DEVELOPMENT OF WOMEN POSITION IN THE PATRILINEAL INHERITANCE OF INDONESIAN SOCIETY

Elfrida R Gultom
Faculty of Law, Universitas Trisakti, Indonesia
E-mail: elfrida.r.goeltom@gmail.com

Abstract

Patrilineality is a kinship system which is based on paternal line; therefore, the position of men in inheritance law is dominant. Batak, Karo and Bali communities are among those who apply this system. Consequently, this system influences women's standing in terms of inheritance. This paper discusses women position in inheritance of patrilineal system on those three societies as well as the factors which influence the development of women's inheritance right. Some principles of this system are maintained while some others change. Several Supreme Court Decisions related to inheritance distribution dispute between men and women have tended to adopt parental system which gives equality, humanity, justice, and right equality. Supreme Court places women in neutral position which means that there is modernization which leads to homogeneity, indicating showing equality between men and women as well as providing significant impact on inheritance law sector in Batak, Karo, and Bali.

Keywords: indigenous people, matrilineal, patrilineal, inheritance, inheritance system

Abstrak

Patrilineal adalah sistem kekeluargaan yang menarik garis keturunan pihak nenek moyang laki-laki, sehingga kedudukan mereka dalam hukum waris sangat menonjol. Penganut sistem ini ada pada masyarakat Batak, Karo dan Bali. Akibat dari sistem ini, mempengaruhi kedudukan anak perempuan di dalam hal warisan. Tulisan ini membahas tentang kedudukan perempuan dalam pewarisan Patrilineal pada ketiga masyarakat tersebut dan faktor yang mempengaruhi perkembangan hak waris anak perempuan. Ada beberapa hal yang tetap dipertahankan dalam sistem patrilineal dan ada yang pula yang berubah. Beberapa Putusan Mahkamah Agung yang terkait dengan masalah sengketa pembagian warisan antara laki-laki dan perempuan, telah menuju ke arah sistem Parental yang memberi kesederajatan, kemanusiaan, keadilan dan persamaan hak. Mahkamah Agung menempatkan perempuan dalam posisi yang netral, berarti terjadi modernisasi yang mengarah kepada homogeniteit yaitu menunjukkan adanya persamaan derajat antara laki-laki dan perempuan dan memberikan pengaruh yang besar dalam bidang hukum waris adat Batak, Karo dan Bali.

Kata kunci: masyarakat adat, matrilineal, patrilineal, harta warisan, sistem pewarisan

Introduction

It is inevitable that most women are placed in the second position after men. In one case, women farmers in terms of food fulfillment needs that occur as a result of the agrarian political system adopted by the government which in the context of regulating agrarian systems, women are not involved since its social structure of local community farmers in the countryside does not perpetuate women to be involved in regulating the control, use, and utilization of the land and its natural resources.[1] This difference is brought into the realm of property laws particularly the division of inheritance which significance difference occurs in inheritance distribution. This paper discusses one of three applicable inheritance laws in Indonesia namely customary inheritance law.

[1] Subekti Mahanani, "Agrarian Justice of Women Farmer in the context of Women Farmer and Agrarian Resource Managing (Land)", *Jurnal Analisis Sosial, Perempuan, Kemiskinan dan Pengambilan Keputusan*, Vol. 8 No. 2, October 2003, Bandung: Yayasan Akatiga, page 6-7.

The determine heir, customary inheritance law is based on the kinship or heredity systems namely patrilineal, matrilineal and parental.[2] The kinship system that focuses on men dominance is patrilineal, which is almost the same as treating women in the distribution of inheritance that is only given by parents and not as a inheritance. The main issue to be discussed in this paper is development of women position in the patrilineal society in Sumatera and Bali currently and arrangement of future patrilineal inheritance systems.

