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Women's Rights In The Division Of Customary Inheritance Rote Ndao Nusa Tenggara Timur (Supreme Court Decision No.1048 K/Pdt/2012)

Febrina Indrasari, S.H.,M.H[1]
[1]Politeknik Negeri Semarang

Corresponding Author: *febrina@polines.ac.id*

Abstract

This research aims to answer the legal construction of women's rights in the inheritance of Rote Ndao East Nusa Tenggara custom, and analysis of Supreme Court Decision Number 1048 K/Pdt/2012 in the distribution of women's inheritance in Rote Ndao East Nusa Tenggara custom. This research uses a doctrinal approach, using the Legislation approach, case approach and concept approach. Rote Ndao Regency of East Nusa Tenggara Province is included in the patrilineal group, which means that sons become or are recognized as heirs and daughters do not have the right position as heirs because in this case girls are not included in the patrilineal group, legal construction related to the recognition of women's rights is reflected in Supreme Court Decision Number 1048 K / Pdt / 2012 which provides a concrete picture related to the recognition of women's rights in customary inheritance law, especially in Rote Ndao Regency of East Nusa Tenggara Province. The attitude of the Supreme Court Judges who reformed the inheritance law of Rote Ndao by recognizing women's rights in the distribution of inheritance in accordance with the Ratio Decidendi states that customary laws that are not in accordance with legal developments in society, such as customary laws that do not recognize women's rights as equal to the position of men, can no longer be maintained.

Keywords: ***Customary inheritance rights, women, Rote Ndao, East Nusa Tenggara.***

INTRODUCTION

Inheritance law in Indonesia is one of the civil laws as a whole and is a small part of family law. Inheritance law is closely related to the scope of human life, one of which is the death of a person, which is related to the settlement of rights and obligations as a result of the death of a person regulated by inheritance law (Ellyne Dwi Poespasari, 2018). Long before the Proclamation

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of Indonesian Independence, three systems of inheritance law had been applied in Indonesia together although the starting point was not the same, namely customary inheritance law, Islamic inheritance law and Western inheritance law (Iim Fahimah,2018). This is called Pluralism inheritance law, which is a law that recognizes the existence of other laws outside positive law (R. Van Dijk, ,2015). The three systems of inheritance law in Indonesia experienced different developments and institutionalization processes. Customary inheritance law develops through various jurisprudence (judge made law)(M Burhanuddin Ubaidillah,2020).

Customary inheritance law is pluralistic because customary inheritance law is influenced by 3 (three) kinship or family systems that exist in Indonesian society, namely the patrilineal system, the matrilineal system, and the parental or bilateral system (Laksana Arum Nugraheni,2021). One of the tribes that adheres to a pure patrilineal system is the indigenous people of Rote Ndao, East Nusa Tenggara Province, which is a patrilineal kinship system that draws its descent system from the lineage of the father or male ancestor (Sonny D. Judiasih,dkk:2021). Based on the patrilineal system adopted by the Rote Ndao customary society of East Nusa Tenggara Province, it does not place the position of women as heirs who are allowed to receive inheritance from parents, which can cause disputes if it is not in accordance with legal developments in society and is not in line with the rules and principles of equality before the law (UU No.7 Th.1984)

Disputes over women's inheritance rights can be seen in Supreme Court Decision No. 1048 K/Pdt/2012, this case stems from Mrs. Jance Faransina Mooy-Ndunyang who is the biological child and legitimate heir of her father JERMIAS NDOEN (alm) filed a lawsuit against Mrs. Jance Faransina Mooy-Ndunyang's inheritance which was controlled by Junus Ndoy, Johanis Tau, Anderias Tau, Eduard Ndoi, Orias Tau, Felifus Ndoy. Tasi, Thobias Ndolu, Frans Mesah, Nehemia Seli, Yonathan Tau and Yunus Tau, in Ratio Decidendi the judge considered that women's inheritance rights were equal to men. The judges' legal argument, that everyone, without discrimination, has the right to obtain justice and place customary laws that are not in accordance with legal developments in society, such as customary laws that do not recognize women's rights as equal to men's position, can no longer be maintained. The position of men in the customary society of Rote Ndao, East Nusa Tenggara Province can be said to be higher than that of women, so that in this case the inheritance that gets inheritance rights is a boy. For this reason, it is necessary to study the legal construction of women's rights in the customary inheritance of Rote Ndao East Nusa Tenggara Province and analyze the Supreme Court Decision Number 1048

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K/Pdt/2012 in the distribution of women's inheritance in the Rote Ndao custom of East Nusa Tenggara.

