

Gender Equality in Customary Inheritance Law in Indonesian Court Decisions

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Abstract: *The discussion of women's inheritance cannot be separated from the position of women in customary inheritance law. Because the position of women in customary inheritance law is one part of customary inheritance law as a whole. Customary inheritance law is essentially the law of transmitting wealth from one generation to the next or to descendants. The application of the concept of gender equality in customary inheritance law in Indonesia has not caused legal issues so far. This is because the differences in the inheritance rights passed down from ancestors are perceived to be just by the community. Based on the research results from Supreme Court decisions and other decisions at the first and second instance courts, especially since Supreme Court Decision No.179/K/Sip/1961, it has become an instrument for reforming customary inheritance law. The reform of customary inheritance law is effective when inheritance disputes occur in the court system. Supreme Court Decision No.179/K/Sip/1961, contextually applied in inheritance disputes among the Karo community, later became a reference in inheritance disputes among the Batak Toba and Rote communities. Although Supreme Court decisions since 1961 have been followed by subsequent decisions, inheritance based on customary inheritance law is still commonly used, even in urban areas.*

Keywords: Gender Equality, Customary Inheritance, Court Decisions

1. Introduction

The inheritance issues in Indonesia are regulated by various scattered legislative regulations. Inheritance law in Indonesia encompasses laws governed by civil law, Islamic law, and customary law. Those who adhere to the Islamic faith generally use Islamic law as a guide in matters of inheritance. However, there are also many followers of Islam who adhere to customary law. The influence of customary law in inheritance can also be found among non-Muslim communities, such as the Batak and Timor ethnic groups.

In general, customary inheritance outside the patrilineal kinship system has three systems.¹The first system is individual inheritance, commonly used in societies with a parental or bilateral kinship system. This parental or bilateral kinship system is applied in Javanese society.²The individual inheritance system regulates the distribution of inheritance by assigning each male and/or female heir a share to control or own the inherited property according to their respective portions. Heirs have the right to control or own their inheritance for business, enjoyment, or transfer to others. The second system is the collective inheritance system. The collective inheritance system considers the inherited property as an undivided entity in terms of control and ownership. Its utilization for the interests and needs of the heirs is collectively regulated by them. The third system is the majorat system, which is not significantly different from the collective inheritance system. The transfer and transfer of control over the inherited property are delegated to the eldest child, who serves as the successor to the heir in the family. The majorat system is influenced by the kinship system used, whether patrilineal or matrilineal.

In the context of the majority of ethnic groups in Indonesia using a patrilineal system (such as the Batak, Timor, Rote, Gayo, and Bali), inheritance is based on the male lineage. According to the customary inheritance law of the Batak

Toba, the right to inheritance of a father is only possessed by male children. Female children and their descendants can only receive agricultural or livestock provision from their father.³ Research by Sulistyowati Irianto also indicates that the Batak Toba community in urban areas still adheres to the Batak Toba customary inheritance system, which is based on the patrilineal kinship system.⁴

This situation contrasts with inheritance practices in Java with a bilateral or parental kinship system. According to Javanese tradition, the youngest daughter who takes care of her parents can inherit the house from her parents. In Javanese society, the parental home holds significant value and can ultimately be passed down to the daughter. The balance in the position of sons and daughters in inheritance in Java is also reflected in the research of Kevane and Levine. According to their study, discrimination against women in Javanese inheritance was still common in the 1950s but decreased over time, especially in the 1990s.⁵

The natural balance of the portion between sons and daughters occurs in Java, whereas in Batak society, it was initially driven by court decisions post-independence, followed by subsequent rulings. A similar situation also occurs in the inheritance practices of the patrilineal Timor society. The balance in the portion of inheritance through court decisions can be seen in several Supreme Court rulings that lead to achieving a balance in inheritance portions. However, these Supreme Court decisions do not easily change the societal views on inheritance.

