

The Position of Girls' Inheritance in Biak Community of Papua

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Abstract

The male order in a family is very important and in terms of the division of inheritance men will get more inheritance than girls, this provides unbalance for women. Thus, it gives a sense of injustice to girls because they do not get a role and also get a smaller share than men. In the division of the estate each heir will get his share which the male will get a larger share than the female. This will cause an imbalance between the male and female parts so that it will cause disputes in terms of the division of inheritance.

Keywords

Biak inheritance law; The position of girl



I. Introduction

Indonesia is a country in the form of an archipelago consisting of various islands, both large and small islands. Each island that lies in Indonesia has its uniqueness and characteristics so that it leaves a beautiful impression on everyone who visits it. The Indonesian archipelago stretches from Sabang to Merauke and has various tribes, customs, races, and cultures. In Indonesia, there are 300 ethnic or tribal groups and based on the census conducted by the Central Bureau of Statistics in 2010, and there were 1,340 ethnic groups in Indonesia. The diverse customs and cultures in Indonesia make Indonesia more unique. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Customs in Indonesia is still recognized. According to the Big Indonesian Dictionary, customs are rules that have been commonly followed or carried out since time immemorial. Customs that exist in Indonesia are people's habits carried out from generation to generation from one generation to so that customs continue to grow and live in society. This is done so that customs do not become extinct or disappear. According to Koen Cakraningrat, adat is a form of embodiment of culture, described as manners or ways of behaving. This is based on Article 18B paragraph (2) of the 1945 Constitution, which states that:

"The state recognizes and respects customary community units and their traditional rights as long as they are still alive and in accordance with community development and state principles. Unity of the Republic of Indonesia as regulated by law".

In addition, the basic agrarian law in article 3 states that:

"The implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, must be in such a way that it is following national and state interests based on for the unity of the nation and must not conflict with other higher laws and regulations.

This means that customs that exist in Indonesia will be recognized and respected if they still exist and do not conflict with higher regulations. one another in a community group. Adat applies to every individual who submits to adat, but not all individuals in Indonesia do so. Every individual who submits to customary law is called an adat community. According to Soerjono Soekanto, Indigenous peoples are "community units that have the features to be able to stand on their own, namely having legal unity, authority and environmental unity based on shared rights to land and water for all its members.

In carrying out their daily lives, indigenous peoples follow every custom that has been carried out for generations, such as cultural values, norms, customs and customary laws in indigenous peoples. Customary law is applied to indigenous peoples when they act not under cultural values, norms, or customs in the community or other cases such as inheritance distribution.

Papua is divided into two, namely Papua and West Papua. West Papua has 13 districts, of which there are 466 tribes or ethnicities. Papua has 29 districts and 800 tribes that still practice customs, such as Asmat, Amungme, Dani, Waropen, Sentani, Biak, and others. Most of the ethnic groups in Papua adhere to a patrilineal kinship system which prioritizes sons as heirs, including Biak. Biak is one of the regencies in Papua Province, Biak is located on a small island on the north coast of Indonesia and is in the northwest of Papua New Guinea. Biak is an area that still maintains its customs. For example, when a family proposes, a man will give a dowry in the form of a jar/plate made of clay, usually also made as decoration in the house so that people call it a hanging plate was given to the family. Women as a sign of the acceptance of a woman to enter into a man's family. The indigenous people of Biak adhere to a patrilineal kinship system and individual and collective inheritance systems. It is proven that the role of men in a family is very important, and in terms of inheritance distribution, men will get more inheritance than daughters. This creates an imbalance for women. So it gives a sense of injustice to girls because they do not get a role and get a smaller share than boys.

The assets left behind are distributed to each heir because the joint assets left behind are no longer managed together, so they are given to each heir. In the division of inheritance, each heir will get his share, of which the male will get a larger share than the female. This will cause an imbalance between the male and female portions, leading to disputes in terms of the distribution of inheritance.

Based on the description above, the author analyzes by making a proposal entitled "The Position of Inheriting Girls in the Biak Tribe Community, Papua."

II. Review of Literature

2.1 Position of Girls' Inheritance in Indigenous Peoples of Biak Tribe

The position of girls in this case as heirs in each region is different from one another. This is adjusted to the kinship system adopted by each region. For example, in Biak, Papua adheres to a patrilineal kinship system that prioritizes sons. In contrast, the Ngada ethnic community, East Nusa Tenggara, adheres to a matrilineal kinship system, while some people in Sulawesi adhere to a parental bilateral or bilateral kinship system, which will cause the position of girls to become heirs is different.

