

## Legal Protection of Underage Marriage in the Traditional Village of Baluk, Jembrana

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**ABSTRACT:** Underage marriage in Baluk Traditional Village still occurs due to social pressure, causing school dropouts, domestic violence, and health problems and the absence of a marriage certificate has an impact on legal issues. So that the formulation of the problem is how is the existence of marriage for couples who are not yet 18 years old and how is legal protection for couples who do not have a marriage certificate to divorce. The purpose of the study is to analyze the existence of marriage for couples who have not reached the age of 18 and legal protection for couples who do not have a marriage certificate to divorce. Using Empirical Law method with Legislation, Conceptual, and Customary Law approaches. The results of the study show that underage marriages still occur in Baluk Traditional Village until 2023 from the factors of marriage accident, cohabitation and the emergence of maturity factors in children. Divorce without a marriage certificate cannot be done, this can be seen from the official report from the traditional village. Based on Supreme Court Circular Letter No. 3/2018.

**KEYWORDS:** Legal Protection, Underage Marriage, Divorce, Traditional Village, Customary Village.

### I. INTRODUCTION

Indonesia has a wealth of diverse cultures and customs. This diversity is reflected in the marriage traditions of each region, which have their own characteristics. Customary law is also alive, because it reflects the sense of justice of the community and continues to develop over time (Soepomo, 1981). Customary law is still upheld by people in various regions in Indonesia, especially marriages in Bali Province. Marriage is an important part of human life, where a man and woman form a household as husband and wife. If done in accordance with the law, marriage has certain legal consequences. In Indonesian Customary Law, marriage not only affects civil relationships, but also involves aspects of custom, kinship, kinship, neighborliness, as well as traditional and religious ceremonies. Thus, marriage in indigenous communities is a legal, customary and social bond (Hilman Hadikusuma, 2007). Before getting married, both men and women need to get the blessing of their parents, as marriage should not occur under duress or influence. In the household, cooperation, mutual help and respect between husband and wife are required (Gita Yani, Pande Putu, Sukadana, I Ketut, Suryani, 2021).

In Balinese customary law, marriage is seen as a matter of kin, family, dignity and fellowship, and can be a private matter depending on the social structure of the local community (Iman Sudiyat, 1981). Marriage in Balinese customary law is closely related to family and custom. After marriage, a person must be able to adjust to social life such as *menyama braya* and carry out traditional responsibilities such as *ayahan banjar*. Marriage is also the moment when a new member enters the family with full responsibility. In addition, the caste system in Balinese customs also has an influence, as everyone is expected to maintain their position, even if someone leaves their caste, which often leads to social conflict.

Divorce is the end of a marriage, usually due to constant conflict, unhappiness, or unfaithfulness. Some see divorce as way to teach their spouse a life lesson. However, divorce does not always solve the problem. In Balinese custom, marriage is a complex bond that involves not only the couple, but also the family and faith in God. When problems in the household cannot be tolerated, divorce can occur. Contributing factors include domestic violence, economic problems, differences in tradition or culture, and low levels of education (Nina Munawara, Muhammad Hasan, 2021).

Desa Adat Baluk has strong traditions and culture that shape the lifestyle of its residents. The existence of underage marriage is a practice that carries various risks, especially for couples who are not mature enough. Social pressure, such as from family or neighborhood, is often the main driver of underage marriage, especially in cases of pregnancy before marriage. Decisions made

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without maturity can have serious consequences in the future. Underage marriage in Desa Adat Baluk is not just a personal problem, but also a social issue that needs mutual attention, because it can have negative impacts such as divorce due to social, economic, health and educational factors.

Law No. 1/1974 on Marriage states that divorce can occur due to death, betrayal, or a court decision, and is only valid if decided through the court. In indigenous communities such as Desa Adat Baluk in Jembrana Subdistrict, divorce is done by adat krama (between residents). Underage marriages and adult couples without marriage certificates are still a problem in many areas, including in Desa Adat Baluk. Although Law No. 16 of 2019 stipulates that the minimum age of marriage is 19 years old for men and women. As a result, various legal, social and health issues arise. The village is also faced with a dilemma between maintaining customs and complying with national law, especially when divorces occur without legal protection due to the absence of marriage registration.

