



## **Implementation of Daughters' Rights in Resolving Traditional Inheritance Disputes through Charity among The Karo Tribe (A Case Study in Nangbelawan Village, Simpang Empat District, Karo Regency)**

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### **Abstract**

The position of daughters in the inheritance distribution system based on Karo customary law in Nangbelawan Village stipulates that daughters do not inherit. When they receive an inheritance in the form of Pemere (gift) from male relatives, this provision does not ensure justice for daughters in obtaining their rightful inheritance. In contrast, the Civil Code and Supreme Court Jurisprudence Code No.179/K/SIP/1961 emphasize gender equality in inheritance rights, which often leads to family disputes. In cases of disputes in the village, conflict resolution is conducted through Arih-arih (consensus deliberations). This research combines normative and empirical legal studies using qualitative research methods, with secondary data sources and descriptive analysis. The findings reveal that daughters' positions in inheritance distribution differ from those of sons, with the allocation of one-third of the inheritance from brothers. The dispute resolution mechanism, Arih-arih, involves neutral mediators such as Anak Beru, Kalimbubu, and Village Heads. The customary inheritance system still prevails in the village, with limited progress in its development.

**Keywords:** Customary Law; Inheritance Disputes; Gender Equality

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## INTRODUCTION

Indonesia is an archipelagic country consisting of 34 provinces that have different cultures, ethnicities and geographical locations. One of the provinces in Indonesia is North Sumatra Province (Alam et al., 2018). One of the largest tribes in North Sumatra, namely the Karo tribe, the name of this tribe, was made into the name of the area, namely Karo Regency or better known as Tanah Karo. The area has a cool climate with temperatures ranging from 160C to 270C, and is located on the coordinate lines 05'North Latitude, 3019' South Latitude, 97055'East Longitude with an area of 127.3 km<sup>2</sup>. The administrative center of Karo Regency is in Kabanjahe. The village that is close to the capital city of Tanah Karo is Nangbelawan Village, Simpang Empat District, the majority of the people who live in the village are Karo people, who have characteristics that distinguish them from other tribes, namely clan, language, traditional clothing which is identical to the color red, kinship or kinship, customs, belief systems, and traditional houses (Sitepu & Ardoni, 2019).

The village community still highly respects Karo culture such as the existence of customary elements when important events in carrying out marriages, births and also deaths that are carried out in a traditional way are still thick with their cultural customs and not only that, in terms of inheritance distribution they also adhere to the legal system. custom in the village. Customary law is a living law that grows and develops in the midst of society in accordance with the development of society and most of its forms are unwritten (Sembiring & Sri Wahyu Ananingsih, 2016).

Customary law is an important source for obtaining national development. One element of customary law that can be used as a guideline for national inheritance law is customary inheritance law (Maya Kania, 2009). According to Hazairin who said that "Customary inheritance law has its own style in the minds of traditional people with the form of kinship of the hereditary system they adhere to (Hadikusuma, 2003).

The Karo indigenous people are indigenous people who adhere to a patrilineal kinship system, namely a community custom that draws lineage from the father's side. (Kasra, 2016). Boys function to continue the lineage of their parents while girls are to become children of other families in the same kinship so that their position produces offspring in other families (Poespasari, 2014; Poespasari, 2018)

So that in terms of inheritance distribution, daughters do not get part of their family, if they can, it's just giving mercy from brothers to sisters. With the provision of customary inheritance law, it is certainly unfair for girls, considering that girls and boys are of the same position as biological children and are entitled to inheritance in accordance with Article 832 of the Civil Code.

With this provision, it is unfair for girls because girls are also children conceived by both parents, and there is already a Supreme Court Jurisprudence No.179/K/SIP/1961 issued to the Karo community, that "boys and daughters have the same position in terms of distribution of inheritance.

