

The Position of Daughters in the Inheritance of Wealth in the Nias Community, Somambawa District, South Nias Regency

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ABSTRACT

This study examines the position of daughters in inheritance of wealth in the Nias community in Somambawa District, South Nias Regency, North Sumatra Province. In the Nias customary law tradition, inheritance adheres to a patrilineal system, where inheritance rights are drawn only from the paternal line, so that sons are fully entitled to the inheritance of their parents, while daughters in principle do not receive a share. This situation differs from the provisions of civil law (BW) which places men and women in equal positions as heirs. The purpose of this study is to determine the implementation of inheritance distribution in the Somambawa community, analyze the position of daughters in the Nias customary inheritance system, and identify the factors behind the community's continued adherence to this custom.

The research method used is a sociological juridical descriptive method, through direct interviews with respondents determined by purposive sampling. The results of the study indicate that the Somambawa community prefers to use Nias customary law over civil law in the distribution of inheritance, because the patrilineal system is considered more appropriate to their social values and family structure. Daughters only receive a share limited to the agreement or compassion of their brothers, without any customary legal obligation to provide it. The main factors influencing this choice are the orientation of inheritance to sons, patrilineal marriage patterns, and cultural values that are still strongly held by the community.

Thus, it can be concluded that the position of girls in Nias customary inheritance in Somambawa District is very weak compared to boys, and this shows a fundamental difference with the provisions of civil law that apply nationally.

Keywords: *Customary inheritance law, inheritance, Nias society.*

1. Introduction

Nias customary inheritance law, especially in Somambawa sub-district, South Nias Regency, North Sumatra Province, is very different from the legal provisions stipulated in the Civil Code (BW), where Nias customary inheritance law, especially in Somambawa sub-district, South Nias Regency, North Sumatra Province, is that a daughter has no right at all to inherit the deceased parent's property, except at the mercy of family or brothers who are willing to give some to their sisters, because marriage in the Nias island area is that the wife must follow her husband. Even if a marriage is not blessed with a son in a marriage, then immediately the husband dies, the wife may return to her parents and may not take property with her deceased husband. The same is true if she has only daughters without having a son. Moreover, if in a marriage there is no child at all, so that when the husband dies, the wife has no right at all to the property they have acquired during the life of the husband and wife. Although when compared

with inheritance law in civil law (BW), what is obtained after marriage is joint property, if the husband dies, his surviving wife has the right to control the inheritance of her husband. Customary inheritance law according to Betrand TerHaar, customary inheritance law is the process of continuing and transferring material and immaterial wealth from generation to generation.¹

The death of a person results in the settlement of rights and obligations related to that person, which is regulated by inheritance law. Indonesian legal experts and Indonesian legal literature have not yet reached a common understanding of the legal definition of "inheritance," resulting in diverse terms. For example, Wirjono Prodjodokoro uses the term "inheritance law." Hazairin uses the term "Inheritance Law." Soepomo uses the term "Inheritance Law."²

The distribution of inheritance often gives rise to conflict in society, some even occurring before the testator dies. These conflicts are caused not only by the very low level of public awareness of the law, but also by legal issues related to inheritance law practices in Indonesia. This is due to the lack of uniformity in the use of inheritance law in Indonesia and the fact that inheritance law in practice in Indonesia is still diverse, meaning that each group still has its own inheritance law rules.

Customary inheritance law, as well as civil law, is part of family law, alongside marriage law, which plays a crucial, even decisive, role in a person's life. This is understandable because everyone experiences a legal event called death, and death sometimes gives rise to disputes among heirs regarding the process of transferring inheritance from the deceased to their heirs.

