

Implication of *Sudra* in Marriage Customary Law between *Wangsa* in Bali (Human Rights Perspective)

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ABSTRACT

Indonesia is the thousand islands; Bali is one of those thousand islands. Bali is very rich in culture, customs, and traditions including the marriage customary law which still following the law at the time of colonization like paswara 1927 that regulate patiwangi sentence against marriage between wangsa. At the time of the Kingdom and Netherlands colonization the question of castes, wangsa is very influential to the marriage. Bali stratified society into a system called caste. Sudra caste included the very bottom which is considered low in degree, now commonly known as the jabawangsa. The marriage between wangsa, taking the husband of the sudra (jabawangsa) is avoided. That is the reason to examine about "Implication of Sudra in Marriage Customary Law between Wangsa (the perspective of human rights). By raising the issue in the following studies: How the implications of sudra in marriage between wangsa from the perspective of HUMAN RIGHTS? Research is conducted on four regencies/municipalities in Bali.

Implications of the sudra in marriage between wangsa (patriloma) or AsuPundung and AlangkahiKarang Hulu, where women of tri wangsa are forbidden to mate with men of sudra. Implications of sudra in marriage between wangsa of nyeburin, where men of sudra are forbidden for nyeburin marriage to women of tri wangsa. Research results have shown any change where sudra men are allowed to marry as nyeburin with women from the wangsaksatria. An implication of sudra in divorce, widow of patriloma marriage that has lowered the degree/wangsa does not possess equal right with the widow of marriage in general. So the implications of any differences in the vertically status of the system is the cause of human rights violations, which in principle are not discriminating among fellow human beings. Such marriage customary law is contrary to the values of Pancasila which is the value of a Just and Civilized Humanity.

Keywords: sudra, marriage between wangsa, human rights

INTRODUCTION

The institution of marriage is a media to accommodate human behavior up on creation of Almighty God, in order to develop the life in the world. Any religion also teaches that humans live and evolve in accordance with the rules of their religion. Adjustment of behavior against religions rule gradually arranged in a positive rule of the country. Yet it cannot be denied that the mating behaviour is the very nature of human rights, so that the will to do a marriage must come from both of them free will. This has been set up in the various regulations in Indonesia.

Hilman Hadikusumostates: "In Indonesia to adopt a rule that marriage has been around since ancient times, since the time of Sri Wijaya, Majapahit, the Netherlands colonial period, until Indonesia had become independent. Even the rules of marriage are not just concerned citizens of Indonesia, but also with regard to foreign nationals, because of the increasing breadth of

the association of Indonesian¹ Culture of marriage and a saw to it that apply to a society or a nation is inseparable from the cultural influence of the environment in which it is located, as well as people relations. It was influenced by knowledge, religious beliefs and habits that are embraced by the community concerned. As with any rule that governs about marriage in Inonesia is not only influenced by Hinduism, Buddhism, Islam and Christianity, but also influenced by Western culture as the result of acculturation and cultural colonizers Netherlands.

According to Korn, kinship system in fact embraced by the Hindu community in Bali is a patrilineal people kinship system. This is drawn from the descendants of the lineage of man (*purusa*). In this connection in case of marriage, then a woman marries will enter into clump family of the men (husbands). Because marriage is a sacred, then that is considered symbolically released from the bride's family and his family for the next entry into the thicket of the bridegroom's family². In addition to the system of kinship in Bali also known form of marriage *nyeburin* that is a form of marriage with how to attract a man into the family of the female mated with one of his daughters who was confirmed as the successor to *sentanarajeg*. Girls who are confirmed as *sentanarajeg*, in Bali customary law considered as Purusha (male). Such a thing may occur because the family does not have a line of boys³. Marriage is prevalent in the area of Tabanan, Denpasar and Gianyar Bali area, but to the North of Buleleng yet prevalent, though in the *awig-awig* also arranged marriages of *nyeburin*.

One of the important aspects that need to be addressed in connection with the issue of marriage in Bali is a layer system of society (social stratification) affecting the existence and exercise of such a marriage, which is known for its caste or surname/*wangsa*. The notion of caste in fact unknown in the Scriptures of the Hindu, because it puts the position and the place of human beings in society at a higher level or lower can be also called stelsel vertically. The understanding of these castes is growing because; some people mastery and sight towards religion is still lower, historical and sociological factors at the time of the entry of Hinduism to Bali brought by the MahaRsi from East Java, its peak at the time of the arrival of MpuNirartha⁴.

