

The development of inheritance customary legal norm on Minangkabau indigenous society

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Abstract

Minangkabau tribes or Minangkabau (often called Padang people) are tribes originally from West Sumatra, Indonesia. This tribe is famous for its customs and its matrilineal kinship system (maternal or female lineage), where the position of female takes precedence over male. Customary law norms indigenous societies of Minangkabau after Judge Decision are a change. On the legal concept of the inheritance of Minangkabau customary, wife cannot be the heir of her late husband. Within the judges' decisions, the widow's status as the heir to the property of her husband gaining recognition. Therefore, Judge's rulings are a contradictive rule compared to the norm of Minangkabau customary law which they embrace Matrilineal kinship system. While there is no clear definition of widow and her children (both male and female) not become the heirs of her late husband or father. In Minangkabau, if there is a property from late husband or father then the right to inherit will be given to his sister and niece. Thus, the existence of new jurisprudence is a new breakthrough to make a new development of value on the old customary law toward the value of new customary law.

Keywords: *Minangkabau Tribes, legal norm, inheritance customary law, indigenous society.*

JEL Classification: K15

1. Introduction

The Minangkabau tribes or Minangkabau (often called Padang people) are the original tribes from West Sumatra Province, Indonesia. This tribe is famous for its custom and its matrilineal kinship system (maternal or female lineage). Minangkabau tribes are strongly converted to Islam. *Adat basandi syara', syara' basandi Kitabullah* (custom is based on a law, a law is referred to the Qur'an) is a reflection of the Minangkabau custom based on Islamic law. Although under Islamic law the Minangkabau tribes also have their customary law. This is evident of Minangkabau tribes still using Minangkabau customary law especially on the marriage procedure and their ordinances on dividing their inheritance ².

Customary inheritance law of Minangkabau tribes is influenced by the matrilineal kinship system, where the position of the girl takes precedence over the boys. This matrilineal kinship system applies to the marriage of *semenda* (traditional one tribe marriage) where the prospective of groom and their relatives did not give "the honest money" to the woman and apply the custom of the woman's request to the male. Therefore, after the marriage, husband is under the

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² Engrina Fauzi, Elwidarifa Marwenny and Jelisy Putri Cenery, 'Dualisme Pelaksanaan Pembagian Harta Waris Di Minangkabau: Perspektif Hukum Islam Dan Adat' [2016] *Jurnal Ilmu Hukum Yustisia*, p. 67.

authority of wife's relatives and after marriage, the husband will follow his wife, however the husband still remains as a member of his original relative and does not enter into wife's relatives, while their children will follow mother's relatives.

In the norms of Minangkabau customary law, maintains maternal lineage, where customary law of inheritance is still closely related to the maternal kinship system, which is, those who come from one original mother that counted as one the mother line, such as brother and sister of mother and siblings both male and female, grandmother and her siblings both male and female, and so on based on the same maternal lineage. Therefore, all children can only be the heirs of their own mother, both for highly heritage treasures or low heritage treasures. If the deceased is a man or her husband, her sons and widow will not be the heirs to her husband's estate, but the heirs are all her nephews (children of his sister).

In Minangkabau society, inheritance divided into four types, namely: *first*, high heritage treasures³ inheritance of generation to generation conducted by maternal lineage. Related to the high heritage treasures in Minangkabau, which is traditional house called *gadang* or *heirloom* rice field belongs to the people where the mother became the center of his mastery. high heritage treasures not only should not be shared, but also should not be sold, unless in a forced state and it may only be mortgaged. *Second*, low heritage treasures, in low treasures there are some different opinion which causing several problems in inheritance.⁴ Minangkabau Customary Law stated that low treasures are all the treasures earned from work and livelihood work themselves. This property can be sold and mortgaged based on the necessity and the agreements of their heirs⁵ however low heritage treasures are all the treasures of one or two generations of relatives, for example from grandfather or a grandmother's descendant. Mother includes in a small unity of relatives. Low heritage treasures are the treasure of relatives who are not divided-its ownership and will continue to grow with the entry of the wealth from other heirs. *Third*, Livelihoods⁶, is a treasure earned by works. This Livelihood is husband-wife's earned during their marriage. The livelihoods are acquired by buying or in terms of customary are called gold bolt. It involved rice fields, fields, gardens and others. When they divorce, these livelihoods can be shared between them. *Fourth*, the treasures of Suarang come from word "surang" or "somebody". So the property of suarang is personal property owned by either husband or wife before the marriage. After marriage the status of this property still belongs to each other. So this treasure of Suarang is a treasure of the husband and the property of the wife, and is the treasure of precision. Because this treasure belongs to "surang" or private property, then the treasure can be given to others without being bound to husband or wife. Therefore, in tradition it is said that "surang can be given, and livelihood can be divided". It means *surang* of a person can be given to anyone, but livelihood can be divided if there is any divorce.

