. The next step is that the child's position can be known whether it is recognized by his mother's family only or recognized in his father's family; then, with this, it can be known whether the child is an heir from his mother's family or his father's family.

METHODS

In this study, the author uses an empirical legal research method. Empirical legal research must have problem approaches in the research process, where the approach is carried out with 3 approaches, including the legislative approach, the sociological, legal approach, and the case approach (UTAMA et al., 2022). In conducting empirical legal research, there are two types of data used: primary data obtained directly from the field, namely from informants and respondents, while secondary data is obtained from library research, which includes books/literature, opinions of legal scholars, scientific writings, and laws and regulations, which are related to the discussion of this research. Data collection for the preparation of this research was carried out in Antapan Village, Timpag Village, and Pandak Gede Village, located in Tabanan Regency. In legal material analysis, qualitative data analysis is applied descriptively by selecting and summarizing data.

RESULTS AND DISCUSSION

In the case of keris marriage, several factors cause the child born to be questioned about the legal status of the child born. It is because he is either getting recognition from his biological father or not getting recognition from his biological father. It must provide legal certainty for the child born so that his position is known in terms of inheritance and status in his family so that he obtains protection in the eyes of the law.

Aristotle also distinguishes between distributive justice and corrective justice. According to him, distributive justice applies in public law, namely focusing on distribution and other goods obtained by members of society. Corrective justice is related to correcting something wrong, compensating the injured party or appropriate punishment for the party violating the provisions to achieve justice. So, it can be said that compensation and sanctions are justice.

Children born in a keris marriage receive recognition from their biological father. The principle of recognition of illegitimate children adopted by the Civil Code is absolute, considering that children born outside of marriage. It shows that Western civil law adopts the principle of absolute recognition per Article 280 of the Civil Code. Hence, a civil relationship only arises between a child and his/her parents after recognition. According to Western civil law, the motivation for recognizing a child is carried out by someone who is a legal necessity for a couple who live together without a legal marriage bond. The legal consequence is that a child born without a legal marriage bond does not have parents before there is recognition from both of them. According to the Civil Code, an illegitimate child does not have a legal or biological bond before receiving recognition from his/her parents.

So, the existence of illegitimate children as regulated in the Civil Code is considered to adhere to a more extreme principle compared to before the Constitutional Court Decision No. 46/PUU-VII/2010 regarding illegitimate children, that without recognition from both parents, illegitimate children will not have a father or mother legally.

Children born out of wedlock can be upgraded in status through child recognition and child validation. In order to provide legal certainty, children born out of wedlock are given legal protection through recognition. Children born out of wedlock have a civil relationship with their mother and father after going through the recognition institution, as explained in Articles 280-289 of the Civil Code. Legal recognition of children born out of wedlock creates a legal relationship between them and their parents, and their status is the same as that of legitimate children (Putri et al., 2019). As a comparison, if we refer to the Constitutional Court Decision Number 46/PUU-VIII/2010, in its considerations, it is explained that:

"A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and other evidence according to the law to have a blood relationship, including a civil relationship with his father's family."

Based on the Constitutional Court Decision above, a child born outside of a legal marriage has a civil relationship with the mother and the mother's family and a legal bond with the father and the father's family as long as it can be proven scientifically. If, scientifically and technologically, the child and the father have a blood relationship, then both have a civil rights relationship.

Referring to the Constitutional Court Decision, determining the blood relationship between an illegitimate child and a man as the father or father must be scientifically proven. Civil law introduces the term of the institution of recognition. Formal recognition of a child is a form of giving information by a man who states recognition of his child. While materially, recognition of a child is a form of legal act that creates a family relationship between the child and the one who acknowledges it without questioning who impregnated the woman who gave birth to the child (Syukrie, 1996). The emphasis of this child recognition is not on who impregnated the woman but rather on the recognition of someone who resulted in the birth of a family relationship. So, this recognition is intended to create a legal relationship.