Stratification system of social known in Hinduism is called *Warna*, related to the profession or function of the individual in society. *Warna* in the teachings of Hinduism in not to be called by four different *Warna* namely *Brahmana*, *kesatrya*, *vaisya* and *sudra*. Their professional tasks set in the Yajurveda XVIII. 48 which reads as follows: "O Lord Almighty has created the *Brahmin* to knowledge, the *kesatriya* for protection, the *vaisya* for trade and the *sudra* for physical work⁵.

According to Antonio Cassese Hinduism receiving the entire life of the community, and particularly the ideology in India until the Declaration of independence, and even further from it⁶. The Hindu community in Bali has characteristics identical to community groups as above, the Hindu community in the social context is stratified into four strata, known as the

¹Hilnan Hadikusuma,1990,*Perkawinan Indonesia menurutPerundangan, HukumAdat, Hukum Agama*, CetakanPertama, MandarMaju, Bandung, h.1

²VE.Korn, 1978 "*Het AdatRecht Van Bali*" (SelanjutnyadisebutKorn I) Terjemahanoleh I GedeWayanPangkat, Cetakankedua, PenerbitFHPM.UniversitasUdayana Denpasar, h.1

³*Ibid*, h.18

⁴KetutWianadanRaka Santi,2006,*Kastadalam Hindu KesalahPahamanBerabad-abad*, cetakankelima, PenerbitUdayana, Denpasar.

⁵I Made Titib,2003, *Veda SabdaSuci (pedomanPraktisKehidupan)*PenerbitParamita Surabaya, h.338-389.

⁶ Antonio Cassese,2005, *Human Right in a Changing World (HakAzasiManusia Di Dunia Yang Berubah)*, DiterjemahkanA.RachmanZainuddin, Cetakankedua, PenerbitYayasanObor, h.74.

CaturWangsa of a *wangsabrahmana*, *wangsakesatrya*, *wangsavaishya* and *wangsasudra* (*jaba*).

In the past the *wangsa* system in Bali whatever the term at that time, whether caste, *warna* or *wangsa* turned out to carry implications of marriage between *wangsa*. Marriage between the *wangsais* the marriage committed by the men and women of different *wangsa*. In the past such marriage is banned, but has now been turned into undesirable marriages. Against banned marriage there are two forms, namely:

1. *Patriloma* marriage, which included Marriage *patriloma* is a marriage performed by the women of *brahmana*, *vaishya* and *kesatriya* with men of *warnasudra*, it is called *anuloma* principle (according to the order of the descend lines). This marriage is commonly named *menekwangi* (wife raised the caste)⁷.
2. *Anuloma* marriage, including *anuloma* marriage is marriage performed by women of *warnasudra* with men of *warna* of the *vaishya*, *kesatriya*, and *sudra*, it is called *anuloma* principle (according to ascend line)⁸. (wife of lowered caste).

The formation of socio stratification resulting *kewangsaan* system in Bali was caused by Ancient Balinese King conquered by Majapahit. After Majapahit conquered Bali then through their Inner Dynasty many of *Arya* classified as *Ksatrya* crusts and also a *Brahmana* to Bali. These two classes then made up the *wangsaBrahmana*, *wangsaKsatrya*. People outside this line called *Wong Jaba*⁹. That means people who are outside of the group, now called the *jabawangsa*. Discrimination against the *wangsasudra* or *jaba* class is still perceived to present that implifies daily life, such as in marriage, rights and obligations in the community and preferential treatment to the *Tri Wangsa*. This discrimination occurred until now, that could result conflicts in society and family as well as the disruption of the communication link.

Discrimination in customary law in Bali against *wangsasudra*, raises a philosophical problem. The philosophical problem among others is in contradiction to the second principle of Pancasila which is Just and Civilized Humanity. Likewise the above treatment is contrary to the teachings of Hindu values, among others, the principle of *Tri Hita Karana*¹⁰, *Tatwamasi*¹¹, and the basic principle of *Manusapada*¹². Juridical aspects of discriminatory treatment against the *wangsasudra* in marriage between *wangsa* is contrary to the principles of the Constitution of 1945 (UUD 1945) mainly in article 28 (2) Paragraph I mention "Every person has the right to be free from the discriminatory treatment on the basis of any kind and is entitled to protection against that discriminatory treatment", increasingly

⁷ G. Pudja M.A. dan Tjokorda Rai Sudharta M.A., 1973, *Manawa Dharmasastra (Manu Dharmasastra) atau Weda Smrti Compendium Hukum Hindu*, Lembaga Penerjemah Kitab Suci Weda, h.136.