DISCUSSION

Legal Construction on the Recognition of Women's Rights in Customary Inheritance of Rote Ndao, East Nusa Tenggara Province

Customary inheritance law is a law that contains lines of provisions about the system and principles of inheritance law, about inherited property, heirs and heirs, and the way the inherited property is transferred control and ownership from the heir to the heir (Erdiansyah,dkk:2021) What is meant by inherited property is the property of the deceased heir, whether the property has been divided or is still in an undivided state. Included in the inheritance is heirloom property, marital property, inherited property and depetan property. Heirs are people who continue the inheritance or people who have inherited property. Waris is a term to indicate people who get inherited property or people who are entitled to inherited property (Habib Ismail,2020)

Customary law and all kinds of rules and regulations that became the basis for practicing the law of early Indonesian society based on the doctrines and beliefs left by the ancestors. Thus, the concepts and teachings of customary law regarding inheritance are based on the customary law community itself. The fellowship in inheritance consists of (Yasir Fauzi, 2016).

1) A territorial alliance is one that refers to the existence of a common place or territory.
2) The alliance of descent (genealogical) is an alliance that refers to the same lineage (blood relationship) from ancestors or ancestors (the existence of a family relationship). In this descent (kinship) alliance, there are 3 (three) types of relationship systems, namely:
   a. Patrilineal

      According to this patrilineal system, descent is taken from the father's lineage, which is an emanation from the original father and becomes the patrilineal system. In this case, women do not become blood channels that connect families. Women who marry men join their husbands and their children become their father's family. This kinship system occurs in Nias, Gayo, Batak and parts of Lampung, Bengkulu, Maluku and Timor. In inheritance law, this alliance gives more importance to the descendants of sons than daughter
   b. Matrilineal

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While matrilineal is descent from the mother, so that the only measure is blood ties from the mother's line which becomes a measure and is a legal alliance. Women who marry remain and are included in their own family compound, while their children are included in their mother's descendants. This matrilineal system is found in Minangkabau, Kerinci, Semendo and some areas of Eastern Indonesia. In accordance with its alliance, matrilineal values female heirs more than male heirs. As long as there are daughters, sons do not get the tirkah.

c. Parental

As for the latter, blood ties are seen from both sides, the father and mother and ancestors. Both descendants are equally important to this partnership (bilateral). This group of people laid the foundations of equality between husband and wife in their respective families.

Heirs According To The Customary Law Of Rote Ndao, East Nusa Tenggara Province

Based on patrilineal lineage, the customary inheritance law that applies in Rote Ndao, East Nusa Tenggara Province, is calculated from the paternal line. Similarly, heirs only come into existence if there is property left by the heir. Therefore, the customary society of Rote Ndao, East Nusa Tenggara Province is patrilineal, which means that sons become or are recognized as heirs, because in this case daughters are not included in the patrilineal group.

The inheritance system adopted by the indigenous people of Rote Ndao, East Nusa Tenggara Province, is associated with the distribution of property, of course, more dominant to sons. This can become a habit in inheritance, so that new problems are found due to changes in the understanding of the heirs who interpret this patrilineal inheritance system only for sons without giving inheritance rights to daughters, so that new conflicts are born among the heirs (Agustina,dkk:2020). Protection of women's human rights, as part of human rights, is an important part of the inheritance system, mandated in Indonesian legislation, and guaranteed by state institutions. Juridically, at the international and national levels, Indonesian legal instruments and regulations recognize the principle of equal rights between men and women and also state that all Indonesians have the same rights and position in the law and government must follow and uphold the law without exception. This article means that the position of men and women is equal before the law and in the legislation (Danang Risdianto,2017).

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However, women are always left behind in the fields of economy, education, health, employment, and politics, as well as in this case regarding the recognition of the inheritance rights of indigenous women of Rote Ndao, East Nusa Tenggara Province. One of the reasons for this is the patriarchal culture that has developed in Indonesian indigenous societies. In a society with a patriarchal culture, men have a greater role in holding power which can automatically degrade the role and existence of women, by following the principle of the formulation of rights in all fields, both men and women have the same rights or opportunities to participate in every aspect of social and state life. So if there is discrimination against women, this is a violation of women's human rights. Patriarchal practices are one of the main disadvantages for women, because these provisions make women not entitled to inheritance (Aisyah,Novia;2022). KUHPerdata does not have a specific article that provides an understanding of inheritance law, only a provision stating that inheritance only takes place due to death.