And given that the Indonesian state is a state of law, of course the people must comply with the applicable laws and regulations. And in accordance with the Civil Inheritance Law Article 832 of the Civil Code: "Those who have the right to become heirs are blood relatives". With this in mind, there are often disputes over the division of customary inheritance which is carried out in an Aarih-aarih manner, in which the division

of inheritance which is carried out arbitrarily is carried out by mediators, namely Kalimbubu, Anak Beru and the village head. However, even though there has been a Supreme Court decision, especially in that village, this provision does not apply, so the author feels the need to conduct research by raising the title Implementation of the Position of Daughters in Settlement of Arit-Arit Traditional Inheritance Disputes in the Karo Bata Tribe (Study in Nangbelawan Village Simpang Empat District, Karo Regency). Based on the background above, the formulation of the problem to be discussed is: What is the position of daughters in the division of Karo Batak inheritance in Nangbelawan Village, What is the inheritance dispute resolution mechanism implemented in Nangbelawan Village and How is the development of Karo Batak inheritance in Nangbelawan village?

## **RESEARCH METHOD**

The research conducted for this study combines both empirical and normative research methods. Empirical research focuses on the practical implementation of normative legal provisions in real-life legal events within society. It involves studying how legal rules are put into action in specific situations (Sinamo, 2010). On the other hand, normative research is based on legal literature and treats the law as a system of norms. It aims to analyze legal principles and doctrines through scholarly examination (Soekanto & Mamudji, 2016)

Qualitative research methodology was employed to gather and analyze data for this study. It involved developing a theoretical framework based on data collected from the research, which provided insights into legal aspects. The collected data was thoroughly examined, discussed, and organized into relevant sections to extract valuable information (Sugiyono, 2010).

The research nature primarily consists of descriptive analysis, with a focus on the results of interviews conducted with the local community in Nangbelawan Village regarding inheritance distribution practices. This descriptive research approach required direct fieldwork to obtain firsthand information and facilitate the research process. Through interviews and observations, a comprehensive understanding of how inheritance disputes are resolved in the Karo Batak Tribe's customary legal framework was developed.

## **RESULT AND DISCUSSION**

### **General Description of the Geographical Location of Nangbelawan Village**

Nangbelawan Village is situated in close proximity to the capital city of Tanah Karo, which is Kabanjahe. It is located at a high altitude, approximately +1,200 meters above sea level, with coordinates at 22°49' North Latitude and 3°20' South Latitude, as well as 95°53' West Longitude and 95°35' East Longitude. The village experiences an average annual rainfall ranging from 2,000mm to 3,000mm per year, and the temperatures typically range between 17°C to 26°C.

Covering an expansive area of 1,200 hectares or 30 square kilometers, Nangbelawan Village is part of the Simpang Empat sub-district within the Karo Regency. It is situated at a distance of approximately 4.9 kilometers from Simpang Empat, around 16 kilometers

from the city of Berastagi, and about 4 kilometers from Kabanjahe, which serves as the capital of the Karo district (Munthe & Pakpahan, 2018)

The land in Nangbelawan village is fertile and suitable for various types of plants because the high rainfall each year supports soil fertility in the area. The land in Nangbelawan village is very suitable for agriculture, especially food such as coffee, cauliflower, cauliflower, broccoli, chilies, eggplant, corn and others. Most of the land in Nangbelawan village is used by villagers for agricultural activities and also settlements, in general the majority of residents in the village are farmers.

Nangbelawan Village has a population of + 1,500 people with 300 families. Community life in the village of Nangbelawan is still very thick with ancestral traditions such as traditional ceremonies which are still being applied. Marriage ceremonies and death ceremonies are still often carried out by the community which are held at the village hall (Jambur/Los) with the traditional Karo event. However, due to the development of the times, now there are also customary traditions such as alms of the earth, clean villages (such as Erpangir Kulau, Ndilo Wari Udan, Cawir Bulung, and others). These activities are no longer carried out because all the people in Nangbelawan village already have a religion that is admitted in Indonesia. The people in Nangbelawan village still uphold customary law which has been implemented long ago. Customary law specifically regulates marriage in which if each child has the same surname, there may not be marriage because they are considered non-siblings but have family ties like close relatives and if the marriage of the same clan violates custom, if there is one of the residents in the village Those who violate these provisions will be expelled from the village.