Article 280 of the Civil Code states that parental recognition of a child born out of wedlock creates a civil legal relationship between the child, mother, and father. Recognition of an illegitimate child can be increased in several ways, namely (1) by marrying both parents after recognizing the child (Article 272 of the Civil Code); (2) recognition is made by an authentic deed (Article 281 of the Civil Code) either with a notary or through the Civil Registry and registered in the birth register according to the day the deed was signed; (3) recognition is made when

the child is 19 years old for males, and for females without an age limit. Recognition of an illegitimate child by a male who is still under 19 years old has no legal consequences because he is not considered independent either legally or psychologically. This recognition is not made because of coercion, error, deceit, or other inducements (Article 282 of the Civil Code); (4) Recognition of children of adultery and illegitimate children is not permitted (Article 283 of the Civil Code) without disregarding Article 273 of the Civil Code; (5) There is no recognition of children born out of wedlock as long as the mother is still alive. It means that recognition after the mother has died does not have the same legal consequences as for the father. (Article 284 of the Civil Code); (6) Recognition of the mother or father during the marriage is for the benefit of the child born out of wedlock but may be refuted by other parties who have an interest (Article 285 of the Civil Code); (7) Prohibition on conducting investigations into who the father of the child is (Article 287 of the Civil Code); (8) Investigations are only permitted into who the mother of the child is with the obligation to carry out a process of proof by presenting witnesses unless there is written evidence that is binding and perfect (Article 288 of the Civil Code); (9) No child is permitted to investigate who his/her father or mother is, in cases where according to Article 283 of the Civil Code, such recognition may not be made (Article 289 of the Civil Code). With such recognition as in Article 280 of the Civil Code, a legal relationship arises between the child and his/her parents. Based on the mechanism for recognizing an illegitimate child, as mentioned above, the method often used is recognition by the father whose name is stated on the birth certificate of the child in question.

Since recognition has been established, the legal consequences of recognizing an illegitimate child are legal consequences in the form of ownership of civil rights between the child (out of wedlock) and the father or mother who recognizes him. An illegitimate child, his father recognizes, can inherit with the heir's *ab intestato* of the next group. Recognition of an illegitimate child regarding inheritance rights regulated in Article 862-867 of the Civil Code is only intended for the Chinese descendant group.

The requirement for an illegitimate child to inherit the testator's inheritance is that the parent who impregnated him must legally recognize him. In Western civil law, only people with a legal relationship with the testator can inherit the inheritance. This legal relationship arises after the parents acknowledge the illegitimate child (Pasmatuti, 2017). In other words, an illegitimate child has the right to inherit the testator's inheritance if the biological father acknowledges the illegitimate child.

Based on the description above, children born out of wedlock must still be given and protected their fundamental rights to realize the best interests of the child, such as obtaining certainty of their biological father following applicable laws. The existence of a recognition institution in civil law is to improve the status of illegitimate children to legitimate children so that their civil rights, such as those of legitimate children, have the same legal spirit to protect and provide legal certainty for the fundamental rights of children as stipulated in the Child Protection Law.

The keris marriage performed by the bride in Pandak Gede Village was based on the reason that the groom, or the biological father of the child in the womb, was unable to attend due to work problems. The groom acknowledged that the child was his biological child. So, it is necessary to have a decision letter from the court first to obtain a certificate of child recognition. The child is legally said to be an heir to his father's family if this has been obtained.

Based on an interview with Ni Nyoman Sri Astiti Nada, a DNA test is needed first to obtain a decision letter from the court regarding child recognition. The Population and Civil Registry Service will process the Child Recognition Deed, and the child will have obtained status and position in his father's family.

The Constitutional Court's decision follows the 1945 Constitution of the Republic of Indonesia, especially Article 28B paragraph (2) and Article 28D paragraph (1). Article 28B paragraph (2) states that "every child has the right to survival, growth and development and has the right to protection from violence and discrimination."

