



Position of Joint Property in Toba Batak Traditional Marriage

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Abstract

Joint property in Batak Toba customs is wealth obtained by both husband and wife since the marriage, both property given as household equipment after the marriage such as *panjaean* for men and *pauseang* for women, as well as property from the hard work of husband and wife. Problems occur when the rights of widows who do not have children in the division of joint property in Batak Toba customs often become a problem in family life. This study aims to determine and examine the position of joint property in Batak Toba customary marriages and the procedure for dividing joint property in Batak Toba customary marriages that do not have children. Through normative legal methods with qualitative methods. Based on this study, the position of joint property in Batak Toba customary marriages is basically no separation of joint property and inherited property. All property included in the marriage bond becomes joint property. The position of joint property according to Batak Toba customs in marriage is the joint property of husband and wife. The procedure for dividing joint property in Batak Toba customary marriages that do not have children involves decisions based on customs and family deliberations. Batak Toba customs do not recognize the procedure for dividing by calculation but are based on considerations, considering the form of objects and the needs of the heirs concerned. Batak Toba customs if the husband dies and does not have children, the joint property obtained during the marriage will belong to the husband's family.

Keywords: Marriage; Community Property; Toba Batak Customs.

INTRODUCTION

Customs are the habits of a group of people that are used as customs and must be carried out for the entire community.¹ Customary law is a *living law* in a society that is dynamic in nature and develops according to the life of the community and is a regulation that is not written in the law but is respected as long as the community is still alive and in accordance with the development of the community regulated in the law in accordance with Article 18 B Paragraph 2 of the Constitution of the Republic of Indonesia of 1945 (hereinafter written the 1945 Constitution of the Republic of Indonesia) which stipulates that: "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law". There are four requirements for the existence of customary law communities, namely: as long as they are still alive, in accordance with the development of the community, in accordance with or not with the principles of the Unitary State of the Republic of Indonesia, in accordance with what is regulated in the law.² One of them is related to marriage which is not only carried out according to their respective religions and beliefs but also involves customs as a sign of the validity of the marriage bond in a marriage.³

¹ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju, 2003), p.1.

² Jimly Asshiddiqie, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Sinar Grafika, 2009), p. 62-63.

³ Wijaya Natalia Panjaitan, Dita Ayudia Pratiwi, Syadzwin Hindun Nabila, "Kedudukan Sinamot Sebagai Syarat Sahnya Perkawinan Dalam Masyarakat Adat Batak Toba Menurut Perspektif Hukum Positif", *BAMETI Customary Law Review* 2, no. 1 (2024): 1- 6.

A valid marriage is an important condition for determining who is entitled to receive an inheritance on the marital property. The existence of inheritance law is very important in the process of distributing inheritance because with this diversity it is able to create the legal order in people's lives.⁴ A very important issue is who is still alive can be called the heir of the deceased (heir). As happened to the Toba Batak tribe. Batak Toba is one of the tribes that originated from North Sumatra. The Batak tribe consists of several types, namely, Batak Toba, Batak Simalungun, Batak Pakpak, Batak Karo, Batak Angkola and Batak Mandailing. The Toba Batak people who have a clan get recognition from their families as well as their positions and obligations in *dalihan natolu* (three-legged cooking stove). The three-legged cooking stove is a symbol of the social order of the Toba Batak tribe. The three legs have the same height and size to get balance.⁵ The community that adheres to the patrilineal system in the Toba Batak tribe, men are the main party to determine who is entitled to receive inheritance rights and the distribution of common property. When discussing the common property of the Batak Toba custom, it is inseparable from the family system or bond. Through this family system, the community understands who is entitled to inheritance, including how inheritance rights are for wives who are left dead by their husbands (widows divorced and dead) who have no children. The majority of the Toba Batak indigenous community is Muslim and Christian who are still bound by the Toba Batak customary law in relation to the position of common property, in this writing study, the author focuses on the Toba Batak indigenous people who are Christian towards a widow who has no descendants in her position towards the common property.

