

ABSTRAK

Akibat hukum bagi wanita Mulih Daha menurut hukum waris adat Bali (Studi di Desa Gesing Kec. Banjar Kab. Buleleng)

Menurut Undang-Undang nomor 1 tahun 1974 terdapat tiga penyebab putusnya perkawinan yaitu : karena salah satu putusnya perkawinan yaitu : karena salah satu pasangan telah meninggal dunia, karena putusan pengadilan dan terakhir karena perceraian. Diantara ketiga faktor tersebut hanya perceraian yang dapat menjadikan dasar adanya mulih daha.

Secara harfiah mulih daha mengandung dua kata yaitu : mulih yang berarti kembali pulang dan daha berarti gadis. Namun kata daha sendiri dapat diartikan. Mengembalikan kedudukan seorang wanita yang sudah pernah kawin menjadi wanita yang belum pernah melaksanakan perkawinan atau kembali gadis, namun hal ini tidak dapat diartikan biologis. Kedudukan mulih daha tidaklah merupakan hak melekat pada seorang janda, sehingga secara otomatis memperoleh kedudukan sebagai seorang gadis (daha). Mulih daha harus dilakukan dengan persetujuan dari keluarga termasuk ikatan keluarga besarnya. Disamping itu keluarga wanita mulih daha harus melakukan upacara penyambutan di tempat persembahyangan keluarga asalnya, yang bertujuan untuk menyatakan anak wanitanya telah kembali dalam lingkungan keluarganya dan disaksikan oleh pejabat perangkat desa adat. Selanjutnya janda mulih daha mempunyai kedudukan sama seperti saudara-saudara lainnya.

Metodologi penulisan ini menggunakan metode penelitian yuridis empiris dan bersifat diskriptif analistis dimana menggambarkan dan mengungkapkan sistem hukum adat setempat. Penulisan ini didasarkan atas hasil wawancara dengan tokoh-tokoh masyarakat dan beberapa janda mulih daha. Didaerah bali khususnya di desa adat Gesing Kabupaten Buleleng.

Hasil dari penelitian ini masyarakat Bali menganut sistem kekerabatan patrilineal, maka hal utama adalah keturunan laki-laki sebagai ahli waris, sehingga perempuan atau janda mulih daha bukanlah ahli waris mutlak namun hanya boleh menikmati laba atau bagian harta warisan orangtuanya. Sedangkan anak yang dilahirkan wanita mulih daha jika lahir perempuan secara otomatis ikut ibunya namun jika laki-laki sudah pasti ikut bapaknya kecuali ada perjanjian sebelum perkawinannya.

ABSTRACT

Legal Consequences To Woman of Mulih Daha according to Hereditary Law Bali (Study In Custom Village of Gesing District Of Banjar, Regency of Buleleng).

According to Law Number 1 1974th, there are three broken cause of marriage him that is : because one of the breaking of marriage that is : because one of the couple have passed away, because justice decision and last because divorce. Among third the factor only divorce of which can make base is existence of mulih daha.

Beside that woman family of mulih daha have to do expectation ceremony in place pray him family, with aim to express its woman child have returned in its family environment and witnessed by functionary of peripheral of custom countryside. Hereinafter widow of mulih daha have to domicile the [is] same as other brothers and sisters.

literally pregnant mulih daha two word that is : mulih meaning to return home and daha mean girl. But word of daha alone can be interpreted, returning to domicile a woman which have married to become woman which have never executed marriage or return girl, but this matter cannot be interpreted biological. Domiciling mulih daha is not represent coherent rights at a widow, so that automatically obtain to domicile as a girl (daha). Mulih Daha must be done in the affirmative from family of including family relationship of level. Beside that woman family of mulih daha have to do expectation ceremony in place pray him family, with aim to express its woman child have returned in its family environment and witnessed by functionary of peripheral of custom village. Hereinafter widow of mulih daha have to domicile the is same as other brothers and sisters.

The writing methodologies use method of juridical empirical and have the character of descriptively of analysis where depicting and laying open local customary law system. This writing is based to the result of interview with elite figures and some widow of mulih daha. In Bali area specially in custom village of Gesing Regency of Buleleng.

Result of from this research of Bali society embrace consanguinity system of patrilineal, hence especial matter is clan of men as heir, so that widow or woman of mulih daha is not absolute heir but shall only enjoy its old fellow heritage shares or profit. While borne by child is woman of mulih daha if delivering birth woman automatically follow its mother but if men beyond question follow its father except there is agreement before its marriage.