

# The Legal State of Equality and Inheritance in Equation of Traditional Heritage Equality in Matrilineal Societies in Indonesia

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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. Traditional inheritance law is basically the law of passing on assets from one generation to the next generation or to their descendants. The application of the concept of gender equality in customary inheritance law in Indonesia has so far not given rise to legal problems. This is because differences in acceptance of inheritance rights passed down from their ancestors are felt to have a sense of justice for the community. Research findings reveal that the role of women in the inheritance laws of indigenous Indonesian communities is intricately linked to the kinship systems these communities uphold. This system determines the position of heirs based on the sex or gender of the heirs. The integration of gender equality into the inheritance law of these communities align with principles of balance, justice and benefit. The concept of gender equality in the inheritance law of customary communities that can be used as a reference in developing national law is to use the principle of balance and justice between the rights and obligations of men and women in the formation of statutory regulations.*

**Keywords:** Gender Equality, Inheritance, Custom

## 1. Introduction

Inheritance law in Indonesia is still pluralistic, because Indonesia does not yet have an applicable National Inheritance Law. There is no specific law that regulates inheritance, so that in Indonesia there are still 3 inheritance law systems in place, namely the Civil Code, Islamic Law and Customary Law.

Inheritance law pluralism is a legal reality that cannot be denied. Various factors that cause inheritance law pluralism include history, culture, economics and political constellations. In terms of historical factors, starting with the Dutch government, its legal politics have divided the Indonesian population into three population groups, namely native people, foreign easterners and Europeans as stated in Article 131 IS jo, Article 163 IS.

Islamic inheritance law is used by people who are subject to the rules of the Islamic religion which is an important issue and one of the pillars among the pillars of Islamic law which has basically been established in Islamic law in a very orderly and fair form. Inheritance is a study in Islam which is studied specifically within the scope of *fiqh mawaris*. The regulation of Islamic inheritance law is contained in Book II of Inheritance Law, Articles 171 to Article 214 of the Compilation of Islamic Law (hereinafter referred to as KHI). Inheritance law regulations are based on Islamic inheritance law as also regulated in the Al-Quran surah An-Nisa' verses 11-12 regarding the amount of inheritance.

The inheritance system, apart from civil law and Islamic law, is also regulated in customary law, where the regulations are different and this also applies to all communities in Indonesia. Each indigenous community has a variety of kinship systems where each island and its

regions have different and similar systems of kinships. One of them is the heir who has the right to inherit the position/position under review or based on the traditional Patrilineal, Matrilineal and Parental kinship system.

According to Zainudini Ali, there are 5 (five) types of customary inheritance law, namely:

- a) The principle of godliness and self-control, namely, the existence of awareness for the heirs, that sustenance is in the form of treasures of human wealth that can be mastered and owned is a gift and pleasure from God to overcome the existence of treasures of wealth.
- b) The principle of equality and mutuality of parties, namely that each heir has the same position as the person who has the right to inherit the inheritance of his heirs, is balanced between the rights and obligations and responsibilities shared by each heir to obtain his inheritance.
- c) The principle of harmony and kinship, i.e., the heirs must maintain peaceful and peaceful kinship relations, both in enjoying and making use of undivided inheritance and also in completing the distribution of divided inheritance.
- d) The principle of deliberation and consensus, namely, that the heirs divide their inheritance through deliberation and consensus led by the heirs who are considered to be the elders, and if there is an agreement regarding the distribution of the inheritance, this agreement has the character of sincerity which is expressed in good words which come out of the heart of the inheritance to each heir.
- e) The principle of justice, i.e. it contains the meaning of being embedded in the family, can be emphasized in the system of justice. This will encourage the creation of harmony within the family, which will minimize the

chances of damage to the relationship between the family.

The application of the concept of gender equality in Indonesia's traditional inheritance law has so far not given rise to legal problems. The same in terms of measurements or amounts. Based on the background that has been explained above, it is very interesting to research how the concept of justice is applied to gender in the distribution of inheritance and according to Indonesian customary law.