This phenomenon related to the right to inheritance gives the impression that women are waiting for mercy from male relatives or family to get inheritance, the uncertainty of women to get inheritance can certainly lead to injustice and inequality for women in getting inheritance, and this is contrary to the principles of legal protection, justice, and equal rights. The legal principles used in inheritance law must be able to provide justice for all parties, both men and women so that the purpose and function of law can be achieved. This is in line with the purpose in the sense of legal function, namely law as a tool of social engineering or law must be able to engineer society to become more advanced or modern (Roscoe Pond,2013).

Customary Law in most ethnic groups in Indonesia adheres to patriarchy by prioritizing men and boys as family leaders who have a public role and will continue the descendants and leadership of the family, so that only men and boys can obtain inheritance, while women and girls are seen as only being able to play a role in the domestic sphere (household), therefore not obtaining inheritance or obtaining inheritance with half the portion of men or an even smaller share.29 Through Supreme Court Decision No. 1048 K/Pdt/2012 dated September 26, 2012 in the case of Mrs. Jance Faransina Mooy-Ndun v. Junus Ndoy et al in relation to inheritance disputes in the Ndao custom of East Nusa Tenggara Province, which is strongly patrilineal, the Supreme Court stated that :

"Customary laws that are not in accordance with legal developments in society, such as customary laws that do not recognize women's rights as equal to the position of men, can no longer be maintained men, can no longer be maintained"

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Supreme Court Decision Number 1048 K/Pdt/2012 can be used as jurisprudence for indigenous women in Rote Ndao, East Nusa Tenggara Province, to obtain a share of the inheritance of parents who have died. Looking at the contents of Supreme Court Decision Number 1048 K/Pdt/2012 above, we get a concrete picture of how to see the position of women in customary (inheritance) law, especially in Rote Ndao Regency, East Nusa Tenggara Province. We can also see the position of women's inheritance rights based on customary law faced with state law in a trial to contest the inheritance of their parents. In addition, this decision shows that as decision makers, judges need to use and consider the values of justice by using the basic principle that everyone is entitled to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law. As well as to state that every person, without discrimination, has the right to obtain justice by filing applications, complaints and lawsuits, both in criminal, civil and administrative matters and to be tried through a free and impartial judicial process in accordance with procedural law that guarantees an objective examination by an honest and fair judge to obtain a just and correct decision. Thus, Supreme Court Decision Number 1048 K/Pdt/2012 related to customary inheritance law which is part of customary law is obliged to follow developments, so that it is dynamic by following the development of regulations, legal developments and changes in society. This is very important so that customary law can provide justice for all parties and women are no exception, and discriminatory customary law no longer needs to be maintained.

Supreme Court Decision Number 1048 K/Pdt/2012 in the Division of Women's Inheritance in the Custom of Rote Ndao, East Nusa Tenggara

The claim for recognition of women's inheritance rights in a dispute over customary inheritance rights where the subject matter stems from the Cassation Petitioner, Mrs. Jance Faransina Mooy-Ndun, who is the biological daughter and legitimate heir of her father JERMIAS NDOEN. Jance Faransina Mooy-Ndun, the biological daughter and legitimate heir of her father JERMIAS NDOEN (deceased), filed a lawsuit against the Cassation Petitioner's estate which was controlled by the Cassation Respondents, namely Junus Ndoy, Johanis Tau, Anderias Tau, Eduard Ndoi, Orias Tau, Felifus Tasi, Thobias Ndolu, Frans Mesah, Nehemia Seli, Yonathan Tau and Yunus Tau as other parties who were not fellow heirs with the Cassation Petitioner.

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Kupang High Court Decision No. 57/Pdt/2011/PTK stated that although the Cassation Petitioner was the heir of JERMIAS NDOEN, However, according to customary inheritance in Rote Ndao, East Nusa Tenggara Province, there is a pure patrilineal inheritance system, which means that the right to inherit or receive inheritance is the son and if a family does not have a son then the family must continue their descendants by adopting their brother's son, known as Dendi Anak Kelambi, so because the Cassation Petitioner is a woman, based on the applicable customary law, the Cassation Petitioner does not have the capacity to file a lawsuit for the inherited land in question.