2. Research Methods

The approach method used in this research is the socio-legal approach method,¹The research explores and discusses

¹ Sosiologi Hukum adalah kajian ilmiah tentang kehidupan sosial. Salah satu misi dari sosiologi hukum adalah memprediksi dan menjelaskan berbagai fenomena hukum,

social issues in society related to the application of customary inheritance law in the lives of people in Indonesia. The application of gender equality in customary inheritance law becomes a common legal issue, where gender often becomes a victim of injustice in the form of stereotypes, marginalization, subordination, violence, and double burdens. The analysis in this article utilizes a case study approach to court decisions at various levels that hold significant value in the development of customary inheritance law. Some of these decisions have become jurisprudence and/or categorized as landmark decisions by the Supreme Court.

3. Discussion

Inheritance issues in Indonesia are governed by various scattered regulations. The applicable inheritance laws in Indonesia include those regulated under civil law, Islamic law, and customary law. Individuals who practice Islam generally use Islamic law as a guide for inheritance. However, it's not uncommon for those who follow Islam to also adhere to customary law. The influence of customary law in inheritance can also be observed in non - Muslim communities of ethnic groups like the Batak, Timor, and others.

Generally, customary inheritance outside the patrilineal kinship system comprises three systems.²The first system is individual inheritance, which is commonly used in societies with a parental or bilateral kinship system. The parental or bilateral kinship system is applied in Javanese society.³The individual inheritance system governs the distribution of inheritance by allocating shares to each male and/or female heir, allowing them to control or own the inherited property according to their respective portions. Heirs have the right to control or own their inheritance to utilize, enjoy, or transfer it to others. The second system is collective inheritance. The collective inheritance system treats inherited property as an undivided unit in terms of control and ownership. The use for the interests and needs of the heirs is collectively regulated by them. The third system is majorat, which is not significantly different from the collective inheritance system. The transfer and transfer of control over the inherited property are delegated to the eldest child, who serves as the successor to the deceased in the family. The majorat system is influenced by the kinship system used, either patrilineal or matrilineal.

Based on the patrilineal system used by the majority of ethnic groups in Indonesia (such as the Batak, Timor, Rote, Gayo, and Bali), inheritance is determined by the male lineage. According to the customary inheritance law of the Batak Toba, the right to inheritance from a father is only

possessed by male children. Female children and their eldest descendants can only receive agricultural or livestock provisions from their father.⁴The research conducted by Sulistyowati Irianto also indicates that the Batak Toba community in urban areas still adheres to the Batak Toba customary inheritance system, which follows the patrilineal kinship system.⁵

This situation differs from the inheritance practices in Java, which follows a bilateral or parental kinship system. According to Javanese tradition, the youngest daughter who takes care of her parents can inherit the house from her parents. The parental home in Javanese society holds significant value and can eventually be passed down to the daughter. The trend of balancing the positions of sons and daughters in inheritance in Java is also indicated by Kevane and Levine. According to their research, discrimination against women in Javanese inheritance was still common in the 1950s but gradually decreased in the 1990s.⁶

The balance in the portions between sons and daughters in Java occurs naturally, while this balance in Batak society was initially driven by court decisions post - independence, which were subsequently followed in subsequent rulings. A similar situation also occurs in the inheritance practices of the patrilineal Timor society. The balance in the portion of inheritance through court decisions can be observed in several Supreme Court rulings that aim to create balance in inheritance portions. However, the existence of Supreme Court decisions does not easily change societal views on inheritance.

The majority of Supreme Court decisions that balance the portions for daughters and sons come from inheritance disputes within Batak families. These Supreme Court decisions include Decision Number 179/K/Sip/1961, Decision Number 100/K/Sip/1967, and Decision Number 136/K/Sip/1967. Additionally, there is also a Supreme Court decision in inheritance disputes from the Roti ethnic group (an ethnic group from an island south of Timor), namely Decision Number 1048K/Pdt/2012.

a) Supreme Court Decision Number 179/K/Sip/1961

Supreme Court Decision Number 179/K/Sip/1961 pertains to an inheritance case in Tanah Karo. The case involves Langtewas Sitepu and Ngadu Sitepu against Benih Ginting. Both parties are disputing the inheritance of assets from the deceased Rolak Sitepu. Langtewas Sitepu and Ngadu Sitepu are the biological children of Tindik Sitepu (a sibling of Rolak Sitepu). Rolak Sitepu did not have any male children when he passed away. The land owned by Rolak Sitepu was then managed by his daughter, Rumbane boru Sitepu. After Rumbane boru Sitepu's death, the land was then controlled by Benih Ginting (the son of Rumbane boru Sitepu). The Kabanjahe District Court granted the lawsuit filed by

yaitu bagaimana suatu kasus memasuki sistem hukum dan bagaimana penyelesaiannya. Sosiologi hukum juga menggunakan fakta-fakta tentang lingkungan sosial di tempat hukum itu berlaku.