⁸ *Ibid*, h.7.

⁹ Wiana, *Op.Cit.*, h.148

¹⁰ Lihat I Made Suastawa Dharmayudhadan I Wayan Koti Cantika, 1991, *Filsafat Adat Bali*, Penerbit Upada Sastra, h.7. Asas Tri Hita Karana adalah tiga buah unsur yang merupakan sumbernya sebab yang memungkinkan kebaikan. Asas ini dipakainya sebagai pedoman atau tuntunan dalam segala kegiatan kehidupan.

¹¹ I Wayan Surpha, 2002, *Seputar Desa Pakramandan Adat Bali*, Penerbit Balai Pustaka, h.35. Tat Tvam Asi dalam pustaka suci Weda yang artinya "Engkau adalah Akudanku adalah Engkau" Adapun maksudnya adalah antaramanusia yang satu dengan lainnya tidak ada perbedaan hak dan ini merupakan dasar hak azasi manusia, bahwasanya manusia itu dilahirkan sama-sama samaciptaan Tuhan Yang Maha Esa. Ajaran ini merupakan landasan masyarakat Hindu untuk melaksanakan kemanusiaan yang adil dan beradab dengan rasa kejujuran serta kesucian hati yang disinاريو oleh Tuhan Yang Maha Esa dalam mengabdikan diri pada swadharma (tugas dan kewajiban hidup) tanpa pamrih untuk kepentingan pribadi saja.

¹² Majalah Suryakanta, September 1926, h.129. istilah "manoesapada" memiliki arti bahwa manusia itu sama di hadapan Tuhan maupun di hadapan negara.

expresses the country's measures to eliminate all forms of racial discrimination within the framework of law enforcement in Indonesia¹³. Contrary to the Act No. 1 of 1974 Concerning Basic Marriage laws in Indonesia, because there is none of the Article that set the difference of about marriage. This rule was not questioned about the *wangsasudra* terms of legitimate marriage. Contrary to the Law No. 7 Concerning Eliminations of all discrimination forms against women. Contrary to the Act No. 29 of 1999, namely the law on the Elimination of all forms of racial discrimination, the outcome of the ratification of the International on The Elimination of all Forms of Racial (ICERD). Contrary to the Act No. 39 of 1999 concerning the law on human rights derived from DUNHAM. Contrary to the Law No. 40 of 2008 concerning the Elimination on Racial and Ethnic Discrimination¹⁴. From the sociological aspects *Sudra* got less fair treatment in the community compared with the *tri wangsa*. Judging from past history, the treatments are now much more fair and humane. History can be seen from a thesis from Anak Agung Putra, entitled Social Change and Caste Conflict in North Bali, can also be seen from the newspaper Surya Kanta which is a media for championing the *Jaba* on colonial rule. From this then arise social change in terms of the treatment of the *sudra* is becoming more modern. That is not as tightly as the colonial era and the kingdom era. Although the *wangsasudra* highly educated, but there are not much effort on who are willing to fight for equality and fair treatment in specific areas within customary law, as in marriage customary law that still give priority to indogami *wangsa* (*matepepadan*). The *sudra* men have not been allowed to proposes woman from a family of *Brahmana*, arguing that *wangsasudra* disproportionate (in lower degree). In the form of a regular marriage on marital past is called *Pratiloma* or *AsuPundung* and *Alangkahi Karang Hulu*. Let alone Brahmin woman married in the form *Nyeburin* and form *Padagelahangmating*. In early research we found the change of marriage between men of the *sudra* who were allowed to propose women of *kesatria* as well as given permission to *mepiuningnganten* in Tabanan area, this marriage of the past called *Alangkahi Karang Hulu*. There is also a *Nyeburin* marriage and *Padagelahang* of *kesatrya* women with men of *sudra* and men of different religions. As an example between Ni Gusti Ayu Putu Deliasih with Muslim men from Malang who later renamed I Gusti Putu Widana. The wedding took place July 16, 1988, the Chaplain who conducted muput was Ida Bagus Komang Surya. This social change is the progress achieved in the marriage between *wangsa* in Tabanan after cases of *nyeburin* marriage between Ida Ayu Siti with I Ketut Bakta. Such cases gave rise to black mark of the family, although this case was won in the District Court of Tabanan, however Ida Ayu Siti parents i.e. Ida Bagus Rai decided to convert to Christianity. When the question of marriage between *wangsa* will hamper, it is feared will have implications for the occurrence of a religious conversion. Gradually *wangsasudra/jabawangsa* will be eliminated because of bigotry of the *wangsa*, recalling *wangsasudra* in Bali is also the descendants of the other *tri wangsa*, it can be seen in the *Babad CaturWarga "Soroh"* in Bali¹⁵. Thus society will understand their ancestor very well. Based on the exposure in the background, then the problem can be raised concerning what are the implications of the *sudra/jabawangsa* on marriage between *wangsa* from the perspective of HUMAN RIGHTS?

