




Justice for the Rights of the Women's Heirs to the Land of Dati

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Abstract

Introduction: Maluku Province has a patrilineal customary law community, whose blood ties follow the father's line. The rights and obligations of the child are determined by the father and his relatives.

Purposes of the Research: The research was conducted using an empirical juridical approach, which is a descriptive study of qualitative analysis.

Methods of the Research: This research tries to describe the justice for the female heirs over the land of the dati in Leihitu, Central Maluku district. The results of collecting, finding data and information through a literature study on the assumptions used in answering the problems in this research, will be tested inductively-verifytively on the latest facts found in the community.

Results of the Research: Boys have an important position in the family, while girls don't really benefit. In the distribution of land inheritance, women are not given full rights, because it is considered that women will marry and then leave with their husband's family. This reason is not to limit women's rights, nor is it because of following patrilineal kinship, but this is because during the Hongi Cruise the men take a long voyage with tough challenges, which a woman cannot do. Women in Leihitu, Central Maluku Regency, do not get inheritance rights, they only have the right to enjoy as long as they are not married. If they are married, then they do not have the right to enjoy it again, but they will have the right to enjoy dati in their husband's family

1. INTRODUCTION

The development of national law must be rooted in and adopted from the existing people's law, so that Indonesian national law must serve the interests of the Indonesian people and nation¹. The results of the Seminar on Customary Law and National Law Development, one of the points formulated, stated: That Customary Law is one of the important sources to obtain materials for national development that leads to legal unification and especially that which will be carried out through the act of statutory regulations. without neglecting the emergence/growth and development of Customary Law and Courts in Legal Development². Theoretically, the heredity system can be divided into three types, namely:

- a) The patrilineal system is a hereditary system drawn from the father's line, where the position of men is more prominent than the position of women.

¹ Soerjono Soekanto, *Masalah Kedudukan Dan Peranan Hukum Adat* (Jakarta: Akademika Pressindo, 1978), p. 1.

² Badan Pembinaan Hukum Nasional, "Seminar Hukum Adat Dan Pembinaan Hukum Nasional" (Jakarta, 1976), p. 251.

- b) The matrilineal system is a hereditary system that is drawn according to the maternal line, where the position of women is more prominent than the position of men in inheritance (such as the Minangkabauw, Enggano and Timor regions).
- c) The parental system (bilateral) is a hereditary system that is drawn according to a two-sided line (father/mother), where the position of men and women is not distinguished in inheritance (such as in Aceh, East Sumatra, Riau, Java, Kalimantan, Sulawesi, etc).

Maluku Province as an inseparable part of the Republic of Indonesia also has a patrilineal customary law community, whose blood ties follow the father's line. The patrilineal customary law community, especially in Central Maluku, which follows the patriarchal line has a kinship system following the father's lineage, where children born from marriage are included in the father's relatives and use the clan or the term Maluku people *Fam* the father. Each hereditary group forms a clan or group unit that is "fatherly law" with the names of their respective clans or better known as "fam". The rights and obligations of the child are determined by the father and his relatives. Boys have the most meaningful position in the family, their presence is highly expected. Girls are disadvantaged and their presence is not expected.

Seeing the developments in Maluku as a whole and especially the people in Leihitu Subdistrict, Central Maluku Regency in distributing inheritance to *dati* land for women, it turns out that they are not given full rights because there is an assumption that women will marry out and bear the clan and eat from their husband's family. so he is not responsible for his family of origin. If viewed from the side of the heirs, both according to Islamic law and civil law and customary law, women should also get their share as heirs from their parents, but what happened in Leihitu District women did not have inheritance rights over *dati* lands. The term *Dati* According to F. Valentijn (1666-1727) is a *hofdienst* for which during the months the *Hongi* Cruise is carried out and every household (*huisgezin*) is required to submit a man to perform *Hongi* duties for approximately one month on the VOC airline without receiving wages. or at your own expense.³

Based on the background, the formulation of the problem in this study is: How is the application of justice to the female heirs over the land of the *dati* in Leihitu District, Central Maluku Regency.

2. METHOD

This research was conducted by using an empirical juridical approach which is a qualitative analysis descriptive study⁴. This study attempts to describe the application of the principle of justice to the female heirs of the *dati* land in Leihitu District, Central Maluku Regency. The workings of the empirical juridical or sociological juridical method in this study are, from the results of data collection and discovery, as well as information obtained through a literature study of the basic assumptions or assumptions used in answering the problems in this study, then testing inductively-verify on current facts in society. Thus, the truth in a study has been declared reliable without having to go through a rationalization process.

³ Novyta Uktolseja, "Tanah *Dati* Dalam Perspektif Hukum Adat Di Maluku," in *Kompilasi Pemikiran Tentang Dinamika Hukum Dalam Masyarakat: Memperingati Dies Natalis Ke -50 Universitas Pattimura Tahun 2013* (Ambon: Anugerah Sejati, 2013), p. 10.

