

THE POSITION OF WOMEN IN THE MAYBRAT TRIBE CUSTOM INHERITANCE

Sri Iin Hartini
STIH Umel Mandiri Jayapura, Jayapura, Indonesia
budenonce@gmail.com



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Abstract: Customary inheritance law is a law that contains lines of provisions regarding the system and principles of inheritance law, inheritance, heirs, heirs, as well as how the inheritance is transferred to its control and ownership from the heir to the heir. As for what is meant by inherited assets are the assets of heirs who have died, whether the assets have been divided or are still in a state that is not divided. This includes inherited assets, namely heirlooms, marital assets, original assets, inherited assets, and joint assets. Heirs are people who pass on their inheritance to the heirs (heirs). Heir is a term that refers to people who receive inheritance from the heir. The results showed that in the process of inheritance in the Maybrat Tribe community, only sons were entitled to inheritance in the form of customary assets in the form of WAN (Heirloom cloth), beads, land/customary rights, houses/buildings, livestock. Girls have unequal or unequal inheritance rights with boys. Daughters do not get inheritance because if the girl marries, she will leave her family and enter her new family to follow her husband. The Maybrat indigenous people adhere to a patrilineal family system in which family membership is drawn or calculated based on male lineage (father). The patrilineal family system adopted by the Maybrat Tribe is a major inheritance system which causes only male descendants to inherit,

Keywords: Daughter, Traditional Inheritance, Maybrat Tribe

I. INTRODUCTION

Inheritance law in Indonesia is a part of civil law as a whole and is a small part of family law. Inheritance law is closely related to the scope of human life, because every human being will definitely experience a legal event, namely death, so that it will cause legal consequences from the event of someone's death, including the problem of how to continue the rights and obligations of someone who dies. How is the settlement of rights and obligations as a result of the death of a person regulated by inheritance law. (Ellyne Dwi Poespasari; 2018; 1)

Customary law is one of the legal rules that is still used in the inheritance process. The inheritance process that prioritizes deliberation as the basis is the most important thing so that harmony and family harmony is maintained. Inheritance is one of the processes that go through in family life. Inheritance has meaning and understanding as one of the processes of transferring the heir's inheritance to his heirs. The existence of heirs has an important position in the inheritance process. The position of heirs, such as widows and children, must fulfill their rights as heirs in the distribution of inheritance.

Inheritance is the transfer of various rights and obligations regarding the wealth of someone who has died to someone who is still alive. In general, in each inheritance, it is required to fulfill the elements of an heir, inheritance and heirs. The heir himself is an heir who at the time of his death leaves assets to people who are still alive. Heirs are family members of the deceased who replace the position of the heir. Meanwhile, according to customary law, inherited assets are assets acquired during the marriage period and inherited assets.

The process of transferring the heir's inheritance to his heirs must be carried out in accordance with the applicable legal provisions while still making deliberations and agreements the basis for the distribution. The existence of customary inheritance law is very important in the process of inheritance, the existence of customary inheritance law can be used as the basis for the distribution of inheritance within the family. The definition of customary inheritance law itself is the legal rules governing how the transfer of tangible and intangible assets from generation to generation follows. The existence of inheritance in customary law can be material, such as land and jewelry, and it can also be immaterial, in the form of value or prestige, for example, position status, such as the status of a king or customary head.

Traditional inheritance law in Indonesia is theoretically influenced by the principle of lineage that applies in the community concerned which can be classified into three systems of kinship or kinship. The family system is a patrilineal family system, matrilineal and parental or bilateral family systems. Patrilineal kinship is a system of descent drawn from the father's line, namely the position of men is higher than that of women in inheritance. The matrilineal system is a lineage from the mother's line, namely the position of women is higher than the position of men in inheritance. The parental/bilateral system is a hereditary system drawn according to the father's or mother's lineage so that the positions of the two are not distinguished in inheritance.