The kinship system adopted by the Biak tribe is Patrilineal. In this system, a child's relationship with his father's family is the most important in his life. In this case, men inherit everything drawn from the mother's lineage, and only daughters will be the successors of the descendants.

According to customary inheritance law, children are entitled to any inheritance owned by their parents, such as goods for livelihood, goods of origin, and goods obtained during the marriage.

Customary inheritance law determines the heirs based on the order of priority among the groups in the heir's family, understanding that one group is prioritized over the other groups. Based on the main line of virtue, people who are related by blood to the heirs are divided into groups as follows:

1. Priority Group I: descendants of the inheritor
2. Priority Group II: parents of heirs
3. Priority Group III: grandparents, heir and so on.

In addition to the main line of virtue that determines the sequences that can get an inheritance from the heir, there is also a basic line of replacement which aims to determine who among the people in a particular priority group appears as the heir. Those who can become heirs are:

a. People who do not have a liaison with the heir.

In the customary law community of Biak, Papua, which adheres to the Patrilineal kinship system, a child has the right to the inheritance of his parents. If the husband and wife do not have a son in their marriage, the family is said to be "unlucky" so that the family that does not have a son adopts a son as the successor in the family later. The adoption of children is known in almost all regions of Indonesia. The Biak indigenous people recognize several types of child adoption. Children are taken from their original environment and included in their adoptive families and children from family circles.

Based on interviews conducted by researchers, the reason the position of boys is higher than girls is because boys will be the successors of the clan of their fathers. Apart from being the successors of the clan of their fathers, boys will also be the head of the family, leading and leading the family to support their family so that boys are prioritized and get more shares than girls. The daughter gets a smaller share than the son because the daughter will be bought by her husband with the dowry payment and will enter her husband's family so that she has no right to interfere in his family's affairs.

There are laws and requirements in the Biak indigenous people that regulate heirs. This is related to the privilege of familial customs for the indigenous people of Biak, Papua, namely trying as long as possible the obligations in the traditional house, which are carried out and continued by male descendants. In addition, boys who will continue their parents' obligations after they die, boys who are prioritized in the Biak customary law community, if there are no sons, can be replaced by adopted sons. Girls do not get an important role in the family because girls will marry their husbands and leave their families.

In the inheritance system of the Biak tribe, Papua, the priority in the distribution of inheritance is the son. Boys get more shares than girls. The daughter will get the remainder of the son's share, but the inheritance is not directly handed over to the daughter. The daughter will wait until her inheritance is given to her. The inheritance obtained by the heirs in the Biak tradition, Papua, is tangible or intangible. Substantial inheritance in the indigenous people of Biak, Papua, such as customary land, fields, sago hamlets, and inherited assets from their parents, while intangible assets can be seen in the sciences or mystique owned by parents and can then be passed on to their children. In the custom of the Biak tribe, this is known as "wudam", which means power or knowledge. For example, science or what is called wudam given by parents to children is the science used to find fish, look for treasure and be used to make machetes or also known as the Biak Tribe,

which in the Biak language is called "kamasan", which means people experts who have special skills and knowledge can also be used to "wor" or sing.

Wor is a sacred ceremony in the Biak community that protects individuals in the moment of transition of social roles, from birth and life to death. The ceremony carried out to maintain the pregnancy of a pregnant woman is called wor fasfesmandwampur. This wor ceremony has many types regarding the implementation of the ceremony. In addition to maintaining the pregnancy of pregnant women, there are also ceremonies known as wor asfasnai, wor anmam, wor papaf, wor Kapanaknik, wor beba, mourning ceremonies, and many other types.

In addition, wor as a traditional song has similarities with the sung poetry. Wor as a song cannot be separated from traditional ceremony wor, and this is in line with the fact that the Biak people are not familiar with performing arts. Singing, dancing, carving and painting are part of the traditional ceremony. They were singing as wor that serves as a protector of life.

Problems that occur in the distribution of inheritance owned by parents in the Biak community, Papua, boys are prioritized and get a higher share of inheritance than girls. This creates injustice for girls. In the case of inheritance distribution, the parents of a daughter will only receive an inheritance for the love and compassion of her father and brother. In the West Biak and North Biak communities, daughters will get an inheritance for the mercy and affection of their fathers and brothers. However, the inheritance can only be enjoyed not for daughters. One day the brothers will take the inheritance that has been given. Then it must be given. There is also a division of inheritance, such as sons getting a larger share of inheritance than daughters and daughters getting the rest of the inheritance. The inheritance is not immediately given to the daughter, but the daughter can only wait until her father gives her share.

