

COMPARISON OF CIVIL INHERITANCE LAW AND TOBA BATAK TRADITIONAL INHERITANCE LAW REGARDING THOSE WHO ONLY HAVE DAUGHTERS AS HEIRS

Gracia Taruli Apriliani Sipahutar^{1,*}, Yunanto²

^{1,2}Master of Notary, Faculty of Law, Diponegoro University, Semarang, Indonesia
graciasphtr@gmail.com^{1,*}, yunanto@lecturer.undip.ac.id²

Received 29 Sept 2022 • Revised 30 Oct 2023 • Accepted 29 Nov 2023

Abstract

This research aims to determine the position of daughters in the distribution of inheritance based on Toba Batak customary inheritance law. This research contains a comparison of the laws contained in the Civil Code with the Toba Batak Traditional Inheritance Law that lives in society. The research method was carried out in a normative juridical manner using a comparative legal approach. This research uses primary legal sources, namely Legislation and Customary Law. Meanwhile, secondary legal sources are obtained from literature studies using journals or other written research. This literature study also uses sources obtained via the internet, such as expert opinions in webinar videos. The conclusion obtained is that inheritance distribution based on the Civil Code does not discriminate between men and women. However, the distribution of inheritance will depend on whether or not there is a will left by the testator. Meanwhile, distribution of inheritance based on the Toba Batak Customary Inheritance Law can be done when the heir is still alive and when the heir has died, which means that if the inheritance is divided when the heir has died then daughters will not have the opportunity to inherit due to the shift in the understanding of the Toba Batak traditional community, regarding the provision of inheritance and giving responsibility to the heir's brother.

Keywords: Inheritance, Toba Batak, Woman

INTRODUCTION

An American legal expert, Roscoe Pound pioneered the birth of the theory of the function of law as a tool for social engineering in society or what is known as "law as a tool of social engineering". This theory views that there is an interaction relationship between social change and the legal sector, namely that on the one hand there is Social change has an impact on legal change, as well as legal changes have an impact on social change. In other words, law reflects social values and norms in society and at the same time forms and strengthens these values and norms through legal rules.

Humans are social creatures who need other humans to form relationships with certain interests, but on the other hand humans also have their own interests. Based on this, norms are needed so that humans do not ignore the rights of other humans for their own interests. These social norms form a rule regarding what is right and what is not right in social life. Over time, these norms will become customs or beliefs regarding human behavior that are passed down to the next generation.

Indonesia as a legal state adheres to the concept of legal pluralism or the application of more than 1 (one) legal system for all Indonesian society. The legal system in Indonesia uses Customary Law, Western Law and also Islamic Law. The birth of the concept of legal pluralism in Indonesia was motivated by the diversity of tribes, nations, religions, cultures and customs that have lived and developed in society from one region to another in Indonesia.

The legal system in Indonesia has the same position, namely that there is no higher legal system, nor any lower legal system. So, when applying the legal system in a case in Indonesia, it looks at the legal case itself and is based on an agreement between the parties involved in the case.

There are various kinds of legal cases that occur in Indonesia involving Indonesian people, one of which is cases regarding wealth. The existence of legal pluralism in Indonesia sometimes creates its own problems for the litigants. This problem occurs because the parties do not agree to use a legal system that is considered detrimental to them. The problem that is often found in cases regarding wealth in the Toba Batak indigenous community is the distribution of inheritance which is considered unfair to women.

Indigenous people are people who have lived and implemented customs for a very long time starting from their ancestors. Theoretically, the formation of customary communities is caused by the existence of bonding factors that bind each member of the customary law community, namely genealogical factors (heredity) and territorial factors (territory). So that 3 (three) forms of customary law communities were formed, namely:

1. Genealogical law fellowship;

The main binding basis for members of a genealogical legal alliance group is similarity in descent or relatedness because they come from the same ancestor. This genealogical legal fellowship is divided into 3 (three) parts:

- Patrilineal Society;
A patrilineal society has a social structure that originates from the father's lineage or the male line and excludes the mother's lineage.
- Matrilineal Society; And
Matrilineal society has a social structure that originates from the mother's lineage or the female line and excludes the father's lineage.
- Bilateral or Parental Society.
Bilateral or parental society has a social structure that originates from the lineage of the parents, namely the father and mother together at the same time. So that the kinship relationship between the father's side and the mother's side runs in balance or parallel.

