



The value of justice in the customary law of inheritance of the moi tribe between male heirs and female heirs in Sorong city: the perspective of maslahah

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ABSTRACT

Allah Subhanahu Wa Ta'ala revealed Islam with the banner of justice, which, before Islam came, was very difficult to obtain. Islam has determined the shares for heirs very regularly and moderately. However, the distribution of inheritance often causes disputes between heirs and relatives. This research intends to reveal the value of justice in the customary law of inheritance of the Moi tribe in Sorong City by proposing three objectives, namely: (1) to describe the thinking of the Moi indigenous people about the value of justice in the Moi customary law of inheritance; (2) to describe the value of justice in the Moi customary law of inheritance between male and female heirs; (3) to analyse the benefits of the value of justice, especially for female heirs in the Moi customary law of inheritance in Sorong City. This research was conducted in a descriptive qualitative manner with a deductive procedure line of thought sourced from primary and secondary data using several approaches: shar'i, juridical, sociological, historical, and philosophical. Through data collection techniques of interviews, observation, and documentation with processing and analysis through reduction, presentation, and conclusion drawing obtained from the research results. First, Moi customary inheritance law in Sorong City has fulfilled the value of justice in the Moi indigenous community as long as it upholds the five fundamental rights in Moi customary inheritance law. Second, the value of justice in the Moi customary law of inheritance is not by Islamic inheritance law because it is distributed based on the discretion of the eldest son in the family. Third, the value of the justice of the customary law of inheritance of the Moi tribe in Sorong city has not been by maslahah because it distinguishes the rights between male

heirs and female heirs. The *maslahah* in the *Moi* customary law of inheritance is included in *maslahah mulghah*, which is *maslahah* not by the guidance of the text and *shar'i*. This kind of benefit cannot be used as a legal basis, according to the agreement of the scholars.

Keywords: Value of justice; *moi* tribe inheritance; *maslahah* perspective

1. INTRODUCTION

The process of human life naturally ends with an event called death, and every death for living things is an ordinary event that Allah Subhanahu Wa Ta'ala has determined for all living things in the world. As for humans, although death is a common thing, as a living being, death causes inevitable legal consequences because death, according to the law, is a legal event.

This means that if someone dies, then all legal rights and obligations owned during life will be left behind. The rights and obligations are generally intangible or tangible as movable or immovable objects. The fate of wealth in the form of objects as a person's estate, when he dies, will become an inheritance object to his descendants.

Allah Subhanahu Wa Ta'ala revealed Islam with the banner of justice, which before Islam came was very difficult to obtain by the *jahiliyah* society. As a perfect religion, Islam regulates all sides of human life, even transferring property left by a human being after he dies. The law that discusses transferring a person's property in legal science is called inheritance law or *faraidh* law.

Islamic inheritance law provides justice and equal rights between male and female heirs, children, the elderly, adults, husbands, wives, brothers or sisters by their respective shares determined by the text. Of the various provisions in Islamic inheritance law, there are at least five principles that must be agreed to be obeyed as something that is considered to reflect the nature of Islamic inheritance law, namely, the principle of *ijbari*, bilateral principle, individual principle, balanced justice principle, and the principle caused by death. Of these five principles, the most interesting to discuss is the issue of justice. In Islamic inheritance law, justice concerns the rights of all heirs.

Justice in Islamic inheritance law is closely related to rights and obligations and the balance between what is obtained and needs and uses. Based on this understanding, the principle of justice in the distribution of inheritance in Islamic law can be seen. It can be said that gender differences do not determine inheritance rights in Islam. Like men, women also get the same strong right to inheritance. This is mentioned in Surah al-Nisa verse 7, which equalises the position of men and women in the right to inheritance. Verses 11-12 and 176 of Surah al-Nisa in detail explained the equal strength of the right to receive inheritance between men and women, fathers and mothers, husbands and wives, and brothers and sisters.

The value of justice in Islamic inheritance law will appear during the distribution of inheritance. The ratio of two to one applies not only to sons and daughters but also to husbands and wives, fathers and mothers, and brothers and sisters, all of which have wisdom if we study and examine more deeply related to justice in Islamic inheritance law.

Hence, the meaning of the value of justice in Islamic inheritance law must follow the provisions of Allah Subhanahu Wa Ta'ala, in the Qur'an and Hadith, which is nothing but equal distribution but distribution according to Islamic inheritance law. The distribution of Islamic inheritance contains values of justice between fellow human beings that can be viewed from theological, economic, and social sides. Regarding theology, the inheritance law contains justice for His servants and feels that this is a decree determined by Allah SWT. So, there will be no assumption that Islamic inheritance law is unfair and leads to discrimination against women because we have proven this justice regarding *maslahat* in dividing Islamic inheritance.