²YeniSalmaBarlinti, "InheritanceLegalSysteminIndonesia:ALegalJusticeforPeople", *IndonesiaLawReview*, Year3, Vol.1, Januari-April 2013, hlm.25

³SitiPatimahYunus, "WanitadanHakWarissertaHakPemilikanmenurutHukumPositifdiIndonesia" *JurnalHukumdanPembangunan*, Vol. 18, No. 5, 1988, hlm. 439-440.

⁴ImanSudiyat.1981.*HukumAdatSketsaAsas*,Liberty,Yogyakarta,hlm. 152.

⁵SulistyowatiIrianto,2005,PerempuandiantaraBerbagaiPilihanHukum:StudiMengenaiStrategiPerempuanBatakTobauntukMendapatkan AkseskepadaHartaWarismelaluiProsesPenyelesaianSengketa,Yayas anOborIndonesia,Jakarta.

⁶MichaelKevane,etal.,"TheChangingStatusofDaughtersin Indonesia", *IRLEWorkingPaper*,No.77-00,November2000.

Langtewas and Ngadu. However, the Medan High Court overturned this decision, leading Langtewas and Ngadu to file a cassation appeal to the Supreme Court.

In its legal reasoning in Supreme Court Decision Number 179/K/Sip/1961, the Supreme Court stated that daughters are heirs and, therefore, have the right to inherit from their parents. This argument is based on a sense of humanity and general justice, emphasizing the inherent equality of rights between men and women. The Supreme Court suggests that gender equality, according to the law applicable throughout Indonesia, is grounded in principles of justice and human rights.

b) Supreme Court Decision Number 100/K/Sip/1967

Supreme Court Decision Number 100/K/Sip/1967 is not solely related to daughters but also to widows of the deceased because both are defendants in this case. The case in this decision involves an inheritance dispute between Tangsi Bukit (the deceased's son) against his stepmother, Pengidahen boru Meliala, and his sister, Muliboru Bukit. The plaintiff argued that only male children have the right to inherit, while the inherited property had been sold by Pengidahen boru Meliala. The Kabanjahe District Court previously ruled that Tangsi Bukit's lawsuit was not acceptable. Tangsi Bukit appealed to the Medan High Court. The Medan High Court overturned the previous decision but only allocated 1/6 of the estate to Tangsi Bukit. Dissatisfied, Tangsi Bukit then filed a cassation appeal to the Supreme Court.

However, the Supreme Court argued that societal progress has led towards equality between men and women. Additionally, the designation of widows as heirs has become a jurisprudence adopted by the Supreme Court.

c) Supreme Court Decision Number 136/K/Sip/1967

The Supreme Court, in Decision Number 136/K/Sip/1967, specifically expanded the scope of holongate in Batak customary inheritance. The decision stated that holongate should also consider the progress of the position and rights of women in the land of Batak. This decision was then followed by subsequent decisions. The decision of the Medan High Court No.198/PDT/2011/PT - MDN explicitly mentioned this ruling in its legal reasoning and stated that the position of daughters and wives in Batak customary inheritance law has undergone changes in practice.

d) Supreme Court Decision Number 1048K/ Pdt/2012 (Ny. Jance Faransina Mooy - Ndun versus Junus Ndoy dkk)

The case began with the death of Jermias Ndoen, the father of Mrs. Jance Faransina Mooy - Ndun, in 1951. Jermias Ndoen owned four plots of land in the Rote Ndao Regency. The land was then taken over by Mrs. Jance as the daughter of Jermias Ndoen. The issue arose when, in 1989, Junus Ndoy gave permission to several people to build houses on one of the inherited lands. In 2010, Junus Ndoy applied to the National Land Agency to measure the land controlled by Mrs. Jance in order to apply for ownership rights over the inherited land.

