

The Effectiveness of the Notary's Role in the Inheritance Distribution Process in Society: A Comparative Study Between Batak Toba Customary Law and Civil Law

Natasya Margaretha, S.H.¹, Bono Budi Priambodo, S.H., M.Sc.²

natasyaamargareth@gmail.com¹, bonobp@ui.edu²

^{1,2}Faculty of Law, Universitas Indonesia, Indonesia

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Abstract

This paper aims to find out and analyze the role of notaries in the process of distributing inheritance to the community, especially to the Toba Batak Customary Law and Civil Law and how to implement the Toba Batak customary inheritance law itself to people living outside their customary territory. The inheritance system in the Batak Toba community adheres to a patrilineal system where children born in the Batak Toba tribe will inherit their fathers where the correct ones who are considered heirs are sons. Along with the development of the times, that the inheritance system in the Batak Toba community itself has changed, especially for urban communities where for urban communities the Batak Toba tribe follows the national law, namely the Civil Code, where the distribution of inheritance for boys and women will get the same share.

1. Introduction

Based on its form, the legal system in Indonesia is divided into two categories: written law and unwritten law.¹ Written law refers to legal norms codified in statutory regulations, whose types and hierarchical structures are regulated by Law No. 12 of 2011 on the Formation of Legislation. In contrast, unwritten law encompasses all norms and rules that are not formally codified but have long existed and are practiced by society in daily life. A prominent example of unwritten law is hukum adat (customary law).

¹ Muhajir dan Luh Rina Apriani, *Hak Waris Perempuan dalam Sistem Kekeluargaan Patrilineal Melalui Putusan Pengadilan*, (Jakarta: Damera Press, 2022), hlm. 2

Customary law in Indonesia is highly diverse, with each region possessing its own unique set of customary legal norms. For communities that adhere to customary law, it is considered a manifestation of the community's collective legal consciousness—living and evolving alongside the people who observe it. Customary law governs various areas of law, including family law, marriage law, land law, criminal customary law, debt-related customary law, and inheritance law.²

Legal pluralism in Indonesia is inseparable from its historical development. One clear example is the existence of multiple inheritance law systems. Efforts to unify inheritance law in Indonesia have consistently faced challenges in aligning legal norms with the social and cultural realities of its diverse population. The difficulties stem from Indonesia's wide-ranging cultural patterns, religious beliefs, social systems, customs, and kinship structures. As a result, the applicable inheritance law still depends on which legal system—customary, religious, or civil—governed the deceased.³

In Indonesia, there are three applicable inheritance law systems: Western inheritance law as codified in the *Burgerlijk Wetboek* (Civil Code), Islamic inheritance law, and customary inheritance law. If the deceased (the testator) is classified as a member of the indigenous population (*pribumi*), then customary inheritance law will apply. Conversely, if the testator belongs to the European group or to the Foreign Eastern Chinese group, the applicable law is the Civil Code (BW). For non-Chinese Foreign Eastern groups (such as Arab, Pakistani, Indian, etc.), their respective customary inheritance laws may apply. However, if religious influence is dominant in their daily lives, then the inheritance will be governed by the applicable religious law.⁴

Indonesian society often faces difficulties in distributing inheritance, many of which lead to disputes and legal conflicts. This includes communities that follow a patrilineal kinship system, such as the Batak Toba people, who trace lineage through the male line. In such families, daughters often face gender-based discrimination. This occurs because the patriarchal nature of the patrilineal system places men in dominant roles, assigning lineage continuity exclusively to sons while excluding daughters from that status. Consequently, women are typically denied the right to inherit, as they are not considered part of the lineage successors.