The position of the head of Mamak on Inheritance in Minangkabau society is very important, because it is a position within a clan which their duty is to leads all

³ Hilman Hadikusuma, *Hukum Waris Adat* (PT. Citra Aditya Bakti, 1993).

⁴ Ibid.p. 40.

⁵ Fauzi Anwar, 'Dualitas Hukum Waris Minangkabau Dan Islam (Studi Konstruksi Sosial Masyarakat Muslim Minangkabau Di Malang)' (2012) 3(1) *Jurnal Hukum dan Syariah*.

⁶ Fauzi, Marwenny and Cenery (219).

members of community, take care of society, organize, supervise and be responsible for the heritage treasures of people. Therefore, the head of Mamak on Inheritance have a position of someone who will take care and develop high heritage treasure for the interest children or his nephew. In reality Minangkabau society is not a static society, Minangkabau is a dynamic society that always follow the development people age, therefore high heritage treasure of people that is already sold and have transferred to other owner are no longer in one piece. The development of this highly heritage treasure is clearly different from the basic principle of Minangkabau customary law relating to the ownership of treasures in Minangkabau which has given clear limits, that high heritage treasures cannot be sold or traded and fixed as belonging to a people, customary proverb stated as "Kabau Tagak Kubangan Tingga".

In relation to the distribution of inheritance in Minangkabau society, there is often an inheritance dispute due to one of which is the matrilineal system, which members of the community draw the line up through mother, mother of mother, and upward so as to find a woman as its ancestor. The legal consequence is that all families are the mother's family; the children are entering the mother's family, and inheriting from the mother's family. Husband or father is not included in the mother's family or wife's family, so it can be said matrilineal family system of women's position is higher than men in dividing inheritance. Moreover, the children can only be heirs of their own mother, both for high heritage treasures and for low heritage treasures. If a man (husband or father) died, his sons and wife who becomes widow do not own his heirs on highly heritage treasures, but his heirs are all sisters and nephews of a man (husband or father) who died.

Based on the description above, one of the cases in the Minangkabau community is often happen a conflict on distribution of inheritance, such as a case of a rice mill, where the case between Kalek (Pisang tribe, Negeri Batipuh Buruh, Padang Panjang) wants inheritance for herself and as the mother guardian of her 5 (five) adult children (Zulkarnaini, Zulfahmi, Murni, Ana and Murdatiwarni) as the widow of the late Ibrahim with the peerage of Datuk Mudo's dealing with Abdul Rahman with the peerage of Datuk Mudo (the head of Mamak on Inheritance in Minangkabau society) and the women named Nursiah and Nursilah they came from Koto tribe, Negeri Batipuh Ateh, Padang Panjang. In such cases it was initially resolved through consensus and peaceful amicable deliberations in the face of family, relatives and society. But this deliberation experienced was failure and difficulty and did not bring results as the conflict's settlement. at the end, those case became taken to the District Court and was recorded at the Padang Panjang District Court with Registration Perdt. Number 11/1962.

The next related case is a case related to conflict of estate (highly heritage treasures). High heritage treasures in the Minangkabau matriarchal kinship cannot be distributed for individuals, because high heritage treasures are inherited collectively. Therefore, high heritage treasures often became a conflict. To settle the conflict of customary treasures especially on high heritage treasures, Minangkabau people can solve them through Kerapatan Adat Nagari (KAN).

Kerapatan Adat Nagari will resolve a conflict outside the court, and straighten out the occurred customary conflict. The opinion of AM Shamunir stated that customary court based on customary is a process, how to prosecute and resolve peacefully conducted by a kind of agency or institution outside the judiciary as stipulated in Act Number 48 Year 2009 on Judicial Power.

The context of this study, is more intended on the judge's decision towards the development of norms of inheritance law on Minangkabau indigenous people who embrace the matrilineal system in Minangkabau. Principally, the position of women is more prominent than men's position, because male are not bonded hereditary, but as sons and daughters will get the inheritance from their mother, while the inheritance of their fathers is inherited by father's sisters and nieces from father. With the development through judge's decision, the position of men as father (parents) and husbands in family and at the same time will affect the position of mamak in community or tribe. It will also affect the inheritance problem, that is, children and wife can only get livelihood inheritance.