2. Territorial legal alliance; And

The main binding basis for territorial legal alliances is the area of birth and living life together in the same place. R. van Dijk differentiates territorial legal alliances into 3 (three) types as follows:

- Village Association (dorp);
Relationships that are formed from people living in a place of residence together in their own area and being subject to village officials who live in the center of the village.
- Regional Federation (streek); And
A relationship formed by communities living in an area of residence together and controlling shared customary land which consists of several hamlets or villages with a common customary government center.
- Association of several villages.
A relationship formed from a cooperative agreement to regulate common interests between several villages or clans located side by side.

3. Genealogical-territorial legal fellowship.

The main binding basis for genealogical-territorial legal alliances is that they are attached to a certain area of residence and are also tied to hereditary relationships in ties of blood and/or kinship.

Based on the description above, the Toba Batak indigenous people are members of a genealogical-territorial legal alliance with ties between indigenous communities based on regional residence which can be seen from the hereditary clan and based on hereditary or patrilineal kinship relationships.

By adhering to a patrilineal kinship system, the Toba Batak traditional law community is known for assigning numbers to their generations. This is done with the aim that the next generation can know their genealogy and their ancestors both from straight lines up and down and lines to the side. So if someone gives up their pedigree, they will receive social sanctions from the indigenous community because it is as if they have abandoned their family.

The Toba Batak indigenous people know an *umpasa* or proverb which reads: "*Jolo tinitip sanggar laho bahenon huru-huruan, jolo sinungkun marga asa binoto partuturan*" which means "First the cage is cut to make a bird cage, first ask the clan so that the kinship is known". This *umpasa* or proverb aims to ensure that in their interactions the younger generation must first prioritize getting to know each other and getting to know each other's clans, so that the younger generation can position themselves for the next step. This is in line with making a bird cage, where you first have to cut part of the bird cage as the material.

As an indigenous community that has a patrilineal hereditary or kinship relationship or follows the lineage from the father's side or the male side, the Toba Batak indigenous community has the view that men are the "bearers of the clan or successors of the clan", so that if there is a family that only has descendants daughters (*siteamon*) are considered to have failed to continue the genealogy in their family.

There are 2 (two) views on the patrilineal system in the Batak Toba traditional community, namely a good view that this system makes it easier for the younger generation to know their family tree and can position themselves well, but there is a less good view that this system creates discriminatory attitudes towards other people. Woman.

One of the discriminatory attitudes towards women is in the area of wealth, especially the distribution of inheritance. In the Toba Batak community, only men receive inherited property, either with their status as children or as siblings of the heir.

For families that have sons and daughters, only sons inherit, whether as the eldest or youngest child. So if there are 3 (three) sons and 1 (one) daughter where 1 (one) son and 1 (one) daughter are positioned in the middle then they do not receive inheritance. Likewise, if the family has 1 (one) son and 1 (one) daughter, the son will inherit the inheritance. However, if there is a family that has only daughters (*siteamon*), regardless of the number, the person who gets the inheritance is the heir's brother.

Apart from Customary Inheritance Law, Indonesia is familiar with Western Civil Inheritance Law, the regulations of which are contained in Book II, Articles 830 to Article 1130 of the Civil Code. Wirjono Prodjodikoro explained that inheritance is what and how the rights and obligations regarding a person's wealth when he dies will be transferred to other people who are still alive. There are 3 (three) important elements of inheritance distribution according to civil law, namely:

1. A decedent or *erflater* leaves wealth at death;
2. There is one or several heirs or *erfgenaam* who are entitled to receive the wealth left behind;
3. Inheritance is a form of wealth that is left behind and passed to the heirs.