Discussion

The Overview of Customary Inheritance Law in Indonesia

Wiryono Prodjodikoro stated that inheritance is a matter of what and how rights and obligtions of one's wealth at the time of his death will be inherited by his/her heirs.[3] Inheritance law is part of the civil law as a whole and is the smallest part of family law. Inheritance law is closely related to the scope of human life since every one will experience a legal event called death.[4] Ter Haar said, that customary inheritance law is the rule of law that governs the way how over centuries tangible and intangible property are transferred from generation to the next generations".[5] Soepomo argues that the customary law of inheritance contains rules governing the process of taking over and passing the tangible and intangible properties (*immateriele goederen*) of a generation to their descendants.[6]

Pluralism in customary law of inheritance occurs due to the influence of kinship arrangement adopted in Indonesia. The composition is as follows:[7] *first*, the lineage linkage according to the male line (patrilineal), in this system the position and men influence in the inheritance law is very prominent,[8] for example: Batak, Bali, Ambon. *Second*, the lineage linkage according to the female line (matrilineal), matrilineal is a family system which draws the lineage of the women ancestors. In this system, men are not the heir to their children, [9] for example: Minangkabau, Kerinci (Jambi), Semendo (Sumatera Selatan). *Third*, motherly and paternal lineage (parental/bilateral), parental is a system that draws a lineage of two sides, both from father's and mother's side; in this system the position of sons and daughters is equal before inheritance law. It means both of them are the heirs of property from their parents,[10] for example: Melayu, Bugis, Jawa, Kalimantan (Dayak).

According to the patrilineal system, the men position is more prominent than women in inheritance distribution, so only the men will be the heirs. The heirs in patrilineal system consist of:[11] *first*, son: all legitimate sons are entitled to inherit all properties and the amount of property is equally shared among them. If they have no son, only daughter and wife, the inher-

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2 Look and read the explanation about this matter on Lastuti Abubakar, "Revitalisasi Hukum Adat sebagai Sumber Hukum dalam Membangun Sistem Hukum Indonesia". *Jurnal Dinamika Hukum*, Vol. 13 No. 2 Mei 2013, Purwokerto: Faculty of Law, Universitas Jenderal Soedirman, pages 319-331; Yanis Maladi, "Eksistensi Hukum Adat dalam Kontitusi Negara Pasca Amandemen", *Jurnal Mimbar Hukum*, Vol. 22 No. 3 Oktober 2010, Yogyakarta: Faculty of Law, Universitas Gadjah Mada; Jan Michiel Otto, "Rule of Law, Adat Law and Sharia: 1901, 2001 and Monitoring the Next Phase", *Hague Journal on The Rule of Law*, 1: 15-20, 2009; M. Syamsudin, "Beban Masyarakat Adat Menghadapi ukum Negara", *Jurnal Hukum*. Vol. 15 No. 3, Juli 2008, Yogyakarta: Faculty of Law, UII, pages 338-352; and Komari, "Eksistensi Hukum Waris di Indonesia: Antara Adat dan Syariat", *Jurnal Asy-Syari'ah,* Vol. 17 No. 2, Agustus 2015, pages 157-172

3 Wiryono Prodjodikoro, 1983, *Hukum Warisan di Indonesia*, Bandung: Sumur Bandung, page 50.

4 Eman Suparman, Hukum Waris Indonesia Dalam Perspektif Islam, 2011, *Adat dan BW*, Bandung: PT. Refika Aditama, page 1.

5 Ter Haar, 1990, Translate by R. Ng Surbakti Presponoto,1990, *Asas-Asas dan Susunan Hukum Adat*, Jakarta: Pradnya Paramita, page 5.

6 Soepomo, 2003, *Bab-bab Tentang Hukum Adat,* Jakarta: Penerbitan Universitas, page 72.

7 Eman Suparman, *Loc. Cit.*, page 41. Read also in Mustaghfirin, "Sistem Hukum Barat, Sistem Hukum Adat, dan Sistem Hukum Islam Menuju sebagai Sistem Hukum Nasional Sebuah Ide yang Harmoni", *Jurnal Dinamika Hukum*, Vol. 11 Edisi Khusus Februari 2011, Purwokerto: Faculty of Law, Universitas Jenderal Soedirman pages 89-95.

8 *Ibid.*

9 *Ibid.*

10 *Ibid.* Also read on Nurul Huda, "Keberadaan Mawali Hukum Kewarisan Bilateral", *Suhuf*, Vol. XVIII, No. 02/November 2006, pages 124-132; Andi Nuzul, "Upaya Kodifikasi Hukum Kewarisan secara Bilateral dengan Pola Diferensiasi dalam Masyarakat Pluralis", *Jurnal Mimbar Hukum*, Vol. 22 No. 3, Oktober 2010, pages 465-481.