Nangbelawan Village is a village that is rich in natural resources which has fertile soil so that it becomes an agricultural area, the results of the economy and the livelihoods of the majority of the people are farmers. The average income of the people is in the middle category. If farmers in rural areas already have sufficient income to meet the necessities of life both for themselves and for their families and also know how to manage modern and advanced agricultural products, then in the end the economy in these villages will grow by itself.

### **The Position of Girls in the Distribution of Traditional Karo Inheritance in Nangbelawan Village**

The distribution of inheritance according to customary law in the village of Nangbelawan adheres to the Patrilineal system, which is the system used in the Batak customary law community, especially the Karo Batak. Inheritance rights in Karo Batak customary law are related to the family structure. The family structure of the Karo Batak legal community is based on patrilineal lines. The family structure of the Karo Batak legal community is based on male lineage and the family environment of the Karo Batak legal community is based on the fatherly line (Alesyanti, 2019; Kipp, 1976; Vergouwen, 2013; Viner, 1979)

Using the Karo customary law system regarding the division of inheritance when viewed from the perspective of customary law, in general, girls do not receive inheritance. Opinions of Mediators who often resolve inheritance dispute cases in Nangbelawan Village. Based on the results of interviews with Perbekalen Sinulingga as

Anak Beru, the position of girls is that they have a share for girls. Whether requested or not requested by the daughter, it is the duty of the son to give inheritance to his sister even though the amount is one-third of the total inheritance rights given by the parents (Boputra & Saraswati, n.d.; Slaats & Portier, 2019)

According to Ferdinan Ginting as Kalimbubu, the position of girls in the distribution of inheritance in Nangbelawan Village is that there is a difference in the position of girls and boys in getting inheritance. There is this difference because sons will carry the surname of the family and also as protectors of their family later when the heir is no longer there, while for girls they will become someone else's family after marriage or often also called Tukur so that daughters and children follow their husband's family and produce offspring. From her husband and getting her share of inheritance from her own husband, if you look at the distribution of traditional Karo inheritance in ancient times, girls did not get inheritance from their families even though they received inheritance in the form of Pemere (gifts) from their brothers (Kipp, 1976; Slaats & Portier, 2019).

According to Supriantojuangin-angin as the Village Head, the position of daughters in inheritance distribution is not the same in terms of obtaining inheritance from their family but girls will still receive inheritance from the family because of the inheritance from their brothers. Although the number of gifts given to women is not the same (Sembiring & Sri Wahyu Ananingsih, 2016). From the results of the three interviews it can be concluded that the position of daughters in inheritance distribution is not the same as boys in terms of inheritance, but with these customary provisions can girls in Nangbelawan village know how to apply the distribution of inherited inheritance? in the village, the researchers distributed questionnaires, the results of distributing questionnaires to girls in the village of Nangbelawan.

From the results of the questionnaire distributed to girls, it can be seen that 73,330/0 girls in Nangbelawan Village know the inheritance distribution system in the village, while only 26,660/0 don't know. From these results it can be concluded that the girls in the village know the distribution of inheritance that is implemented in the Nangbelawan village. However, with this provision, of course, there is injustice or discrimination that is felt by girls because girls do not get inheritance from their own families. The results of the questionnaire were distributed to girls in the village of Nangbelawan.

As for the results of the second questionnaire, it can be ascertained that most girls feel discrimination 66.66% while those who say no. Discrimination of 33.33%, which occurs as a result of inheritance distribution which is carried out according to Karo customary law which specifically regulates inheritance distribution. With the results of the questionnaire, it can be seen that girls experience compulsion in accepting what their rights should be, but prefer to remain silent even though they do not get the rights that girls should get from their families, while the results of the questionnaire concern the lack of courage for girls to fight for their rights.

It can be seen from the results of the next questionnaire that girls prefer to be silent 73, 330/0 choose to be afraid of violating customs, 6.66/0 choose not to care and 300/0 express their own opinion about why girls prefer to be silent even though they do not receive inheritance from inheritance. If you look at the results of the questionnaire, most of the girls stated that they were afraid, violated customs and also agreed with the results of interviews with several sources, especially girls who filled out the questionnaire,

saying that it was better to remain silent so as not to violate customs and there was no conflict between the nuclear family because if something it will embarrass the family so it's better to keep quiet so that the family remains intact and peaceful.