There are 2 (two) important principles in inheritance based on the Civil Code, namely:

1. Inheritance assets can be opened or inherited to another party if a death occurs (Article 830 of the Civil Code);
2. There is a blood relationship between the heir and the heir, with the exception of the heir's husband or wife (the heir's husband or wife and the heir are still married when the heir dies) (Article 832 of the Civil Code).

In inheritance regulated by the Civil Code, there is a division into groups of *ab intestato* heirs as follows:

1. Group I : Legitimate child, husband/wife who lives the longest, including second wife or second husband and so on (Article 852 in conjunction with Article 852a of the Civil Code);
2. Group II : Parents and siblings, same father or mother (Article 852 jo. Article 857 Civil Code);

3. Group III : Blood family in a straight line upwards both in the father's and mother's lines (Article 853 Civil Code);
4. Group IV : Consanguineous family to the side up to the sixth degree from the father's side and mother (Article 861 in conjunction with Article 858 of the Civil Code).

Based on this background, it becomes the main problem to see how daughters in the Batak Toba traditional community do not seem to have inheritance rights from their fathers and what the solution is if the daughters claim their rights as legal heirs from the heir.

RESEARCH METHOD

The research was carried out using a normative juridical or doctrinal legal approach, where this method sees the law as what is written in legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate. Indonesian Dictionary provides the definition of an approach method as regular steps in a system to facilitate the implementation of a research activity in establishing a relationship with the subject or object of research to achieve the specified goal, namely understanding the research problem. Then normative juridical based on the Indonesian Dictionary is adhering firmly to legal norms or applicable legal rules. Meanwhile, according to the Indonesian Dictionary, law is a regulation or custom that is officially considered binding and aims to regulate social life in society.

Based on the above, it can be concluded that the normative juridical approach method is a set of systematic steps taken to carry out a research activity which is supported by establishing relationships with the subject and object of research as an effort to facilitate the implementation of a research activity to achieve the specified goal, namely creating a solution. scientific research that can help with problems in research, where systematic steps are carried out by including and analyzing norms or legal rules that apply as guidelines for community behavior.

This research is descriptive analytical in nature by presenting secondary data sources containing primary legal materials (legislation and jurisprudence), secondary legal materials (legal expert opinions, journals and books), and tertiary legal materials (webinars). Then data collection will use library research techniques. Library research is a series of activities related to collection methods library data, reading and taking notes, and processing the research material obtained.

Indonesian Dictionary provides the definition of analytical descriptive as describing what is and providing conclusions that are not based on the author's views. So it can be concluded that this research was carried out by describing the subject or object of the research based on the data or samples that have been collected as they are without providing the author's views which could change the meaning of the research.

RESULTS AND DISCUSSION

Differences between Western Civil Inheritance Law and Toba Batak Traditional Inheritance Law

a. Western Civil Inheritance Law

Inheritance law is a collection of regulations that regulate the law regarding the transfer of wealth left behind by the deceased and the consequences of this transfer for the people who acquire it, both in the relationship between them and them, as well as in the relationship between them and third parties. In this case there is also a transfer of wealth, both rights and obligations from heir to heir.

Inherited assets are all assets that exist and are left behind by the heir minus the heir's debts.

In an inheritance there are conditions that must be met, namely:

a. General conditions:

- A person has died (Article 830 of the Civil Code);
- There are heirs left behind (Article 836 of the Civil Code);
- There are assets left behind.

b. Special or absolute conditions:

- There must be a person who has died (Article 830 of the Civil Code), but there are exceptions, namely in the event of absence.

In Western Civil Inheritance Law, if there is a will, then inheritance is carried out according to what is contained in the will first, as stated in Article 874 of the Civil Code, namely:

"All the assets left behind by a person who dies, belong to all his heirs according to the law, but with a will, no legal provisions have been made."

Western Civil Inheritance Law regulates 2 (two) ways to obtain an inheritance, namely as follows:

1. *Ab Intestato*

The *ab intestato* inheritance system is an inheritance system based on law due to death or without a will. Based on this inheritance system, the heir is related by blood or marriage to the heir.