¹³Hesti Armiwulan Sochmawardiah, 2013, *Diskriminasi Racial Dalam Hukum HAM, Studi Tentang Diskriminasi Terhadap Etnis Tionghoa*. Cetakan Pertama, Penerbit Genta Publishing Yogyakarta, h. 269

¹⁴*Ibid*, h. 265-269

¹⁵Made Ratnatha, 2008. *Babad CaturWarga "Soroh" Di Bali, Sebuah Studi Pilihan Tentang Kisah Kelahiran Warga Pasek, Satrya Dalem, Brahmana Dan Pande Wesi Di Bali*, Penerbit Yayasan Damai Sejati, h. 47-54 tentang Silsilah Berawal dari Sanghyang Pasupati, Betara Hyang Genijaya, Mpu Witadharna, sampai pada Mpu Wiradharmadan Mpu Rajakertha, Mpu Lampitadan Mpu Brahmawisesa, yang menurunkan wargapande, sedang Mpu Lampitamenurunkan Panca Pandita yang nantinya menurunkan wangsa Brahmana, Kesatrya Dalem, Para Arya dan Warga Pasek Saptarsi.

DISCUSSION

Marriage form in the Hindu Bali people

Regular Marriage Form

The Hindu community in Bali has a patrilineal familial pattern or fatherhood widely known in the community of Bali as *kapurusa* system or *Purusha*¹⁶. In accordance with a system of familial *kapurusa* (patrilineal people), then it is the most common form of marriage practiced was a form of marriage in which the wife to follow her husband. This is commonly referred to as marriage in the form of regular. In the regular forms of marriage, the husband earned status as *Purusha*, while his wife as *predana*. In this marriage the wife released originally law relationship with her family (biological parents or adoptive parents what the woman is when the adopted child) then belonging to the family of her husband. Then the wife doing right (*swadikara*) and liabilities (*swadharna*) in the family of the husband¹⁷. The children born of the marriage of a regular shape only has a legal relationship with the family of the father (*Purusa*), including conducting obligations called *swadharna* and rights (*swadikara*) in terms of *mewaris*. Marriage in the regular form in General requires the wives and husbands in the same *wangsa*, this form is often referred to by mate *pepadan* (derived from the same *wangsa*).

Marriage form of Nyeburin

Besides the regular marriage form there are also another forms of marriage called *nyeburin* form, this form of marriage is found in “*apanage*” region of Tabanan, Gianyar, Badung, and Kelungkung. This can also be called marriage *nyentana* or *nyaluksentana*¹⁸. Some of the things the principle in marriage *nyeburin*, i.e. the first daughter was confirmed as the successor of the *sentanarajeg*, second, initiatives, initiatives for the talk of marriage came from the families of women (*predana*), and the third, kept the wedding ceremony at the home of the woman¹⁹. In this form the husband holds status as women (*predana*) follows the wife as status male (*predana*) all rights and obligations made at the home of his wife. The husband has no legal relationship with his family, but morally and emotionally persists. The children born of the marriage in the form of *nyeburin* has a legal relationship with the wife's family. In case of divorce, the husband simply did not get the part, or just a portion of the rights of children. The husband, however, more or less (*eenigsins*) based in certain things as a woman²⁰. In other respects still serves as the men.

