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Distribution of Wealth by Parties as a Result of Divorce in Hindu Communities (Case Study in the Indonesian Hindu Society, West Nusa Tenggara Barat)

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Abstract

The purpose of this study is to find out and analyze the distribution of assets by the parties due to divorce in Hindu society (PHDI) West Nusa Tenggara and to find out and analyze the legal consequences of the distribution of assets by the parties by divorce in Hindu society (PHDI) West Nusa Tenggara. This type of research is empirical legal research, statutory approach, conceptual approach and sociological approach, with research locations in PHDI West Nusa Tenggara. Based on the results of the study, the distribution of assets by the parties due to a divorce in the Hindu community carried out by the PHDI West Nusa Tenggara based on its function as a religious institution, PHDI West Nusa Tenggara is passive, if there are reports of the parties, there is a stage of coordination and deliberation on sitting down issues, decision making which is operational in nature to summon or follow up on cases to be sought by the opinion of the parties and to present experts and Hindu religious figures. Subsequent stages are given suggestions, solutions for further steps, limited to agreement or further commitment to the efforts taken or provide recommendations directed at the settlement by mediation. As a result of the legal distribution of assets by the parties with a divorce to the Hindu community committed by PHDI West Nusa Tenggara region an attempt is made to resolve it through mediation and settlement through a court. PHDI is not authorized to carry out the distribution of assets due to divorce. In the West Nusa Tenggara region, there are no adat institutions / traditional villages as in Bali that can be directed towards the settlement of the distribution of assets by PHDI.

Keywords: Hindu society, property distribution, divorce.

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1. Introduction

Sharing property together in a marriage is always a crucial thing as a result of divorce. Because both the husband and wife will make a fuss about the distribution of shared assets owned during the marriage, both husband and wife mutually assume or postulate together have the right to assets in the marriage. This is due to the fact that most of the husband and wife in the family do not record the assets owned by the husband and wife, so there is often a mixture of inheritance with shared assets during the marriage. This situation makes it difficult to know and be detailed in which assets belong to the husband and which assets belong to the wife. Marriage Law Article 35 is regulated in terms of treasure in marriage, namely:

Paragraph (1) "Assets obtained during a marriage become joint property".

Paragraph (2) states that, "Inheritance from each husband and wife and property acquired as each gift or inheritance are under the control of each party as long as the parties do not determine anything else".

The West Nusa Tenggara region is one of the most widespread areas of Hindu society in Indonesia, historically the Hindu community in West Nusa Tenggara is a distribution of Balinese Hindu society. For this reason, the Hindu community in West Nusa Tenggara applies the Balinese traditional legal system. In Balinese customs, divorce results in certain legal consequences for joint property in a marriage (Bali: *gunakaya*).

Report of the Association for Justice Legal Aid Institute (LBHAPIK) of Bali and the Community for Fair and Equivalent Indonesia (KIAS) sees that divorce in Balinese customs still causes a lot of harm to women. Most Balinese women are ashamed of divorce. *Maluminta* nothing. After working hard for years to support the family economy. Where do women feel they have no right to share the news that they have collected together with their husband? Is it true that he does not have any rights? The old Balinese law does regulate this, but only if women are guilty. If he is not guilty, he has the right to get one third of the wealth to be rich. Unfortunately, this custom is rarely implemented.

Based on the description, the distribution of shared assets due to divorce in Balinese customs still causes problems so it needs to be reviewed empirically. The focus of the problem raised in this research is the distribution of assets by the parties due to the divorce of the Hindu community by PHDI West Nusa Tenggara and the legal consequences of the distribution of assets by the parties by the divorce of the Hindu community by the PHDI West Nusa Tenggara.

2. Reserach Method

This study uses empirical legal research or sociological legal research, namely research on the effectiveness of law, which is research based on normative legal science (legislation), observing how reactions and interactions occur when the norm system works in society (law in action). The method used in this research is the statute approach, the conceptual approach and the sociological approach.