Like the event of the distribution of common property that has no descendants occurred in the Toba Batak tribe, especially in 2021 in the case that occurred in the city of Medan, the marriage of a husband and wife, namely Mrs. BRS and Mr. SBS, who are Protestant Christians, had been married in 1999. From the marriage, the married couple has joint assets consisting of movable property, cars, and savings, then immovable property of the house. Furthermore, Mr. SBS had an accident and died. From this marriage, the married couple has no children (offspring). Based on the custom of Batak Toba, the male family, namely the parents of Mr. SBS who are entitled to all assets consisting of movable property, cars and savings, then immovable property of the house. Batak customary law also recognizes the term "*paulakhon*" "*dipaulak*" which means returning to his father's family. Where Mr. SBS's family also made a custom for Mrs. BRS to be able to return and gather with her original family to continue life by using the *clan* from her father's side again. Leaving her husband's residence or being told to return to her family is done with family. Mrs. BRS returned to her family without bringing any of the property because she had no children (descendants). Mrs. BRS has no kinship relationship with Mr. SBS's family anymore. A woman who has the status of a widow without children will lose access to control her deceased husband's property, and the property will be controlled by her husband.

METHODS OF THE RESEARCH

This research uses a normative juridical research method (*library research*). A study examines legal materials, positive legal provisions, legal principles and legal doctrine to

⁴ Weldo Parinussa, Merry Tjoanda, Barzah Latupono, "Pembagian Harta Waris Kepada Ahli Waris Dari Perkawinan Pertama Dan Kedua Ditinjau Dari Kitab Undang-Undang Hukum Perdata", *TATOHI: Jurnal Ilmu Hukum* 1, no. 4 (2021): 356-363.

⁵ Eric Evonsus Simbolon et al., "Peranan Dalihan Na Tolu Dalam Perkawinan Adat Batak Toba", *Pactum Law Journal* 1, no. 1 (2017): 42-51.

answer the legal issues faced. The sources of legal materials used in this study are primary legal sources, tertiary legal materials, and tertiary legal materials. Primary legal material sources consisting of laws and regulations related to the issues raised. Secondary sources of legal material consist of books and scientific works. Meanwhile, tertiary legal sources are materials that provide instructions and explanations of primary legal materials and secondary legal materials consisting of the Legal Dictionary and Wikipedia (*website*). The procedure for collecting legal materials is carried out by inventorying information from primary and secondary legal materials that are in accordance with this study. The processing and analysis of legal materials is carried out using a normative type of legal research with problem description, exposure, interpretation and analysis so as to create conclusions that have been collected.

RESULTS AND DISCUSSION

A. Joint Property in Toba Batak Traditional Marriage

Customary law regulates customary marriage law, customary inheritance law, and customary agreement law.⁶ Customary law in the Toba Batak community has a function to regulate social, economic and cultural life. Customary law does not only regulate relationships between individuals but also between kinship groups (clans). Individuals as descendants (family members) have certain rights and obligations related to their position in the family. Family relations are very important in the Toba Batak indigenous people in several events, such as: marriage problems, the existence of family relationships which is a prohibition to be husband and wife (for example, blood relations) and inheritance issues, family relationships are the basis for the distribution of inheritance.

Inheritance is all property, whether in the form of money, land, houses, vehicles, securities, or other valuables left by a deceased person (heir) to a living person (heir) who is entitled to receive it.⁷ A marriage also has a problem regarding the property obtained during the marriage which is called joint property. Joint property is property obtained by both husband and wife since the marriage was carried out. The property can be in the form of property given as household provision after the marriage such as *panjaean* for men, *pauseang* for women, and property resulting from the husband's hard work during the marriage. *Panjaean* is a term in the Toba Batak custom that refers to property or land that is inherited to a man. *Panjaean* shows hereditary ownership which is generally passed down to boys as successors to the clan lineage in order to continue their business and build a household, while *pauseang* is property given to women in the form of items such as jewelry or household furniture related to marriage, referred to as gifts from parents to girls. In Batak Toba customary law, the position of women is not balanced with the position of men because the inheritance system of the Toba Batak community uses a patrilineal system.

The patrilineal community group in the Batak customary environment, especially the Toba area, which mostly adheres to Christianity, basically does not separate common property and inherited property. All property that is included in the marriage bond becomes joint property. The Toba Batak customary inheritance law is greatly influenced by the patrilineal kinship system, where the lineage is determined by the male or father. Therefore, men have a much higher position than women. Men play the role of descendants, clan

⁶ Suryani. D., & Triganda Sayuti, A, "Sanksi Adat Perkawinan Semarga Masyarakat Batak Angkola di Kecamatan Batang Angkola, Kabupaten Tapanuli Selatan", *Zaaken: Journal of Civil and Business Law* 3, no. 1 (2022): 1-22.

successors, and heirs of their parents, while women are not considered as hereditary successors and not as heirs of their parents. According to the traditional inheritance law of Batak Toba, widows who have no descendants cannot inherit because widows do not have blood relations with their husbands.