Marriage between Wangsa

The marriage between the *wangsa* does not belong to the three forms of marriage above. This includes the prohibition of marriage. Marriage between the *wangsais* the marriage by the women of the *tri wangsa* to men with a different *wangsa*, i.e. women *brahmana* to men of *kesatria*, *weisyas*, and *sudra*, called *AsuPundung*. Between women *kesatria* and men of *weisyas* and *sudra* are called *Alangkahi Karang Hulu*.

Implication of *Sudra* in the marriage of different *Wangsa* (Perspective of Human Rights).

¹⁶V.E.Korn I, *Op. cit.* h.1.

¹⁷ I KetutSudantra, I GustiNgurahSudiana, KomangGede Narendra, 2011, *PerkawinanMenurutHukumAdat Bali*, Udayana University Press, h.7.

¹⁸V.E.KornI,*Op.cit.* h.8.

¹⁹I GustiKetutKaler, 1982,*Butir-ButirtercecerentangHukumAdat Bali*, Penerbit Bali Agung Denpasar, h.61.

²⁰ V.E Korn,2013, *Verwantschrecht dalam Het Adatrecht van Bali (Bentuk-Bentuk “Sentana” MenurutHukumAdat Bali Masa Kolonial)* (SelanjutnyadisebutKorn II). Diterjemahkanoleh I GedeWayanPangkatdanIbu Mien Joebaar, PenerbitUdayana University Press, CetakanPertama, h.40.

Implication in Regular Form of Marriage

In a regular marriage men from the *sudra* should marry women of *sudra* anyway, according to the system of extended family embraced the Balinese kinship system i.e. patrilineal or fatherhood or also called the *kapurusa* system, then *sudrawomen* will be drawn to enter family of the husband. Men *sudra* hold status as *Purusha* while women's status as *predana*.

In the regular forms of marriage there are the desired marriages between different *wangsa* from men of *Brahmana* to the women of *vaishya*, *sudra* and *ksatria*, marriage is commonly called marriage “*menekwangi*” (*anuloma*). The woman then given ceremony to entitle them with new term “*jero*” and follows the *jero* name flowers, as an example, among others *jero Sandat*, *jero Soka*. Up in degree according to the author only half-measures not directly into *idaayu* or *anakagung*. Unlike in *pratiloma* (in the descend line), women of *tri wangsa* lowered directly her caste or *wangsa*, through ceremony *patiwangi*. Results of the study showed that only in the Regency of Buleleng had eliminated *patiwangi* sanctions, in other areas is still done, specifically in South Denpasar sanctions was conducted in the Temple Of Bale Agung as contained in the book of *Brahmatawa*. Other areas performed in the courtyard of the *wangsa*.

Pratiloma marriage is a marriage between *wangsa* i.e. between men of the *sudra* status *Purusha* with women of *Brahmana* and *satrya Dalem* status as *predana*, this marriage in ancient times called the marriage *AsuPundung*. As for marriage between the *sudra* men with women of *ksatria* and *vaishya* in ancient times called the marriage *Alangkahi Karang Hulu*. The marriage between *wangsa* above in *Menawa Dharmaśāstra* called marriage *pratiloma*. *AsuPundung* and *Alangkahi Karang Hulu* marriage is very contemptuous for the *sudra*, also known as the *jabawangsa*. This can be understood from the meanings of *AsuPundung* and *Alangkahi Karang Hulu*. *AsuPundung* definition as follows, *asu* means dog, being *pundung* mean holding. So *AsuPundung* likened the women of *Brahmins* and *kesatrya Dalem* likened as a woman holding a dog, dog as a *sudra*.

In its dynamic, the *AsuPundung* and *Alangkahi Karang Hulu* marriage are experiencing many changes in both the rule and the sanction. Marriage is arranged in some epigraphs as *Bramatatwa* with *patiwangi* sanctions. Epigraphs *Dandang Bang Bungalan* with sanctions will not be reincarnate as a human until a thousand times reincarnation. In *peswara* are also organised, such as *peswara* 1910 with a lifetime of *Selong* sanctions outside of the island of Bali and a fine for the *Alangkahi Karang Hulu*, then replaced with *peswara* 1927, sentencing the above *selong* is replaced with *selong* a few years in the area of the island of Bali and plus *patiwangi* ceremony. This continued until the time of independence. *AsuPundung* and *Alangkahi Karang Hulu* marriage institution then was revoked by the Decree of Council of Balinese Government Nomor 11 Year 1951 due to “equity” reasons. Then it was corroborated by PHDI Pandita Sabha Bhisama. Center No. III/PHDI/IX/2002 Concerning the practice of the *CaturWarna* and also corroborated by Later decisions of the Supreme III was held in *Wiswa Sabha* building of Bali Province Governor's Office on October 15, 2010 relating to the law of marriage, some important changes that successfully formulated in great *pesamuhan* (Congressional) include not to hold *patiwangi* any more in the implementation of the marriage ceremony that had customarily done in the marriage between the *wangsa* of the woman who was higher (*nyerod*)²¹.