In contrast to marriage law, which has been regulated in a unified manner based on Law No. 1 of 1974 concerning Marriage, inheritance law in Indonesia, to date, is still an actual and long-standing problem, because there is no law on inheritance that applies nationally.³ This is inseparable from the legal history of the application of civil law in Indonesia before Indonesian independence, as a result of Dutch colonial rule. The legal policy of the Dutch East Indies government at that time, as outlined in Articles 131 and 163 of the *Indische Staatsregeling* (S.1855-2), regulated the classification of the population.⁴

The impact of the Dutch East Indies government's policy of dividing the population into various groups is still felt by society today. As a result, legal

¹ Betrand Ter Haar, *Asas-Asas Dan Susunan Hukum Adat*, terjemahan (Surabaya: fadjar. 1953, 1953).

² EmanSuparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat Dan BW* (Bandung: PTRafikaAditama, 2011).

³ K.N. Sofyan Hasan dan Warkum Sumitro, *Dasar-Dasar Memahami Hukum Islam Di Indonesia*, Cetakan Pe (Surabaya: Karya Anda, 1994).

⁴ Komari, *Laporan Akhir Kompedium Bidang Hukum Waris* (Jakarta: Departemen Hukum dan Hak Asasi Manusia, 2011).

pluralism has emerged in the field of civil law.⁵ From the determination of different civil laws for various groups in Indonesian society, in the field of inheritance law, various inheritance law systems also apply, namely customary inheritance law and civil inheritance law/BW.⁶

Legetieme portie, the right of each heir to a certain portion of the inheritance according to law. The principle of Ijbar, the transfer of a deceased person's assets to the living applies automatically according to God's decree without depending on the will of the testator or heirs. "For Europeans and Eastern Foreigners, Western civil inheritance law applies, while for the Bumi Putra group, customary inheritance law applies. Bumi Putra is divided into two, namely for Native Indonesian citizens who are Muslim, Islamic inheritance applies which has been accepted into Customary Law. Meanwhile, for other Native Indonesians, customary inheritance law applies which is spread across 19 customary law regions, which differ from one another. These three inheritance law systems differ from one another, both in terms of principles and legal norms. Customary Inheritance Law does not recognize legitieme portie.⁷ While Civil Inheritance Law recognizes legitieme portie.⁸

In addition to the differences above, another difference between customary inheritance law and civil inheritance law concerns the elements of inheritance, namely the heirs. In customary inheritance law, the element of kinship between the testator on the one hand and the heirs on the other is very important.⁹ Meanwhile, in Civil Inheritance Law as regulated in the Civil Code (Burgerlijk Wetboek), it is stipulated that there are two legal ways for an heir to inherit a certain amount of the testator's assets, namely according to the provisions of the law and as designated in a will.¹⁰

This article focuses on explaining the position of daughters in the inheritance of wealth in the Nias community in Somambawa District, South Nias Regency, explaining the process of dividing inheritance assets according to the laws or customs of the Nias community in Somambawa District.

⁵ Sunaryati Hartono, *Sumbangsih Hukum Adat Bagi Perkembangan Pembentukn Hukum Nasional Dalam Hukum Adat Dan Modernisasi Hukum*, ed. by Dkk M.Syamsuddin, I (Yogyakarta: Fakultas Hukum UII, 1998).

⁶ G.H.S.L. Tobing, 'Pengantar Hukum Waris Dalam Sistem Hukum Perdata Nasional', *Majalah BPHN*, 1989, p. 27.

⁷ Andi Nuzul, *Upaya Kodifikasi Hukum Kewarisan Secara Bilateral Dengan Pola Diferensiasi Dalam Masyarakat Pluralis*, 3rd edn (Mimbar Hukum, 2010).

⁸ C. Dewi Wulansari, *Hukum Adat Indonesia Suatu Pengantar*, Cetakan ke (Bandung: PT. Refika Aditama, 2012).

⁹ Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat*, Cetakan ke (Jakarta: PT. Gunung Agung, 1995).

¹⁰ Burgerlijk Wetboek, *Kitab Undang-Undang Hukum Perdata*, ed. by R. Subekti (Penterjemah), Cetakan ke (Jakarta: Pradnya Paramita, 1980).