Based on the High Court Decision, legal action was continued by Mrs. Jance Faransina Mooy-Ndunyang to the Cassation Level and in Supreme Court Decision Number 1048 K/Pdt/2012 in Ratio Decidendi stated that the Judex Facti The Kupang High Court which overturned the decision of the Rote Ndao District Court was wrong in applying the law because the consideration of the Kupang High Court was contrary to the applicable law which states that women's inheritance rights are equal to men. This means that customary laws that are not in accordance with legal developments in society, such as customary laws that do not recognize women's rights as equal to men's position, can no longer be maintained. Therefore, in accordance with the Ratio Decidendi, the Supreme Court granted the appeal of Mrs. Jance Faransina Mooy-Ndunyang and annulled the decision of the Kupang High Court.

According to Mahfud MD (2018), given the importance of court decisions (jurisprudence), the official line that must be used as the basis for legal considerations by judges in resolving a case or dispute between the parties should at least refer to four guiding principles, namely:

1) The law must protect the entire nation and ensure the integrity of the nation. the integrity of the nation and therefore there should be no law that plants the seeds of disintegration;
2) The law must ensure social justice with special protection for the weak so that they are not exploited in free competition. the weak so that they are not exploited in free competition against the strong. against the strong.
3) Laws must be built democratically while building democracy in line with nomocracy (rule of law).
4) The law must not discriminate based on any primordial ties and must encourage the creation of religious tolerance based on primordial ties. must encourage the creation of religious tolerance based on humanity and civilization.

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Novelty in Decision Number 1048 K/Pdt/2012 when viewed from the Ratio Decidendi of the judge, using sociological interpretation, namely that law is a social symptom, so every regulation has a social duty, namely legal certainty in society. The social purpose of a regulation cannot always be understood from the words formulated. Therefore, the judge must look for it. Sociological interpretation is a guarantee of the judge's seriousness in making decisions, because his decisions can realize the law in the real atmosphere in society. Decision Number 1048 K/Pdt/2012 has provided a new progressive reference that is visionary and courageous in making a breakthrough. The conditions for achieving a just decision require that standard concepts be changed or used (in certain cases), so at that time there was basically a legal reform. Based on the method of legal interpretation by judges as exemplified above, the principles that should be owned by judges in order to realize substantive justice or social justice in society based on Pancasila are (Bayu Setiawan,2018):

a) Judges must have the courage to break away from positivistic legalistic understanding by overriding formal law in the interests of society and the interests of the state;
b) Judges in deciding cases should not limit themselves to the text of laws and regulations but need to use conscience, common sense, honesty, courage and skills so that the resulting decisions can realize social justice Pancasila;
c) Judges must have the principle that the law is not autonomous but the operation of the law is influenced by various other non-legal factors such as political, economic, social, cultural and others.

Supreme Court Decision No. 1048 K/Pdt/2012 is a jurisprudence in the provision of customary inheritance, especially regarding women's rights in the customary inheritance of Rote Ndao, East Nusa Tenggara Province, so that the interpretation of judges in this decision is guided by the provisions of Article 17 of Law No. 39 of 1999 concerning Human Rights (HAM) and the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 179 K/Sip/1961 dated November 11, 1961 which basically states a rule that on the basis of equal rights between men and women that everyone, without discrimination, is entitled to justice and places customary law that is not in accordance with the development of customary law. 179 K/Sip/1961 dated 11 November 1961 which basically states a rule that on the basis of equal rights between men and women that everyone, without discrimination, has the right to obtain justice and places customary laws that are not in accordance with legal developments in society, such as customary laws that do not recognize women's rights as equal to the position of men, can no longer be

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maintained. The new rule in Supreme Court Decision No. 1048 K/Pdt/2012 is a rule of customary law of Rote Ndao, East Nusa Tenggara Province that shows the direction of dynamic legal development, thus becoming a legal breakthrough for justice for Rote Ndao women to get their parents' inheritance.

CONCLUSION

The legal construction of women's rights in the customary inheritance of Rote Ndao, East Nusa Tenggara Province is that in the customary inheritance of Rote Ndao, women do not have rights to inheritance because Rote Ndao adheres to a patrilineal lineage system, so the applicable customary inheritance law is calculated from the father's line to inheritance because Rote Ndao adheres to a patrilineal lineage system so that the applicable customary inheritance law is calculated from the father / male line, so that the Supreme Court judge provides renewal of customary inheritance law in Rote Ndao, namely customary law must follow legal developments in society, so that customary law can provide justice for all parties and women are no exception, and discriminatory customary law does not need to be maintained anymore.

Supreme Court Decision No. 1048 K/Pdt/2012 has provided a new reference for indigenous women of Rote Ndao, East Nusa Tenggara Province that on the basis of equal rights and justice between men and women, the distribution of inheritance should not be differentiated, including for Rote Ndao women who also have the right to receive inheritance from their parents.

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