2. Legal issues

Based on the background above, two problems can be formulated as below:

1. What is the legal norm of customary inheritance in Minangkabau society?
2. How is the development of inheritance customary law of indigenous people in Minangkabau after the judge's decision?

3. Discussion

3.1 Legal norm of customary inheritance on the Minangkabau community

Related to the judge in settling the conflict of the division of inheritance of Minangkabau community, the judge must observe the existence of original Minangkabau inheritance law and unwritten rule because, it will be the basic of judge on discovering the law of resolving the sharing conflict of Minangkabau customary inheritance. The discovery of law was conducted by the judge in deciding a case is dividing into some parts, *first* analyzing the case is stipulated in a written law or not, if it written in law but not complete and clear then the judge have to arrange their own law. The judge must find legal discovery (*rechtsvinding*), and the judge is assigned to apply general law on concrete legal events⁷.

Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power states that "judges and judges of the constitution are obliged to explore, follow and understand the values of law and sense of justice living in society". In order to explore the sense of justice that lives in society there are times when judges in deciding a case apply customary law therefore, the judge is expected to be able to explore new positive law. The judge must have a high intellectual acumen about the law existing in society which is an unwritten but obedient and respected law in society.

Furthermore, in Article 50 Paragraph (1) of Act Number 48 Year 2009 on Judicial Power affirms that: "the decision of the court shall not only contain the reason and basis of the decision, it also contains certain articles of the relevant

⁷ Ellyne Dwi Poespasari, 'Perkembangan Norma Hukum Adat Berdasarkan Yurisprudensi Mahkamah Agung (Putusan Hakim)' (2015) 1(2) *Jurnal Media dan Peradilan*.

legislation or source of the unwritten law serve as the basic for judgment".

Related to the settlement of conflict on dividing inheritance among Minangkabau community within their own customary law areas, there are several cases resolved by consensus between heirs, the community, the relatives, the customary heads of the District Court.

In the case of a paddle mill, the plaintiff filed the Cassation appeal with the consideration that the mill is owned by Datuk Mudo and has been cultivated for 35 years and has been fixed with the plaintiff's property. Whereas Minangkabau has grown in which the livelihoods are no longer obtained by nephew, the Supreme Court judging in appeal on 12 December 1969 No. 39 K/Sip/1968 decided that: first, to cancel the decision of the Padang Panjang District Court and the High Court of Bukit Tinggi; second, the mill is the livelihood of the plaintiff with Datuk Mudo; and third, entitled to the windmill is the plaintiff with his children.

The results of the research on case mentioned above, the husband's livelihood is given to his wife and children not to his nephews as well while for heritage treasures are used for the benefit of tribe members who needs it. Especially about the inheritance of parent's livelihood is inherited to his son not to his nephew. Thus, when the husband dies then his wife and child become his heirs. The division of inheritance rights is female having the higher amount than male.

Essentially, jurisprudence in Indonesia has not been thoroughly capable of providing definite and constant legal standards, but general jurisprudence has tried to provide a basis or legal basis as a guide for judges in taking a decision. The legal standard is created by jurisprudence in customary law of inheritance is a shifting of original pluralistic value towards a neutral direction, this is happen due to the guidance of development era and modernization, the emancipation and the equality between men and women, thus this situation also affects women who are demanding to change the customary discriminatory customary values between men and women. The jurisprudence creates the same customary legal values in the position of women (female and widows) as the heirs of all Indonesians, and in the application of women's position (daughter and widow) as heirs according to customary law there is no longer to be questioned the existence of kinship system (patrilineal, matrilineal and parental).

Within development of era, people also participate on experienced the development of time and that is also happen on customary law inheritance law in Minangkabau. The Minangkabau customary inheritance law is no longer happen, therefore in relation to Minangkabau customary law of inheritance which is not having a real conflict nowadays. And this illustrated that matrilineal Minangkabau customary has developed based on development of times. Minangkabau customary has opened itself outside of Minangkabau and still have a possibility of Minangkabau community with matrilineal kinship system (female or maternal lineage) this will someday lead to parental or bilateral kinship system related to the national customary law.