The *ab intestato* inheritance system classifies the groups of heirs as follows:

- Group I : Legitimate children, husband/wife who lives the longest, including second wife or second husband, and so on (Article 852 in conjunction with Article 852a of the Civil Code);
- Group II : Parents and siblings, same father or same mother (Article 852 in conjunction with Article 857 of the Civil Code);
- Group III : Consanguineous family in a straight line up both the father's and mother's lines (Article 853 of the Civil Code);
- Group IV : Consanguineous family extends to the sixth degree from both the father's and mother's sides (Article 861 in conjunction with Article 858 of the Civil Code).

These four groups can inherit because of their own position (*uit eigen hoofde*) and because of a change of place (*bij plaatsvervulling*/representation). These four groups will inherit based on the principle of rank, which means that the higher group or the family that is closer closes the opportunity for the lower group or the family that is more distant.

However, if these four groups do not exist, then the inheritance will fall to the state as the owner of the inheritance (Article 832 paragraph (2) of the Civil Code in conjunction with Article 520 of the Civil Code).

For illegitimate children who are recognized, they will occupy a separate place or position, which can inherit together in groups I, II, III and IV (Article 863 of the Civil Code).

2. By Testamentair

Testamentary inheritance law emerged after inheritance law according to statutory provisions due to:

- There was an idea that emerged in the Middle Ages that everyone could do freely with their property, so that it was normal for someone to want to give some or all of their property to someone else.
- Sometimes when an heir is still alive, he wants to give his property, either in part or in full, to a certain person. This is generally because there is a close relationship between the testator and the person.

Article 875 Civil Code put forward:

"What is called a will or testament is a deed that contains a person's statement about what he wants to happen after he dies, and which can be revoked again."

Article 874 of the Civil Code states:

"All the assets left behind by a person who dies belong to all his heirs according to the law, only in respect of that, no legal provisions have been made in a will."

So a will is a statement of the testator's will which is stated in a deed regarding what he wants, which will be carried out by the executor of the will after the testator dies. However, because this will is a statement of will, the heir can revoke the will he has made. Then the provisions of inheritance law are complete law and only a small part of them is coercive law.

There are conditions that must be fulfilled by the person who wants to make a will, namely:

1. Must be in a sound state of mind (895 Civil Code);
2. At least 18 (eighteen) years of age (Article 897 of the Civil Code);
3. The recipient of the will must already exist and still exist when the testator dies (Article 899 of the Civil Code).

Meanwhile, when implementing this will, you must pay attention to Article 912 of the Civil Code which regulates the incompetence of heirs as follows:

1. Those who were punished for killing the inheritor;
2. Those who have embezzled, destroyed, falsified wills;
3. Those who, through coercion or violence, have prevented the person who inherited the will from revoking or changing their will.

Based on the description of Western Civil Inheritance Law above, it can be concluded that inheritance using the Western Civil Law system will first look at whether the heir left a will or not. If the testator leaves a will, then that will be carried out properly. However, if the heir does not leave a will, then the distribution of the inheritance will be carried out based on the distribution of heir groups based on blood or marital relations as stated in the Civil Code.

So the inheritance system using Western Civil Inheritance Law uses the principle of justice, which does not differentiate between female heirs and male heirs. For this reason, the Civil Code emphasizes equal rights between women and men.

b. Toba Batak Traditional Inheritance Law

The term customary law comes from the Arabic "*Huk'm*" and "*Adah*" which means orders or provisions. *Adah* or custom in Arabic means "*habit*" or community behavior that always occurs.

The definition of customary law according to several experts is as follows:

- Soediman Kartohadiprojjo
Customary law is a certain type of unwritten law that has a unique rationale that is fundamentally different from other written laws. Customary law is not customary law because its form is not written, but customary law is customary law because it is structured on certain basic ideas which are fundamentally different from the basic ideas of western law.
- R. M Soeripto
Customary law is all the rules/customary regulations of behavior of a legal nature in all aspects of Indonesian life, which are generally unwritten which the community considers appropriate and binding on members of the community which are legal in nature because there is a general sense of justice, that These rules/regulations must be maintained by law officers and community officers with coercive measures or threats of punishment (sanctions).
- Soerjono Soekanto
Customary law is essentially customary law, meaning habits that have legal consequences (*sein-sollen*). In contrast to mere habits, habits which constitute customary law are actions that are repeated over and over again in the same form which leads to "*rechtsvordigeordering der samenlebing*".