With the discrimination and also the compulsion felt by girls, of course, there are provisions or legal protection that girls get in terms of inheritance, bearing in mind that the 1945 Constitution Article 28D paragraph (1) contains provisions that every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, in its considerations in part it is written that "all citizens have the same position before law and government, so that all forms of discrimination against women must be abolished because they are not in accordance with Pancasila and the 194 Constitution. Law Number 39 of 1999 concerning Human Rights Chapter III part four concerning the right to justice. Article 17 contains provisions,

"Every person without discrimination has the right to obtain justice by submitting requests, complaints and lawsuits in criminal, civil and administrative cases and to be tried through an independent and impartial judicial process, in accordance with procedural law that guarantees an objective examination by honest and fair judges. to obtain a fair and correct decision" (Alesyanti, 2019; Kipp, 1976; Vergouwen, 2013; Viner, 1979)

When viewed from justice regarding the distribution of inheritance according to Karo customary law regarding the position of daughters in the village of Nangbelawan, according to Ferdinan Ginting as Kalimbubu who is usually called to resolve inheritance disputes, namely "If measured from the injustice it is indeed unfair, but usually when there is a problem of inheritance I as a mediator, he definitely advises the family to give inheritance to their daughter's heirs to get a share, even if it's a little, that is, if you look at the customary law of Karo in Nangbelawan village, that is, giving the inheritance in the form of inheritance from a brother to a sister, namely one third of the daughter's share (Kipp, 1976; Slaats & Portier, 2019).

According to Perbekalen Sinulingga as a beru child "It is certain that girls feel that they have less parts in conscience, but if you look at the customary law that we have applied in this village for a long time, whether it is fair or unfair, we have to follow the rules that have been set a long time ago in this village. . Because from the beginning the rights of boys and girls were not the same. So you have to follow the habits that have been applied from long ago. Even though girls do not have the same rights as boys, girls still get their inheritance, only a third of the size of boys (BOPUTRA & SARASWATI, n.d.; Slaats & Portier, 2019)

According to Supriyanto Perjuangann-angin as the head of the village of Nangbelawan that "When viewed from the side of fairness there is no income for daughters regarding this inheritance, but it has become a customary rule that has been passed down to us, grandchildren, now it depends on the heir again, who must be wiser in distributing inheritance to heirs (Sembiring & Sri Wahyu Ananingsih, 2016).

With the opinion of the Mediators who usually handle inheritance cases in Nangbelawan Village, the three felt that it was unfair for daughters regarding inheritance income. Thus the daughter will always be sought by the three mediators to get a share of

the daughter by means of a grant or gift (Pemere or Kuahate) from her male relative. The amount of inheritance that the daughter gets is one-third of the son's share.

Even though it is still unfair for daughters, there are many reasons from the brothers that the daughter will be Tukur (already bought or married by another family) and will produce another family as well, so that the daughter does not get an inheritance even though getting the inheritance was only in the form of mercy (pemere) from his family. From this it can also be said that in the Karo tribe community in Nangbelawan village it is known that boys are one of the heirs, so not only parents are heirs but sons also have the right to be heirs for their families.

### **Dispute Resolution Mechanism Applied in Nangbelawan Village**

With the distribution of inheritance implemented in the village of Nagbelawan based on Karo customary law which adheres to the patrilineal system of male lineage. So it is possible for inheritance disputes to occur in the Nangbelawan Village. There are 3 (three) main factors that influence the dispute resolution process, namely: Interest; Rights; and Power.

The parties to the dispute want their interests to be achieved, their rights fulfilled, and their powers shown, utilized and maintained. In the dispute resolution process, the disputing parties will usually insist on maintaining these three factors. In the event that a dispute arises, differences of opinion and prolonged debate generally result in the failure of an effective dispute resolution process, the prerequisites that must be met are that both parties must pay attention to or uphold the right to hear and the right to be heard so that common ground can be created in settlement dispute (Sembiring & Sri Wahyu Ananingsih, 2016).