Types and sources of data used in this study are primary data, i.e. data collected through field research. In this study, field research was conducted in Parisada Hindu Dharma Indonesia in the West Nusa Tenggara region (PHDI West Nusa Tenggara). Sources were obtained from informants and respondents. The informants in this study were elements of PHDI in the West Nusa Tenggara region, while respondents were Hindu communities and religious leaders who were directly involved. Secondary data is obtained from library research consisting of primary, secondary and tertiary legal materials. Primary legal materials are statutory regulations, and court decisions. Secondary legal materials include textbooks, journals, research results or related documents, and tertiary legal materials, namely supporting materials such as media news sources. This research was conducted at PHDI West Nusa Tenggara. Consideration of the location of the study is one of the locations that have a high divorce rate and property distribution problems due to the Hindu community's divorce. The samples used in the study are: First, the sample on the PHDI elements of the West Nusa Tenggara region. Second, the people who carried out or had distributed assets in PHDI in the West Nusa Tenggara region were also community leaders, namely traditional and religious leaders.

3. Discussion

1. Distribution of Assets by Parties Due to Divorce in Hindu Society Conducted by Parisada Dharma Indonesia West Nusa Tenggara Region

a. Mechanism

Based on the results of research on PHDI WEST NUSA TENGGARA through interviews with Dr. Ir. I Gst Lanang Media, MS, as the chairman of PHDI WEST NUSA TENGGARA, acknowledged that the distribution of assets by the parties due to the divorce of the Hindu community in the WEST NUSA TENGGARA region, especially in the city of Mataram as a Hindu community base, was still poorly understood by the community, the existence of the PHDI was still not effective for settlement law problem. Read more Dr. Ir. I Gst Lanang Media, MS states that: "This PHDI did initially appear in Bali, then spread throughout the region, it more or less influenced the existence of PHDI, the community was still unfamiliar with the role of PHDI in solving legal cases, generally PHDI was seen as merely a religious problem, whereas the role of religion in the Vedic scriptures was the source customary law values in solving all kinds of problems. Keep in mind that the existence of PHDI is a religious organization, so the direction of settlement is based on the book. On the one hand also the existence of PHDI itself is constrained by structures that are not working as it should, changes in provisions in the articles of association and reforms, Hindu judicial institutions need to be considered, for ADRTI this is made by penandita and community leaders, so it can be adjusted to the needs, can be changed So, it still needs to be considered whether the role of the PHDI in the future, including in the field of solving the problem, because so far the role of the PHDI in solving the problem is only to provide input and seek peace between the parties, it could be, therefore all of us need an active role for socialization and of course management possible resources and budget.

The description of the results of the interview above confirms that the existence of the PHDI is a religious institution and has no scope in the distribution of assets, so that the role of the PHDI is still in general and is more the initiative of the parties to present the PHDI, because basically the PHDI does not have the authority to enter further issues division of property.

Furthermore, Dr. Ir. I Gst Lanang Media, MS, said that related to the mechanism of handling the distribution of assets, namely:

"... if there are legal issues, in relation to the settlement of the division of assets that was asked, then based on the function of PHDI, there are daily executors, so they are fully authorized according to the Articles of Association, in which the mechanism implemented is, followed up by reporting by the community directed at the legal field, because according to the ADRT there is a legal field that deals with it, then the legal sector coordinates and deliberates on sitting issues, later, the role of the daily executive takes operational decisions, for example such as follow-up cases to be asked for opinions or submissions to Paruman Pandita and Paruman Walaka. PHDI cannot play a role, because the settlement can be directed at traditional institutions, with mediation or other forms, it depends on the choice of the parties, PHDI's daily board is more to provide support and facilitate Hindu activities for the development of social life of the community. Related to legal issues, later if there is an agreement, a summons is made to the parties and even then there must be a report and the wishes of the parties, given advice, further steps solutions, so do not provide decisions related to resolution, settlement is limited to agreement or further commitment to the efforts taken . PHDI is not a judicial institution, for the mediation function itself it is necessary to strengthen the institution in the future in order to resolve legal issues. Because every place for Hindus also has different customs, actually handed

over to traditional institutions, but because in the region of Lombok Pakraman Village has not been formed like in Bali, so it is really important the role of PHDI to provide understanding to the parties, according to our authority, PHDI more suggest to this extent, therefore in the future it is necessary to think about the structure of the PHDI with traditional institutions, then Hindu justice institutions ".