So, based on the definitions mentioned above, it can be concluded that customary law is all the rules or customary regulations of behavior in unwritten form which are born from certain basic thoughts of indigenous peoples and if they are violated they will be subject to sanctions in accordance with existing law.

Customary Inheritance Law recognizes 3 (three) inheritance systems as follows:

- a. The Individual Inheritance System believes that heirs are individuals. In Batak customs, this system can be linked to the custom of *manjae* or a person's independence in starting a new life through marriage, where specifically parents will give inheritance or wealth to their children.
- b. The Collective Inheritance System is a system where the heirs jointly inherit inheritance which cannot be divided specifically among 1 (one) family or 1 (one) individual. This can be seen in customary rights to land that have been owned by ancestors to a clan. So that customary rights to the land are given collectively to all subsequent generations.
- c. The Majorat Inheritance System has the same concept as the collective inheritance system which provides its inheritance to the next generation. It's just that in this inheritance system there is a delegation of responsibility to the eldest child who will then be considered the leader of the household. In the Batak tribe, this inheritance system is applied to the male majorat system, which then considers the oldest male child as the leader.

Toba Batak Traditional Inheritance Law differentiates inheritance into 2 (two) conditions, namely as follows:

- Distribution of Inheritance When the Heir is Still Alive;
In this condition, several traditional activities will be carried out to express verbally to other Toba Batak indigenous peoples the heir's desire to give his inheritance to a certain person.
- Distribution of Inheritance When the Heir Dies.
In this condition, the distribution of inherited assets is carried out based on customs involving relatives who are still part of the heir's extended family.

The Toba Batak traditional community prioritizes men over women because of the belief that men are the successors of the clan, so this also applies to inheritance. In inheritance, distribution will be prioritized to men first, both from their position as children and as male siblings of the heir.

There are stages in giving an inheritance based on customary provisions that must be carried out before the parent dies in order to obtain approval from the extended family, namely:

- *Manggoli Sinamot* (Must);
Manggoli sinamot is a process of determining the limits of rights to assets that will be given to an heir by discussing it with the heir first.
- *Pasahat Sulang-Sulang* (Not mandatory);
Pasahat sulang-sulang is a form of respect for parents and then the parents will verbally state the gift of their inheritance to their children.
- *Ungkap Hombung* (Must).

Ungkap Hombung is a meeting of all the extended family, including the wife's family, to provide final certainty regarding how to distribute inheritance assets, including debts and receivables.

A person who has female offspring but no male offspring is called *napunu*. Then there is also the term *sipaenan* which means heir if you don't have a son. There is a misconception in the application of *sipaenan* which assumes that if a family does not have sons, then the *sipaenan* for inheritance is the family whose father is the same as the heir. However, basically *sipaenan* does not eliminate the inheritance rights of daughters.

In Toba Batak custom, if a person who dies only has daughters, then the person who is made *sipaenan* is the person responsible for the daughters. The person appointed as *sipaenan* has the obligation to provide life, customary costs for the wedding, and direct relatives (*hula-hula*) to fulfill all the traditional needs of the daughter left behind by someone who died. Based on these obligations, there is a high possibility that the traditional needs that must be met will involve a greater amount of expenditure than what has been inherited.

There is a term *sipangean* in Toba Batak custom which aims to make things easier for daughters by transferring responsibility to the heir. However, the existence of this *sipangean* cannot ignore women's rights as *pausang*.

In the Toba Batak tradition, daughters have the right to *pauseang*, which means giving property from their parents to their daughter when she marries. In the Toba Batak tradition, girls have rights that are obtained when they marry in the form of *pausang* property, this property is given by the girl's parents in the form of land or gold. Retired assets are included in the category of inherited assets given by parents while they are still alive, but with the condition that a marriage takes place first. The parent's assets in the form of land can be requested to be replaced with an amount of money according to the price of the land given by his parents.