2. Research Method

The type of legal research is sociological juridical, where in this research, it is carried out directly in the field to collect primary data, and uses a descriptive method, because this research aims to describe (describe), record, analyze, interpret phenomena that occur according to the reality of life in society.¹¹

So in this study, a sociological juridical research is used. That is, an empirical (sociological) juridical research using a descriptive method is a form of research that attempts to describe what happens in the position of daughters regarding inheritance assets, as well as providing a clear description of the distribution of inheritance assets left by parents according to the customs of the Nias community in Somambawa sub-district, South Nias district, North Sumatra Province.

3. Result and Discussion

3.1. The position of girls in the inheritance of wealth in the Nias community, Somambawa District, South Nias Regency, North Sumatra Province

The Nias indigenous community is a patrilineal society, tracing descent from the father. In the distribution of inheritance in Nias custom in Somambawa District, only sons are heirs when dividing their parents' wealth. The customary distribution does not stipulate a specific system or method for distributing inheritances, which is usually carried out either in writing or verbally.¹²

The Somambawa community adheres to Nias customs, which are fundamentally similar to Batak customs. The Nias customs of Somambawa possess distinctive characteristics, differing from those of other tribes. Therefore, the customs practiced by the Somambawa community can also be called Nias customs or the customs of the Nias people in general when distributing inheritances left by parents. As a patrilineal tradition, men hold an essential and privileged position in the Nias community's customs and traditions, as the family system is centered on the father.¹³

Nias customs in Somambawa are always strong so that even the Muslim Nias people who live in Somambawa still follow the customs of the Nias people when dividing the inheritance of their parents, because in dividing the inheritance of their parents we do not look at the heirs' religion, church or sect, but we still recommend it as is the custom of us Nias people so far.¹⁴

¹¹ Hilman Hadikusuma, *Metode Pembuatan Kertas Kerja Atau Skripsi Ilmu Hukum* (Bandung: Mandar Maju, 1995).

¹² Tokoh Masyarakat Nias di kecamatan Somambawa an. Alm. Aluiziduhu Tafona'o, *Hasil Wawancara Penulis Dengan Tokoh Masyarakat Nias Di Kecamatan Somambawa*.

¹³ 'Hasil Wawancara Penulis Dengan Tokoh Masyarakat Nias Di Kecamatan Somambawa an. Ama Yadi Hulu'.

¹⁴ 'Hasil Wawancara Penulis Dengan Tokoh Agama Masyarakat Nias Di Kecamatan Somambawa an. Pdt.Sokhinaso Hulu'.

In the Nias traditional society, men are always held in high esteem, as the Torah also states to honor your father and mother, meaning father comes first, then mother. Therefore, the Nias people take this as their basis in distributing inheritance, with men having the right to receive the inheritance. Furthermore, in managing assets, men are considered more capable of safeguarding and using them more economically than women. For example, if a woman controls an inheritance, it tends to be easier for her to sell it once she is married and joins her husband, especially if she needs money at any time. Furthermore, men also have a greater sense of responsibility for settling their parents' debts, if any, while their parents are still alive.¹⁵

As the person in power in the family, it is the men who are responsible for overseeing the inheritance in a broad sense, but this does not mean that men can act arbitrarily towards the inheritance, because supervision is still carried out by other brothers.

In the distribution of inheritance in a family within the community in Somamabwa sub-district, it is carried out based on custom where the heirs are the sons. However, this does not mean that daughters do not have rights. Daughters have the right to inheritance if the inherited property has been agreed upon by the male heirs to be given in part to the female heirs, such as land objects, coconut trees, or part of the garden, as well as a small part of the valuables belonging to the heirs or the parents of the heirs.