The *Moi* customary law of inheritance adheres to a patrilineal system or male lineage as the principal heir in the *keret*/clan. Women in the *Moi* custom of inheritance are placed second in inheritance and every decision-making. This is because men in the *Moi* tribe have a great responsibility to prepare and take care of all family needs, including the needs of younger siblings or daughters in the *keret*/family. In addition, men are also responsible for marrying off their children or younger sisters and preparing everything needed in the traditional wedding ceremony.

2. METHODS

This research was conducted descriptively and qualitatively with a deductive procedure line of thought sourced from primary and secondary data using several approaches: *shar'i*, juridical, sociological, historical, and philosophical. The research location is in Sorong City, Southwest Papua Province, with data sources coming from informants, social conditions, and documents collected using interview techniques, observation and literature study.

Researchers use data collection techniques, interview guidelines, observation guidelines, and documentation formats with processing and analysis through reduction, presentation, and conclusion drawing obtained from the research results.

3. RESULTS AND DISCUSSION

a. Thoughts of the *Moi* Indigenous People About the Value of Justice in the Customary Law of *Moi* Tribal Inheritance in Sorong City

The customary law of inheritance of the *Moi* tribe adheres to a patrilineal system or male lineage as the primary heir in the *keret*/family. Women in the *Moi* custom of inheritance are placed second in inheritance and every decision-making. This is because

men in the *Moi* tribe have a great responsibility to prepare and take care of all family needs, including the needs of younger siblings or daughters in the *keret* /family. In addition, men are also responsible for marrying off their children or younger sisters and preparing everything needed in the traditional wedding ceremony.

Although the *Moi* customary law of inheritance adheres to the patrilineal inheritance system and seems discriminatory against the rights of female heirs, the *Moi* customary community considers that the inheritance system has fulfilled the value of justice amid the customary community and all heirs. The *Moi* indigenous people believe that the inheritance system is the best for them, which their ancestors passed down from generation to generation. The *Moi* also believe that if the customary law of inheritance is not carried out according to customary provisions and guidance, it will bring curses from the spirits of the ancestors.

According to Hana, although the customary law of inheritance of the *Moi* tribe in terms of *shara'* is not by *maslahat* and seems discriminatory against women's rights, the customary law of inheritance of the *Moi* tribe is considered to still provide the value of justice for all heirs, especially for women. It has its benefit value among the indigenous people of the *Moi* tribe. The main requirement for the values of justice and benefit in the customary law of inheritance of the *Moi* tribe to be achieved is that the *Moi* people, carrying out and implementing inheritance law, continue to use the patrilineal system taught by their ancestors and continue to carry out and implement the five fundamental rights in the customary law of inheritance of the *Moi* tribe, namely *pebemun* rights, *woti* rights, *sumla* rights, *sukban* rights and *supwi* rights.

b. The Value of Justice of the *Moi* Customary Law of Inheritance Between Male Heirs and Female Heirs from the Perspective of *Maslahah*.

The customary law of inheritance of the *Moi* tribe adheres to a patrilineal system or male lineage as the primary heir in the *keret*/family. Women in the *Moi* custom of inheritance are placed second in inheritance and every decision-making. This is because men in the *Moi* tribe have a great responsibility to prepare and take care of all family needs, including the needs of younger siblings or daughters in the *keret*/family. In addition, men are also responsible for marrying off their children or younger sisters and preparing everything needed in the traditional wedding ceremony.

In the customary law of inheritance of the *Moi* tribe, daughters only have the right to eat the inheritance left by their parents. However, the right to eat can change to full property rights if the family has no male heirs or the daughter is the only child. Daughters can also pass on inheritance to the next generation with provisions and a series of traditional ceremonies that must be carried out so that the next heir can legally

inherit the inheritance. One of the traditional ceremonies that can be carried out is the traditional blood unification ceremony, which uses a tool in the form of traditional bamboo. After performing the traditional ritual, it can legally inherit the inheritance from the mother.

Male heirs, especially the eldest son in the clan, get full rights to their parents' inheritance, whether in the form of a house, garden or customary forest. In contrast, female heirs in the clan only get the right to eat or the right to be able to enjoy the results of their parent's inheritance, such as occupying their parents' house, enjoying garden produce and hunting results from the customary forest without being able to have full rights to their parent's inheritance. In certain circumstances, the *Moi* customary law of inheritance allows female heirs to obtain full rights to parental inheritance, not limited to the right to eat. These circumstances include, first, the daughter is the only child in the family. Second, the daughter in the family chooses not to marry throughout her life or live single. Third, there are no more heirs or sons in the family or the clan.