With the existence of a dispute, it is necessary to have a dispute resolution agency both legal and non-legal in the Nangbelawan Village. The author has distributed questionnaires to girls in the Nangbelawan village. From the results of the questionnaire, it can be seen that the form of dispute resolution by Arih-arih chose as much as 900/0. This was implemented in the village of Nangbelawan, Simpang Empat District, Karo Regency, while for the legal route it was only 100/0. Where the implementation of customary inheritance disputes which were carried out by Arih-arih resulted in the application of Karo customary law regulations in solving the inheritance disputes.

According to Perbekalen Sinulingga as Anak Beru "the form of dispute resolution is carried out in Arih-arih in which a mediator is asked to resolve the case". According to Ferdinan Ginting as Kalimbubu, "the form of dispute resolution in the village of Nangbelawan is usually carried out in an arih-arih or carried out in discussions with the family and calling a third party to get a good agreement (Kipp, 1976; Slaats & Portier, 2019).

The same thing was also conveyed by Supriyanto Waringin-Angin as the Head of Nangbelawan Village "the form of dispute resolution that is carried out in this village is usually by means of inter-familial relations with the aim of settling the case (Warring S. , 2021). With the opinion of a third Mediator who usually handles inheritance cases where dispute resolution is carried out by Deliberation or Arih-arih where there is a third party to resolve the case. As for the three mediators, namely Anak Beru, Kalimbubu, to the village head, the three will be summoned in stages. The dispute resolution mechanism can be seen in the following figure.

The inheritance dispute settlement mechanism is in accordance with the graphic above.

1. There is an inheritance dispute within one family, then an internal family deliberation is carried out first. If no peace agreement is obtained between the parties, the Mediator is summoned as a third party to resolve the case.
2. There is a summons for a mediator or a third party to carry out the settlement of the dispute with Arih-arih by calling Anak Beru as the intermediary.
3. Subsequent summons from Kalimbubu, usually with Kalimbubu's summons, most problems can be resolved if Kalimbubu has participated in providing advice and input to families with inheritance disputes, their words are highly respected and their input can be considered. Because the words of Kalimbubu in the Karo community are grand or words that must be respected. And if the family is still not satisfied, then the last party called.
4. There was a final summons of a third party, namely the village head or village officials who participated in resolving the case. And if the summons of the village head has not yet come to light, then the only and final route is the legal route.

With the existence of this dispute resolution mechanism, it can be seen that Kalimbubu is one of the parties that is highly valued in the Karo customary community, so it is not uncommon if there is a summons from Kalimbubu, usually conflicts in the family can be resolved. If the dispute with the call of Kalimbubu still does not get a bright spot. Then the settlement of disputes through legal means by filing a lawsuit in court. With the case going to court, both kalimbubu, anak beru, and traditional leaders can no longer intervene in resolving the problem. According to Perma No. 1 of 2008 which has been amended by Perma No. 1 of 2016 article 1 point (2) and (3), those who can become mediators in resolving disputes in court are career judges and non-career judges. These non-career judges must fulfill the requirements of having a mediator certificate issued by the Supreme Court, therefore, neither the kalimbubu, anak beru, nor the traditional elders can intervene in solving the problem. However, with the inclusion of mediation in court, the opportunity for peace for the parties to the dispute is open again, even though the form of settlement offered by the court does not include Arih-arih in it (Kipp, 1976; Slaats & Portier, 2019).

### **The Development of the Karo Batak Inheritance Division in Nangbelawan Village**

The division of Karo customary inheritance in Nangbelawan village until now still adheres to the customary system even though in areas outside Nangbelawan village there have been developments in the distribution of inheritance which is carried out differently from customary law that used to be applied but increasingly the development of the era is accelerating so that the existence of customary law in other areas has experiencing change.

It is different from Nangbelawan village, if it is seen that there has been no significant change because the people in the village prefer to adhere to the customary law system and if a dispute occurs in terms of inheritance distribution, usually the community will always choose to carry out Arih-arih in terms of inheritance distribution, this can be Judging from the results of the questionnaire distributed to girls, it can be seen that if girls are the recipients of inheritance, the inheritance distribution system

that is mostly chosen by the people in the village is an inheritance system that is determined by inheritance as much as 83.33% and those who choose are based on jurisprudence regulations. Supreme Court No. 179/K/SIP/1961 regulates the equal rights of boys and girls in obtaining an inheritance of 13.33%.