That the inheritance has several sources, namely, (1) assets obtained together after marriage, (2) assets brought by the husband, namely assets inherited from the husband's parents, (3) assets obtained from the wife's parents' inheritance, then all of this immediately after the husband and wife die, the male children are obliged to share it together and if the male children have an agreement to give a portion to the female children, they are not obliged to do so.¹⁶

Regarding assets brought in, acquired assets, and property, if there is a dispute between a husband and wife resulting in divorce, or the death of one of the husband and wife or even both of them die while there are no children/descendants, then the assets/wealth remain in their place and are controlled by the husband's brother and cannot be taken by others. If there are assets obtained from the wife's parents, they will be taken over by the parents or the wife's parents' heirs or her brother.¹⁷

Inheritance distribution in the Somambawa District community usually begins with a discussion among the heirs. However, if a problem arises that the heirs cannot resolve on their own, the family will call on other family members or relatives to help resolve the issue. If the problem remains unresolved, traditional leaders and village officials will be called in to the discussion to reach the best possible agreement.¹⁸

¹⁵ 'Hasil Wawancara Penulis Dengan Tokoh Masyarakat Nias Di Kecamatan Somambawa an. Ama Yadi Hulu'.

¹⁶ 'Hasil Wawancara Penulis Terhadap Sekretaris Desa Hiliorahua Tasua an. Fiktorius Telaumbanua, Spd.'

¹⁷ 'Hasil Wawancara Penulis Terhadap Sekretaris Desa Golambanua II an. Motuho Tafonao.'

¹⁸ 'Hasil Wawancara Penulis Terhadap Sekretaris Desa Golambanua II an. Motuho Tafonao.'

In the Nias traditional community, if a dispute or difference of opinion occurs, a deliberation/consensus will be held between the disputing parties, mediated by traditional/religious leaders so that the parties do not feel tense or stiff during the deliberation/consensus. In this deliberation/consensus, a decision will be made based on a joint decision by community leaders who in ancient times were called Tuhengeri, Balugu, and other names. That is, what decision is considered appropriate or proper to be taken as a middle way in this dispute.¹⁹

Therefore, in the distribution of inheritance, deliberation involving traditional leaders or customary leaders is recommended so that the distribution of inheritance can be carried out in a family manner, and in the distribution it can be encouraged by prioritizing family, harmonious family relationships, togetherness, mutual cooperation, deliberation and consensus. Thus, it is logical if later between male and female heirs have the same share as long as the parties agree on this principle and have understood their respective rights.

An example of a case such as that which occurred in the Nias traditional family in Somambawa District, in the family of the deceased father, Ama Wati Telaumbanua, there were 5 (five) heirs, namely a wife and 4 (four) children. The children consisted of 3 (three) daughters and 1 (one) son. The inheritance consisted of 1 (one) house, a plot of vacant land and a plot of land planted with cocoa measuring 10 hectares. Because the male heir was alone, there was no need for inheritance division, namely the deceased's wife lived with her son and occupied the house that was built together when her husband was still alive, while the female heirs were married and followed their respective husbands or in other words did not control the inheritance of their biological father after his death, however, if one day the daughters came to their parents' house freely to enjoy or take the produce of the garden and with the knowledge of their brothers.

The customs practiced by the Somambawa community are Nias customs, which are almost identical to those of the Batak people in North Sumatra. The Nias customs practiced by the Somambawa community are not permitted for Muslims; all people who wish to adhere to these customs must adhere to Nias customs, regardless of their religion or religion. Because Nias customs are prevalent throughout the island, traditional leaders, community leaders, Tuhengeri, Balugu, Salawa Hada, and others are required to heed these customs whenever issues arise within the community.

Especially for the Somambawa area, this Nias tradition with all its regulations was drawn up by every community leader, traditional leader, religious leader, youth leader and others in each region during the time of our elders, who were under the leadership of Tuhengeri.

That after all the community issues were taken over by the government, the names of the traditional leaders began to erode because the positions they had been entrusted with were no longer functioning, However, in particular, the customs of our Nias

¹⁹ 'Hasil Wawancara Penulis Terhadap PJ Kades Gabungan Tasua an. Baziduhu Tafonao, SPd.'

community that we are most familiar with are our Nias customs, which are already evenly distributed throughout regarding the distribution of inheritance, however, our weakness is that until now there is no Nias traditional institution that has been appointed as the traditional authority, because currently we no longer use any such institutions as Tuhengeri, Balugu and others.