## 2. Research Methods

The approach method used in this research is a sociological legal approach, because this research examines and discusses social problems in society, in the application of customary inheritance laws in social life in Indonesia. Victims of injustice are in the form of stereotyping, marginalization, subordination, violence and double burden. Reviewing this matter, this research tries to explore the need to discuss the concept of gender equality in the laws of cultural inheritance in Indonesia.

## 3. Discussion

Inheritance law is still pluralistic in nature so that various inheritance laws apply in Indonesia. The traditional inheritance law system is one of the systems of inheritance law, in addition to Western inheritance law which is regulated in the Civil Code and Islamic inheritance law. Traditional inheritance law is also pluralistic because it is influenced by 3 (three) kinship or family systems that exist in Indonesian society, namely the patrilineal system, the matrilineal system, and the parental or bilateral system (Kusmayanti and Krisnayanti, 2019:70).

Wignodipoero (1995:43) is of the opinion that customary inheritance law includes legal norms that determine the material and immaterial property of a person who is handed over to his descendants, as well as regulating the timing, manner and process of his transition. According to Hadikusuma (2003:19) states that customary inheritance law is customary law which meets the provisions regarding the system and principles of inheritance law, regarding inherited property, heirs, and inheritance as well as the methods in which controls of the ownership of the inherited assets is transferred from heir to heir. In fact, customary inheritance law is the law of passing on wealth from one generation to the next generation of descendants.

Poespasari (2018 : 63) stated that basically the inheritance procession or transfer by the heir through the inherited property itself can be differentiated into the succession procession of inherited assets when the heir is still alive, called "gifting" and the succession procession or transfer of assets when the owner dies is called "inheritance" Based on this distinction, customary inheritance law is the provisions that regulate the procedures for succession and operation of property from the heir to his heirs.

The general principles or fundamentals of customary inheritance laws include the following: if inheritance cannot be carried out in a descending manner, then this inheritance

is carried out in a gradual or lateral manner. This means that the first heir is the son or daughter and their descendants are. If this does not exist, then the heirs are the father, mother, grandfather, grandmother, and so on. With the understanding that the closest family excludes the distant family (Anshori, 2015: 15).

Utomo (2016: 76) said that according to customary law, property inherited from someone is not always divided directly between the heirs, because sometimes the distribution is postponed or even some of it is not distributed, because the property is a single unit that cannot be divided forever. Customary law recognizes the principle of succession (*Plaatsvervulling*). This means that a child is the heir to his father, so his place can be replaced by his children if he leaves the world (grandchildren who inherit), and this portion of the grandchildren is the same as that which his father will receive as part of the inheritance he receives.

In the field of customary inheritance law, for example, the plurality of inheritance occurs because of the existence of family or kinship structure patterns that Indonesia adheres to: (Poespasari, 2018: 16)

- 1) Relations between descendants follow the male line (patrilineal). For example, this applies to the Batak, Bali, and Ambon communities.
- 2) Hereditary ties follow the female line (matrilineal), apply to the communities of Minangkabau, Kerinci (Jambi), Semendoi (South Sumatera).
- 3) Hereditary ties according to the maternal and paternal lines (Parental/Bilateral). For example, it applies to Malay, Bugis, Javanese, Kalimantan (Dayak), other idols.

Indonesia's customary inheritance laws in parental or bilateral communities do not recognize ways of distributing inheritance using mathematical calculations (numbers), but are always based on considerations of the form of inheritance and the needs of the heirs. The heir will receive the inheritance portion in the same amount, with the same value or according to the number of portions that have been determined. The procedure for distributing traditional inheritances is possible, namely: (Hadikusuma, 1987 : 106)

- 1) With Segedong Sepikul. This means, the male child's share twice as much than the female child's portion; and
- 2) With Dum-dum Kupat. This means, the inheritance of the son and daughter's share the same amount of portion.

As a legal state, it is appropriate that the principles of a legal state must be respected and upheld. One of them is the principle of justice, i.e. the most central idea as well as the highest goal that is taught by every servant of humankind in seeking to achieve human ideals in living life with them.