Distribution of Joint Property in Toba Batak Traditional Marriage The rules of customary law of marriage in each community are different due to the diversity of customs, religions, beliefs, and social characteristics of Indonesian society, besides that the rules of customary law on marriage are different from each other caused by the development and progress of the times.⁷ Marriage is a matter for men and women who will foster married life, but in reality according to customary law, marriage is also a matter for both parties, relatives, clans, and is also a matter for the community even now it is a matter for the state.⁸ The traditional marriage of the Toba Batak is exogamous in the clan, with the main purpose of continuing the male descendants and maintaining the clan. The absence of offspring is considered a failure to fulfill the purpose of marriage, thus affecting the division of property.

The consequence of not having children is that the wife is considered a foreigner if the husband dies. The form of marriage in the Toba Batak tradition is an honest marriage that requires a *clan* difference between the prospective groom and the bride. Marriage is always inseparable from property during marriage because property during marriage is the main basis for the survival of a family. In the patrilineal society, there is basically no separation of common property and inherited property. All property that is included in the marriage bond becomes joint property. A wife who has lost her husband or a wife who is left behind by her husband can inherit or cannot inherit the inheritance property depending on the family system adopted by the indigenous people. The death of a husband creates circumstances that can give rise to various types of family relationships, including with the wife who is left behind by her husband (*na mabalu*). A wife who is divorced due to the death of her husband, has two options, namely: the Batak Toba community who is Christian, a wife who is left dead by her husband who has children, both men and women are not considered as heirs to the inheritance of her deceased husband in an honest marriage according to Batak customary inheritance law.

Nevertheless, women still have a respectable and special position because they carry out the dual role of father and mother to their children. As long as the wife is still alive, she has the right to enjoy, use, and manage her husband's inheritance for the benefit and sustainability of her children, which will later become an inheritance for her children and the return of the wife left behind by her husband to her relatives (*parboru*), then the termination of separation (*pasaehon*) is carried out which can be arranged in an atmosphere of friendship and kinship between the parties concerned or with the intervention of the customary elders. So according to custom, the wife does not have the right of inheritance from her husband.

The procedure for the distribution of joint property in the traditional marriage of the Toba Batak who have no descendants involves a decision based on the customs and deliberation of the Toba Batak Traditional family does not know the methods of division by calculation but is based on considerations, considering the form of the object and the needs of the heirs concerned.⁹ The division of joint property to the wife is entitled to half of the joint property,

⁷ Dijk Van, *Pengantar Hukum Adat Indonesia*, (Bandung: Mandar Maju, 2006), p. 25.

⁸ Merry Yono, *Ikhtisar Hukum Adat*, (Bengkulu: Universitas Bengkulu, 2006), p. 48.

⁹ Eman Supaman, *Hukum Waris Indonesia, Dalam Perspektif Islam, Adat, dan BW*, (Bandung: Refika Aditama, 2011), p. 42.

if there are children while the rest will be distributed to the husband's heirs, in accordance with the applicable law. This division can be done through deliberation between the wife and the husband's heirs (for example, the husband's parents or siblings). The division of joint property according to the Toba Batak indigenous people if the husband dies and has no children, the joint property obtained during the marriage will belong to the husband's family then the wife who is left dead by her husband returns to her relatives (*parboru*) then the separation is terminated (*pasaehon*) which can be arranged in an atmosphere of friendship and kinship between the parties concerned and with the intervention of the indigenous elders. This consideration is based on the fact that a widow has no blood ties to her deceased husband's family, so the widow is not entitled to receive an inheritance. The inheritance in the Toba Batak community is only given to men who play an important role in continuing the family lineage.

CONCLUSION

Position of joint property in the traditional marriage of Batak Toba basically does not separate common property and inherited property. All property that is included in the marriage bond becomes joint property. The position of joint property according to the Toba Batak custom in marriage is the joint property of the husband and wife. The procedure for the distribution of joint property in the traditional marriage of the Toba Batak who have no descendants, involves decisions based on customs and family deliberation. The Toba Batak custom does not recognize the procedure of division by calculation but is based on consideration, considering the form of the object and the needs of the heirs concerned. Batak Toba custom if the husband dies and has no children, the joint property obtained during the marriage will belong to the husband's family.

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