11 *Ibid.,* page 5.

itance can still be used by the daughter and wife throughout life. *Second*, adopted children, his position is the same as a legitimate child, but the adopted child only becomes heir to the treasure with his adoptive parents and is not entitled to the heritage. *Third*, father, mother, and siblings of the heir can inherit altogether if there are no son and adopted children. *Fourth*, immediate family in no particular order if there are no the heirs. *Fifth*, indigenous communion, if there is no hers at all, then the inheritance is held by indigenous communion.

The Women Position in Patrilineal Society in Sumatera (Batak Toba and Karo) and Bali

Batak Toba Society

In Indonesia, there are various ethnicities, there is 1.128 ethnic groups most of which use patriarchal ideology. One of them is Batak Toba society. Patriarchy confirms the behaveoral pattern or point of view of each ethnics considering the man to be superior and the woman as inferior.[12] Patriarchal society formed human civilization that assumed men are stronger than women in private life, family, community, and state since long time ago. Biological differences between men and women are considered the beginning of the formation of patriarchial culture.[13]

The influencial factors that make sons as heirs in Batak society include: *first*, family lineage is based on sons, daughters do not continue the lineage (family descendants); *second*, in the household, wife is not the head of family, the children use father's surname (clan) while the wife is classified into the husband's clan; *third*, in custom, a woman cannot represent her parents (her father) because she belongs to a member of her husband's family; *fourth*, in custom, men are considered family members as parents (mother); and *fifth*, in case of a divorce, the child(ren) to be the father's responsiibility. Later, the sons become the heirs, in both custom and properties.[14]

The amount of Batak Toba inheritance given to daughters largely depends on situations, regions, offenders, religious doctrine that adopted in family and family interests. Moreover, there are some people who prefer applying civil law in the inheritance distribution. The inheritance distribution for sons in the patrilineal system of Batak law custom is regulated such a way due to its distinction in terms of the youngest son called "siapudan" in Batak language got a special inheritance.

Karo Society

The process of one's property distribution to their descendants is usually already done when the owner was still alive. The distribution was conducted in front of *"anak beru"* (a term that means son/daughter in law). *Anak Beru* is official phrase in Indonesian, *senina* (*senina* is a kinship relationship based on the same clan),[15] and *kalimbubu*. *Kalimbubu* is group of women benefactor and highly respected in Karo society's kinship system.[16]

Karo people convinced that kalimbubu is the blessing bearer. It is also called *Dibata Ni Idah* (The visible God). Confronting and offending *Kalimbubu* is strongly admonished and prohibited. In every banquet, *Kalimbubu* is always at priority. *Anak beru* would not dare to start the meal before the *kalimbubu* do.

Sometimes, the distribution was also attended by traditional authorities (head of village) to make the distribution clear. If the distribution is done after the heirs died, it should be noted that eventhough all sons have equal rights to the property of their parent, the distribution must be done very wisely according to the will/ message of the testator before death.

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[12] Elizabeth Monika Hutabarat, "Budaya Patriarki Batak Toba dan Perilaku Politik Perempuan", *Jurnal Dinamika Politik*, Vol.1 No. 3, December 2012, page 7-8, accessed on web http://download.portalgaruda.org/article.php?article=58779&val=4139

[13] *Ibid*. Compare with opinion by T. Omas Ihromi, "Inheritance and Equal Rights for Toba Batak Daughters", Law and Society Review, Vol. 24 No. 3 September 1994.

[14] Annisa dan Normaidah, 2015, *Hukum Waris Dalam Sistem Kekeluargaan Patrilineal*, Banjarmasin: IAIN Antasari, page 3.

[15] Tridah Bangun, 1986, *Adat dan Upacara Perkawinan Masyarakat Batak Karo*, Jakarta: Kesaint Blanc.

[16] Roberto Bangun, 1989, *Mengenal Orang Karo,* Jakarta: Yayasan Pendidikan Bangun.

If there is dispute in the distribution, *anak beru* and *senina* must try to finish it through deliberation.

Bali Society

Hinduism views that glorifying women in their religious values are very contradictory to the traditions and customary laws that exist in Bali in which Bali traditions and customary law do not reflect gender equality. This can be seen in terms of the men and women position in marriage, inheritance and their role in social life as stated by Ni Nyoman Rahmawati through her paper in *Jurnal Kultural*.[17] In the social life of Balinese people and also their role in society, men possess a role and a privileged position.[18] In making important decisions in society, for instance, only men who has the right to decide, then women only accept what been decided. Likewise in case of inheritance, only men are entitled to inherit, while women only deserve to use the properties without rights to inheritance.