The problem is the distribution of inheritance in Biak is that the inheritance is not distributed equally to boys and girls. This results in injustice to the heirs, especially girls. Because girls get a smaller share of the remainder than boys, girls cannot have this share but only enjoy gifts in North Biak and West Biak communities. At the same time, in other parts of Biak, girls can only wait until their fathers give them their inheritance.

III. Result and Discussion

3.1 Distribution of Inheritance to Daughters in Biak Indigenous

Biak Papua is an indigenous community that adheres to a patrilineal kinship system which prioritizes sons in various matters, including the distribution of inheritance. Boys will get a bigger share than girls. This will result in the injustice that will be felt by girls.

In the indigenous people of the Biak tribe, the transfer or transfer of inheritance is carried out when the heir is still alive or before the heir's death. In contrast, the inheritance occurs when the parents are still alive. If the male parent or father dies and the inheritance left has not been distributed, the right to distribute the inheritance as a substitute for the male parent is the old father or brother of the heir. If the heir is an only child, those who can replace the heir to distribute the inheritance or inheritance are the brothers and sons of the grandfather or tete in Biak language called kamam. The heir's wife, aunt or older sister of the heir does not have the right to distribute the inheritance left by the testator. The inheritance left by the testator can be distributed for 3 (three) months and above after the testator's death. So far, the distribution of inheritance is carried out while the heir is still alive and strong. As described above, the division of inheritance is done to avoid conflicts

or disputes between the heirs. Therefore, while the parents are still alive and strong, they share their wealth with their children.

The procedure for distributing inheritance before the heir dies to the Biak indigenous people, in this case to inheritance in the family (joint property), is carried out verbally within the family where the heir will summon the children and husband or wife in the presence of witnesses. Witnesses are people who are elders in the family or attended by the manager keret or the head of the clan. Because the Biak indigenous people consider that the witnesses present at the deliberations are strong and valid evidence, the Biak indigenous peoples traditionally do not acknowledge evidence with certificates but believe and acknowledge statements or stories from witnesses who were present at the family deliberations who shared the inheritance. . Inheritance can be carried out within the family itself without being attended by other families based on mutual trust. This is the heir's decision in what way he can distribute the property to his children.

The parts that will be obtained by the heirs of the Biak indigenous people are:

a. Sons

Sons in the Biak indigenous people can automatically receive an inheritance from their parents. The inheritance or inheritance is accepted automatically, such as customary rights, namely the joint property of the clan that is used or processed and jointly maintained by all heirs. This inheritance or inheritance cannot be divided but can be used together. Assets can be given to daughters for the tolerance of their parents, and siblings must respect and accept their parents' decisions. If there is no son in a family, the family will be considered "unlucky". This ulayat right cannot be accepted by girls.

The form of inheritance is usually in the form of land and houses. The share that sons will receive from their parents is the same. The method of distributing inheritance or inheritance in the form of land is still carried out verbally or by giving stakes. Witnesses from other trains must attend the distribution of this inheritance.

b. Daughters

Based on the data obtained, girls have the right to inherit the inheritance or inheritance of their parents. However, daughters' share is not greater than that of sons because daughters will marry out and enter into their husband's family or her husband's keret. Even girls sometimes do not get what is due to their parents. Many girls feel that this situation is unfair because they should get what they are entitled to in terms of the distribution of inheritance. However, the daughters who did not get what was due to them from their parents just kept quiet and waited for their share to be given.

c. Adopted child

Based on the data obtained, the share received by the adopted child and biological child is the same because the adopted child has been considered to have entered his adoptive family and become like his own child. Adopted children even get the love of their adoptive parents slightly more than biological children, both boys and girls. An adopted child, in this case, is because the adopting family does not have children or descendants, a child who is adopted. After all, his parents abandoned the child or are not responsible for the child usually happens in the family or between close families. This is the basis of the indigenous people of the Biak tribe in adopting children.

3.2 The Role of the Biak Customary Institution in settlement of Inheritance Distribution to Daughters' Traditional

Institutions are community organizations that grow and develop within the indigenous peoples of an area and have legal and property rights in traditional territory. Tribal chiefs or traditional elders chair customary institutions. They have a role in carrying out government tasks and implementing development and community development at the village and sub-district levels. This tribal chief or traditional elder has an important role in encouraging and mobilizing community participation compared to the role of a village head. The customary institution located in Biak, Papua, was formed in 2000 and aimed to accommodate and accommodate customary issues.