Based on the description of the results of the interview with Dr. Ir. I Gst Lanang Media, MS, then it shows that PHDI has no power in handling legal issues in general, and specifically the distribution of assets due to divorce. Handling is handed over to traditional institutions, because basically the Hindu custom in each place can be different, depending on the agreement . However, this is hampered by traditional village institutions which have not yet been formed as is the case in Bali. So far, based on the PHDI function, in handling the distribution of assets due to divorce, PHDI has a role in facilitating the parties, and based on ADRT, PHDI has a role in religious coverage.

Based on this function and the findings of the field research in the interview, it shows that PHDI does not have the strength and obligation to solve the problem of the distribution of assets due to divorce in Hindu society, therefore the cases handled are still very limited.

As for the parties who have asked questions or solutions to PHDI in research searches, found a married couple who want to divorce and its relation to the distribution of assets, the first pair is Wayan Kerta and Nyoman Aryni, and the second pair is on behalf of Nengah Artana Putra and Wayan Sry Yulianingsih .

Explanation of the interview with the parties who had submitted their case to PHDI, related to the mechanism delivered by the couple Wayan Kerta and Nyoman Aryni, Wayan Kerta said:

"... Yes, after the divorce was a matter of property, finally my ex-wife and I once got to PHDI, because of information from family, try asking the PHDI first, before knowing PHDI, but usually it was specifically religious events and giving advice. At that time we first contacted the contact, coincidentally given by the family too, we were asked directly to the secretariat office, at that time I went to the office, got there after reporting directed to another section, I reported it only a few days later was called, we were asked to attend Both of us at that time, finally the PHDI who contacted each of us, previously the same wife indeed agreed on the allocation of assets, only to find clarity, going to court also the process was complicated and costs were also obstacles. When we were present at PHDI we were in a kind of place in the congregation. There were 3 times in total we were asked to the office just finished, for the 4th meeting we were only asked again for objections to be conveyed. Finally, when it was finished, we were only asked to sign an agreement so, using a stamp, there was filled in the letter there as considered by the Pandita. In short, it was finished, because we also raised religious considerations, so we both felt that it was sufficient, there were no more problems for property and children. "

The results of the study through the interview of the first couple above shows that there is a process or mechanism of reports received by PHDI. The mechanism or procedure is carried out in several stages, which endeavored for a peaceful settlement.

Furthermore, the second pair who finally voted through the court was Nengah Artana Putra and Wayan Sry Yulianingsih. This research search gets interview excerpt from Nengah Artana Putra, namely:

"... At that time, we were directed to the PHDI first to take care of further after the divorce over the matter of property, I was asked to report, I went to report, and about ten days we were called respectively, we met at the office, confronted and there were two people in the first meeting that asked about marriage to divorce, I felt PHDI was indeed pressing for mediation, division based on the consideration of the pandita, we were like a trial and given a hotbah like that. At the third meeting, at that time there were three people, again we were given an understanding of the distribution according to religious law, and finally were asked again to obtain property and assets that were brought during marriage, so PHDI at that time essentially gave the contents related to the provisions of property in Hinduism, we explained the process, so PHDI handed it over to us, we were asked to attend again for the next meeting, that was the last time, PHDI each meeting was trying to reconcile, I myself was frankly back and forth in despair, such as there was no resolution and seriousness of PHDI, because it was stalled, after that we were told to sign and we proceed in court, in PHDI there was no settlement. "

The description of the results of the interview with the second pair above, shows the stages or mechanisms that are not different from the first pair, in addition PHDI efforts that lead to peace efforts, but the second pair of mechanisms reached the state justice process.

The results of the study as a whole show the role of PHDI has no power in suppressing parties and providing steps that provide legal certainty, PHDI is only able to provide *bisama* made by the pandita, namely decisions related to the interpretation of religion.