⁴ Maria S W Sumardjono, *Pedoman Pembuatan Usulan Penelitian Sebuah Panduan Dasar* (Jakarta: Gramedia Pustaka Utama, 2001), p. 10.

3. RESULTS AND DISCUSSION

3.1 Inheritance Rights for Women in Leihitu District, Central Maluku

As an inseparable part of the Republic of Indonesia, Maluku Province also has a patrilineal customary law community, whose blood ties follow the patrilineal line. The patrilineal customary law communities, especially in Central Maluku who follow the patriarchal line, have a kinship system following their father's lineage, where children born from marriage are included in the father's relatives. Each hereditary group forms a clan or group unit that is "fatherly law" with the names of their respective clans or better known as "fam". The rights and obligations of the child are determined by the father and his relatives.

Boys have the most meaningful position in the family, their presence is highly expected. Girls are disadvantaged and their presence is not expected. If there is no son in a family, then their life is less than perfect. Sons as successors are highly expected and if in a family there is no son, then the family is considered to be on the verge of extinction because there is no successor for their descendants. The absence of male descendants causes families to adopt sons from distant and close relatives to continue their lineage. The father's relatives then determine and regulate what is allowed and prohibited for the child, including regarding marriage, inheritance and property in the family. The child's relationship with relatives is prioritized on the father's relatives. The role of women/mothers and maternal relatives is not that significant.

The patrilineal customary law community in Central Maluku is still thick with a culture that highly respects men as leaders. Men are in a higher position than women. Women live side by side with men and live together, but it is undeniable that the influence of culture and customs that highly respects the position of men still characterizes life with indigenous peoples. The patrilineal customary law community in carrying out their daily lives is colored by a strong patriarchal culture. Boys in the family have a priority in the family compared to girls.

In the life of the people in Leihitu District, Central Maluku Regency, there is a patriarchal culture. In life together there is always an interaction between men and women. Each of them carry out their rights and obligations for the sake of survival. Women's rights are often not equated with men's rights. Men are considered superior to women, men as first class citizens and women only as second class citizens who are often sidelined in life together.

Everyone, both men and women have the same rights and positions in society. Rights and obligations do not recognize the distinction between men and women, all have the same rights and obligations and their position is not distinguished under the law. Men are given their own portion and even their dominance sometimes marginalizes the rights of women in the customary law community. The position of women in the customary law community, especially in Central Maluku is in a weak position, they seem to be second-class citizens in the customary law community group and this has been going on for a long time and has become a value system that is firmly held to regulate life with legal communities. custom. The weak legal position of women in customary law communities in Central Maluku surrounds everyday life. This includes the weak position on inheritance of *dati* land as one of the types of customary land owned by indigenous peoples in Central Maluku. From the results of interviews obtained in the field, it can be seen that women do not have inheritance rights over land, they only enjoy.

As a consequence of the adoption of the Patrilineal family system, the role of women in relation to inheritance is not so great. Even public opinion in the community until now has not been able to give the right to inherit to daughters⁵. In customary law communities, the balance of life is always maintained in harmony. A balanced life is believed to maintain the integrity and sustainability of the life of the indigenous peoples as a whole. The life of the customary law community highly upholds the values that have been passed down from generation to generation by the grandmothers their ancestors. Likewise, the patrilineal customary law community also highly respects the domination of men in every line of life. The values that exist and develop and are used as guidelines in behavior to glorify the position of men in customary law communities. Men are given their own portion and even their dominance sometimes marginalizes the rights of women in the customary law community.

The origin of the word inheritance comes from the Arabic word, namely "inheritance" grammatically means "remaining" then thus if associated with the issue of inheritance law, the word inheritance means people who are entitled to receive the inheritance of the property left by the dead, and popularly termed the "heir".⁶

In inheritance in Maluku, there are two classes of inheritance, namely inheritance and inheritance. Heritage assets are all assets that were originally owned by a person, originating from a personal business and after the owner's death was inherited by his heirs. As for the dati hamlets, apart from being indivisible, the dati hamlets also cannot be divided. In Landraad Saparua's decision No. 9/1919 it is stated that the head of the dati may not divide the dati, so that some of the hamlets of the dati belong to one of its members, while others belong to another. So both inheritance and real estate are in principle an inheritance that cannot be divided. The difference in the way of inheritance is that inheritance is inherited by relatives from the mother's side (cognatis), while inheritance is inherited by relatives from the father's side (agnatis). Inheritance property can lead to personal rights (individualization), but this property remains a common property (collective), cannot become individual property.