² Ni Nyoman Sukerti, "Perkembangan Hak Perempuan di Bidang Waris dalam Hukum Adat Bali", *MMH*, Jilid 20 No.1 Maret 2011, hlm. 86

³ Ellyne Dwi Poespasari, Soelistyowati, dan Erni Agustin, *Kapita Selekta Hukum Waris Indonesia* (Jakarta : Kencana, 2020), hlm 4

⁴ Badan Pembinaan Hukum Nasional (BPHN), Simposium Hukum Waris Nasional, (Jakarta : Departemen Kehakiman), hlm. 1

In contrast, the Indonesian Civil Code (*KUHPerdata*), specifically Article 832, states that legitimate blood relatives—whether born within or outside of marriage—as well as the surviving spouse, are entitled to inherit.⁵ This indicates that, under civil law, there is no distinction between sons and daughters in terms of inheritance rights. Furthermore, Article 584 of the Civil Code stipulates that one way to acquire ownership of property is through inheritance, either by virtue of statutory succession or by testament (will). Thus, inheritance is recognized as a legal means to obtain ownership (*eigendom*).⁶

Due to the perceived injustice in inheritance disputes, many parties choose to resolve the matter through the legal system by filing inheritance claims with the district court. When such disputes arise, the involvement of an impartial third party is essential to manage and guide the heirs and any third parties involved. This neutral party is typically a notary.

According to Article 1(1) of Law No. 2 of 2014, which amends Law No. 30 of 2004 on the Position of Notary, a notary is a public official authorized to create authentic deeds and carry out other authorities as prescribed by law.⁷ Essentially, the notary plays a vital role in formalizing the legal actions agreed upon by the parties, ensuring that these are clearly and legally documented. A notary must fully understand the legal process involved in the drafting of such deeds.

The distribution of inheritance through a notarial deed can serve as an alternative to litigation, which is the more common option chosen by Indonesian society. The agreement of the involved parties, as formalized in a notarial deed, can serve to clarify the terms of inheritance distribution and help prevent potential disputes in the future. From the perspective of Indonesia's positive legal system, there are several recognized methods for determining and formalizing the division of inheritance. First, it may be carried out through a court decision. Second, it may be conducted through a notary, acting as a public official authorized to draft a deed of partition and inheritance distribution.

The responsibility of a notary arises from the duties and authorities granted to them by law. In drafting a deed, the notary is accountable for the formal validity of every deed they prepare. Additionally, a notary may also bear responsibility for the material accuracy of a deed if it is proven that their negligence has caused harm to the parties involved. A notary's authority in creating an authentic deed must be

⁵ KUHPerdata, Pasal 832

⁶ KUHPerdata, Pasal 584

⁷ *Undang-Undang Tentang Perubahan Atas Undang-Undang Jabatan Notaris Nomor 30 Tahun 2004*. UU Nomor 2 Tahun 2014 No. 3, TLN No. 5491, selanjutnya disebut UUJN, Pasal 1 ayat 1

exercised impartially and without bias toward any client. This is because the fundamental role of a notary is to prevent legal disputes between parties engaging in legal acts.⁸

2. Research Method

The research method employed in this study is the doctrinal legal research method. Muhamad Muhdar explains that the doctrinal approach involves solving legal problems by relying on written laws and legal practices.⁹ Doctrinal legal research focuses on doctrines derived from rules, principles, or norms, and it is primarily conducted through literature review or statutory analysis. The data obtained is then analyzed using a qualitative approach, as it relies mostly on library materials and produces descriptive-analytical findings. The typology of this research is explanatory. According to Jarot Didgo, explanatory research aims to test a hypothesis that may either strengthen or refute the findings of previous research.¹⁰ In this study, the explanatory nature is evident in the use of prior similar research as a basis for formulating the main problems and several research questions.

The type of data used in this study is secondary data, which includes references on inheritance distribution, academic journals, books, official documents relevant to the research topic, and findings from previous studies. The secondary data used in this research consist of three types of legal materials: primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials include the Notary Law (*Undang-Undang Jabatan Notaris*) and the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). The secondary legal materials include books, legal journals, academic articles, and other sources related to the research topic. The tertiary legal materials include dictionaries.