Similarly, the children ownership are held on men's side. This is surely contrary to the equality principle of gender equality.[19] Whereas development leads to change, including the changing role of women who should bring the consequences of change also to the role of men in the given social order.[20] The Balinese uniqueness and distinct characteristics cannot be separated from the patriarchal culture derived from Balinese kinship system in the form of patrilineal. According to Sancaya[21], the culture of patriarchy in Balinese culture is derived from the existence of purusha and predana, which symbolizes the eternal soul (purusha), and matters relating to men or purusha, and matters relating to women or predana. This Hinduism philosophy construct the Balinese cultural ideology, which evolves into system of values, norms and rules, called patrilineal patrimonial laws and customs, which function as social control.[22]

Development of Women's Position in Patrilineal Society of Sumatera (Batak Toba and Karo Area) and Bali Nowadays

Patrilineal in Batak Toba

The idea of equality between men and women is not the same depending on the individual's character and understanding of the inheritance itself. What makes men and women equal in status is because the interested parties do not bring the problems of inheritance through applicable customary law but through the competent jurisdiction, that is the District Court. Thus, by Court decision, automatically all the parties are subject to applicable national law.[23]

Patrilineal kinship system in its development is divided into two groups, namely *parmalim Batak* class which still strongly hold custom and usually resides in the countryside and has not been assimilated with other cultures. They still strongly implement patrilineal family system. The second class is non-*parmalim Batak*, that is Batak people of assimilated culture, they are resides in the urban areas, more educated, and have better understanding about inheritance law which is considered fairer.

The influences of rationalism result in changes in the customary law of Batak Toba and

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17 Ni Nyoman Rahmawati, "Perempuan Bali dalam Pergulatan Gender", *Jurnal Studi Kultural*, Vol. 1 No. 1 Januari 2016, page 64.

18 Compare with two opinion about same matters from: Ni Nengah Budawati, "Sejarah Hukum Kedudukan Perempuan dalam Perkawinan Menurut Hukum Adat Bali (Kaitannya degan Perkawinan Nyentana Beda Wangsa)", *Jurnal Magister Hukum Udayana,* Vol. 5 No. 2, Juli 2016, pages 301-320; and I Nyoman Sukerti and I Gusti Ayu Agung Ariani, "Perkembangan Kedudukan Perempuan dalam Hukum Waris Adat Bali (Studi di Kota Denpasar)", *Jurnal Magister Hukum Udayana*, Vol. 6 No. 2, Juli 2014, pages 243-258.

19 Ni Nyoman Rahmawati, *loc.cit*

20 Ida Ayu Nyoman Saskara, 2010, *Laporan Hasil Penelitian Disertasi Doktor Tahun Anggaran 2010, Konflik Perempuan Bali yang bekerja di Sektor Publik: Suatu Tinjauan Perspektif Ekonomi dan Non Ekonomi*, Universitas Brawijaya, Malang, 2010, page i

21 Wiasti, N M, 2006, *Hubungan Industrial yang berwawasan Gender: Studi Kasus Pada Industri Kerajinan Bambu di Desa Belega, Kabupaten Gianyar,* Bali: Kembang Rampai Perempuan Bali, page 134-153.

22 Ni Made Diska Widayani dan Sri Hartati, "Kesetaraan dan Keadilan Gender dalam Pandangan Perempuan Bali", *Jurnal Psikologi,* Vol. 13 No. 2. October 2014, Semarang: Universitas Diponegoro, page 149-162.