Inheritance rights for women specifically in the middle of the Leihitu sub-district, where the majority of the community follows religious law, namely Islamic law for the nuclear family consisting of father, mother and children (daughter and son), then the distribution is that boys get one share while girls get half the share. The legal principle in Islamic inheritance does not look at the differences between men and women, all heirs, both male and female, have the same rights as heirs. But only the comparison is different. Indeed, in Islamic inheritance law the emphasis is on balanced justice, not equal justice as fellow heirs.⁷ However, for certain inheritances, such as inheritance rights over dati land which is a hereditary tradition, a girl is not entitled to an inheritance, but as long as she is not married, she is entitled to enjoy it after marriage, so she is not entitled anymore.

In customary law, especially customary land law in Maluku, which is a group of indigenous peoples who are very thick with patriarchal culture, women's rights are sometimes marginalized. Men are given more rights, both management rights and

⁵ I Putu Andre Warsita, I Made Suwitra, and I Ketut Sukadana, "Hak Wanita Tunggal Terhadap Warisan Dalam Hukum Adat Bali," *Jurnal Analogi Hukum* 2, no. 1 (2020): 83–87.

⁶ Sofyan Mei Utama, "Kedudukan Ahli Waris Pengganti Dan Prinsip Keadilan Dalam Hukum Waris Islam," *Jurnal Wawasan Yuridika* 34, no. 1 (2016): 68–86, <https://doi.org/10.25072/jwy.v34i1.109>.

⁷ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender," *Jurnal Ilmu Hukum* 3, no. 4 (2012).

customary land tenure rights. Women are only given the right to cultivate and take the results, even then sometimes they are limited.

3.2 Justice for Women in the Distribution of Traditional Inheritance in Leihitu District, Central Maluku

The patrilineal customary law community also highly respects the domination of men in every line of life. The values that exist and develop and serve as guidelines for behavior to glorify the position of men in customary law communities. In customary law, especially customary land law in Maluku, which is a group of indigenous peoples who are very thick with patriarchal culture, women's rights are sometimes marginalized. Men are given more rights, both management rights and customary land tenure rights. Women are only given the right to cultivate and take the results, even then sometimes they are limited.

The position of women in the customary law community structure, especially in Central Maluku is in a weak position, they seem to be second-class citizens in the customary law community group and this has been going on for a long time and has become a value system that is firmly held in regulating life together with legal communities. Petuanan rights of indigenous peoples in Central Maluku Regency are known as, Land Petuanan Rights and Sea Petuanan Rights. Land Petuanan Rights are the rights of indigenous peoples over the land areas owned by them and Sea Petuanan Rights are the rights of indigenous peoples over the sea areas they own. This right includes the right to extract, process, and preserve natural resources. The head of the Dati is known as the Head of the Dati.

The head of the Dati refers to himself as a person who acts for himself and according to custom represents the other heirs of the dati he represents without mentioning the names of his daughters. The Head of Dati's authority to deal with cases before the Court is the sole right of the Head of Dati where the Dati's child is not entitled to personally file a lawsuit with the Court regarding Dusun Dati. Although the Head of Dati can act on behalf of the Dati, all of them must have the approval of the Dati's children, every policy taken must have the approval of the Dati's son so that in return the Head of Dati receives an amount that is more than the results of the Dusun Dati. Tulung Dati is a member of the Dati who is not a direct descendant according to the paternal line of the Dati concerned. Even if properly researched, there may still be kinship or blood relations. The appointment of the tulung dati was not only carried out by the head of the Dati but with the approval of the State Saniri after first obtaining the approval of the sons of the dati and the tulung dati.

After becoming a tulung dati, he broke his legal relationship with his original relatives. Tulung dati had to let go of the old fam/marga and replaced it with the fam/marga of the relatives who adopted it. Likewise, the rights in the previous data are deleted and replaced with rights in the data they enter. Because in the Dati Law that one can only eat from one dati only. The rights and obligations of the tulung dati are the same as the rights of the children of the dati. Dati's children are meant only sons of one daughter, daughters are not allowed to become daughters of dati because the duties of a dati are not suitable for girls, because by their nature they cannot carry out other jobs that require physical strength. In fact, not all boys can become daughters, but only those who have adequate physical strength can become daughters.

Land has a very important meaning in human life, because most of the human life depends on the soil. There is a close correlation between humans and land and there is not

a single human being in this world who does not need land⁸. In principle, a woman is not allowed to be a child of a noble or a tulung of a daughter. In the Landraad decision No. 107/1919 it is stated that it is not permissible for a married or unmarried woman to be a tulung dati. The reason is not only because it prohibits or covers up the rights of a woman, nor is it because of the patrilineal kinship structure in which the rights of women are less than those of men. However, because of the heavy and difficult task of getting there for those who follow the Hongi voyage for a long time and the challenges are tough⁹. In addition to land has a very meaning important for humans, land also has important position for life customary law community communally as well as individually.¹⁰

According to the principle of dati law, a person can only have dati hamlets if they have done the dati's duties first. For those who do not carry out the dati's duties, they do not have the right to eat from the dati as a child of the dati because the right to eat from the dati is a form of compensation for the achievement of carrying out the duties of the dati. However, even though a woman cannot become a child or tulung dati with her own rights, they have the right to eat as long as they are not married.

