

Dispute over Sasak Customary Inheritance Rights and the Evolution of Granting Inheritance Rights to Girls

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Abstract

A central concern in disputes concerning customary inheritance rights within the Sasak community of West Nusa Tenggara, Indonesia, pertains to the allocation of inheritance rights to daughters. This article examines recent modifications to the Sasak custom of granting inheritance rights to females, in addition to the historical and cultural context surrounding these rights. In accordance with empirical normative research, the author demonstrates that traditional inheritance practices are shifting to grant daughters inheritance rights. Multiple factors, including modernization, the legalization of gender issues, and social demands, support this. The complexities of granting females inheritance rights in traditional Sasak society and the resulting social and cultural transformations in the region are examined in this study. In Sasak customary law, the following elements contribute to disputes over the inheritance of girls: 1). Religious factors impede the development of customary law and legal choice ("in every legal choice, people will choose the law that is most profitable"); 2). Social relations and justice factors, as forces suppress every old law and switch to new ones; and 3) Factors of justice and social relations. 3. Legal subsystems and structural factors, which are an integral part of every legal system.

Keywords : *sasak dispute, inheritance rights, Sasak customary, rights to girls*

INTRODUCTION

Indonesian inheritance law has historically been shaped by the evolution of three fundamental concepts underlying the inheritance system. A significant portion of the provisions of the three legal systems—customary law, Islamic law, and Dutch inherited law or civil law—are outlined in the Civil Law Act (Hooker, 1988; Lev, 1965; Merryman & Pérez-Perdomo, 2018). There are numerous distinctions among the three of them concerning the components of inheritance, successors being one of them. The recipient of the inheritance is referred to as the heir. The concepts underlying provisions concerning successors in customary inheritance law, civil inheritance law, and Islamic inheritance law are distinct. The matter of inheritance does not manifest itself immediately; rather, it evolves and transforms in tandem with the progress of social civilization. During an uncivilized era, interpersonal connections between men and women were characterized by unrestrained and non-attachmental interactions. However, this dynamic changed when each individual assumed the role of a spouse; in such cases, normative property regulations did not exist due to the absence of a legal family unit (Muhammad, 2001; Novitasari et al., 2023)

Certain members of contemporary Indonesian society are governed by the Civil Code, Islamic Inheritance Law, and Customary Inheritance Law, indicating that the inheritance law that remains in effect is pluralistic. Numerous Indonesians continue to be powerful and obedient in accordance with the regulations of their respective customary laws, as a result of the pluralistic nature of Indonesian society, which is comprised of numerous ethnic groups, cultures, and customary laws. Because each rule of customary law is unique and possesses distinct qualities, it is incorporated into the pluralistic set of national inheritance law regulations. In addition to this, customary inheritance law differs from other inheritance laws, including Islamic inheritance law, with respect to inheritance in particular. In accordance with customary inheritance law, the transfer of an individual's assets (the heir) is not exclusively contingent on their demise; rather, it is possible for this to transpire during their lifetime, in accordance with the family system that persists and evolves in all legal associations across the Unitary State of the Republic of Indonesia. Additionally, the transmission of assets may occur either during the testator's lifetime or subsequent to their demise.

The Sasak Lombok tribe, an ethnic group residing in Indonesia, is recognized as the indigenous inhabitants of Lombok Island, which is situated in the eastern direction from Bali Island (Rahayu et al., 2023; Sukenti et al., 2016). As opposed to the predominantly Hindu Balinese, the Sasak tribe of Lombok adheres to the Islamic faith. Following the Majapahit kingdom's decline in the 16th century, Islam started to penetrate the island of Lombok. Adherents of the saints from the island of Java introduced this Islamic faith by means of the antiquated Javanese language. Presently, Lombok is referred to as the "island of a thousand mosques" due to its abundance of mosques, which are places of worship for Islamic adherents.