23 Look and read explanation this matter on Mura P. Hutagalung, "Faktor-faktor yang Mempengaruhi Mengapa Banyak Orang Menyelesaikan Masalah Kewarisan Melalui Pengadilan Agama", *Jurnal Hukum dan Pembangunan*, September 2013, Jakarta: Faculty of Law, Universitas Indonesia, pages 409-416

some causing factors. In customary law, it is initially considered strange and at the issue of Provisional People's Consultative Assembly Temporary (MPRS) Decree Number 11 Year 1960 and The Supreme Court Ruling Number 179K/SIP/1961 shall be subject to the system in accordance with customary law that is the patrilineal kinship system/family system which makes women position either in domestic are or in society are rigid and weak. The distribution of inheritance in Batak Toba society has already done fairly and equally because due to equality of sons and daughters toward their parents' heritage. In regard to this, the Supreme Court stipulates: *first*, Verdict on January 31st, 1968 Number 136K/Sip/1967. The Supreme Court has justified The High Court Verdict that used customary law of Batak *Holong Ate* over the distribution of inheritance in Padang Sidempuan. The customary law of Batak *Hotong Ale* has given more inheritance to daughters for the consideration of the progress of women's status and rights in Batak land. *Second*, The Supreme Court Verdict on June 30th, 1971 Number 415K/Sip/1970. The Supreme Court in its consideration reinforces it by stating that customary law in Tapanuli has also evolved toward the equal rights to daughters as well as sons. *Third*, the Supreme Court Verdict on January 17,1971 Number 528K/Sip/1972. The customary law of South Tapanuli recognizes *Holong Ate*, a gift according to a sense of justice to daughters if the dead do not leave a son. With *Holong Ate* institution, the daughters have rights to get half of all properties. The inheritance of her dead father which is demanded by her met justice and humanity. *Fourth*, the Supreme Court Verdict on July 31st, 1973 Number 1037K/Sip/1971. The Supreme Court mentioned that daughter is the one and only the heir and has rights over properties, the left inheritance. *Fifth*, the Supreme Court Verdict on November 2nd, 1976 Number 284K/Sip/1975 has justified and upheld the High Court Verdict which states according to the new customary law of inheritance, wife and daughter are the heirs. When viewed the phrase "new customary law of inheritance", daughters have been recognized as heirs. ***Sixth***, in the Supreme Court Verdict on January 31st, 1968 Number 136K/Sip/1997 and the Supreme Court Verdict on January 17, 1973 Number 528 K/Sip/1972. *Holong Ate* institute has given the daughters a chance to be in equal position to sons.

Patrilineal in Karo

Patrilineal in Karo evolves in regulating the inheritance rights between men and women. Similar to Batak Toba, not all people have the same perspective of equal rights between men and women for several factors including the character and understanding of each party on the rights of men and women as well as the understanding of rigid custom.

The influencing factors that affect the equality of rights in the inheritance between men and women is irresolved inheritance disputes that occur within the family that requires state to solve it. It is the result of the Court through a decision that makes a lot of changes in Batak Karo people's mind which enables the progress of equal rights inheritance between men and women.[24]

Through the Supreme Court Verdict on November 1st, 1961 Number 179K/Sip/1961, it has been an attempt toward equal rights processes between men and women in Karo land, although many confront it, a few parties actually agree on this.[25] There also many comments and responses to the judgment of this Supreme Court verdict, one of which is delivered by Djaja S. Meliala, "commonly, a change of law occurs on the grounds that the old law is no longer compatible with the sense of justice in which the law applies, in this case the sense of community justice (Karo society) reformed and replaced with a new law that is inconsistent with the sense of community justice, and also the Supreme Court's assumption that the daughter and son of the heir are equally entitled to inheritance as the law that lives throughout the

[24] The religion can be cause development of inhertance law in Karo. This opinion can be read on Azhari Akmal Tarigan, "Pelaksanaan Hukum Waris di Masyarakat Karo Muslim Sumatera Utara", *Jurnal Ahkam*, Vol. XIV No. 2, Juli 2014, pages 199-212

[25] *Ibid.*, page 8.

community, is seen as a mistake because there are some people in Indonesia with such a strong unilineal system like Minangkabau, Batak, etc that have different inheritance system from the Supreme Court's assumption".