Legal reform in the future, it is also desirable to strengthen the role of PHDI in handling various legal issues. First there needs to be a legal unification of Hindu society, or there needs to be a law that regulates the level of law in order to clarify the mechanism, handling and resolution. In addition, it is necessary to socialize the Hindu community, before taking the path of the state court and traditional court, according to the function of the PHDI

the Hindu community can ask for advice, solutions, opinions or consultations with PHDI related to legal efforts, also it is possible to issue a PHDI Decision in its settlement, because basically the settlement of the distribution of assets can be done with each law.

b. Settlement

Based on the description above, there were parties who had asked questions or solutions to PHDI in research searches, found a married couple who wanted to divorce and its relation to the distribution of assets, the first pair namely Wayan Kerta and Nyoman Aryni, and the second pair namely on behalf of Nengah Artana Putra and Wayan Sry Yulianingsih. From the couple there were two settlements, namely an amicable settlement agreement and an agreement to proceed at the district court stage.

The completion phase has been described by the parties in the interview above, Wayan Kerta as the party reconciled by PHDI said:

"... the settlement was peaceful, the process was that at each meeting we were asked for peace, which, as pressed, we were given advice and the consequences, so because we felt we could improve ourselves too, we thought again, the settlement was peaceful at PHDI, there was a letter the signatures, we hold each of them, that's all, because I kept it in the family for a long time, the letter, I don't hold it now. "

The results of the study through the interview of the first couple above shows that the settlement was carried out peacefully with the active role of PHDI and the good faith of the parties. Meanwhile, the second pair who chose through the court, based on the results of interviews with Nengah Artana Putra, namely:

"... how do we do that, we reported it earlier, we initially wanted to divorce, we wanted to go directly to the court, but the family ordered us to go to PHDI first, so the process took a long time, because several times it was forced into peace, we were told that the trial was conveyed if divorce has even a lot of problems later, but because it was unanimous in its determination, the settlement goes to court ... "

The description of the results of the interview with the second pair above, shows the PHDI efforts that lead to peaceful efforts, but the second pair of the mechanism reaches the state justice process, so the settlement at this stage is the settlement at the next stage.

Dr. Ir. I Gst Lanang Media, MS said several things related to efforts to resolve the case by PHDI West Nusa Tenggara, namely:

"For settlement, so basically we will still be based on ADRT, because earlier, the ADRT did not allow PHDI to get too into the settlement aspect until issuing a decision on the number of shares, what could be done was that PHDI provided recommendations, which was termed *Bisama* made by Pandita, the form of the decision related to interpretation from a religious perspective. PHDI has been pursuing peace from the beginning, there have been cases, but indeed it is rarely agreed to mediate in cases of divorce, so the process goes to the district court because we have not formed an *adat* institution for the West Nusa Tenggara region. "

Based on the description above, it shows the settlement efforts made by PHDI to the parties that is pushing for mediation efforts and PHDI cannot provide legal certainty related to the amount of property distribution, limited to giving decisions containing interpretations based on Hinduism.

Pemuput religious program, Pedande Gede Puja Sakti Manuabe commented in relation to the settlement of cases by PHDI as follows:

"PHDI is like a guardian of Hindu teachings, its breath is religion, so all problems must come from us, if we resolve the divorce case, we can use *adat* institutions, because it is clear, I do not know that in the future PHDI will have a judiciary, it might be possible effective, or may not work effectively, because it can also change people's habits. "

Based on the description of the results of the research above, PHDI basically has the task of regulating, maintaining and developing Hinduism and heightening the awareness of religious life and society of Hindus in Indonesia. PHDI West Nusa Tenggara region plays a role in the Prov. West Nusa Tenggara. PHDI does not have the scope to encourage peaceful resolution of every problem. If seen, the emergence of PHDI is a religious institution that focuses on the Bali region, but with its development PHDI has grown and developed in all provinces in Indonesia. However, it does not eliminate the basic value of PHDI which is a religious institution. In Bali, customary cases become the scope of special institutions authorized to handle, namely *adat* / *Pakraman* villages with their ranks, from village level to provincial level. PHDI provides support and facilitates. PHDI is not a judicial institution or the scope of settlement outside the court, so it does not have the scope of duties for the decision to settle the distribution of assets. Therefore, for the mediation function, it is necessary to strengthen the institution in the future in order to resolve legal issues, including the distribution of assets due to divorce.