According to the author, the fact is that in everyday life, it is daughters who contribute more in helping their parents in terms of business, while sons can be said to be somewhat favored, however, daughters have no rights whatsoever to their parents' inheritance.

That currently, in accordance with the development of the times and society is beginning to understand the Law, it would be better if it were aligned with the provisions of Positive law, namely civil inheritance law (BW). Whether the rights of sons are greater than those of daughters, the important thing is that there are rights for daughters or themselves as heirs. So that if problems or disputes arise between heirs who sue in court, the basis is certainly civil inheritance law (BW), and the judge in making a decision is very legally justified. It would also be better if the Nias Islands had a Nias Traditional Institution so that it could create written customary provisions and the Nias community in general, and the Somambawa community in particular, could comply with them.

3.2. Factors behind the community in Somambawa District, South Nias Regency, Province preferring inheritance distribution according to Nias customs

There are several factors that influence the Somambawa community in carrying out customary inheritance distribution apart from the patrilineal kinship factor, namely:

1. Marriage Factors

Inheritance distribution in Indonesia generally reflects a kinship system, with patrilineal, matrilineal, or bilateral descent systems in effect. Kinship is fundamentally born through marriage. To maintain a patrilineal or matrilineal society, marriage between a man and a woman must be of the same ethnicity. In other words, the form of marriage and the social system will determine the inheritance system of that indigenous community.

Indonesia's diverse customs and cultures impact the various customary inheritance systems. In general, customary inheritance law in Indonesia is regulated according to the customary community structure, which can be patrilineal, matrilineal, and parental/bilateral. The principle of lineage primarily influences the determination of heirs and the distribution of inherited assets (both material and immaterial).

Discussing Nias cultural customs regarding the distribution of inheritance, there are rules or customs of the Nias community that have long been believed in regarding the principles of inheritance, which in their process differ from the provisions adopted by communities outside the Nias

community regarding customs that regulate heirs.

The distribution of inheritance according to Nias customary inheritance law or the customs of the Nias community has its own characteristics, which are influenced by the Patrilineal family system, namely all sons are heirs of their parents' inheritance, and which applies the distribution of inheritance based on the principles of individuality and balance, while women do not have the right to inheritance from their parents' inheritance, because after marrying a man, women follow their husbands or receive assets from their husband's family.

2. Factors of Agreement from Heirs

The distribution of inheritance in Somambawa District, South Nias Regency is often done through deliberation with an agreement reached between the family and the heirs, if the deliberation results in an agreement that all inherited objects are maintained and not sold, then the female heirs must accept it with an open heart, because if the inheritance is in the form of objects such as land or a house, then the female child will not receive anything unless the property in the form of the object is sold, then the male heir must give the female child a portion, and the portion is also not determined, depending on the portion given by the male child.

3. Family and Economic Factors

The term "family relationship" refers to the feelings of other family members who are heirs. In relation to inheritance, this means that the inheritance should not cause disputes or resentment among the heirs. Some people who have experienced the division of inheritance believe that dividing the assets separately in a definite manner will create disharmony, as the distribution of material goods can lead to dissatisfaction among the heirs with the other heirs. This assumption influences their thinking when deciding on the division of inheritance. The division of inheritance can also affect the financial situation, as if one of the heirs needs living expenses, meaning they are less well-off, they will not hesitate to provide financial assistance with the portion of the inheritance that has been distributed.

Furthermore, for the Somambawa people, this customary inheritance system is truly the most appropriate inheritance distribution system. First, it is considered not to conflict with Christianity, as it teaches that the husband is the head of the family and the priest in Christianity, while the wife must be loved by her husband, whom the Somambawa people have always held in high esteem. Furthermore, this inheritance distribution system is considered to protect sons, who are considered the successors to their father's lineage. If the inheritance is given to a woman, the son's fate can be uncertain. Especially if the son is unmarried, then no one can support his life without his parents' inheritance, which can also be used to marry a woman. Because when both parents die, the inheritance is passed on to the daughter in a larger amount. Furthermore, it can protect the inheritance from being easily sold.