The Sasak community is primarily characterized as a traditional society governed by customary law. However, considering that the majority or entirety of the Lombok Sasak tribe community follows Islam, they, being religious individuals, are obligated to abide by the principles of Islamic law as outlined in the Hadith and the Koran. Conversely, the Sasak traditional tribe is affiliated with several other traditional tribes residing within the Unitary State of the Republic of Indonesia. Consequently, the Sasak traditional community is governed by national laws and other national regulations, including those derived from the Decision, in the course of their daily activities. -Determination by the judge (Haq et al., 2021; Salahuddin, 2023).The Patriachat community is a society that establishes its lineage through the paternal line or the male side. As a result, the prevailing customary provisions that assign traditional roles and influence to men are also influenced by this characteristic. In regard to customary provisions concerning customary inheritance law matters, which are patently apparent as distinct rights that are bestowed upon males (Aolia et al., 2023)

The Sasak tribe of Lombok prohibits daughters from inheriting the property of their parents. This is an outcome that can be attributed to the Patriachal society, which is characterized by its patrilineal or male-dominated lineage system. Nonetheless, upon examining the longstanding religious adherence of the Sasak Lombok tribe to Islam, it becomes evident that the females of the Lombok Sasak tribe invariably embrace Islam as their parental faith. In contrast, with regard to inheritance law, Islamic stipulations regarding the rights of women to inherit are present, despite the fact that the quantity of portions of rights bestowed upon women is comparatively smaller than that given to men. According to Islamic inheritance law, the allocation of inheritance shares is as follows: men are entitled to receive two-part shares, while women are entitled to one-part shares; thus, the ratio of shares is two to one. Indirectly, the upward trajectory of science, information, communication, contemporary advancements, and technology, which are not constrained by gender distinctions, has influenced the perspectives and thought processes of women as a whole, including the Sasak Lombok girls. specifically the female members of the Sasak tribe residing in Lombok.

Women, including those belonging to the Sasak tribe of Lombok, no longer restrict their life necessities to the household. As a result of their advancements, women now recognize their capacity and right to acquire and pursue other social interests that were previously the domain of men. This constitutes a fundamental rationale and cause for Sasak women to advocate for parity in status and rights with men, particularly with regard to inheritance rights. As per the women of the Sasak Tribe of Lombok, there is presently an inequitable distribution of rights between men and women with regard to the customary inheritance provisions that have been observed for generations. This disparity is deemed to be out of touch with contemporary developments and the actual circumstances and conditions of existence. As equal-natured human beings created by Allah SWT, the Almighty God, women must have their human rights and responsibilities acknowledged and respected. Disputes that have arisen and continue to arise in society necessitate a procedure or process for resolution that ensures the application of justice principles between men and women. The aforementioned circumstances indicate a disparity in the rights possessed by men and women; this is the impetus behind conflicts concerning the allocation of inheritance. Due to the prevalence of inheritance disputes in a society where females' equal rights and justice are sought after.

It is anticipated that the responsibility of law enforcement officials, particularly justices, in case resolution is to observe and evaluate any developments that may have official ramifications. Therefore, judges are not creators; rather, they assimilate and encapsulate the will of the community in their decisions, which subsequently establish obligatory consequences. The same holds true for the positions of religious leaders, traditional leaders, and village chiefs, who are expected to resolve disputes amicably and fairly through deliberation in order to achieve consensus among the disputing parties. Drawing from the aforementioned contextual information, the primary aim of this study is to elucidate the elements that contribute to conflicts over the inheritance of daughters in accordance with the Sasak tribe's traditional inheritance law.

RESEARCH METHODS

This study involves normative-empirical legal research focusing on cases related to resolving conflicts over Sasak customary inheritance rights and the evolution of extending inheritance rights to girls. This study aims to uncover factual data on the origins and settlement of conflicts, as well as to examine the evolution of bestowing inheritance rights to girls under Sasak customary law.

This research focuses on a specific legal occurrence. This research is classified as empirical research based on the description provided. To comprehend behavior in conflict resolution, it is essential to not only be familiar with the applicable law but also to grasp the

structure and procedure of resolving disputes. Research is a scientific endeavor that involves specific methods, methodical approaches, and critical thinking to investigate particular legal issues through analysis. Furthermore, a thorough analysis of the legal facts is conducted in order to address the issues that arise in the phenomena under consideration.

Analyzing through a normative approach is necessary to find legal substance in a case or dispute (Johnny Ibrahim, 2005; Syahrums, 2022). This method involves obtaining data to understand the ongoing dispute, identifying the causes and parties involved, tracing the chronology, examining the settlement process, and analyzing the impact on the community.