Underage marriage has major impacts on children, such as dropping out of school and the risk of domestic violence. Couples who marry without a marriage certificate also experience legal difficulties when they divorce, as they cannot file for divorce in court. This leads to unclear legal status, child custody and property division. Legal protection is very important for young couples as well as adult couples, especially those without a marriage certificate, because without it they are vulnerable to injustice. In Desa Adat Baluk, customary mechanisms are often unable to adequately protect divorced parties and children. Therefore, it is important to raise legal awareness and strengthen legal protection according to national rules. So that in the description above there is a formulation of the problem of how the existence of marriage for couples who are not yet 18 years old and how is legal protection for couples who do not have a marriage certificate to divorce?

## **II. RESEARCH METHOD**

The type of research used is Empirical Legal Research. This research examines and raises the Legal Protection of Underage Marriage in the Traditional Village of Baluk Jembrana, so the type of research used is empirical legal research. This type of empirical research was chosen because the focus of the research is to understand the complex social phenomena of underage marriage in the context of local culture and the influence on legal protection. This research uses a statute approach, conceptual approach, and customary law approach.

## **III. RESULT AND DISCUSSION**

### ***A. Existence Of Marriage For Couples Who Are Not Yet 18 Years Old***

Humans as *zoon politicon* means that by nature, humans are social creatures who need togetherness and interaction in social life. Marriage is one of the tangible manifestations of this social nature, as it shows that humans cannot live alone. The need to interact is seen in various aspects of life, which naturally encourages humans to live together and need each other (Muhamad Sadiq, 2017). In the perspective of *zoon politicon*, marriage is understood as a social and legal bond between a man and a woman who live together in a relationship recognized by society and the law. In Indonesia, this is regulated in the Marriage Law, where Article 1 defines marriage as a physical and mental bond between husband and wife to form a happy and lasting family, based on the Almighty God. Over time, the meaning of marriage has also changed in line with evolving social values and norms.

Some experts also define marriage as a life partnership between a man and a woman that is formalized through law (juridical) and is usually also bound by religious values (Titik Triwulan Tutik, 2008). Marriage is not just an inner or outer bond, but both. The outer bond reflects its formal aspects, while the inner bond shows things that are non-formal (Cahyani, 2020). Based on this understanding, marriage can be interpreted as a process of unification between a man and a woman in a bond that includes outward and inward aspects. This bond is not only emotional and spiritual, but also formally regulated through legal procedures and applicable customs. The main purpose of this union is to form a legal, harmonious and sustainable household in accordance with the social, cultural and religious norms prevailing in society.

In Bali, the culture involves the ritual of *nganten* (marriage ceremony) as a bond of promise between lovers to God according to the teachings of Hinduism and their beliefs. For indigenous communities that emphasize kinship, the purpose of marriage is to preserve bloodlines, build happy families, maintain traditional values and peace, and preserve cultural heritage. According to the Bali Politika News report, the Bali Regional Child Protection Commission (KPAD) recorded a significant spike in child marriage in 2023-2024. There were 368 applications for marriage dispensation in 2024, spread across several regions such as Denpasar (1 case), Bangli (3 cases), Jembrana (1 cases), and Gianyar (2 cases). Many couples undergo traditional marriage before applying for dispensation. KPAD Bali hopes to encourage regional regulations to prevent and handle child marriage.

The existence of marriages for couples who are not yet 18 years old still occurs in Baluk Traditional Village in 2021 and 2023. In 2023 the existence of underage marriage couples is a man aged 18 years and a woman aged 17 years, the occurrence of underage marriage is due to marriage accident or pregnancy outside of marriage. The phenomenon of underage marriage in 2021