Moving on from the explanation above it turns out women from the *sudra* and *tri wangsa* equally experienced discrimination in marriage of different *wangsa*. Men of the *sudra* also experienced the same thing, i.e., have an inequity between men of *tri wangsa*. Justice and

²¹Sudantra, Sudiana, dan Narendra, *Op.cit.*,h.41.

equality could not be achieved if the Hindu society was still tight in the *wangsa* system. Justice and equality are the pillars of human rights. The nature of *sudra* in the concept of *warna* and *wangsa*, not like the *sudra* of Dravidian nation that exists in India, considered contemptible physic, different race and skin color with the Aryans. *Wangsasudra* or *jaba* on the community of Hindus in Bali is one race, one offspring, same skin color, one religion and one nation. They should not be discriminated against based on stratification in the system color, caste, or *wangsa*. Discrimination against men of *sudra* in marriage customary law between the *wangsa* implicates against human rights violations, because marriage is the free will of the bride who is protected by the Act. Implications of racial discrimination as it has discriminated human in a society that is based on a system of stratification, similar to the sound of the article 2 of the Universal Declaration of human Rights, namely: "Every person entitled to all the rights and freedoms set forth in the Declaration without any exceptions or differences of any kind such as race, colour, sex, language, religion, political or other views, national origin or social, property rights, birth or status. In other words in perspective of HUMAN RIGHTS there can be no discrimination, addressed to particular groups of people²².

The explanation above confirms the principle of freedom, equality, brotherhood, and anti-discrimination as characteristic of human rights, which showed that in the terminology of human rights in all forms of discrimination actions/treatment of the *sudra* is a violation of human rights.

In Nyeburin Marriage

Nyeburin marriage in a regular marriage is nyeburin the same *wangsa* or *soroh* however, where women's status as Purusha and men are predana. In the Korn mentioned husband, according to the local custom is somewhat different, i.e. anyone call it "Sentanatarikan, *sentananyeburin*, *atausentanangelabuhin*"²³. As social change since the *nyeburin* marriage cases occurred at the village of Wanasari Tabanan, there are new developments in the village of Sesandan which used to be the Village Wanasari before expansion in 2008. The social changes can also occur due to the decision of the judge of the case nyeburin different *wangsa* i.e. antra Ida Ayu Siti with I Ketut Bakta is a valid marriage according to the law. According to the theory of genre of American legal Realism, pioneered by Holmes and Jerome Frank, said the law was the behaviour of judges²⁴. The truth could not be equated with a rule, on the other hand the subjective nature of a judge attached to the judge can take another decision outside the rule of law, but the Tabanan judge's decision to skew opinions more to Benjamin Cardozo that mentioned, it is true that socio-economic factors as well as psychological aspects was also influential in the ruling of the judges. But all of that should not be made a judge on the normative aspect of the forgotten laws, which serve the interests of public justice. The authority of a judge upheld his loyalty lies in precisely the purpose of the law. Therefore the decisions of judges should not be grown freely without limits. The behaviour of Judges remains attached to the public interest as the essence of Justice²⁵. Thus the decision of judge Tabanan refers to the Pancasila as the source of all sources of law, the CONSTITUTION of 1945 as the basis of nation, Act No. 1 of 1974 as the marriage laws in Indonesia, as a normative legal aspect which must be upheld high by a judge.

The Tabanan judge's decision is taken as the benchmark for *triwangsa* families that have children of women without male descendants to receive *nyeburinsentana* of different *wangsa*,

²²Hesti Armiwulan, *Op. cit.*, h.2.

²³V.E.Korn II, *Op., cit.*, h.40

²⁴Bernad L. Tanya dkk, 2010, *Teori Hukum Strategi Manusia Lintas Ruang dan Generasi*, Cetakan ketiga, Penerbit Genta Publishing Yogyakarta, h.166.