There are three types of inheritance systems adopted by indigenous peoples in Indonesia, namely collective inheritance systems, mayoral inheritance and individual inheritance. The collective system is when the heirs receive the inheritance that they receive collectively (together) from the heirs who are not divided individually. The mayoral system is if the inheritance is not divided and only controlled by the eldest child, which means that the right to use, the right to process and collect the proceeds is fully controlled by the eldest child with the right and obligation to take care of and care for his younger siblings, male and female until they can stand up. Alone. Individual System, namely if the inheritance is divided and can be owned individually with property rights, which means that each heir has the right to use, process and

enjoy the results or also transact them, especially after the heir dies. (Hilman Hadikusuma, 2003, 212-213)

Principles customary inheritance law is the principle of divinity and self-control, the principle of equal rights and togetherness of rights, the principle of harmony and kinship, the principle of deliberation and consensus, the principle of justice and *parimirma*. This principle is widely seen in inheritance and settlement of disputes in the distribution of inheritance. Due to the many different tribes, religions and beliefs as well as different forms of kinship, all of these are the influence of the kinship system adopted by indigenous peoples or in other words are influenced by the kinship system of a customary law community. (Toatubun, H. (2020). Distribution of Inheritance to Daughters According to Byak's Indigenous Law. *Kyadiren Journal of Law*, 1(2), 65-76. <https://doi.org/10.46924/jihk.v1i2.122>)

With regard to customary law, one of them is the Maybrat indigenous people who adhere to a patrilineal family system in which family membership is drawn or calculated based on male lineage (father). The patrilineal family system adopted by the Maybrat tribe is a mayoral inheritance system which causes only male descendants to inherit, because the position of a man is more important than his sister who is considered able to take care of and carry on family responsibilities. Based on this, only male descendants are entitled to inheritance. While female offspring may not be able to continue the responsibility so that it is equated with a person who leaves family responsibilities and is therefore deemed not entitled to inheritance in the family. The existence of male offspring in the family is very important. The position of the son functions as the successor of the lineage. The importance of the value of sons in the life of the Maybrat people, namely in the implementation of their customary law both in family and social life. In boys, there is great hope as the next generation, caring for and providing a living if their parents are no longer able to afford it.

In relation to customary inheritance law, the patrilineal family system adopted by the Maybrat people in the application of their inheritance is that only sons receive the inheritance inherited from their parents. Meanwhile girls do not get a share. Girls are only entitled to enjoy their parents' assets as long as they are not married and are still the responsibility of their family.

II. RESEARCH METHODS

The method used in this research is normative legal research and empirical legal research. In normative legal research using primary legal materials and secondary legal materials. In empirical research, namely by observing facts that are considered relevant to the research subject and then conducting research to be able to explain and develop facts in accordance with applicable law. The research location is the Maybrat Tribe community in Sorong Regency, West Papua, where the Maybrat Tribe community in inheritance distribution still uses customary law by following the patrilineal line.

III. RESULT AND DISCUSSION

Inheritance Process Based on Maybrat Tribe Customs

Maybrat Regency is a Regency in West Papua Province. This regency was formed in 2009 as a division of Sorong Regency, based on Law Number 13 of 2009 concerning the Formation of Maybrat Regency with the capital city of Kumurkek.

On October 27, 2008, South Sorong District Head Decree No. 133 of 2008 was issued concerning the Handover of Part of the Lower Area Coverage of South Sorong Regency to Sorong Regency. The territory that was handed over consisted of 11 (eleven) districts, namely:

1. Aifat District
2. North Aifat District
3. East Aifat District
4. South Aifat District
5. West Aitinyo District
6. Aitinyo District
7. North Aitinyo District
8. Ayamaru District
9. North Ayamaru District
10. East Ayamaru District
11. March District

On January 16, 2009, Republic of Indonesia Law Number 13 of 2009 concerning the Formation of the Maybrat Regency was passed as a result of the division of Sorong Regency. This happened because the division of South Sorong Regency did not fulfill the technical and legal requirements, so efforts to accelerate it were in the form of temporarily moving the 11 districts back to the parent Regency and continuing with the process of forming the Maybrat Regency as a result of the division from Sorong Regency not from South Sorong Regency. Maybrat Regency includes 41 sub-districts, 259 villages and 2 sub-districts. The inauguration took place on 15 April 2009 in Jakarta with the appointment of Bernard Sagrim as acting regent.

The kinship system in terms of inheritance is something that is very urgent. Because the distribution of inheritance in indigenous peoples is very dependent on the kinship system adopted by the community. In the composition of society that adheres to a system of descent according to the patrilineal line, namely from the father's side, the difference between the position of men is more prominent than the position of women as heirs. The nature of patrilineal inheritance is to carry out a collective system, in which the heirs may not own the inheritance personally, but are allowed to use, cultivate or process and enjoy the results.

Inheritance according to customary law in the Maybrat Tribe community is not a unit that can be valued, but is a unit that cannot be divided or can be divided according to type and type because in inheritance to the Maybrat customary community there are assets that cannot be distributed to the heirs in an independent manner. private but jointly owned by the heirs. The heirs only have the right to use or the right to control and enjoy the results of the joint right.