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also occurs in male and female couples who are still under 18 years of age, girls who have dropped out of school feel mature enough even though they are still young, and choose to live with their partners, refusing to go home even though they have been told by their parents. A situation where adolescents who have stopped school feel ready to form a household, even though they are still in the process of self-discovery. In some cases, the decision to marry is also influenced by disharmonious family conditions, such as parental divorce, as well as the desire to avoid cohabitation. These factors indicate that the decision to marry at an early age is often the result of complex social, cultural and family conditions. Efforts made from the Traditional Village are that the marriage process is completed at the customary level, then based on the agreement of the two families with a pabiokawonan ceremony and will be considered valid in customary and religious terms. After the marriage process has been completed and witnessed by the Prajuru Adat, the Prajuru Adat will make a Marriage Certificate to apply for dispensation to the Court, and after the Court can then register the marriage at the Civil Registry to obtain a marriage certificate. This practice reflects the coexistence of customary law and state law in handling child marriage in the village, namely two different legal systems that coexist harmoniously. Customary law plays a role in maintaining local values and social structures, while state law provides formal and administrative legitimacy. This coexistence shows that there is room for dialogue between local norms and national regulations in addressing the social realities of indigenous peoples wisely and contextually.

Underage marriage in Desa Adat Baluk shows the gap between customary law and state law. Although Indonesia has set a minimum age for marriage through the Marriage Law, which requires a minimum age of 19, underage marriages still occur and are considered legal in the village. This decision is often influenced by efforts to avoid cohabitation, which is considered worse than marriage despite the young age, and the occurrence of pregnancy outside of marriage. Social pressure encourages families to solve the problem by marrying off their children, even if they are not emotionally ready. The settlement of the marriage is done at the customary level based on the agreement of the family, which shows the strength of customary norms in the village, then after the completion of the marriage ceremony, the Customary Village will make a Marriage Certificate to apply for dispensation to the Court and after obtaining a determination of the dispensation application, the marriage can be registered at the Civil Registry Office.

Before marrying, the Desa Adat Council in collaboration with the Directorate General of Hinduism Bimas issued the Rumah Bina Keluarga Sukinah program, including in Desa Adat Baluk, to foster couples to be ready for a harmonious married life. This program is not only for couples who marry at an adult age, but also for those who marry underage. Rumah Bina Keluarga Sukinah aims to support the Golden Indonesia 2045 by forming a strong and prosperous family. The program provides education on mental, physical, and social readiness for marriage, prevents problems such as divorce, and ensures that families create peace and prosperity. The program also addresses social and health issues, such as stunting, HIV/AIDS, and high divorce rates, by checking health at Puskesmas before marriage. With coaching through Rumah Bina Keluarga Sukinah, couples, both adults and minors, are better prepared to face the challenges of marriage, reduce negative impacts, and contribute to the well-being of families and communities

The practice of young marriage in Baluk Traditional Village in the theory of legal pluralism, as stated by Griffiths, that in one society more than one legal system can apply. In this case, customary law and state law coexist in addressing social realities. Some marriage cases occur due to certain conditions such as pregnancy before marriage, dropping out of school, or complex family dynamics. Indigenous communities respond to this through internal mechanisms, such as pabiokawonan ceremonies, which are recognized by custom and religion and facilitated by Prajuru Adat. Furthermore, the registration process is carried out through a dispensation application to the court, reflecting the synergy between customary and formal legal systems.

From the perspective of Gustav Radbruch's theory of legal certainty, the existence of these two legal systems presents both challenges and opportunities. On the one hand, state law sets a minimum age limit to provide clear legal protection, but on the other hand, customary law still plays an important role in maintaining social values and balance. This coexistence shows the importance of recognizing the diversity of legal systems and the need for respectful dialogue so that regulations remain contextual, fair, and acceptable to all levels of society.

### ***B. Legal Protection For Couples Who Do Not Have A Marriage Certificate To Divorce***

Marriage runs deep in human life, encompassing more than just an emotional bond between two individuals, but also having significant legal repercussions. In Indonesia, a marriage certificate is the legally valid proof that two people are married and thus acquire rights recognized by the state. The certificate is not only important for the administrative validity of the marriage, but also provides legal protection regarding inheritance rights, childcare, and division of joint property. However, not all marriages in Indonesia are officially recorded, especially among couples who marry according to custom or who perform underage marriages. Every marriage has legal consequences for husband and wife, including rights and obligations related to joint property. Although

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family and property law can be distinguished, they are interrelated, as marital property law is part of family property law (Ali Hadi, 2023).