²⁵*Ibid*, h.168

even taking *nyeburinsentana* from Muslim men. This is a social change going on; therefore, the community changed the behavior from an established behavior before, due to the appearance of the DEKREE.DPRD. No. 11 in 1951 and the decision of the the Visionary judge who throw over the *wangsa* issues (caste at the time), with an emphasis on justice for husband and wife who in love to each other. Soleman B. Toneko call social change is none other than collective deviations from the established pattern²⁶. After the case a marriage *nyeburin* between *Brahmana* women and men from the different *wangsa* over there has never been occurred again. The family of *Brahmins* usually keeps the purity of their *wangsa* compared to the women of the family *ksatrya*.

Positivist theories of the human rights, holds that because the right has to be contained in the law, then the right is viewed real as a right through the guarantee of the Constitution (right, then should be created and granted by the constitution, laws and contract)²⁷. Therefore if the rights had been incorporated in the Constitution, then the law structure, borrowing the term from Friedman, judge as executor of legal structure should follow the regulations already positified. Thus the social change in the areas of the marriage between the *wangsa* of *nyeburin* in line with the theory of Multi Cultural Feminism asserts the situation and experiences of women is not the same between geographic differences caused society, race, class, religion, sexual orientation, etc²⁸. Facets of life in Indonesia, causing all kinds of experiences, as well as regulations, customs against women are different from each other. One of the Customs *kewangsaan* has bound women of *tri wangsa*, where their rights are very different to men of *tri wangsa*.

IMPLICATION IN DIVORCE

Marriage as a kindred affairs function maintains of a reciprocity relationship between different groups of *kewangsaan*, that is a duplicate relationship of in laws or unilaterally. But regardless of all that, the marriage as a legal institution that combines human and living as husband and wife in a dwelling place together is a very private affair²⁹. Each community as well as husband and wife will definitely want this marriage lasting so that does not break up in the middle of its journey. But there's always an "obstacle" that made the relationship becomes uncomfortable, so it finally happened the divorce. There are a couple of reasons regarding the breakdown in the marriage, among others are:

Caused by Death

f marriage different *wangsain* the form of regular (*menekwangi*, anuloma) breaking up due to the death called widow or (*balu*), have the right to live at her husband's family called *Gria*, *jeroor puri*, by performing obligations of widow (swadharmaning widows). But if the widow returned home to her parents (*mulihdeha*), then according to the custom of Bali the widows has such rights at the time still a girl.

When the marriage between *wangsain* the form *nyerod* (*pratiloma*/ caste down) broke up because the death is also called the *balu*, also has the right to undertake widow obligations in her husband's family. But if she wanted to go back home of his parents (family *tri wangsa*) have to deal to receive them back. It is closely related to the existence of a status already lowered caste or *wangsa*. In this case the problem of discrimination against women

²⁶Soleman B Toneko, 1996,*Pokok-pokok Study HukumdalamMasyarakat*, Raja Grafindo Jakarta, h.69.

²⁷Majda El Muhta, 2013,*Dimensi-Dimensi HAM MenguraiHakEkonomiSosial, danBudaya*, Cetakanketiga, PT.RajaGrafindoPersada Jakarta, h.6.

²⁸SindungHaryanto, 2012,*SpektrumTeoriSosial Dari KlasikHingga Modern*, Cetakanpertama, Penerbit AR-RUZZ MEDIA, Jogyakarta, h.115.

²⁹R. SoetojoPrawirohamidjojo, 1986,*PluralismeDalamPerundang-UndanganPerkawinan Di Indonesia*, PenerbitAirlangga University Press, h.121.

menekwangito women with *nyerod*, and gender discrimination occurred between women and men of *tri wangsa*. But in the village of Timpag in Tabanan now not become a problem as the *kesatria* when there are widows, both because of the *sapihan* as well as *balu*, accepted as the widow *mulihdeha* with her rights in general. The rights lasts until the time of her death will be accepted by all the risks either *niskala* or *sekala*. *Niskala* will mean given *aben* (death rituals for Hindus in Bali), subject to the rights of his brother. But in the *wangsa* Brahmin woman died, her *pengabenanceremony* will be distinguished from *sekala* and *niskala*. Another case with in Buleleng widow *mulihdeha* is not got any right. At the time of widow living as a waiter (*wangjero*), upon her death she got *aben*, but no ceremony to unite her spirit with the ancestors (*kampuhdiampigan di luarmerajan*)³⁰. In the area of Sesandan Village Tabanan district, the widow is accepted, and will be *diaben*, after which her spirit was ushered into the PuraDalem³¹. So does the same as the East of Denpasar area³². With the above treatment of widows is also unjust spirit, this raises its own fear of the woman *tri wangsa* marries *nyerod* to get divorced. Her life is such as an egg in between rocks.