When distributing inheritance to all heirs, there is also a significant difference where male heirs in the family or clan can immediately obtain their rights as heirs while, for female heirs, to get full rights to the inheritance left by parents, they must first comply with the three conditions mentioned earlier and must go through a traditional ceremony procession and be witnessed by the entire family, clan and traditional elders of the *Moi* tribe in order to obtain legality for the inheritance obtained. Of the many traditional ceremonies that can be carried out, the traditional blood merger ceremony

The traditional blood merging ceremony is a traditional ceremony that is often used to obtain legality for the inheritance of parents by combining the blood of the heir and heirs using traditional bamboo taken explicitly in the *Moi* tribe's customary forest. The customary bamboo is then sliced on the body parts (mainly on the arms) of the testator and heirs until they bleed, and then the blood of both is merged into one. This way, the female heir can obtain full rights to her parents' inheritance. This traditional blood-merging ceremony can also be carried out so that adopted children can inherit their adopted parents. *Silas* is most often carried out to obtain legality for the inheritance obtained by female heirs in the *Moi* tribe.

The *Moi* customary law of inheritance in Sorong City does seem unfair and discriminatory, especially to female heirs. However, the *Moi* indigenous people consider that their customary law of inheritance has fulfilled the value of justice and *maslahat* as long as it maintains and carries out the five fundamental rights in the *Moi* customary law of inheritance. Of course, this kind of benefit falls into the *maslahah mulghah*, which is a benefit that is not by the guidance of the text and the will of *Shara'*. According to the scholars' agreement, this kind of benefit cannot be used as a legal basis.

c. The benefits of the justice value in the law customary of inheritance of the Moi tribe in Sorong City from the perspective of *Maslahah*

The benefits obtained by experts in the customary law of inheritance of the *Moi* tribe, especially for female heirs in the distribution of inheritance by using customary law compared to using other inheritance laws, are the preservation of brotherhood ties in the *Moi* tribal community and avoiding conflicts that can lead to disputes in the family and more importantly, avoid war between clans. Another benefit that can be obtained by female heirs in the distribution of inheritance using customary inheritance law is the guarantee of all their living needs, which male heirs bear in the clan. Therefore, although women in the customary law of inheritance of the *Moi* tribe do not get full rights and only get the right to eat, they still use customary law in dividing inheritance because they have benefited while still applying the five fundamental rights of the customary law of inheritance of the *Moi* tribe in dividing inheritance.

Thus, the customary law of inheritance of the *Moi* tribe, especially regarding the distribution of inheritance for female heirs, is not by *maslahat* because it does not give full rights to control the inheritance and only gives the right to eat. This is contrary to the *nash syar'i*, which still gives the right to inherit the inheritance left by the parents by the female heirs. In other words, the *Moi* customary inheritance law is included in the category of *maslahah mulghah*, namely *maslahah*, which contradicts the clear and detailed *nash* but aims to create a safe and peaceful life in the family or community.

As explained earlier, one of the conditions for enacting a benefit is that it does not conflict with the *shar'i* texts, namely the Qur'an and al-Sunnah.

4. CONCLUSION

The customary law of inheritance of the *Moi* tribe adheres to a patrilineal system or male lineage as the primary heir in the keret/family. Women in the *Moi* custom of inheritance are placed second in inheritance and every decision-making. The *Moi* indigenous people consider that the inheritance system has fulfilled the value of justice among the indigenous community and all heirs. The *Moi* indigenous people believe that the inheritance system is the best for them, which their ancestors passed down from generation to generation.

Male heirs, especially the eldest son in the clan/keret, get full rights to their parents' inheritance, whether in the form of a house, garden or customary forest. In contrast, female heirs in the clan/keret only get the right to eat or the right to be able to enjoy the results of their parent's inheritance, such as occupying their parents' house, enjoying garden produce and hunting results from the customary forest without being able to have full rights to their parent's inheritance.

The Moi indigenous people consider that their customary law of inheritance has fulfilled the value of justice and *maslahat* as long as they maintain and implement the five fundamental rights in the Moi customary law of inheritance. Of course, this kind of benefit falls into the *maslahah mulghah*, which is a benefit that is not by the guidance of the text and the will of *Shara'*. According to the scholars' agreement, this kind of benefit cannot be used as a legal basis.

The benefits obtained by female heirs in the division of inheritance using customary law of inheritance are the guarantee of all their living needs borne by male heirs in the clan. Therefore, although women in the customary law of inheritance of the Moi tribe do not get full rights and only get the right to eat, they still use customary law in dividing inheritance because they have benefited as long as they continue to apply the five fundamental rights of the customary law of inheritance of the Moi tribe in dividing inheritance.

The customary law of inheritance of the Moi tribe, especially regarding the distribution of inheritance for female heirs, is not by *maslahat* because it does not give full rights to control the inheritance and only gives the right to eat. This is contrary to the *nash syar'i*, which still gives the right to inherit the inheritance left by the parents by the female heirs. In other words, the Moi customary inheritance law is included in the *maslahah mulghah*, namely *maslahah*, which contradicts the clear and detailed *nash* but aims to create a safe and peaceful life in the family or community.

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