A marriage certificate in Indonesian law is a legal evidence recognized by the state and is the basis of legal protection for spouses, children and joint property. Despite being religiously or customarily valid, many marriages, especially those conducted in a traditional manner or at a young age, are not administratively recorded. Although the purpose of marriage is to last for a long time, it is inevitable that marriages can end, so marriage certificates are also important in the event of divorce, to ensure the rights of both parties are protected (Anggara Deva, I Gusti Agung Gede Pramudia., Laksmi Dewi, A.A, Sagung., 2024). A marriage certificate in a divorce proceeding has a major impact, as it enables the division of joint property between the divorcing husband and wife, so that the property can be divided fairly.

In Baluk Traditional Village, the phenomenon of marriage registration is often delayed due to a lack of understanding of the importance of administrative legality. Registration is usually done after the child is born because it is needed to apply for a birth certificate. In fact, according to Article 2 of the Marriage Law, marriage registration is an important requirement for legal recognition by the state.

In Baluk Traditional Village, even if a couple does not have a marriage certificate, divorce can still be carried out using the marriage certificate, and the divorce process is only carried out in a traditional manner. The divorce hearing in this village is called the Sidang Waneh Pade Waneh, which involves the Prajuru Adat of the Traditional Village as well as the families of both parties. The traditional divorce procedure in Baluk Traditional Village is conducted in two stages. First, a hearing is conducted at the banjar level, where both parties are called to dialogue and find a solution. this hearing is conducted twice to give both parties a fair chance. If there is no agreement, the case will be forwarded to the traditional village level.

At the customary village level, another hearing is conducted by summoning both parties to discuss the issues. At this stage, sometimes the couple can reach an agreement, either to divorce or reconcile. However, if there is no decision, the process can be postponed for one month to give the couple time to reflect and evaluate their decision. Hopefully, they can realize their mistakes and try to change. If the couple does not reconcile, the Traditional Village will issue a Certificate of Divorce, which is considered a customary divorce.

The divorce process in Baluk Traditional Village prioritizes mediation and conflict resolution through dialogue. Mediation is first conducted at the banjar level to give both parties a chance to express their opinions, and if that fails, the case proceeds to the traditional village level. At this stage, the couple is given time to reflect before a final decision is made. Although this procedure emphasizes social values and local wisdom, divorces that are only settled at the adat level have no formal legal force without a court.

In the State District Court, divorces of underage couples without a marriage certificate can be processed based on customary divorce. If the marriage is not registered in the civil registry, divorce is only accepted if the marriage took place after Law Number 1 Year 1974 on Marriage. If the marriage occurred before 1974, the divorce can still be processed even without a certificate, in accordance with Supreme Court Circular Letter No. 3/2018. As for the Amlapura District Court, divorce without a marriage certificate can only be processed under certain conditions, such as marriages before 1974, where marriage registration is not mandatory. If the marriage was conducted in a customary manner without registration, the couple must apply for marriage registration first before filing for divorce.

If a person does not have a marriage certificate and wishes to divorce, especially if amicable settlement is not possible, the divorce can be finalized through *ceraf adat*. Customary divorce is often used as a preventive measure to avoid bigger problems, such as domestic violence or ongoing incompatibility. In many indigenous cultures, divorce is finalized early to protect the couple and family from worse repercussions. Although customary divorce provides legal protection, further legalization through the courts is necessary, especially if there are children in the marriage. Without marriage registration, the legal status of the relationship is unclear, children born do not receive adequate legal protection, and inheritance rights are limited to the mother's family. In addition, divorce without an official marriage certificate complicates the divorce process as there is no authentic evidence recognized by state law.

Legal protection for couples who divorce without a marriage certificate can be done preventively, the Customary Village can facilitate divorce through the Sidang Waneh Pade Waneh, starting from the banjar level to the customary village level. This process requires the existence of a marriage certificate from the customary village. If no reconciliation is reached, the adat village can issue an official report of divorce, which is recognized as valid within the customary sphere even though it is not recognized by the state.