Patrilineal in Bali

There are many changes of customary law of Inheritance in Bali over women. Now, women deserve half of inheritance rights given to their brother. This provision is the result from Supreme Assembly (Pesamuhan Agung) III which was held on October 15th, 2010, and included in the Decision of the MDP Pesamuhan Agung Bali Number 01/KEP/PSM-3/MDPBali/X/2010, and this decision was socialized into the pakraman villages and adopt it into *awig-awig*.[26] However, if the individuals who are entitled to inheritance converted their religion, they will not be entitled at all of inheritance but the provision (soul fund) from their parents.[27]

Some Balinese who have inheritance problem submit their problems to the state to be sloved. Consequently, they are subject to the positive law, which is the Supreme Court Verdict: ***First***, the Supreme Court Verdict Number 179/K/1961/23/10/1961. This Verdict gives consideration that humanity and general justice on the nature of equality rights of men and women viewing as living throughout Indonesia that daughters beside sons should be inherited so as to have the inheritance rights of their parents. That decision appears and becomes part of Bali customary law that is most difficult in resolving inheritance disputes between sons and daughters due to different custom. On the other hand, it does not mean that indigenous Balinese that patrilineal system cannot be implemented since there are universal principles applicable to the Balinese society. ***Second***, the Supreme Court Verdict of the Republic of Indonesia Number 4766/Pdt/1998 on November 16th, 1999. This Verdict said that all of daughters in Bali have rights over inheritance from the heir.[28]

Management of Future Inheritance System in Patrilineal Society

Patrilineal culture which has penetrated almost all society will not fade away easily since it generally tied to the concepts and values of women placed in domestic area and custom restrictions. Although they are able to get out from their traditional roles, pursuing high education, taking part in various respected professions in society, they still cannot set themselves free from customary obligations.

In fact, in Indonesia, the struggle of feminists demanding equal status to men or against the patriarchal power had begun long before the independence pioneered by R. A. Kartini, and admitted implied in Constitution that citizens are equal before law and government and shall uphold the law without exception. In addition, as a product of legislation that has been established as a realization of the demands of equal rights and position of women and men including Law Number 1 Year 1974 (Marriage Laws), Law Number 7 Year 1984 on Approval of the Convention on the Elimination of All Forms of Discrimination Against Women and Law Number 13 Year 2003 (Labor Laws). Among the products of legislations, the most firmly one that regulate the elimination all forms of discrimination against women is Law Number 7 Year 1984. Although it has been ratified, the subordinate position of women in reality still persists in various areas of life.

At present, to manage patrilineal system to the future, the acceleration of the comple-

[26] Putu Jagadhita, December 6th, 2015, *Perempuan Bali Kini Berhak Dapat Warisan, Begini Perhitungannya*, available on web: http://www.balisaja.com/2015/12/perempuan-bali-kini-berhak-dapat.html, accessed on December 10, 2015. Also read on Ida Ayu Sadnyini, "Implementasi Keputusan MDP Bali Tahun 2010 ke dalam Awig-awig Desa Pakraman di Bali", *Jurnal Magister Hukum Udayana*, Vol. 5 No. 3, September 2016, pages 627-638; and I Ketut Sudantra, I Made Walesa and Yuwono, "Aspek-aspek Hukum Keluarga dalam Awig-awig Desa Pakraman", *Jurnal Magister Hukum Udayana*, Vol. 5 No. 3, Mei 2016, pages 43-58

[27] Compare with Sukerti opinion about this matter in Ni Nyoman Sukerti, et.al., "Pewarisan pada Masyarakat Adat Bali Terkait Ahli Waris yang Beralih Agama", Jurnal *Acta Comitas: Jurnal Ilmiah Magister Kenotariatan*, (2016) 2, pages 131-141

[28] Edo Hendrako, "Hak Waris Anak Perempuan Terhadap Harta Peninggalan (Studi Kasus Putusan MA RI No. 4766/Pdt/1998", *Jurnal Lex Privatum*, Vol. III No. 1. January-March 2015, accessed on web: https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/viewFile/7028/6538

tion of the Bill of Laws on Justice and Gender Equality is immediately passed into law so as to avoid further discrimination between women and men in the distribution of inheritance and the role of academics and legal practitioners is also needed to provide counseling and socialization of the position of women in inheritance law.

Conclusion

From the result of the discussion above, it can be concluded that: ***First***, there are various factors affecting the changing in society custom in patrilineal kinship system, especially in Batak, Karo and Bali people. They are education, urbanism or migration, religion and social, and internal factors such as individual awareness. ***Second***, some Court's verdict, in the end, become the guidance as a jurisprudence as stated in Circular Letter of the Supreme Court which decided distribution of inheritance in patrilineal indigenous people, that in distribution of inheritance both of daughters and sons are same. ***Third***, management of inheritance in patrilineal to the future is important to reach between men and women in inheritance distribution.

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