RESULT AND DISCUSSION

In the Sasak tribe, concerns relating to inheritance partition and distribution of inheritances can lead to disagreements within the family due to conflicts of interest. Having close family ties and a household packed with relatives does not provide a consistently comfortable and calm environment. This is a result of evolving innovations and growing demands, requiring individuals to constantly be prepared to compete in enhancing the quality of life inside their households. The Sasak people face numerous issues that necessitate prompt and fast answers to uphold their comfort and peace. Inheritance can lead to joy or sorrow depending on whether the distribution adheres to the necessary provisions. Each individual's perception of justice varies. If the conflict remains a family matter, it should be settled peacefully.

Factors contributing to inheritance disputes among Sasak girls include (Erwinsya et al., 2020; Grace, 2004; Hariati et al., 2024):

- 1) The religious factor, specifically the stagnation in the evolution of traditional inheritance law, is due to the introduction of Islamic inheritance law by Tuan Guru (Kiyai) or Islamic preachers to the Sasak Lombok community at lower levels. This aligns with the theoretical behavior proposed by Lawrence M. Friedman. This theory elucidates how individuals transmit messages and subsequently take action, particularly in relation to capital, known as the cost-benefit capital (profit and loss theory). This idea posits that individuals will select laws that are advantageous to them in every legal decision. The community follows Islamic inheritance law, which dictates a distribution scheme of 2:1, unlike traditional law societies where daughters do not inherit from their parents. Individuals that continue to follow traditional knowledge in sharing property inheritance promote a communal lifestyle that fosters mutual assistance, aiming to establish harmony, concord, and tranquility in life. The "local wisdom" followed by the Sasak people does not contradict Islamic teachings upon closer examination. In this culture, the focus is on promoting harmonious and peaceful living rather than materialistic and selfish traits.
- 2) Social relations and justice
Lawrence M. Friedman identified social relations and justice as variables that lead to the replacement of existing laws with new ones.
Many women labor as female migrant workers overseas at the research site, bringing fresh experiences back home and raising questions of justice for themselves. They transformed traditional inheritance law into Islamic inheritance law, becoming agents of change.
- 3) Structural elements and legal systems.
Lawrence M. Friedman asserts that legal structures and subsystems are tangible elements of the legal system. The research object provides straightforward access to the essence of Islamic law due to its well-defined written form and structure. At the village level, there is a Penghulu, at each sub-district, there is a Religious Affairs Office, and in each Regency/City, there is a Religious Court. The primary factors leading to disputes or conflicts in the communities at this research site are these three things.

Law of Inheritance

There are three systems in inheritance law: the presence of inherited assets or heirs' wealth known as inheritance, the presence of heirs who control or own the inherited assets, and

the presence of heirs who receive the transfer or distribution of inherited assets (Fauzi, 2017; Wahyuni, 2018; Wantaka et al., 2018)

As per the Civil Law Act, inheritance can be acquired through two methods: either as an heir based on legal provisions or as designated in a "testament" will.

Inheritance law is a component of individual and family law that typically follows a system of lineage, including matrilineal, patrilineal, and bilateral or parental structures. In a matrilineal system, inheritance laws are based on familial connections through the female lineage, as seen in societies like as the Minangkabau, Enggano, Timor, Kerinci (Jambi), and Semendo (South Sumatra). In the patrilineal system, inheritance law is based on hereditary connections through the male lineage, as shown in societies like as the Batak, Gayo, Nias, Lampung, Buru, Seram, Bali, and Ambon. In the Bilateral or Parental system, inheritance law is based on succession through both the mother's and father's lines, as seen in societies such as Malay, Bugis, Javanese, and Kalimantan (Dayak).

Additionally, in terms of the inheritance system, there are categories that can be classified into:

- a) Individual Inheritance System. For instance, in bilateral (Javanese) and patrilineal (Batak) family systems.
- b) System of Collective Inheritance. For instance: Significant hereditary practices in Minangkabau and Tanah Dati in Ambon.
- c) System of Inheritance by Majority. For instance: in Lombok, Bali, Lampung, and other locations. According to inheritance law, only rights and liabilities related to property law can be passed down. Simply said, only rights and duties can be quantified in terms of money. Thus, the rights and responsibilities in family law or more broadly, the rights and responsibilities related to one's identity, such as those of fatherhood, are not transferable through inheritance. Similarly, the rights and responsibilities of an individual as a member of an organization cannot be inherited.