Justice is generally defined as "placing things proportionally" and "giving rights to their owners". As explained in article 27 verse (1) of the 1945 Constitution "All citizens of the State and their positions are subject to law and government and are obliged to uphold those laws and government with no exceptions" which is better known

as the principle of equality before the law or equality before the law.

Equality is the mainstay of the democratic process because it guarantees open access and opportunities for all elements of society. Biases and position of asymmetry in social relations. Such discriminatory and unequal treatment can cause harm and reduce welfare. Mainly towards the marginalized and subordinated parties.

To this day, discrimination based on gender is still felt throughout almost the entire world, including in countries where the mania for democracy has been considered achieved. Men and Women. In this context, it is women who are most likely to experience discriminatory treatment, although this does not rule out the possibility that men may also experience it (Marzuki, 2010 : 27).

Zamzani (2013:21) said that gender becomes a social issue when changes occur in society, caused by shifts in technology at the macro level, but not accompanied by changes in the pattern of relationships and social positions, thereby bringing losses to those in subordinate positions. The standardization of roles in society is the most important obstacle in the process of social change. As far as gender issues are concerned globally, women are more likely to experience negative impacts, patriarchal culture is considered to be the root of the problem.

Meanwhile, Hasanuddin (2013:58) said that patriarchal culture is reinforced by the standardization of roles and the mania of interests and 'phallo-centric' values which are seen as standards of appropriateness and provide more advantages to men. Gender, like other social categories such as race, ethnicity, religion and class, can influence a person's life. This includes their participation in the life of society, nationhood and statehood. include equality in wages, equality in the development of human resources and other productive sources.

The failure of legal instruments to provide justice for women is mainly due to the fact that they still strongly influence the perception and construction of patriarchal culture (Zamzani, 2013:17). From here we need to rebuild the meaning of justice based on a new social context and with a substantive justice paradigm. it is partial to the victim. Another thing that is more fundamental is that the meaning of justice for women must be based on the paradigm of human rights.

In the economic aspect, gender equality has quite a significant influence on the economic growth of a country. participate in economic activities, Education and political empowerment. Political empowerment is one way for women to gain recognition and self-awareness of the potential and worthiness they have. that women have potential and capable intelligence, which helps reduce the incidence of poverty and other values. Various problems arise in the field of economics related to gender equality, among others, many women do not have assets to name themselves, such as ownership of land, companies, etc. Apart from that, there are many women who work in the informal sector and are paid lower salaries than men in terms of working conditions equal to men's abilities. In this case

there is wage protection in the framework of gender equality, namely in Law No. 13 Year 2003 Concerning Employment in Article 6. This is also reinforced by the review of Government Regulation No. 8 Year 1981. Violations of discrimination against gender have also been declared in all the instruments under Bill of Rights, which consist of the Universal Declaration of Human Rights (UHDR) and the International Covenant on Economic, Social, Political Rights, Culture (International Covenant on Economic, Social and Cultural Rights).

Indonesia's customary law is a portrait of Indonesian society. Indonesian law has different characteristics and characteristics than the law in Western Europe which is individualistic-liberal. The customary law style has the following differences:

- 1) Has strong communal characteristics. This means that humans obey customary laws and are creatures of closer social ties and closer togetherness.
- 2) Has a magical-religious style that is related to Indonesia's natural outlook on life.
- 3) The system of law is based on concrete thoughts.
- 4) Customary law has a very visual nature. This means that legal relations are considered to only occur because they are determined by a bond that cannot be seen. Customary law as unwritten law is formed and implemented by the decisions of the internal law administrators in the community, namely first of all the internal judges system "Dutch East Indies" Gubernemen law and in the regional legal system swapraja and then the village heads in the lower layer areas of the village community. (Soepomo, 1987:107)

As part of customary law, the characteristics and patterns of these can be seen in the customary law of inheritance. is a unified entity which has the character of a concrete icon which cannot be divided.