Giving *pauseang* in the form of land to girls has tended to disappear or is rarely implemented. However, if the gift of *pauseang* is still there, often the property of *pauseang* is lost because the daughter travels out of town to migrate or is entrusted to her brothers or the King of Huta to take care of the land.

There is one piece of jurisprudence regarding the patrilineal system for the Toba Batak indigenous community, namely Decision Number 415 K/SIP/1970 dated 16 June 1971 concerning inheritance disputes in customs in the Tapanuli area where the Supreme Court stated that: "Customary law in the Tapanuli area has now developing towards giving equal rights to girls and boys."

Application of Western Civil Inheritance Law and Toba Batak Traditional Inheritance Law

Lawrence M. Friedman states 3 (three) characteristics of law that must be observed in social reality, namely: existing norms (legal substance), law enforcement (legal structure), and legal culture (legal culture). These three characteristics are needed in making observations to see how a legal rule operates and influences everyday life, where social forces will always influence the existence of a law, either by strengthening, destroying, renewing, or only showing certain aspects.

Customary law, which is unwritten provisions based on the understandings of indigenous peoples who have lived for a long time and continue to develop, has sanctions that will be imposed if indigenous peoples do not comply with the provisions of the customary law.

In the Toba Batak traditional community, the application of sanctions for non-implementation of the provisions in customary law is social sanctions. This social sanction usually takes the form of giving up rights and obligations to act according to Toba Batak customs. This sanction is considered very heavy because the life of the Toba Batak traditional community, from birth to death, is always based on customary provisions.

The implementation of inheritance in Toba Batak customary law is carried out by someone who acts as an interpreter. In this case, the interpreter is usually someone who is appointed and trusted in an extended family to distribute the inheritance given by the heir if there is no will or does not go through the customary inheritance process. This interpreter can be formed from parents or someone who is considered old by tradition, a member of the family, or a religious leader who is chosen by deliberation by the heirs.

In general, dispute resolution in the Toba Batak traditional community is carried out by deliberation, as is the case with inheritance. This deliberation was carried out by presenting the disputing parties, the heir's extended family, and the Traditional King as the leader of the deliberation. However, if this deliberation does not find an agreement, then the case will be brought to court using Western Civil Law in its implementation.

With the development of society's thought patterns, this causes the development of the existing legal system. This can be seen from the fact that quite a lot of Toba Batak traditional communities do

not apply inheritance only to sons, but also to daughters. This modernization process was motivated by the Supreme Court Decision Number 179/Sip/1961 which showed that there was equality between men and women.

Even though modernization has affected the Toba Batak traditional community, it is necessary to anticipate this by carrying out traditional heritage-giving activities such as *Manggoli Sinamot* and *Ungkap Hombung*. Carrying out these traditional activities will provide legal certainty for the heirs appointed by the testator before he dies.

Another legal certainty that can be carried out by the heir is by making a will based on Article 874 of the Civil Code which contains a statement of the heir's wishes for his heirs regarding the rights and obligations that must be carried out.

In contrast to the Toba Batak Traditional Inheritance Law, there are regulations regarding legitimate portie in Western Civil Inheritance Law, namely the part of the inheritance that must be given to heirs according to law. Article 914 of the Civil Code explains that what is included in a legitimate portie is someone who is a descendant and has a blood relationship with the testator, whose share of the inheritance cannot be set aside by a will. The distribution of inheritance will be given based on how many descendants they have and how far they are.

In applying Western Civil Inheritance Law you must look at the following principles of inheritance law:

1. The principle of *le mort saisit le vif* (Saisene's Rights);
This principle provides the understanding that inheritance does not require any legal action after someone dies, where based on this principle the rights and obligations of someone who dies will automatically transfer to their heirs.
2. Principle of Death;
This principle is contained in Article 830 of the Civil Code which states that inheritance can only occur due to death.
3. Individual Principle;
This principle means that individuals who can be heirs are individuals, so they cannot inherit as a group, ethnic group, or entire family.
4. Bilateral Principle;
This principle is contained in Article 850 of the Civil Code which states that a person does not only inherit from one lineage, so that the father's and mother's lineages must be given equal inheritance rights.
5. Principle of Degree.
This principle recognizes the term that the one who has a closer blood relationship, the inheritance will be given to him. This principle states that someone who is related by blood will deny other people the opportunity to inherit.