In addition, the description of the settlement efforts above also shows the role of PHDI in an effort to resolve peacefully, although basically PHDI has no specific obligations mandated in ADRT. The basic spirit of PHDI is handling religious issues and religious problems (State Dharma and Religious Dharma). The contents of the Dharma Religion are, among others, upholding the *Sruti Veda* as *murda* (core), that is, the mantra of *Deva puja* (idol), *Bhagawadgita*, *tattwa-tattwa* (spiritual philosophy). *DharmaSastra Smrti* (the teaching of religious moral guidance), that is *Sarasamuscaya* and moral guidance, desiring to establish / hold a Boarding House of Judgment

(Religious Higher Education) where to study dharma, determine the requirements of the priesthood (appointment of the Pastor) before the existence of the school, must establish Padmasanatau Sanggar Agung in each of the Three Kayaks, establish a dharma rule, determine the requirements of the priesthood (appointment of the Pastor) before the existence of these Schools, establish Padmasanatau Sanggar Agung. Pengalantaka (calendar), stipulates the implementation of corpse firing and ceremonies for the dead unnatural (wrong starch, act of starch, kepengawan, leprosy), determine cuntaka (dirty period), determine the replacement of the Saka Year (Period), Direct the implementation of Shiva Latri (Night holy contemplation) and hopefully the Sulinggih and Welaka disseminate this decision.

The contents of the State Dharma are more focused on the obligation of Hindus as citizens of the nation who are under the auspices of the Republic of Indonesia based on Pancasila and the 1945 Constitution. The mediation effort is one of the important efforts that needs to be integrated with traditional justice institutions or Hindu justice institutions. Since the issuance of Law No. 30 of 1999 shows that alternative dispute resolution or out of court has a clear legal basis and is followed by implementing regulations below including regulations regarding marriages and property distribution. Settling the case of distribution of assets due to divorce began mostly done by mediation, because the mediation process is considered effective.

To prioritize case resolution through mediation, the Supreme Court took a progressive step with the mediation model in the judicial process, in 2002 the Supreme Court issued Circular No. (SEMA) No. 1 of 2002 concerning Empowerment of the First Level Court in implementing the Peace Institution which had previously been regulated in Article 130 HIR / 154 R.Bg. The Supreme Court then replaced the Supreme Court Regulation No. 1 of 2008, further changes to the regulatory steps carried out through the Supreme Court Regulation No. 1 of 2016.

Based on the consideration of the Supreme Court Regulation No. 1 of 2016 that mediation is one of the faster and cheaper dispute resolution processes, and can provide greater access for parties to find a satisfactory solution and fulfill a sense of justice.

2. Legal Consequences of Distribution of Assets by the Parties With Divorce in Hindu Community Conducted by PHDI West Nusa Tenggara

a. Legal certainty

The Marriage Law regulates the termination of marriage as Article 38 states that marriage can be terminated due to death, divorce and due to court decisions. Choice of law in the implementation of marriage, becomes important in the settlement of the distribution of assets due to divorce, the determination of marriage law has implications for the resolution of marital problems.

1) Distribution of Asset Due to Divorce in Hindu Society

Based on the description in the previous chapter, that in Hindu societies there are differences in customs in each place, it is also a mistake in understanding religious law and customary law, basically in Hindu society, the resolution of legal problems is delegated to traditional institutions. The function of PHDI is as a religious organization, which is limited to providing suggestions or solutions which can then be taken by the parties.

The results of the study as described in the interview in the previous chapter, found that the role of the PHDI as a religious institution in the distribution of assets as a result of divorce is possible to make decisions based on religious interpretation, such matters have no legal implications, so they do not contain the value of legal certainty.

Legitimate marriages in Indonesia are marriages that are carried out according to their respective religious and religious laws. In addition to being based on religious and religious law, marriage is also inseparable from the customary law inherent in Indonesia. Marriage in Bali itself is closely related to Balinese Customary Law and culture. For Balinese Hindus, marriage matters have a special meaning and position in the world of their lives. Marriage in Hinduism is expected to be an eternal relationship between husband and wife.

The regulations governing the management of marriages are regulations that are the source and guide in continuing the development of Hindu law in the field of marriage. Traditional marriage is very much colored by the glorification of God as the Creator, as all marriages are performed at the groom's house and in conducting the marriage ceremony all costs incurred for the event are the responsibility of the male family.