According to customary inheritance laws, inheritance does not form a unity with inherited property which is not inherited from the heir. In the study of customary inheritance law, there are special characteristics in accordance with the philosophy of Pancasila in Indonesia. With this description which originates from the principles of Pancasila as a view of life for the Indonesian nation, we can conclude that the traditional inheritance laws of the Indonesian nation are not only contained in the principles of harmony and equality of rights in inheritance, but there are also legal principles which consist of:

- 1) The principles of godliness and self-control;
- 2) The principle of equality of rights and equality of rights;
- 3) The principles of harmony and family;
- 4) The principle of deliberation and consensus; and
- 5) The principle of justice and purity. (Van Dijk, 2006:91)

#### 4. Conclusion

The position of women in the inheritance laws of traditional communities in Indonesia is determined by the kinship system adopted by those traditional communities. can be considered to be discriminatory, because in societies that adhere to this family system, where only men have the position of heir, whereas in societies that adhere to the

female family system, have the position of heir only on the part of the woman. Unlike the bilateral or parental family system, both women and men are the same. have the position of heir. The position of women in traditional society is very important It is determined by the kinship system adopted by the community. Likewise, women's accession to the deliberation process for the distribution of inheritance also really depends on the kinship system adhered to by the community. The concept of gender equality in the inheritance law of traditional communities which has been found to be a reference in the development of national law is by using the principles of balance and justice between the rights and obligations of men and women in the formation of laws and regulations. Obligation to the recipient. This is done so that there is gender equality which does not give rise to legal problems in the future.

- [18] Van Dijk, R, Introduction to Indonesian Customary Law, Translated by A. Soehardi, Mandar Maju, Bandung, 2006.
- [19] Zainudin Ali, Implementation of Inheritance Law in Indonesia, Sinar Graphics, Jakarta, 2008.

## References

- [1] Abdul GhofurAnsori. Hazairin's Philosophy of Bilateral Inheritance Law, Yogyakarta: UII Press, 2005.
- [2] Pitlo, Inheritance Law According to the Dutch Civil Code, Translated by M. Isa Arief, Jakarta: Intermasa, 1979.
- [3] Ellyne Dwi Poespasari., Understanding of Customary Inheritance Law in Indonesia, Jakarta: Prenamedia Group, 2018.
- [4] Eman Suparman, Indonesian Inheritance Law in Islamic, Customary and BW Perspectives, Bandung: PT Redika Aditama 2013.
- [5] Free Hearty, Gender Justice, Jakarta: Indonesian Obor Foundation, 2015.
- [6] Graham, D. S. Gender Diversity in Indonesia, Jakarta: Pustaka Obor Indonesia Foundation, 2018.
- [7] Hasanuddin, Customs and Requirements, Sources of Inspiration and Reference for Minangkabau Dialectic Suggestions. Minangkabau Information and Cultural Study Center. Padang UNAND: 2013.
- [8] Hazar Kusmayanti and Lisa Krisnayanti. The Rights and Position of Grandchildren as Substitute Heirs in the Inheritance Distribution System in terms of Islamic Inheritance Law and the Compilation of Islamic Law, Futura Islamic Scientific Journal 19, No. 1 (2019): 70.
- [9] Hilman Hadikusuma, Kinship Law, Jakarta: Fajar Agung, 1987.
- [10] \_\_\_\_\_, Customary Inheritance Law, Bandung: Citra Aditya Bakti, 2003.
- [11] Muhktar Zamzami, Women and Justice in Indonesian Inheritance Law, Kencana Prenada Group, Jakarta, 2013.
- [12] Oemarsalim, Basics of Inheritance Law in Indonesia, Jakarta: Rineka Cipta, 2012.
- [13] Peter Mahmud Marzuki, Introduction to Legal Studies, Jakarta: Prenadamedia Group, 2010.
- [14] R. Soepomo, Customary Law, Jakarta: Pradnya Paramita, 1987.
- [15] Soerojo Wignjodipoero, Introduction and Principles of Customary Law, Jakarta: Gunung Agung, 1995.
- [16] St. Laksanto Utomo, Customary Law, PT. RajaGrafindo Persada, Jakarta, 2016.
- [17] Subekti, R, Principles of Civil Law, 19th Print. Jakarta: PT Intermasa, 1984.