3. Results and Discussion

The Role of the Notary in the Inheritance Distribution Process in Society: A Comparative Perspective Between Batak Toba Customary Law and Civil Law

Communal living is a hallmark of traditional Indonesian society, which is characterized by a strong sense of community and shared responsibilities. Within the framework of customary law (*hukum adat*), an individual is inherently bound to the community, as individual life is primarily understood to serve the

⁸ Lusiani Indah Puspita dan Ery Agus Priyono, "Analisis Yuridis Peran Notaris dalam Penyelesaian Sengketa Pembagian Harta Warisan", *Notarius*, Vol.16, No.2 (2023), hlm. 1030

⁹ Muhamad Muhdar, *Penelitian Doktrinal dan Non Doktrinal Pendekatan Aplikatif dalam Penelitian Hukum*, (Samarinda : Mulawarman University Press, 2019), hlm. 11

¹⁰ Dr.Jarot Didgo Ismoyo, S.H., M.H., *Metodologi Penelitian Hukum Mendapatkan Kebenaran Berdasarkan Konsep Hukum*, (Depok : PT. Raja Grafindo Persada, 2019), hlm. 5

collective interests of the group.¹¹ In customary law communities, social structure is often genealogical in nature. This means that members of such communities believe they are connected by a common lineage and are bound together by a sense of order based on the belief that they all descend from a shared ancestor.¹²

In customary law communities determined by genealogical (lineage-based) factors, three types of kinship systems are recognized¹³:

1. **Patrilineal Kinship System** – This is based on the male lineage and is commonly found in the customary communities of Batak, Bali, and Ambon.
2. **Matrilineal Kinship System** – This is based on the female lineage and is practiced by the Minangkabau customary community.
3. Lineage traced through both the male and female lines is generally referred to as a **parental** or **bilateral** kinship system, which can be found among the Javanese community.

This paper specifically examines the Batak Toba customary community, which adheres to a **patrilineal** kinship system. This system, practiced by the Batak people, places significant importance on male descendants in continuing the family lineage, as only sons are considered capable of passing down the family name (*marga*) to their offspring. In other words, the *marga* of children born within a family follows that of their father, not their mother.¹⁴

Similarly, under Batak Toba customary inheritance law, only sons are entitled to inherit their father's estate. However, this provision is sometimes relaxed in practice through the gifting of property, such as rice fields or livestock, from the father to his daughters. These gifted items are referred to as "**hauma bangunan**".¹⁵ Such gifts represent the transfer of property within the family circle. In cases where the deceased leaves behind only daughters, close relatives may agree to allocate part of the estate to them. This distribution is not automatic, but must be based on the consent of the closest family members.¹⁶ However, if the family does not agree to distribute any inheritance to the daughters, the property will be transferred to the deceased's brothers. In such

¹¹ Soepomo, *Hubungan Individu dan Masyarakat dalam Hukum Adat*, (Jakarta : Pradnya Paramita, 1983), hlm. 10.

¹² *Ibid*, hlm. 10

¹³ *Ibid*, hlm. 32

¹⁴ Meliyana Yustikarini, *Kedudukan Anak Perempuan dalam Hukum Waris Adat Batak*, (Jakarta: Damara Press, 2022), hlm. 5

¹⁵ Surojo Wignjodipuro, *Pengantar dan Azas-azas Hukum Adat*, (Bandung : Alumni Bandung, 1973), hlm. 121

¹⁶ Meliyana Yustikarini, *Ibid*, hlm. 6

cases, the brother who receives the inheritance is obligated to provide for the needs of the deceased's daughters until they are married.

In Batak Toba customary law, the inheritance process does not begin immediately after death. It typically opens 40 to 100 days after the decedent's passing, following the completion of certain traditional rituals. These provisions are not codified in formal law, but are instead based on customary practices that have evolved within the community.¹⁷

The rules governing inheritance under customary law differ significantly from those under civil law. In customary law, inheritance encompasses the transmission of both tangible and intangible wealth from one generation to the next.¹⁸ In contrast, civil inheritance law operates on the principle that only rights and obligations of a financial nature can be inherited—those that can be valued in monetary terms. Civil inheritance law also adheres to the principle derived from the French legal maxim "*le mort saisit le vif*", meaning that upon a person's death, all their rights and obligations are immediately transferred to their heirs. The inherited estate may consist of assets (*activa*), such as tangible property or claims against third parties, and liabilities (*passiva*), such as debts owed to third parties or other obligations.

According to civil law, inheritance rights become valid only upon the death of the decedent, and only if the heirs are still living at that time. In other words, inheritance occurs solely as a result of death and takes legal effect without the need for any ceremonial proceedings.¹⁹ This is stipulated in Article 2 in conjunction with Article 836 of the Indonesian Civil Code (*KUHPerdata*), which introduces a legal fiction: a child conceived before the decedent's death is considered to have already been born, provided the child's interest so requires. If the child is born alive, they are entitled to inherit; if they are stillborn, they are legally considered never to have existed.