Mrs. Jance then sued Junus Ndoy in the Rote Ndao District Court based on the grounds of an unlawful act (Article 1365 of the Civil Code) committed by Junus Ndoy. The Rote Ndao District Court ruled in favor of Mrs. Jance (Decision of the Rote Ndao District Court No.07/PDT. G/2010/PN. RND). However, the Kupang High Court annulled the decision of the Rote Ndao District Court. The Kupang High Court, in its ruling, stated that even though Mrs. Jance is an heir of Jermias Ndoen, in the Rote Ndao region, a patrilineal inheritance system is recognized, and therefore, only male children are entitled to inherit.⁷ Mrs. Jance filed a cassation, and the petition was accepted by the Supreme Court, which annulled the Decision of the Kupang High Court No.57/PDT/2011/PTK. The cassation memorandum filed by Mrs. Jance stated that the patrilineal inheritance system adhered to by the Rote community is no longer in line with societal development and the principles of gender protection and non - discrimination between men and women. This argument was based on Supreme Court jurisprudence related to inheritance disputes that favored daughters or widows of the deceased. Additionally, the cassation memorandum referred to the Convention on the Elimination of All Forms of Discrimination against Women, which prohibits discriminatory cultural practices against women. According to this convention, the state is obligated to enact appropriate regulations to change social and cultural behavior patterns of men and women with the aim of eliminating prejudices, customs, and any other practices based on the inferiority or superiority of one gender.

According to Daniel S. Lev, the transformation of the status of daughters in customary inheritance law through court decisions, especially those of the Supreme Court, in the 1950s and 1960s is closely tied to the post - independence judicial paradigm shift.⁸ The unstable political situation and the absence of a well - established legal system led judges to see themselves as crucial creators of law. Judges often declared that old legal rules no longer needed to be applied, and they were not hesitant to create new rules through court decisions. Therefore, Lev questioned the sociological foundation of these judgments.

Lev's analysis of judges positioning themselves as creators of new laws when dealing with customary law can be related to Soetandyo Wignjosoe - broto's analysis of influential thoughts among nationalist legal experts in the 1950 - 1959 era. According to Wignjosoebroto, Indonesian legal experts during that time were in a dilemma when determining how to position customary law within the newly established national legal system.⁹ Customary law reflects the nation's identity, which should be preserved as a source of national pride. However, on the other hand, customary law can hinder economic progress and social welfare growth due to its weaknesses in legal certainty.

⁷James J. Fox, 2001, "ARotinese Dynastic Genealogy: Structure and Event", dalam Beidelman, T.O., *The translation of culture: Essays to Evans-Pritchard*, Routledge, New York, hlm.37-77.

⁸Daniel S. Lev, 2013, *Hukum dan Politik di Indonesia*, Pustaka LP3ES Indonesia, Jakarta, hlm.28.

⁹Soetandyo Wignjosoebroto, 2014, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial-Politik dalam Perkembangan Hukum di Indonesia*, HuMa; VVI-Leiden; KITLV-Jakarta; Episteme Institute, Jakarta, hlm.188.

In the decisions of the Supreme Court, the judges seem to interpret the progression of time in relation to equality before the law. The construction of inequality between male and female heirs in customary inheritance law appears inconsistent with the values of equality that have become universal. However, on the other hand, the issue of inheritance distribution between male and female heirs, especially concerning land, cannot be viewed merely as a matter of equality or inequality.

According to those who continue to adhere to customary inheritance laws, the fairness of inheritance distribution to male and female heirs cannot be divorced from the context of social structure in their communities. For example, in the fairness of distributing inherited land, even though land is not evenly shared with female heirs, the land inherited by male heirs retains its social function. This social function also applies to female heirs who have become part of another lineage. When female heirs and their husbands face financial problems, the male heir who received the inherited land must assist by allowing the female heir to manage the land.

The perspective that societal development and civilization should be the basis for improving the share of inheritance for female heirs is acknowledged. However, this change should not deconstruct the connection between the lineage/clan and the land inherited by male heirs. Land should not be positioned as an asset that can be divided among individuals in the family based on a balance of rights. Instead, land should be understood as a "lineage/clan asset" with a collective function.

The importance of not deconstructing the continuity of the lineage/clan is an implication of the views in traditional societies that position children, especially sons, as bridges for the family and traditional community in the future. According to Lukito, children in traditional societies are not only a continuation of family existence but also cultural identity. In this context, cultural identity refers to the family name.