Similarly, Article 28B paragraph (2) of the 1945 NRI Constitution, which is guaranteed after the issuance of this Constitutional Court decision, and Article 28D paragraph (1) of the 1945 NRI Constitution are also guaranteed. Article 28D paragraph (1) of the 1945 NRI Constitution states that "everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law."

In the Presidential Regulation on the Requirements and Procedures for Population Registration and Civil Registration, Presidential Regulation Number 96 of 2018, LN Number 184 of 2018 Article 34 explains that one of the requirements for making a Birth Certificate is a Marriage Book/Marriage Certificate. Suppose the Marriage Book/Marriage Certificate Extract requirement cannot be met. However, in the Family Card, both parents are shown as husband and wife (either in the same Family Card or in different Family Cards) or are listed as parents (in the column of Father's name and Mother's name on the Family Card). In that case, residents can make a Statement of Absolute Responsibility (SPTJM) for the truth of the marriage data with the knowledge of 2 (two) witnesses. For this reason, a birth certificate will be made as a child of the father and mother with the additional phrase: "whose marriage has not been registered following the provisions of statutory regulations," which is stated in the Regulation of the Minister of Home Affairs regarding the Implementing Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Minister of Home Affairs Number 108 of 2019 BN Number 1789 of 2019 Article 48 paragraph (2)

Children who are born after their parents have carried out a legal marriage according to religious law but whose marriage has not been/has not been registered can have their child recognized. Based on the fulfillment of the following requirements:

- a. Letter of acknowledgment of the child from the biological father approved by the biological mother or a court decision regarding the acknowledgment of the child if the biological mother is a foreigner;
- b. Letter of acknowledgment of the marriage from a religious leader or a believer in God Almighty;
- c. extract of the child's birth certificate;
- d. Family Card of the father or mother;
- e. e-KTP; or
- f. A travel document for the foreign biological mother

Which is stated in the Presidential Regulation on the requirements and procedures for population registration and civil registration, Presidential Regulation No. 96 of 2018, LN no. 184 of 2018, Article 49.

Children who do not receive recognition from their biological father or can be said to be illegitimate children. An illegitimate child is a child born to a woman who does not have a legal marriage bond with a man who has conceived a child in her womb, and the child does not have a perfect position in the eyes of the law like legitimate children in general (Eliana & Sahrudin, 2021). The definition of extramarital itself is a relationship between a man and a woman who can produce offspring. In contrast, their relationship is not a legal marriage relationship according to positive Indonesian law or the religious law they adhere to (Witanto, 2012). As regulated in Article 42 of the Marriage Law, a legitimate child is born in or as a result of a legal marriage.

The position of illegitimate children has changed since the issuance of the law on marriage, namely Law Number 1 of 1974. The regulations regarding the position of illegitimate children in the Civil Code to the extent that this Marriage Law has regulated them are declared invalid. It is as regulated in Article 66 of the Marriage Law, which states that "For marriage and everything related to marriage based on this law, then with the enactment of this law, the provisions regulated in the Civil Code (*Burgerlijk Wetboek*), and other regulations governing marriage to the extent that they have been regulated in this law, are declared invalid."

The position of illegitimate children in the Marriage Law is regulated in Chapter IX concerning the position of children, Article 43, paragraph (1) and paragraph (2). Article 43, paragraph (1) states, "Children born outside of marriage only have a civil relationship with their mother and their mother's family."

Based on this article, it can be interpreted that a child born out of wedlock cannot be related to his father, so this child does not have a civil relationship with his father. It is considered because children born out of wedlock are only children of the mother who gave birth. A child cannot be born from a mother who gave birth to him. The absence of a civil relationship with his father is because it is difficult to prove whether the man is indeed his biological father (Firman et al., 2023).

Due to this, an illegitimate child can only inherit from his mother and his mother's family; he is also cared for and supported only by his mother and his mother's family. It is because an illegitimate child only has a civil relationship with his mother and his mother's family. He has no civil relationship with his biological father at all. Therefore, his biological father is legally not obliged to care for or support the child, which, according to researchers, is detrimental to the mother and child (Wati et al., 2023).