3.2 The development of inheritance customary law in Minangkabau after judge's decision

Customary law has some peculiar properties as an unwritten rule. Customary law has a vibrant and dynamic nature, following the development of society in need of change in the legal basis along the way of history. One of the most significant implications of this dynamic nature is the decision-making pattern

of judges. The possibility of judge's decision is different even with the same issues; and the customary law's ability to adapt, customary law can receive inputs and elements that come from outside, as long as it does not make a spiritual conflict of customary law. Customary law can simply be explained, because customary law is understated, customary law is not complicated and not having a complicated administration. Therefore, in customary law it is easy to accept inputs, elements or other legal influences, because customary law is not written and is not being codified.

Within the development of customary law in Indonesia there are two models of applicable theories, first, the linear model, known as the development of customary law, the new customary law does not contain the old customary law (This development can be said development of customary law through judgment), for example in inheritance customary law; and second, the interactive model, known as the development of customary law, the new customary law still contains the old customary law (the development of customary law developed within the society).

The customary law of dividing inheritance in Minangkabau has a close relation to the maternal or matrilineal system of kinship, which is, from those who come from one mother of origin counted as the same maternal line, brothers and sisters, mother and siblings both male and female, grandmother and her siblings both male and female, and others according to the female lineage. Therefore, children can only be the heirs of their own mother, both for high heritage treasure and low heritage treasure. If the deceased person is man, then his son and wife who became a widow will not be his heirs for getting any inheritance, and his heirs will be all his nephews.

Regarding the development of customary law norms after the existence of Supreme Court jurisprudence on the matrilineal kinship system in Minangkabau, there is a development in inheritance law in Minangkabau. Supreme Court's Decision Number 39 K/Sip/1968 related to the case of the rice mill, where the case between Kalek Woman (Pisang tribe, Negeri Batipuh Buruh, Padang Panjang) for herself and as the mother guardian of her 5 (five) adult children (Zulkarnaini, Zulfahmi, Murni, Ana and Murdatiwarni) as the widow of the late Ibrahim with his royal title as Datuk Mudo dealing with Abdul Rahman also as Datuk Mudo (the head of Mamak on Inheritance in Minangkabau society) and the women whose name Nursiah and Nursilah that they came from Koto tribe, Negeri Batipuh Ateh, Padang Panjang. In the decision of the Supreme Court of Cassation won the case to Kalek as widow of the late Ibrahim with the royal title of Datuk Mudo to the heirs of rice mill. Men in Minangkabau have a role as father or husband and mamak (head of tribe) in customary law.

Jurisprudence No. 39 K/Sip/1968 on February 12, 1968, stated that a father or husband was not responsible for his children considering the form of a *semendo bertandang* (traditional) marriage, where father or husband was only considered as a guest therefore children become the responsibility of wife and wife's family. It can be said in other words that children have only relationship with his mother and his mother's family and thus, the children is the heirs of mother not the heir of father. Furthermore, the existence of a customary conflict as what happen on rice mill cases means if inheritance customary law of Minangkabau, cannot be resolved within customary law, it can be settled through the Court or can be taken higher to the Supreme Court.

Related to the norms of customary law, after jurisprudence of Supreme Court/judge's verdict, there is a change on law of dividing inheritance in Minangkabau. Therefore, the Decisions of Supreme Court explain about the recognition of widow's position as her late husband heir. This Judge's decision having a contradictive rule with Minangkabau customary law values related to Matrilineal kinship system, which is no definition of widow and children (both male and female) can not be the heirs of late husband or father. In Minangkabau, if there is any inheritance come from husband or father. Therefore, the right to inherit taken by his sister and nieces. Thus, the existence of new jurisprudence system as a new rule to develop the old customary law become the new value of customary law.

4. Conclusion

Generally, the settlement of Minangkabau Inheritance Customary law can be settled by deliberation. However, if all the conflict of Inheritance is failed to be settle, those cases will be taken to the court.

The norms of customary law in indigenous communities of Minangkabau after Judge Decision, there is a change of legal norms in Minangkabau customary law of inheritance. On the legal concept of the Minangkabau customary law of Inheritance, as a widow did not have the right as the heir of her late husband. the judges' decisions, help widow's status as the heir of her late husband property to be recognized. Therefore Judge's decision have a contradictive rule with the norm of Minangkabau customary law which embraces the Matrilineal kinship system. In Minangkabau, if there is a property from the husband or his father then the right to inherit given to his sister and nieces. Therefore, the existence of jurisprudence is a new breakthrough. Thus, there is a development in value of old customary law and change to the value of new customary law.

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