The Maybrat people in general adhere to a patrilineal system, namely a kinship system drawn according to the father's line where the position of men is more prominent (male majority) in influence than women as heirs. This shows that there are differences in position and inheritance rights where it is customary that only boys have the right to be heirs, while girls do not have the right to be heirs to their parents' inheritance.

The implementation of the male-majority inheritance system is due to the fact that the eldest son has the position as the successor of responsibility for the inheritance left by his parents and is obliged to take care of and care for his younger siblings until they are married and stand on their own. If in this family the first child is a girl, while the boy is the second child, then the boy will act as the oldest child in the family to replace his older sister's position in controlling and managing inheritance, but the child still listens to advice from his brother. If the family has no sons or only has daughters,

In determining someone as an heir according to the customs of the Maybrat Tribe, there are several criteria that must be seen or reviewed as the birthright or first child of someone who has died and status in the family, whether he is a biological child or a child who is adopted/adopted

as a son, boy, not girl. At the time of deliberation for consensus, all the family and relatives of someone who has died must be present, such as the clan/fam of (father) of someone who has died and the family and clan/family of the wife of someone who has died and also the clan/fam of the deceased. about land or customary rights with someone who has died.

Some of the inheritance that is usually left by someone who has died which is common in the Maybrat Tribe area is Heirloom Cloth, ordinary cloth, Land/Ulayat Rights, Houses/Buildings, Livestock (Pigs) and so on which are considered valuable by the Tribe community Maybrat. In particular, heirloom cloth (WAN) is a first-class heirloom cloth in the customary system of the Maybrat people whose value is billions of rupiah if converted, so not everyone has it except for those who are called Rae Bobot (noble class people).

All clans/fam of the Maybrat Tribe have expensive heirlooms as inheritance in each of their clan/fam representation. But not all clans/fams have WAN. Usually, if there is no inheritance of heirlooms such as WAN then there are objects such as beads, gemstones as inherited assets which are passed on to descendants representing the clan/fam that inhabits an area or customary land, for example the Ibiah clan/fam which has inherited property. like beads that will later be passed on to the sons of the first generation.

Inheritance in the form of WAN or beads are usually passed on from the ancestors of the clan/fam according to the Maybrat Tribe's customary belief that these heirlooms automatically appear on the surface from nature (emerge from the surface of the water, from caves, from tree holes, from snake's mouth and others) in the territory of each clan/fam as a symbol representing the clan/fam that inhabits that customary territory. Heirlooms such as WAN are heirlooms that are very rarely owned by everyone or clan/fam so that usually they are only owned or kept by a tribal chief or someone who is considered to be from the first lineage (eldest male) of the clan/fam that owns the object. the heirloom. These heirlooms are usually passed on to the first son of someone who has died.

If the inheritance is passed on in an undivided condition, it is necessary to determine when the distribution will take place and how the distribution will be carried out. Customary law does not determine when the inheritance will be divided, but usually the distribution of inheritance is carried out after the ceremony of congratulating the deceased heir. And usually those who distribute are family members/relatives, namely parents who are still alive, widows or widowers heirs, oldest sons or daughters, oldest family members who are seen as honest, fair and wise or members of neighboring relatives, community leaders or religious leaders or chosen by the heirs. For how to distribute inheritance based on certain considerations considering the form of objects and the needs of the heirs concerned. So even though customary inheritance law recognizes the principle of shared rights, it does not mean that each heir will receive an equal share of the inheritance with the same price value or according to the number of shares that have been determined.

The Position of Women in the Customary Inheritance Law of the Maybrat Tribe

In terms of kinship in the Maybrat Tribe community, the most important and most important element is descent. Heredity is an absolute thing that must exist to continue certain clans or tribes so they don't experience extinction. Because descent is so important in customary law, individuals who become descendants have certain rights and obligations related to their position in the family concerned.

In the Maybrat Tribe community, the first to serve as heirs are sons and daughters (excepted) and their descendants (grandchildren). Children who are still in the womb of a mother

also become heirs as long as the child is born alive. Likewise with children born to mothers who are pregnant when their biological father dies, he has the right to become the heir of his father.

Inheritance in the form of WAN and other heirloom knick-knacks that are considered sacred cannot be inherited to daughters, except for other objects such as furniture or home furnishings, buildings or houses, ordinary fabrics or distribution of profits from the sale of customary land/ulayat rights, there are still exceptions for inherited to daughters and sons who are not the first child of someone who has died to be divided as joint property which is passed on to all children, both boys and girls.