With these results it is known that Arih-arih is the most chosen daughter as heir because the people in the village are not yet aware of the existence of the Supreme Court Jurisprudence regulations. Based on the results of the questionnaire, it can be seen that the people in Nangbelawan village still adhere to their customs and it is difficult to experience changes in terms of inheritance distribution. Results of interviews with the three mediators.

According to Ferdinan Ginting as Kalimbubu "regarding the development of inheritance distribution in Nabelawan village, namely that there has not been a full development in the distribution of customary law inheritance in this village where the majority of cases that are commonly experienced in this village still adhere to the customary law system that applies in this village. However, more and more, there has been a slight change in getting an inheritance. In the past, girls did not receive an inheritance, but now girls have received an inheritance, even though their income is not the same as that of sons (Kipp, 1976; Slaats & Portier, 2019).

According to Perbekalen Sinulingga as Anak Beru "there has been no progress because until now the people in Nangbelawan village still adhere to karo customary law because they still maintain their family integrity (BOPUTRA & SARASWATI, n.d.; Slaats & Portier, 2019). According to Supriyanto Perjuangann-angin as the Head of Nangbelawan Village "the form of development, if you look at it from the past until now, has not developed significantly, maybe before that girls did not get an inheritance, but now girls have received an inheritance, although not as much as the share of boys (Munthe & Pakpahan, 2018).

With the opinion of the Mediators who often handle inheritance cases, regarding the development of inheritance distribution in the village of Nangbelawan, there has not been a significant change. There is a possibility that there is no development of inheritance in the village due to ignorance of laws and regulations, such as the Supreme Court Jurisprudence Regulation No. 179/K/SIP/1961 which states that there are equal rights for girls and boys in terms of inheritance from their families. The results of the questionnaire explain the ignorance of the people in the Nagbelawan village.

The results of the questionnaire distributed to girls in the village of Nangbelawan were 46.66% only knowing the Supreme Court Jurisprudence No. 179/K/SIP/1961 and as many as 56.660% were not aware of these regulations, which hindered the development of inheritance distribution in the village of Nangbelawan (Nangbelawan 3. a., 2021).

## **CONCLUSION**

The position of girls in the distribution of inheritance in the village of Nangbelawan is not the same as that of boys. Where in the village Karo customary law still applies which regulates patrilineal inheritance. With this provision, the position of daughters in the distribution of inheritance is not taken into account, because daughters do not receive inheritance only get a share in the form of giving mercy (pemere or perkuah ate) from their brothers to their sisters. The ratio of girls must not be less than one-third of

the proportion of boys. The inheritance dispute resolution mechanism implemented in Nangbelawan Village is carried out by Deliberation or also called Arih-arih, this activity is carried out to get a peaceful word in a case. With Arih-arih, the majority of the people in the village used this activity to obtain a peace agreement. This activity was carried out with three mediators as third parties, namely Anak Beru, Kalimbubu, and the village head. The mechanism is that there is an existing inheritance case, after which internal family discussions are carried out first. If there is no agreement, then there is a summons for the mediator, namely Anak Beru. If with the calling of Beru's child there is no agreement, then another third party, namely Kalimbubu, is summoned. Usually if there is already a call from Kalimbubu, then when Kalimbubu gives advice it is usually a wise and respected remark. And if there is still resistance from a party and no agreement has been reached, the last party, namely the village head, is summoned. If there is also no agreement with the village head, then the only last resort is the legal route with a lawsuit in court. Particularly in the development of the distribution of the Karo Batak inheritance in Nangbelawan Village, there has not been a very significant development regarding the distribution of inheritance. This incident occurred due to the ignorance of the community about the existence of laws and regulations that benefit girls in terms of inheriting from their families. There is also an obstacle to this development, namely the feeling of not wanting to violate the customs that have been carried out with the regulations that have been implemented long ago.

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Kitab Undang-Undang Hukum Perdata

Undang-undang Dasar Republik Indonesia 1945

Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia.

Yurisprudensi Mahkamah Agung Republik Indonesia No. 179/K/SIP/1961.B.