Caused by Divorce

The breakdown in the marriage because of divorce in the marriage between *wangsa* is not much different from the breakdown in the marriage because of the death. Just different terms, the widow and the widower called *sapihan*. Therefore, marriage and divorce are regulated in the law of divorce shall be terminated then by law, custom and religion. Therefore, the principle of the legislation undermines the occurrence divorce problem it needs to be brought to the local custom of *prajuru*, the customary *prajuru* is required to provide mediation to the parties in advance³³. If mediation is not successful then the last problems presented to the local District Court for a decision requested in justice. If the decision has been received then the next whether women as widows or *sapihan* it will be returned to her parents. Her rights as widow *mulihdeha* because the breakdown in the marriage caused death. Widows *nyerod* often get rumor, so her parents tend to treat her unfair, with expelling her subtly to mate again with less consideration regarding the *wangsa*. The research area of Buleleng, Tabanan, Denpasar, Gianyar everything from *geria*, *jero*, *puri* and there are several widows who returned to her parents, but there is already marries a Brahmin, and the *sudra*, but there are also some that are still in the House of her parents. As an example of Ida AyuBulan, pretty woman, delicate and soft spoken, but no such luck, because luck did not hold with harsh words from her husband. Treatment of abusive husband may be caused by *nyerod* because women are worthless and not honored. What causes none other because parents, her own family abandoned her, does not give permission, or proposes to permit *mepamit*. Sometimes the meaning of the proposal from the *wangasudra* or *jabais* considered as insulting families Castle or the *geria*. Whereas no such intent. The intent of the *jaba* in honor of *geria* is precisely the House or Castle. In the area Sukasada there are the girls' parents *disepekan* (excommunicated) by a large family because of she is proposed by *jabawangasoroh* Pasek.

Thus the fate of women who have already lowered the degree of *wangsa* be *sudra*. Any risk perceived by themselves, relatives are not able to protect the customary thick walls of *kewangsaan* still overshadowed by caste, when women will be protected by *warnasystem*. *Warnasystem* will be dissected the thick walls because according to the *warna* system of man is struggling through economic, political education to get a "*warna*" in accordance with

³⁰RatuAyuLingsir, wawancarahariKamis, tanggal 12 Juni 2014 bertempat di PuriKawanBuleleng.

³¹ Ida Pedande Putra Telaga, wawancarapadahariRabu, tanggal 18 juni 2014 Di GriaJumpungSesandanKecamatanTabanan.

³²Ida Bagus Alit, wawancara, padahariMinngutanggal, 1 Juni 2014, di GriaBinduKlurahanKesimanKecamatan Denpasar Timur.

³³Sudantra, Sudiana, dan Narendra, *Op., cit.*, h.31

function and *karma*. Human beings will be placed on each portion, unlike now, the birth that determines a person's status and honor in the community.

CONCLUSION

In the form of a regular marriage between men of *sudra* (status of *Purusha*) and *sudra* woman (status *predana*), as well as in *nyeburin* marriage between *sudra* men (*predana*) there is no problem. In a regular marriage between *sudra* men and *tri wangsa* women of the former marriage is banned, the development is now an unwanted marriage. This marriage in some areas still carries out sanctions *patiwangi*. The marriage is still takes into account the origins of the surname or *tereh*. *Sudra* family is not allowed to propose, *sudra* proposal of event defined as an abuse. The marriage between women in the *tri wangsa* with the *sudra* in marriage between the *wangsa* implies of HUMAN RIGHTS, as there in the marriage occurred the process of decline of woman caste or honor and abuse against the *sudra/jabawangsa*. Marriage is the free will of both would-be brides that are protected by law. The State guarantees every person without differentiating race, religion, tribe, ethnic group, social status, economic status, gender, political belief, upfront legal equity to use his rights.

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