In Batak Toba customary society, if a parent dies without having explicitly designated how their property should be distributed, a full family meeting—referred to as *Dalihan Na Tolu*—is held. This meeting is led by the eldest son and attended by key kinship groups, including *dongan tubu-boru* (siblings and in-laws), *hula-hula* (maternal uncles), and *dongan sahuta* (neighbors). The first item on the agenda is calculating the costs incurred during the funeral. Once these costs are deducted, any remaining inheritance is typically allocated to the youngest son, while daughters (*boru*) traditionally receive nothing.

In practice, this system of inheritance reveals clear gender bias, particularly

¹⁷ Ellyne Dwi Poespasari, Soelistyowati, dan Erni Agustin, *Kapita Selekta....*, hlm. 11

¹⁸ Imam Sudiyat, *Hukum Adat Sketsa Azaz*, (Yogyakarta : Liberty, 1981), hlm. 151

¹⁹ KUHPerdata, Pasal 830

favoring the eldest and youngest sons. The youngest son typically receives the most significant portion of the estate, such as ancestral land, the family home, and other inherited assets. The remaining sons divide the remaining property equally, while daughters are excluded entirely.²⁰

With social and intellectual progress, many have argued that such customs should be reconsidered and revised. Increasingly, Batak Toba communities, particularly those living in urban areas, are shifting toward more egalitarian inheritance practices. These groups often apply the principles found in the Indonesian Civil Code (*Burgerlijk Wetboek*), which recognizes equal inheritance rights for male and female children. As a result, property is more commonly distributed among all children, regardless of gender, based on the decedent's wishes.²¹ Nevertheless, in more traditional and rural Batak Toba communities, customary inheritance norms continue to be strictly followed. In these settings, only sons receive inheritance, while daughters are excluded, reflecting deeply ingrained patriarchal values.

Given these disparities, inheritance can be a highly sensitive and divisive issue within families. Unequal distribution often leads to disputes, conflict, and family breakdown. In such cases, it is essential to recognize the role of the notary (*notaris*) in facilitating fair and legally sound inheritance processes—especially when local customary law is invoked. As a neutral public official, the notary plays a crucial role in mediating between the parties involved, ensuring that the inheritance is distributed in accordance with applicable law—whether customary or civil. The notary is responsible not only for drafting authentic legal documents but also for promoting legal certainty and preventing future disputes among heirs.

The role of a notary in drafting legal deeds, particularly in the realm of customary law, is not without its challenges. One of the primary obstacles is the limited outreach and socialization efforts directed toward indigenous communities, who often lack a clear understanding of the notary's crucial function in the inheritance distribution process. A notarial deed guarantees legal certainty for the heirs and the inheritance itself, as it possesses full evidentiary strength. However, due to this lack of understanding, indigenous communities tend to place greater trust in their local traditional leaders than in notaries.

As a result of these challenges, notaries are expected to take a proactive role in providing legal education to customary communities.²² This legal outreach may

²⁰ Aisyah dan Novia Alexia, "Keberadaan Hukum Waris Adat Dalam Pembagian Warisan pada Masyarakat Adat Batak Toba Sumatera Utara", *Jurnal Ilmu Hukum*, Vol. 11, No. 1 (2022), hlm.6

²¹ KUHPperdata, Pasal 852

²² UUJN, Pasal 15 ayat 2 huruf e

include offering advice on customary law and inheritance procedures, aiming to enhance the community's legal awareness and reduce the likelihood of disputes among heirs.²³

The responsibility of a notary to serve the public by providing authentic deeds is part of their role as a public official. This also applies to the process of inheritance distribution under customary law. According to the Law on Notarial Positions (Undang-Undang Jabatan Notaris or UUJN), notaries are authorized to draft authentic deeds, provided that such deeds do not violate existing laws, public order, or moral principles.²⁴ In customary inheritance distribution processes conducted in the presence of a notary, the notary may act in a capacity similar to that of a traditional elder—serving as a neutral mediator who offers legal opinions, guidance, and solutions to the heirs who have agreed to execute a deed of inheritance distribution.