CONCLUSION

Inheritance using the Toba Batak Traditional Inheritance Law has 2 (two) divisions, namely when the heir is still alive and when the heir has died. In conditions when the heir is still alive, traditional activities will be carried out to verbally declare the gift of his inheritance. Meanwhile, when the testator dies, the inheritance will be given to the testator's sons or male siblings (if he only has daughters). The giving of inheritance to the male sibling of the heir is considered to have shifted from its initial understanding, namely not giving inheritance property but giving responsibility to look after the heir's daughter and ensuring that all her rights and obligations according to Toba Batak custom are fulfilled.

There are stages that parents must carry out before they die in terms of dividing inheritance before the Toba Batak traditional community. In addition, land which is inherited property cannot be given to women. This is due to the understanding that women will marry and move to their husband's family, so that inherited land is only given to men as successors to the clan. Inheritance implementation in the Toba Batak Inheritance Law is carried out by a Divider appointed by the heir's extended family to distribute the heir's inheritance if there is no will and does not go through the customary process of granting inheritance.

Meanwhile, Inheritance using Western Civil Inheritance Law which is based on the Civil Code will first see whether or not there is a will left by the testator. If the heir leaves a will, then the implementation of his inheritance will be based on the existing will. Meanwhile, if the heir does not leave a will, then the implementation of his inheritance will be based on the classification of heirs based on blood or marriage relations.

So, the use of Western Civil Inheritance Law is considered to provide an attitude of justice with equal rights between women and men. So that both women and men have the same position in implementing their rights and obligations. Therefore it is highly recommended by implementing legal pluralism in the Indonesian legal system, the heirs must see a legal system that is considered fair and beneficial to the parties. If there is no common ground regarding the use of this legal system, then the heirs can rely on the agreement between the parties.

Then for the Toba Batak traditional community who only have daughters, they can give gifts or bequests to their daughters to avoid the possibility that their daughters will not get their inheritance. This also applies to the Toba Batak traditional community who also have sons, but it is best for the sons to know about the gift or testamentary grant to avoid disputes in the future. The latter was suggested to the traditional kings, it is good to make written customary laws or provide outreach to indigenous communities regarding customary laws that have deviated or have become extinct in terms of their implications for the traditional lives of these indigenous communities.