According to the assumption, as long as a woman is not married, she is under the protection of her relatives in a dati alliance. The rights of women to hamlet dati can be distinguished as follows:

- a) The rights of unmarried daughters. As stated earlier that girls cannot become children of dati or tulung dati who stand alone with the right to eat from dati like boys. This provision is based on the consideration that according to nature, women are not worthy to carry out the duties of the Dati. However, as long as she is not married, a woman may enjoy the dusun dati and its products with the children of the dati or the tulung-tulung dati. Because as long as he is not married, he is in the protection of his relatives, so the part that is received by the daughters is not part of a child or tulung dati but part of a person who must be protected. This gift is more human than his legal right.
- b) The rights of married women. If a daughter from a dati alliance marries, then she loses her right to eat from a dati from her origin. Landraad Saparua with Decree No.10/1918 said that a daughter who marries loses her father's rights to her father's daughter because by marriage she switches to her husband's inheritance. There are three reasons for the termination of the right to eat from a married woman, namely:
 - 1) By marrying a daughter, then according to the form of marriages that marry by asking for or marrying honestly and based on the kinship structure which is fatherly law, the daughter is removed from her original kinship structure and changes or moves to become a member of her husband's kinship. This resulted in the loss of his rights to the dusun dati belonging to his parents and shifting to the dusun dati from his husband's relatives.

⁸ Ahyar Ari Gayo, "Perlindungan Hukum Hak Atas Tanah Adat (Studi Kasus Di Provinsi Aceh Khususnya Kabupaten Bener Meriah)," *Jurnal Penelitian Hukum De Jure* 18-03-03 (2018): 18-30, <https://doi.org/10.30641/dejure.2018.V18.289-304>.

⁹ Margi E M Tahapari, "Paradigma Perubahan Nilai Tentang Kedudukan Hukum Perempuan Atas Tanah Dati Dalam Perspektif Kesetaraan Gender" (Universitas Hasanuddin, 2013).

¹⁰ Novyta Uktolseja and Pieter Radjawane, "Tinjauan Juridis Perkembangan Tanah-Tanah Adat (Dahulu, Kini Dan Akan Datang)," *SASI* 25, no. 1 (2019): 13-26, <https://doi.org/10.47268/sasi.v25i1.146>.

- 2) If a married daughter is still allowed to eat from her mother's origin, then she "eats two daughters" i.e. from her mother's line and from her husband, while under the law, this is not allowed because a person can only eat from one child.

If a daughter who is married is still allowed to eat from her native origin and then she dies, then the rights to the *dusun dati* will certainly pass to her heirs so that it will result in people from outside the kinship being able to enjoy the rights to the *dusun dati*. This is the reason why a married woman cannot be entitled to a *dusun dati*. Decision Landraat Saparua number 10/1918.

4. CONCLUSION

Dati of land is a form of inheritance which is one of the most vital objects that is often debated and contested in the indigenous people of Maluku. *Dati* can be interpreted that it is a right and also an obligation that must be carried out by everyone to be equally responsible for carrying out and completing the work assigned to them. Inheritance in customary areas in Maluku there are two classes of inheritance, namely inheritance and inheritance. Heirlooms are all assets that were originally owned by a person, originating from a personal business and after the owner's death was inherited by his heirs. Inheritance rights for women specifically in Leihitu Subdistrict, Central Maluku Regency, where the majority of the people follow religious law, namely Islamic law. In the main family consisting of father, mother and children (daughter and son), in the division of inheritance, boys get one share while girls get half. However, for certain inheritances, such as inheritance rights over *dati* land which is a hereditary tradition, a girl is not entitled to an inheritance, but as long as she is not married, she has the right to enjoy it and if she is married, she is no longer entitled to an inheritance. According to the principle of *dati* law, women do not get inheritance rights to *dati* land and this is something that is considered fair because a person can only own *dati* hamlets if they have done the *dati*'s duties first. For those who do not carry out the *dati*'s duties, they do not have the right to eat from the *dati* as a child of the *dati* because the right to eat from the *dati* is a form of compensation for the achievement of carrying out the duties of the *dati*. However, even though a woman cannot be a child or *tulung dati* with her own rights, they have the right to eat as long as they are not married. According to the assumption, as long as a woman is not married, she is under the protection of a male relative in a partnership.

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