According to the customs of the Maybrat people, girls have unequal or not the same inheritance rights as boys, even in observations, their rights are often secondary or neglected in the process of dividing inheritance which is still in the category of ordinary property, as explained earlier, that girls no longer continuing the clan/fam of your father because when you marry you will continue the clan/fam of another male descendant. In this case the daughter does not get an inheritance because if the girl marries, she will leave her family and enter her new family to follow her husband's family. However, in certain cases, if all of the offspring do not have sons, then the women inherit the entire land.

In the inheritance rights for the first or subsequent daughters who still have inheritance rights in the process of dividing inheritance which is in the category of ordinary objects and if in the distribution of inheritance by sons as the holder of inheritance rights when distributing inherited assets or objects it turns out that the rights of the sister's children are neglected then there will be natural sanctions or punishments against sons who are the holders of inheritance rights, but in the distribution process do not respect or ignore the inheritance rights of their sisters or also the rights of other brothers, there will be sanctions, both sanctions from God and from nature in the form of a serious illness that can't be helped, paralysis or stroke, the first child can die or the person concerned can die or the child to be born can be disabled and so on.

Women can only control inherited land as long as they are not married or throughout their life. When the woman dies or gets married, the inherited land must be returned to her parents to be given to other male families they own. In addition, women can also be counted in getting inherited land if the family has sons. In this case the son can give part of his inherited land to his sister in exchange for the woman giving a child to her brother as a substitute and it is carried out in a traditional ceremony.

Girls are not counted as heirs but the oldest son becomes the heir. Where it can be concluded that basically the position of girls in the Maybrat Tribe, especially in the inheritance system, is very weak compared to the position of boys. This is caused by :

1. The position of sons, especially the eldest son, has an obligation as the successor to the responsibilities of his parents to meet every family need and to care for and provide for his younger siblings until adulthood.
2. Women will marry and leave their families or tribes because in the Maybrat customary community adheres to an exogamy system, that is, they must marry out of their clan.
3. The position of the woman is as a collector of assets, where in marriage the woman receives dowry payments in the form of assets brought from the groom's side.

However, daughters are considered in a family because the birth of a daughter is considered very extraordinary because it brings enormous wealth to the family. The wealth in question is that when a daughter is about to marry, the male family will bring a dowry to the female family and the daughter can also help her parents, especially her mother, where in a family a wife has the task of maintaining the integrity of her household, being loyal and devoted

to her husband, and caring for and educate their children until they grow up. So that when a daughter is an adult, most of her mother's responsibilities become her responsibility.

Likewise, in families where the eldest child is a daughter, then in her position as the eldest child she is obliged to be an adviser to give advice which must be heard and obeyed by her younger siblings who are heirs in managing the inheritance from their parents.

Because girls play a role as collectors of customary assets for their families, namely in the form of dowries when they are married, girls are very cared for and pampered when they are small. It is different from the treatment of sons who are allowed to grow up because they cannot produce or bring in customary assets.

Inheritance which is customary property in the form of WAN or beads must also be present in every marriage in the Maybrat community, which is used as a dowry that must be paid by the male family to the female family. The amount of customary property that must be paid by the man to the woman's family is adjusted to the position of the woman's parents. If the daughter is the older sister or child of the Traditional Head, more customary assets must be prepared to be brought.

IV. CONCLUSION

The process of inheritance in the Maybrat Tribe community is a patrilineal system in which only sons have the right to inherit property in the form of WAN assets (faith library), beads, land/customary rights, houses/buildings, livestock (pigs) which are considered valuable by the Maybrat people. It shows there are differences in position and inheritance rights where it has been customary that only boys have the right to be heirs, while girls are not entitled to be heirs to the inheritance of their parents.

The position of women as heirs in the Maybrat customary community is quite strong because the presence of daughters brings enormous wealth, especially mothers and older sisters as custodians of inheritance and collectors of customary assets for their families. According to the customs of the Maybrat people, girls have unequal or not the same inheritance rights as boys, they are even secondary or neglected in the process of dividing inheritance which is still in the category of ordinary property. In this case the daughter does not get an inheritance because if the girl marries, she will leave her family and enter her new family to follow her husband's family. However, in certain cases, if there are no sons in all of the offspring, then the woman inherits the whole land. They (women) can be said to be disguised men or compared to men to replace the position of men in the family.

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