However, repressively, divorce without a marriage certificate does not get legal protection so that the divorce lawsuit cannot be processed in court because it does not have a legal basis for the couple's marriage, as confirmed in SEMA No. 3/2018 in the General Civil Chamber Legal Formulation Point 5. The impact of not having a marriage certificate is that the couple cannot access legal rights such as property division, child recognition, and registration of marital status on the KTP. To obtain legal protection,

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couples must first register their marriage through an application for marriage dispensation and registration at the Civil Registry Office before they can file for divorce in court.

From some of the statements above, there are several weaknesses in the legal protection of children who are victims of underage marriage in Indonesia, especially related to the existing legal basis. Although Indonesia has laws that provide protection, such as the Marriage Law which sets the age limit for marriage, this regulation also leaves legal loopholes that allow underage marriages to occur under certain conditions. In addition, the Child Protection Law emphasizes the state's obligation to protect children, but law enforcement on this issue remains weak. In cases of underage marriage, judges play an important role because Article 7 Paragraph 2 of the Marriage Law authorizes judges to grant dispensation for the age of marriage that is not in accordance with the provisions, with urgent reasons and sufficient supporting evidence

## IV. CONCLUSIONS

- 1) The existence of underage marriage in Desa Adat Baluk still occurred until 2023. Although the minimum age of marriage according to Law No. 16/2019 has been set at 19 years old for both men and women, the practice of underage marriage still occurs, especially in couples with a female age of 17 years and a male age of 18 years. These marriages are generally triggered by marriage accident situations (pregnancy before marriage), the decision to live together after dropping out of school, and disharmonious family conditions, such as divorce or parental separation. Girls who feel psychologically mature, even though they are still legally considered children, often choose to marry rather than return to their parents' home. In response to this phenomenon, the Baluk Traditional Village community has a customary law-based resolution mechanism. Child marriages that have been agreed upon by both families will be legalized through the traditional ceremony of pabiokawonan, which is considered valid according to custom and religion. But before that, the couple will first be fostered through the Rumah Bina Keluarga Sukinah program as a form of mental and family preparation efforts. After the ceremony is completed and witnessed by the Prajuru Adat, a Marriage Certificate will be issued which is the basis for applying for dispensation to the District Court. If granted, the couple can officially register their marriage at the Civil Registry Office and obtain a marriage certificate. This solution reflects the coexistence between customary law and state law, where local norms are not ignored, but are still directed towards formal legality according to national regulations.
- 2) Legal protection for couples who do not have a marriage certificate to divorce, in preventive legal protection divorce without a marriage certificate can be through the traditional village with the Sidang Waneh Pade Waneh Session provided that they bring a marriage certificate from the traditional village, customary divorce settlement starts from the banjar level and the customary level, and if there is no peaceful effort, the traditional village will issue a divorce certificate even though without a marriage certificate the divorce process can be carried out with the existence of a marriage certificate issued by the Traditional Village, and if the divorce certificate from the Traditional Village has been issued then the couple is considered legally divorced in the divorce within the scope of the Traditional Village. Repressive legal protection of divorce without a marriage certificate does not receive repressive legal protection, couples without a marriage certificate do not get a divorce process, because the court has no legal basis to examine the divorce lawsuit, this is reviewed from the Supreme Court Circular Letter (SEMA) Number 3 of 2018 concerning the Implementation of Formulation of the Results of the 2018 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Court, in the Formulation of the Law of the General Civil Chamber Point 5 it is emphasized that divorce can only be processed if there is a marriage certificate. The impact of not having a marriage certificate has broad implications such as the inability to access the divorce process in court, difficulties in managing children's civil rights, obstacles in managing population administration, the absence of a marriage certificate also has an impact on population administration such as the making of family cards, the inclusion of marital status in family card, and limitations in the recognition of inheritance and joint property. Repressive legal protection can be carried out through the mechanism of making a marriage certificate first, by applying for marriage dispensation to the court, especially for cases of underage marriage. After the dispensation is granted and the marriage registration is carried out at the Civil Registry Office, the couple can then officially file a divorce suit with the court.

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