REFERENCES

- Aisyah, A., & Alexia, N. (2022). *Keberadaan Hukum Waris Adat Dalam Pembagian Warisan Pada Masyarakat Adat Batak Toba Sumatera Utara*. Mizan: Jurnal Ilmu Hukum Volume II Nomor 1, Juni 2022. Retrieved from <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/2323>.
- C. Dewi Wulansari. (2014). *Hukum Adat Indonesia Suatu Pengantar*. Bandung: PT Refika Aditama.
- Djaja S. Meliala (2019). *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan (Edisi Revisi Keenam)*. Bandung: Penerbit Nuansa Aulia.
- Fatmawati, S. (2021). *Pembagian Harta Waris Terhadap Anak Perempuan Dalam Masyarakat Adat Batak Toba (Studi Kasus Di Desa Padang Mengkudu Kecamatan Ujung Padang Kabupaten Simalungun Sumatera Utara)* (Thesis, Universitas Islam Riau). Retrieved from <https://repository.uir.ac.id/16414/>.
- Hilman, H. (2003). *Hukum Waris Adat*. Bandung: PT. Citra Aditya Bakti.
- Hukum Adat Batak Toba.
- Isa Arief. (1986). *Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata Belanda Jilid I*. Jakarta: PT Intermedia.
- Kitab Undang-Undang Hukum Perdata.
- Lasmaria & Ning Adiasih. (2019). *Analisis Yuridis Kedudukan Anak Perempuan Dalam Mewaris Harta Asal Pauseang Berdasarkan Hukum Waris Adat Batak Toba (Studi Kasus Putusan Pengadilan Negeri Balige Nomor 47/PDT.G/013/PN.BLG)*. Jurnal Reformasi Hukum Trisakti Volume 1 Nomor 1, Mei 2019. Retrieved from <https://ejournal.trisakti.ac.id/index.php/refor/article/view/7139>.
- Lathif, N. (2017). *Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat*. Pakuan Law Review.
- Mariaty P, H. (2003). *Perkembangan Hak Waris anak Perempuan dan Janda pada Masyarakat Batak Toba di Perkotaan (Suatu Penelitian di Kelurahan Sudi Rejo II, Kecamatan Medan, Kota Medan)* (Doctoral Dissertation, Universitas Sumatera Utara).
- Monang Naipospos. (2022). *Hukum Waris Adat Batak*. Webinar Batak Diaspora Marnonang. <https://youtu.be/trYt337Y0ek>.
- Mulyadi (2022). *Hukum Waris Dengan Adanya Surat Wasiat*. Semarang: UNDIP Press.
- Nangka, B. (2019). *Penyelesaian Sengketa Berdasarkan Hukum Waris Adat Berdasarkan Sistem Kekerabatan*. Jurnal Elektronik Bagian Hukum Keperdataan Fakultas Hukum Unsrat LEX PRIVATUM Volume VII Nomor 3, Maret 2019. Retrieved from <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25923>.
- Sari, Indah. (2014). *Pembagian Hak Waris Kepada Ahli Waris Ab Intestato dan Testamentair Menurut Hukum Perdata Barat (BW)*. Jurnal Ilmiah Hukum Dirgantara Volume 5 Nomor 1, September 2014. Retrieved from <https://journal.universitassuryadarma.ac.id/index.php/jjhd/article/download/99/96#:~:text=Pada%20Hukum%20Waris%20Perdata%20Barat,si%20pewaris%20dalam%20surat%20wasiat>.
- Sartika, Dewi. (2018). *Hukum Atas Kedudukan Perempuan Dalam Hukum Waris Adat Batak Toba Di Desa Hutalontung, Kecamatan Muara*. Jurnal Universitas HKBP Nommensen, Agustus 2018. Retrieved from <https://repository.uhn.ac.id/handle/123456789/1472>.
- Siahaan, Edwin Marganda Tua. (2022). *Pembagian Harta Warisan Untuk Anak Perempuan Tunggal Dalam Adat Batak Toba*. Mizan: Jurnal Ilmu Hukum Volume II Nomor 1, Juni 2022. Retrieved from <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/2504>.
- Sianturi, Wahila N., Grace T. Hutahaean, Gomgom T. P. Siregar, Alusianto Hamonangan. (2023). *Kedudukan Perempuan Dalam Hukum Waris Adat Batak Toba (Desa Untemungkur Kecamatan*

- Muara*). Jurnal Prodi Ilmu Hukum Universitas Darma Agung RECTUM Volume 5 Nomor 1, Januari 2023. Retrieved from <https://jurnal.darmaagung.ac.id/index.php/jurnalrectum/article/view/2634>.
- Tim Hukumonline. (2023, May 22). *Pembagian Harta Waris Menurut Hukum Perdata*. Hukumonline.com. <https://www.hukumonline.com/berita/a/pembagian-harta-waris-menurut-hukum-perdata-1t6236c9ba3d767/#!>
- Tiorista. (2008). *Hak Mewaris Anak Perempuan Dalam Masyarakat Batak Toba (Studi Di Kecamatan Pangururan Kabupaten Samosir)*. (Thesis, Universitas Sumatera Utara). Retrieved from: <https://docplayer.info/51328733-Hak-mewaris-anak-perempuan-dalam-masyarakat-batak-toba-studi-di-kecamatan-pangururan-kabupaten-samosir.html>.
- Vergouwen, J. C. (2004). *Masyarakat dan hukum adat Batak Toba*. LKiS Pelangi Aksara.
- Zed, Mestika. *Metode Penelitian Kepustakaan*. Jakarta: Yayasan Obor Nasional, 2004.