2.2 The Implementation of Batak Toba Customary Inheritance Law Among Communities Living Outside Traditional Territories

The inheritance distribution process among Batak Toba communities residing outside their traditional territories has undergone changes and adjustments in line with the evolution of modern life. One of the notable shifts is the recognition of daughters' rights to inherit property from both parents. Nevertheless, some Batak Toba families still adhere to customary principles, wherein only male descendants are considered rightful heirs.

Therefore, several general considerations remain relevant in the application of Batak Toba customary inheritance law among communities living outside traditional territories, including the following:

1. **Persistence of Customary Practices:** Although these communities now live outside their ancestral lands, some Batak Toba families continue to uphold customary practices in the division of their inheritance.
2. **Recognition of Traditional Principles:** The traditional Batak Toba principle that prioritizes male descendants as primary heirs may still be acknowledged in certain inheritance arrangements.
3. **Hybrid Approaches:** Some families may adopt a hybrid model that combines elements of Batak Toba customary inheritance law with national legal

²³ Freny Zulvyanita dan Widhi Handoko, "Upaya Penyelesaian Pembagian Waris Tanah Menurut Hukum Adat di hadapan Notaris", *Notarius*, Vol.16 No.2 (2023), hlm. 698

²⁴ KUHPerdata, Pasal 1320

provisions, such as those found in the *Burgerlijk Wetboek* (Indonesian Civil Code), particularly regarding equal inheritance rights for daughters and legal protections for all heirs.

4. **The Role of Notaries:** For Batak Toba individuals residing outside their traditional regions, notaries with knowledge of both customary and national legal systems can play a crucial role in drafting wills or other legal documents related to inheritance distribution.
5. **Family Deliberation as a Solution:** Despite being geographically removed from their traditional homelands, family consensus (*musyawarah keluarga*) can still serve as an effective means for reaching equitable agreements between heirs and the decedent in the division of assets.

4. Conclusion

The conclusions of this study are as follows:

a. **The Role of Notaries in Drafting Deeds in the Context of Customary Law**

The role of a notary in drafting legal deeds, particularly within the realm of customary law, certainly encounters various challenges. One notable obstacle is the lack of socialization or public education directed at indigenous communities, who often lack a comprehensive understanding of the notary's crucial function in preparing inheritance distribution deeds. In light of this challenge, notaries are expected to take a proactive role in providing legal outreach to these communities.

Such outreach may include legal counseling regarding customary law and inheritance distribution, aiming to raise awareness and improve the mindset of indigenous people concerning the applicable national legal system. This, in turn, can help minimize disputes among heirs. In the process of distributing inheritance in accordance with customary law—when done in the presence of a notary—the notary acts as a neutral elder or mediator who provides legal advice, opinions, and practical solutions to heirs who have mutually agreed to formalize the inheritance distribution through a notarial deed.

b. **Changes in the Inheritance Distribution Practices of the Batak Toba Community Living Outside Customary Areas**

The inheritance distribution process among members of the Batak Toba indigenous community residing outside their traditional territory has undergone significant changes and adjustments in line with modern developments. One of the major changes is the recognition of daughters' rights to inherit property from both parents. Nevertheless, there are still some Batak Toba families who continue to adhere strictly to traditional customary principles, where only sons are considered rightful heirs.

Recommendations

- a. In order to improve inheritance distribution within indigenous communities,

notaries should enhance their skills and knowledge concerning customary inheritance law. The government should also intensify efforts to disseminate information regarding inheritance law and related regulations. This can encourage indigenous communities to seek assistance from notaries rather than solely relying on customary elders, particularly when dealing with inheritance distribution and resolving potential future disputes. Such involvement ensures legal certainty in the actions taken by the involved parties.

b. The implementation of Batak Toba customary inheritance law for community members living outside their ancestral regions should be revised to reflect more equitable practices. This includes acknowledging the legal precedent set by Supreme Court Decision No. 179/K/Sip/1961, which considers daughters as legitimate heirs. This decision affirms the principle of equal inheritance rights for both male and female children. Furthermore, Article 852 of the Indonesian Civil Code should be applied, which clearly states that sons and daughters are entitled to equal shares of the inheritance.

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