Customary institutions domiciled within the indigenous peoples of Papua are indigenous peoples based on the king's leadership system, authoritative male leadership system, and mixed leadership system. Customary institutions function to resolve customary civil and criminal cases and protect the rights of indigenous Papuans. Customary institutions have to receive and manage civil and customary criminal cases. There is a customary court in traditional institutions to resolve a customary problem. Customary courts have the authority to receive and manage customary civil and criminal cases between indigenous peoples in Papua and receive and manage cases between indigenous Papuans and non-native Papuans.

Biak indigenous peoples are all communities within the Biak customary law area. The formation of the Biak customary council is a crystallization of institutionalization that has been customary since time immemorial. The Biak tribal conference is where the highest decisions are made for the Biak tribal custom. Therefore, all the decisions made at this conference are binding on the Biak community.

The law has regulated the functions and duties of the customary courts, which are used as a basic reference to work following the regulations. Full authority to the customary courts to try someone from both indigenous tribes and other tribes who are immigrants in Biak, so if there is a customary problem, the indigenous people of Biak will come to the customary council, and the customary council will resolve the problem with the applicable customary rules. Customary regulations in the breed are called kankain karkara Byak, which is usually abbreviated as KKB. This is regulated in Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua Article 51 paragraphs 1 and 2, which states as follows:

“(1) Customary courts are peace courts within customary law communities, which have the authority to examine and adjudicate disputes civil and criminal cases between the members of the customary law community concerned. (2) customary courts are arranged according to the provisions of the customary law of the customary law community concerned.”

Customary settlements are settled by a customary court led by a chairman, a deputy chairman, a secretary, a deputy secretary, a treasurer and a deputy treasurer. The customary court is in charge of customary law, the field of customary justice, the field of claims for customary rights and the general field.

In convicting all violations of existing laws, the adat council refers to the decision of the KKB or kankain karkara Byak that the previous parents have made. If a customary problem occurs, it will be resolved through the customary court and subject to sanctions. The KKB has described in detail the customary law sanctions for violators.

The position of the customary courts in Papua, especially in Biak, is seen from the legal culture that originates from customary rules that have existed since ancient times until now and are part of the law that regulates the community's way of life outside of

positive laws that apply nationally. Customary law is compared to formal legal language because the language of customary law is easier to understand and follows the culture of the Biak people, and settlement using customary courts is considered faster and does not take a long time, and there is certainty in compensation. Indigenous peoples of Biak are more likely to choose customary law in resolving various kinds of everyday problems due to the openness factor in the settlement because the community perceives that in the settlement process using customary courts, sanctions and fines are not only imposed arbitrarily but based on facts, the language barrier factor is because the community understands the language better.

Based on the results of interviews, the role of traditional institutions is very important in the Biak indigenous people. The indigenous people of Biak adhere to customary regulations in the breed tribe called kankain karkara Byak, which is commonly abbreviated as KKB. To resolve everyday problems, the community chooses to resolve them through traditional institutions. In terms of solving the problem of dividing the inheritance of daughters, according to traditional institutions, girls must follow every applicable customary rule so that girls can only wait until their share is given by their father or get an inheritance based on the love and compassion of their father and brother. can only enjoy the inheritance not to be owned.

IV. Conclusion

From all the descriptions that have been put forward, conclusions can be drawn on the issues discussed, including:

1. Papua is an area with a patrilineal kinship system in the Biak indigenous community, which draws on the father's lineage.
In terms of inheritance distribution, boys will get the biggest share than girls in North Biak and West Biak, girls will get but not to become property rights. that is received by boys and girls so that it will create a sense of injustice in terms of the distribution of inheritance from parents to share children inheritance or inheritance automatically from their parents.
2. The inheritance or inheritance is accepted automatically, such as customary rights, namely the joint property of the clan that is used or processed and jointly maintained by all heirs. The form of inheritance is usually in the form of land and houses. The method of distributing inheritance or inheritance in the form of land is still done verbally or by speaking by giving stakes, while girls. Based on the data obtained, girls have the right to inherit the inheritance or inheritance of their parents. However, daughters' share is not greater than that of sons because daughters will marry out and enter into their husband's family or her husband's keret. Even girls sometimes do not get what is due to their parents.
3. The role of customary institutions Based on the interviews; the role of traditional institutions is very important in the Biak indigenous people. The indigenous people of Biak adhere to customary regulations in the breed tribe called kankain karkara Byak, which is commonly abbreviated as KKB. To resolve everyday problems, the community chooses to resolve them through traditional institutions. In terms of solving the problem of dividing the inheritance of daughters, according to traditional institutions, girls must follow every applicable customary rule so that girls can only wait until their share is given by their father or get an inheritance based on the love and compassion of their father and brother. can only enjoy the inheritance not to be owned.

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