Article 43, paragraph (2) of the Marriage Law states that the status of children born out of wedlock will be regulated in a Government Regulation. However, the government has not issued a regulation discussing this status yet, which has become a problem and created legal uncertainty for children born out of wedlock.

It is because, in the Marriage Law itself, the position of an illegitimate child is only regulated in one article. According to researchers, the position of an illegitimate child, which is only regulated in one article in the Marriage Law, indeed cannot cover all the problems that arise due to the birth of a child outside of marriage.

Since Constitutional Court Decision Number 46/PUU-VII/2010, it has been decided that mothers and children born out of wedlock can fight for their rights as children to the child's biological father. The mother and mother's family: If it is proven that the child has a blood relationship with the man as the biological father, then the biological father and the father's family legally have a civil relationship with the child.

The legal consequences for children born from a Keris marriage based on the registration of the Family Card and Birth Certificate are that they have a civil relationship with their mother only. So, in the Family Card, the mother has the status of head of the family, and in the Birth Certificate, only the names of the child and the mother are listed without the name of the father (Febriana et al., 2022).

Legally, the child has the right to be cared for, protected, financed and can inherit from his father. It creates justice for illegitimate children in fulfilling the same rights as a child as with legitimate children. It also does not eliminate the man's responsibility as his biological father (Pradiani et al., 2023).

The Constitutional Court's decision follows the 1945 Constitution, especially Article 28B paragraph (2) and Article 28D paragraph (1). Article 28B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." After this decision is issued, an illegitimate child can continue his life, grow and develop as a legitimate child with his rights as a child fulfilled. The child is also protected from discrimination because he is an illegitimate child who sometimes receives lousy treatment from his surroundings.

Similarly, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is guaranteed after this Constitutional Court decision issuance. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia is also guaranteed. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law." The rights of illegitimate children to be recognized, receive guarantees and protection, and receive legal certainty and equal treatment before the law as befits a human being and citizen of Indonesia following Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which with the issuance of this Constitutional Court Decision Number 46/PUU-VII/2010 can also be fulfilled.

The position of illegitimate children also occurs due to the Keris Marriage that occurred in Tabanan Regency, precisely in Timpag Village, where the Keris marriage occurred because the man was reluctant to take responsibility for marrying the woman who was already pregnant, where the man was not responsible. After all, he did not want to carry out a nyeburin marriage, where the woman required a nyeburin marriage because the

woman was the only female child in the family was called Santana Rajeg in her family, which requires a keris marriage so that there is no birth of a bebinjat child, which resulted in the leteh of the traditional village. So, the child born only has a civil relationship with his mother, and in terms of inheritance, the child born from the woman is only entitled to be an heir to his mother's family.

The position of illegitimate children also occurs due to the Keris Marriage that occurred in Tabanan Regency, precisely in Antapan Village. Where the keris marriage occurred because the man had died before the marriage, and the woman was already heavily pregnant, requiring a marriage so that the child born would not be called a being child who would pollute the Traditional Village. So, the child born only has a civil relationship with his mother, and in terms of inheritance, the child born from the woman is only entitled to be an heir to his mother's family.

CONCLUSION

The position of children born from keris marriage in the inheritance of Balinese Customary Law is caused because the male party does not want to take responsibility, so the keris marriage occurs where it occurs in Timpag Village. In Antapan Village, it occurs because the prospective husband dies so that the child born from the keris marriage only has a civil relationship with the mother and her mother's family. Regarding inheritance, the child only has the right to inherit in her mother's family. Furthermore, because the male party cannot attend the marriage ceremony procession because the male party is still abroad and his work contract period is still ongoing, the keris marriage occurs which occurs in Pandak Gede Village. Suppose the marriage procession is continued again after the male party arrives. In that case, the child is administratively recognized by his biological father. In terms of inheritance, the child has the right to inherit because he gets recognition from his biological father. These three factors are carried out to avoid illegitimate children who cause the letehnya (dirty) of the local traditional village.

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