The distribution of assets as a result of a divorce is not only influenced by the choice of law at the time of marriage, the caste system and gender have a very big influence. The Balinese who embrace the patrilineal system do emphasize everything on the male line. In caste different marriages at different caste marriages, we can see how a woman is treated unfairly. Sudrayang women who are married to quarterly men will never enter into the sorrow or clan of their husbands, in the sense that the sudraters will not change their caste to follow her husband's caste even after marriage.

In the case of marital divorce, the divorce that occurred will have a very large impact on the position of women. In the period of paswara 1910 until it was changed into paswara 1927 the position of women who committed divorce was very alarming. During the Paswara period 1910 and Paswara 1927, women who did caste marriages had to do the ceremonies which were ceremonies to reduce the title of women to their equals. However, in 1951 the Bali PRD abolished the provisions regarding inter-caste marriages. This was later reiterated in the Great Pasamuhan III Decree dated 15 October 2010 issued by the Pakraman Village Council. As a result of divorce

on the position of women according to the Decree of Pasamuhan Agung III, the quarterly women who divorced from different caste marriages will return to their original homes.

2) Marriage and Distribution of Assets Due to Divorce Based on National Law

General Explanation of Law Number 1 of 1974 concerning Marriage as amended by Act Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 (hereinafter referred to as Marriage Law), states:

"All the provisions stipulated in the Civil Code (Burgelijk Wetboek), Christian Indonesian Marriage Ordinance (Huwelijk Ordonantie Christen Indonesia 1933 No.74, Mixed Marriage Regulations (Regeling opgemengde Huwelijken S.19898 No.158) and other regulations governing Indonesian Christianity 1933 No.74, Mixed Marriage Regulations (Regeling opgemengde Huwelijken S.19898 No.158) and other regulations regulates Marriage as far as it is regulated in Law No.1 of 1974 concerning Marriage, is declared no longer valid. "

4 Elucidation of Article 2 paragraph (1) of the Marriage Law states that there are no marriages outside the law of each of his religion and beliefs, in accordance with the 1945 Constitution. What is meant by the law of each of his religions and beliefs includes legal provisions that apply to his religious group and his belief is insofar as it does not contradict or is not otherwise stipulated in the Marriage Law. Because there is no marriage outside the law of each of his religions and beliefs, the consequences are that there is no divorce outside the law of each religion and its beliefs. "

The validity of the Marriage Law also applies to each religious law and its beliefs as a positive law for marriage and everything related to marriage, including divorce and the issue of distribution of marital property, as long as it does not contradict or is not otherwise specified in the Marriage Law.

The occurrence of divorce brings legal consequences to divorced husbands, to children, as well as to assets. Against husband's wife, divorce results in the elimination of all consequences due to marriage such as the rights and obligations of husband and wife during marriage. The wife gets back her position as an unmarried woman. Parental power also stops with divorce, because it changes with guardianship. Joint assets held in a marriage are divided as gono assets between husband and wife. Hartabersama or gono-gini are assets produced from a marriage both by the husband / both of the assets which are shared jointly in a marriage.

In the event of a divorce, the engagement is broken, and then a share of the assets of the union can be held. If there is a marriage agreement, this distribution must be carried out according to the agreement. In a divorce, it can result in property wealth, which is inherited property and acquisition property and gonogene property / joint property. For property and acquisition property does not cause problems, because the property is still controlled and the rights of each party. If there is a unification of property due to the agreement, the settlement is also adjusted to the provisions of the agreement and the agreement.

In addition to providing legal consequences on property, divorce by a married couple, impacts both husband and wife as well as children. Juridically, for both parties it has an impact on the status of widower and widow, while the children have a broad impact.