The Indonesian Constitution actually guarantees respect for cultural identity through Article 28I paragraph (3) of the 1945 Constitution. The next discussion will analyze the contradiction between the guarantee of respect for cultural identity in the constitution and the criteria "in line with the progress of the times" in the same article regarding the reform of customary inheritance laws through court decisions.

The alignment of cultural identity in traditional communities with the criteria of the Rule of Law becomes a requirement if a cultural identity is to be respected by the state. Inheritance customs as a cultural identity are challenging to reconcile with the principles of the Rule of Law. In fact, several court decisions regarding customary inheritance tend to consider customary inheritance laws that must conform to universal legal principles. This perspective resembles the colonial way of thinking, which applied evolutionary theory by requiring traditional laws not to contradict Western laws and values such as justice and equality. According to Lev, the continuation of colonial thinking in viewing legal

pluralism is inevitable because the Indonesian independence movement was articulated in the terminology of "liberty, equality, and self-determination." These ideas also seem to be transformed into the views of post-independence Indonesian judges when dealing with inheritance disputes.

Judges argue that society has changed and believe that the values in customary inheritance—values that tend to diminish the share of females—are no longer accepted by the community. The community is seen as having accepted the changes of the times. The principle of equality in inheritance—as a universal principle—seems challenging for communities still adhering to customary inheritance laws. Court decisions that alter the inheritance share for female heirs are perceived as state intervention to ensure fair inheritance distribution. Such intervention can also reshape kinship systems within communities if customary inheritance laws are drastically altered. For example, in the decision of the Medan High Court No.360/PDT/2015/PT-MDN, which stipulated that female heirs should also be considered heirs but also determined that money received by female heirs from their parents (pauseang and indahanarian) should be part of the inheritance to be distributed among the heirs.

In the context of the Batak community, changes in cultural identity do not appear to have undergone significant changes, even as part of a dynamic urban society. According to Bruner, "... the urban Batak not only lack alternative models of change but find in their adat the sole basis of moral order in society." Therefore, one way the urban Batak community preserves its cultural identity is by maintaining customary inheritance laws, even when migrating out of the Sumatra region.

This condition is not as evident in other ethnicities, such as the Rote ethnic group in urban areas. Supreme Court Decision No.1048K/Pdt/2012 is indeed related to an inheritance dispute using Rote customary inheritance law considerations. This decision was given in a Rote family inheritance dispute living on Rote Island. Most inheritance disputes (from 2012 - 2016) involving male and female heirs in the Kupang District Court did not use customary inheritance laws in their legal arguments, both on the plaintiff's and defendant's sides. This situation might be different if land inheritance disputes occurred in a nusak area in Rote Island, especially concerning productive land, as that land is related to the inheritance of ancestors in a clan.

4. Closing

The position of women in customary inheritance law in Indonesian society is determined by the kinship system adopted by that particular customary society. In this kinship system, the position of heirs is determined based on their gender. Supreme Court decisions and other court decisions at the first and second levels, especially since Supreme Court Decision No.179/K/Sip/1961, have become instruments for the reform of customary inheritance law. The reform of customary inheritance law is effective when there are inheritance disputes brought to court. Supreme Court Decision No.179/K/Sip/1961 was contextually applied

in inheritance disputes in the Karo community but later became a reference in inheritance disputes in the Batak Toba and Rote communities.

Although Supreme Court decisions since 1961 have been followed by subsequent decisions, customary inheritance law is still commonly used, even in urban areas. Court decisions that refer to Supreme Court Decision No.179/K/Sip/1961—especially for those who have previously conducted inheritance based on customary inheritance law—are perceived as state intervention to ensure fair inheritance distribution between men and women. This fair distribution of inheritance—in the context of land inheritance—can impact the kinship system because ancestral land should be wholly controlled within a clan.

If a court examines inheritance disputes in a community still using customary inheritance law, judges should comprehensively understand the meanings of various provisions in customary inheritance law. Additionally, judges need to clearly interpret the criteria of "the progress of the times" in transforming customary inheritance law toward inheritance laws that align with the principles of the Rule of Law and universal legal principles.

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