Traditional Inheritance Law

Customary law plays a significant role in shaping national law by guiding the development of statutory regulations. The psychological aspects of customary law that are fundamental to the Indonesian national identity should be incorporated into new legal frameworks to align with the fundamental principles of justice and legal sentiments of Indonesian society.

The term "Customary Law" was introduced by Cristian Snouck Hurgronje in his book "De Acheers" (the Acehnese), and later by Cornelis van Vollen Hoven in his book "Het Adat Recht van Nederland Indie" (Salim, 2015, 2016; Sudirman et al., 2021). Indonesian legal professionals have defined inheritance law with specific constraints to aid in a comprehensive understanding of its meaning:

- a) Wirjono prodjodikoro defined inheritance as the transfer of rights and obligations of a person's assets to living individuals upon their death.
- b) Soepomo defines inheritance law as the legislation governing the transfer of property and intangible assets from one generation to the next. This process commences when the parents are still living. This process does not escalate to an acute stage due to the parent's death.

R. Santoso Pudjasubroto defined inheritance law as the legal framework that governs the transfer of a deceased person's property rights and obligations to living individuals. Similar to Wirjono Prodjodikoro, R. Santoso Prodjosubroto also uses the phrase "inheritance law" in his formulation to refer to the same concept. R. Santoso Prodjosubroto further clarified that inheritance conflicts occur when a person passes away, leaving behind property that certain individuals are entitled to receive, but there is no chance to distribute the inheritance. Ter Haar's work "Principles of the Structure of Customary Law" was translated by K. Ng. Soebakti. Poesponoto defines inheritance law as the legal regulations governing the transfer

and preservation of both tangible and intangible assets across generations over time. Inheritance law, as defined by A. Pitlo, pertains to the regulations governing the distribution of a deceased person's wealth and the implications of this transfer for the beneficiaries, encompassing their relationships with each other and with external parties.

The connection between inheritance is that the heir dies while discussing the issue from the viewpoint of Islamic inheritance law or Civil Code inheritance law. From a customary law standpoint, succession or transfer of an heir to another can take place before the heir's death through appointment, power transfer, or object ownership transfer. The definition provided outlines four aspects in customary inheritance law:

1. Norms govern the process of transferring property from one successor to another. Inheritance customary law norms consist of material law that establishes the rights and obligations of the heir and heirs.
2. Legal subjects known as heirs inherit assets, while another group known as heirs acquire these assets from the heirs.
3. Inheritance includes a variety of goods, both physical and non-physical.
4. Assets can be transferred either before or after the heir's death. Customary inheritance law in Indonesia possesses distinct traits that set it apart from Islamic law and Western law. The distinction arises from the underlying beliefs of the Indonesian people who adhere to the Pancasila philosophy and those who follow the principle of *Bhineka Tunggal Ika*. The background represents a mutually beneficial coexistence aimed at fostering harmony and peace in life.

Indonesian culture prioritizes familial values and harmony over monetary possessions and selfishness. A contemporary trend prioritizing material possessions over familial and communal relationships is causing a moral dilemma in Indonesia, partly influenced by Western culture.

Customary inheritance law is a fundamental ingredient in the evolution of national inheritance law. To identify the components of customary inheritance law, one might engage in both library and field research. This aims to identify similarities among different systems and principles of customary inheritance law across the archipelago. The goal is to establish common ground with national legal awareness to achieve a unified national legal system for the Republic of Indonesia.

Indonesian society currently follows a pluralistic inheritance law system, which includes the Civil Code, Islamic Inheritance Law, and Customary Inheritance Law. Indonesia's diversified society, comprised of multiple ethnic groups, possesses unique customs and customary laws that differ from one another. These distinct traits contribute to the pluralistic nature of customary law, including inheritance law.

CONCLUSION

Religious elements contribute to inheritance issues for girls in Sasak customary law by impeding the development of legal choices. People will always choose the most advantageous law in each legal decision. Social dynamics and justice factors compel the abandonment of old laws in favor of new ones. Structural considerations and legal subsystems are integral components of every legal system. Establishing a Traditional Krame Council at various levels of government is crucial for resolving inheritance disputes efficiently and peacefully. This institutional strengthening aims to ensure legal certainty and justice in resolving disputes through community institutions.

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