Under Balinese customary law, in principle only boys as heirs (can be seen in the provisions of Manawadharmasastra IX, 104, 156-157 and 185). In Manawadharmasastra stated that heirs are descendants called a panda drawn a straight line downward and upward, three inherited descendants descended from the heirs and upward from the heirs declared one panda as heirs, but among the six levels that are heirs with the right of inheritance downward and above, three descendants descended from the heirs and upward from the heirs declared one panda as heirs, male (asapurusa). Therefore, heirs are sons of heirs. But in reality, not all things that have been arranged can be carried out, because marriage as it is, cannot always give birth to male children as expected. Not a few Balinese marriages only have daughters. If a family does not have male descendants but there are only female descendants, then these girls can be appointed as rajententana status (purusa status), marriages are conducted with a nyentana / nyeburin marriage system.

The Balinese traditional community adheres to a patrilineal family system or fatherhood that is more widely known in Balinese society in terms of the caste or purusa. The principles in the ancient family system together with the institutional system adopted in the Book of Manawadharmasastra are known as one of the books of Hindu law. So that is why the family system adopted by the indigenous Balinese is said to be imbued with the teachings of Hinduism adopted by the majority of Balinese people. There is a very tight blend of Balid adat with Hindus in the applicable family law, although it cannot be said that the law that applies to the Balinese indigenous community is the Hindu law itself.

Prioritizing boys aside because of the above, also relates to the basic Hindu religious beliefs about punarbawa, boys can save the spirits of their ancestors from Put and the ancestral spirits can reincarnate through the male descendants. So it is clear that the family system in Bali that takes into account the kin membership based on the line of men gets strong support from the Hindu view which emphasizes the importance of male offspring for the happiness of a family, the world and the hereafter.

The existence of such boys' obligations causes boys to become a staple in Balinese society.

From Gde Panetja's records of court decisions regarding Balinese customary law as published for the first

time in 1986 in the Various Notes on Balinese Customary Law, it can be seen that judges' decisions (jurisprudence) were passed, especially during the Raad Kertha traditional judicial era, applicable. At that time, the position of the joint assets after the divorce is dependent on the causes of the divorce. If the divorce is not caused by a mistake, the wife of Makaharta together is divided between husband and wife, one part for the wife, two parts for the husband, according to the principle of remembrance of an elder or asenun category (sepikul segendong). If divorce is caused by a mistake, the wife is not entitled to the distribution of assets (Panetja, 1986: 152). The attitude of the rights to the Raad Kertha era seemed to have been influenced by the patriarchy culture which was very strong in the Balinese people.

The times have also had an impact on changing behavior and values. Divorce rates in Bali are increasing for various reasons. At present, in Balinese society there has been a shift in outlook. Research shows that the majority of respondents surveyed expressed the view that if marriages break up due to divorce, then in principle the shared property (gunakaya) is divided between husband and wife without relating to the causes of divorce. awig-awig adat villages (customary rules made by and for the villagers in Bali), as can be seen from the results of research conducted by Sandi Sudharsana (2000). From this research it was learned that most of the traditional village awig-awig who were examined regulate that in the event of a divorce the shared property (gunakaya) is divided between husband and wife.

b. Legal protection

In the perspective of national law, the Government has preventively provided protection efforts for married couples to prevent disputes in marital property, by opening up opportunities to determine other laws for husband and wife in regard to marital property, namely by making marriage agreements made before or after the marriage takes place. This has been determined in the Civil Code and Marriage Law.

Although the Government has given rules on marital property, but in the Marriage Law, there is no detailed explanation of the form of joint property and inheritance. The Marriage Law only states that joint assets are assets obtained during marriage. Regarding property, there is also no explanation regarding inheritance, what is meant by inheritance, its forms and time constraints when an asset enters the group of inherited assets and also matters regarding the distribution of shared assets in the event of a divorce.

Article 37 only emphasizes that if a marriage is broken because the divorce of shared assets is regulated according to their respective laws. The Marriage Law also does not regulate how to resolve the problem of inherited property of a husband or wife who enters a marriage which then mixes with shared assets. The articles which have unclear provisions, will bring multiple interpretations to the application of the law in the field. on the basis of the purpose of law is to protect human interests.

In the event of a dispute over marital property, the unclear law is passed on to the judge by interpreting the law based on a sense of justice from the judge concerned. The judge is obliged to find his own sentence or a case whose rules are unclear. Although it is not possible that law can provide full protection of the interests of one, as well as ignoring the interests of other people because of the full protection of the interests of one person, means ignoring the interests of another person in whole or in whole.