Custom means a habit which, according to the assumptions of society, has been formed both before and after the existence of society.²⁰ Custom is a cultural concept consisting of cultural values, norms, customs, institutions, and customary laws commonly practiced in a region. If these customs are not implemented, confusion will arise, leading to unwritten sanctions by the local community against those deemed to deviate.²¹

Another opinion regarding the form of customary law is that, in addition to unwritten law, there is also written law. This written law, in more detail, consists of recorded law (*beschreven*), as written by well-known legal scholars in Indonesia, and documented customary law (*gedocumenteerch*), such as the customary laws (*awig-awig*) in Bali.

Culture is a comprehensive pattern of life. It is complex, abstract, and broad. Many aspects of culture contribute to communicative behavior. These sociocultural elements are widespread and encompass many human social activities. Culture is a complex set of values polarized by an image that embodies a view of its own uniqueness. This "compelling image" takes different forms in different cultures, such as "rugged individualism" in America, "individual harmony with nature" in Japan, and "collective obedience" in China. This coercive cultural image provides its members with guidelines for proper behavior and establishes a logical world of meanings and values that its humblest members can draw on to gain a sense of dignity and connection with their lives. Thus, it is culture that provides a framework for organizing one's activities and enables one to predict the behavior of others.

Culture is a way of life that develops and is shared by a group of people and is passed down from generation to generation. Culture is made up of many complex elements, including religious and political systems, customs, language, tools, clothing, buildings, and works of art. Language, like culture, is such an integral part of human nature that many people tend to think of it as genetically inherited. When someone tries to communicate with people from different cultures and adapt to their differences, it proves that culture is learned.

4. Conclusion

Based on the results of research and discussion conducted by the author about inheritance law in the Nias traditional community, especially the position or rights of a daughter in the distribution of parental inheritance in Somambawa District, South Nias Regency, North Sumatra Province, the author concludes that a daughter is not one of the heirs of her parents' inheritance, based on the marriage relationship, namely the Patrilineal system by drawing the paternal line, not the maternal line, so that male children are entitled to receive and manage the inheritance of their parents. In a Nias family in Somambawa District, in the distribution of inheritance, the rightful is the son.

²⁰ I Gede A.B.Wirinata, *Hukum Adat Indonesia* (Bandung: P.T. Citra Aditya Bakti, 2005).

²¹ Banjar.bulelengkab.go.id, 'Pengertian-Dan-Perbedaan-Adat-Serta-Kebudayaan-89' <<https://banjar.bulelengkab.go.id/informasi/detail/artikel/pengertian-dan-perbedaan-adat-serta-kebudayaan-89>>.

While the daughter can only get it according to the agreement of her male brothers, meaning there is no coercion or obligation, there may or may not be any at all. In the Nias traditional community in Somambawa sub-district, if a dispute or difference of opinion arises, a deliberation/consensus will be held between the disputing parties, mediated by a traditional leader, so that the parties do not feel tense or stiff during the deliberation/consensus. In this deliberation/consensus, a decision will be made based on Hada Nono Niha, namely what decision is considered appropriate or proper to be taken as a middle way in this dispute.

Several factors influence the Nias indigenous community in Somambawa sub-district to prefer customary inheritance law in carrying out inheritance distribution apart from the patrilineal kinship factor, there are also several other factors, namely: (a) Marriage Factor, by paying attention to the line of descent, namely from father to son, (b) Factor of Agreement from Heirs. Deliberation with the achievement of agreement between the family and the heirs in the distribution of Nias customary inheritance in Somambawa Sub-district, South Nias Regency, (c) Factor of Family and Economic Ties. This means that the inheritance should not cause disputes and hurt feelings among the heirs. The distribution of inheritance can be influenced by the economic level, because if there is one of the heirs who needs living expenses in the sense of being less able, then in the implementation of the distribution the heirs do not hesitate to help the heir's finances by giving part of the inheritance that has been distributed to the less able heir, that is what is meant by the factor of family ties here.

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