Based on this, Article 37 of the Marriage Law does not provide a uniformity of positive law about how shared property and the sharing of shared property if divorce takes place. So in accordance with the way the division of laws that submit to the law that lives in the community where divorce and household reside. Specifically regarding Article 37 of the Marriage Law can be seen as an equivalent to the Marriage Law Article 35 paragraph (1).

Legal arrangements for joint property in the event of a divorce are according to their respective laws. Marriage Law Article 35 regulates property in marriage, namely:

Paragraph (1) "Assets obtained during marriage become joint property".

Paragraph (2) states that, "The inheritance of each husband and wife and property acquired by each of them as a gift or inheritance, is under the control of each party as long as the parties do not determine anything else".

The meaning of each law is religious law, customary law and other laws. In practice, the use of religious or customary law depends on the religion and ethnicity of husband and wife. If a husband and wife who broke up due to divorce embraced Islam, they always divided their property according to Islamic law, but did not rule out the possibility of being divided based on their customary law. For non-Islamic religions, the distribution of property due to divorce is always subject to customary law if they are of one tribe, and if there is no agreement settled according to customary law then what applies is positive law. In other words, the assets owned by a married couple before marriage takes place do not become mixed ownership or ownership of the property is not collective ownership. However, ownership rights regarding this type of property can be determined to be joint or collective ownership rights for husband and wife. The legal basis in this case is Article 35 paragraph (2) of the Marriage Law which states: "is under the control of each party as long as the parties do not determine otherwise".

The legal consequences of divorce on the distribution of shared assets according to the Marriage Law, Article 37 states that "if the marriage is broken due to divorce, property is regulated according to their respective laws". What is meant by each law is religious law, customary law, or other applicable law. In the Marriage Law it is not

explicitly stipulated about how much each part of the husband and wife to the joint property. However, in the Marriage Law provides concessions by submitting to the husband and wife who are divorced about which law and what law will be enforced in resolving the dispute over the distribution of shared property and if there is no agreement, then the Judge can consider according to a reasonable sense of justice.

Legal arrangements for joint property in the event of a divorce are according to their respective laws. The meaning of each law is religious law, customary law and other laws. In practice, the use of religious or customary law depends on the religion and ethnicity of the husband and wife. If the husband and wife who broke up due to divorce embraced the religion of Islam, they always divided their property based on Islamic law, but did not rule out the possibility of being divided based on their customary law. For non-Islamic religions, the distribution of property due to divorce is always subject to customary law if they are of one tribe, and if there is no agreement settled according to customary law then what applies is positive law. In other words, the assets owned by a married couple before marriage takes place do not become mixed ownership or ownership of the property is not collective ownership. However, ownership rights regarding this type of property can be determined to be joint or collective ownership rights for husband and wife. The legal basis in this case is Article 35 paragraph (2) of the Marriage Law which states: "is under the control of each party as long as the parties do not determine the other".

This implies that if a husband and wife want the mixing of one or both of these types of assets, then the mixing of these assets can be made possible by prior agreement. Regarding the distribution of property together after divorce, the Marriage Law does not regulate in a timely manner formulating the applicable law in division because it is handed over the distribution to the respective law.

4. Conclusion

1. The distribution of assets by the parties due to a divorce in the Hindu community carried out by the PHDI of the West Nusa Tenggara region based on its function as a religious institution, PHDI west nusa tenggara is passive, if there are reports of the parties, there is a stage of coordination and deliberation about sitting issues, making decisions that are operational to call or follow up on the case to be asked the opinion of the parties and present experts and Hindu religious leaders. Subsequent stages are given advice, further steps solutions, limited to an agreement or further commitment to the efforts taken or provide recommendations directed at the settlement by mediation.

2. The legal consequences of the distribution of assets by the parties by the divorce of the Hindu community by the PHDI of the West Nusa Tenggara region is an effort to resolve through mediation and settlement through the courts. PHDI is not authorized to carry out the distribution of assets due to divorce. In the West Nusa Tenggara region, there are no adat institutions / traditional villages as in Bali that can be directed towards the settlement of the distribution of assets by PHDI.

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