



Widow's Rights to Property and Child Care in The Kad'di Culture of The Sabu Community

Chatryen M. Dju Bire¹, Ananda Natasya Manu²

¹Faculty of Law, Nusa Cendana University, E-mail: chatryen94@gmail.com

²Faculty of Law, Nusa Cendana University, E-mail: anandamanuu@gmail.com

ARTICLE INFO	ABSTRACT
<p>Keywords: Property; Management; Culture</p> <p>Child Kad'di</p> <p>How to cite: Bire., Et., Al. (2024). Widow's Rights to Property and Child Care in The Kad'di Culture of The Sabu Community. <i>Veteran Law Review</i>. 7(2). 235-243.</p> <p>Received:2024-03-18 Revised:2024-03-25 Accepted:2024-11-16</p>	<p><i>In relation to marriage problems, when there is an event where the husband dies first, then culture Kad'di must be followed in the customs of the Sabu community. Culture Kad'di only done for those married to Sabu. Culture Kad'di done when the husband has been buried or a few days after being buried. When the wife returns to her clan of origin or returns to the lap of her parents and/or family, important matters arise, including child care and problems with assets. In the cultural Sabu indigenous people Kad'di have social values, cultural wisdom that is passed on (inherited) from one generation to another from generation to generation. The Savu people still maintain, maintain and treat culture Kad'di as customary law. Culture Kad'di which is carried out usually through a very long and cultured customary process that requires the right time, place and conditions.</i></p>

1. Introduction

Marriage is a legal relationship between a man and a woman. The purpose of marriage itself is to create or build a happy and harmonious household. In marriage, both husband and wife are obliged to fulfill the rights and obligations of each party as they should, the existence of marital status, children born from marriage, property or property, inheritance and population factors that exist in a social order (Dwi Dasa Suryantoro, 2020). Marriage has legal consequences for each husband and wife related to rights and obligations. Marriage is regulated in Law Number 1 of 1974 concerning Marriage.

As one of the social institutions, marriage is a relatively important event in people's lives. The basics of marriage are formed by the natural elements of human life itself which include biological needs and functions including offspring, the need for affection, kinship and raising children to become perfect members of society. Initially

a man and woman are free individuals without any legal ties, but after the occurrence of marriage, both men and women are bound to become husband and wife. The bond of marriage is what gives rise to a legal effect on each husband and wife relating to rights and obligations. A man and woman who form a household or family in a marriage bond is basically a human instinct as a social being in order to continue their life.

Indonesia consists of various tribes and customs which of course include customary law that applies in each region/tribe. Customary law reflects the personality and soul of the nation, so it is believed that some customary legal institutions are certainly still material in forming a legal system (Mahalia Nola Pohan, 2018).

If you look at the definition of marriage according to customary law, it is a bond between a man and a woman to form a household that is carried out in a customary manner involving the families of both parties. Siblings and relatives. Customary law is a law that grows and develops in a community. Customary law groups have a kinship system that is certainly different from one indigenous community to another. The kinship systems include (1) parental kinship system, which is a kinship system that draws lineage from male relatives and female relatives, (2) matrilineal kinship system, which is a kinship system that draws lineage from female relatives, and (3) patrilineal kinship system, which is a kinship system that draws lineage from male relatives (Muthmainnah Muthmainnah & Fattah Setiawan Santoso, 2019)

Marriage among indigenous peoples still strongly maintains the principle of kinship based on ties of blood descent (*ius sanguinis*), so the function of marriage is a life value to be able to continue offspring, maintain the lineage and position of the family concerned. In addition, sometimes marriage is a means of repairing distant and fractured kinship relations, so that it is often a means of approaching and reconciling between relatives and marriage is also related to matters of position, property and inheritance. So based on this, marriage according to customary law is much broader in meaning than according to positive law regulated in legislation.

As is known from the applicable law in our country where customary law has been in effect since time immemorial and is used from generation to generation as a guide in solving various problems faced by the people who adhere to it. Such is the case with the issue of inheritance according to gray customary law. Although it is only a custom that is carried out repeatedly and from generation to generation according to the cultural system of indigenous peoples that applies in the relevant area, it is still maintained and maintained to this day and is highly upheld in the community.

Kad'di is one of the cultural traditions of the Sabu people. This tradition is part of the process of dealing with the death of a husband who is married to a woman of Sabu origin in the ethnic Sabu community. In the customs of the Sabu people, if the husband dies, then after the thanksgiving ceremony, the family who has the right to the wife (widow) asks the family of the deceased husband to bring back the wife (widow) to the family and the widow's life is fully under the responsibility of the family who has the right to her. The purpose of *kad'di* is also to avoid embarrassing the family.

According to the Sabu tradition, if the widow wants to remarry, but still lives in her husband's house, this is called adultery, so it is very embarrassing for the family. Therefore, the widow must be asked to return to her family of origin to avoid this. The family's request for the widow's return to the husband's family is known as *kad'di*. This *kad'di* culture is still maintained today by the Sabu community.

Efforts to defend the *kad'di* tradition are made so that the identity as a Sabu person is maintained. The efforts made include:

- a. Cultural internalization, carried out from parents to children since childhood. Sabu parents, on certain nights, usually tell children about Sabu folklore and the values or norms that exist in the Sabu ethnic community;
- b. Cultural socialization, which is the process of transferring cultural values from one generation to the next. The *kad'di* tradition goes through a socialization process when the implementation of this tradition takes place. The people of Sabu learn *kad'di* culture from people who are considered to understand Sabu culture, especially *kad'di* culture (Chatryen M Dju Bire et al., 2023).

Many areas of community life used to exist, but now no longer do. That is, they have been abandoned, no longer practiced because they are no longer considered necessary or needed. For example, ceremonies, rituals, stages of implementation of something, some are no longer performed. However, the *kad'di* ceremony is still carried out in every event of the death of a husband who has a female wife from the Sabu ethnic group. It can be said that *kad'di* is performed in almost all events of the death of the husband of a Sabu woman.

The *kad'di* ceremony dates back to the ancestors of the Sabu people and is practiced from generation to generation until today. This *kad'di* should not be eliminated because: First, *kad'di* is one of the characteristics of the Savunese custom. Secondly, *kad'di* is a custom or way to maintain family relations between all parties involved, namely the husband's family and the wife's family, including the children and grandchildren of both parties. If *kad'di* is removed, one day we who are siblings may not know each other anymore (Yustus K.C Mata Ratu, 2013).

When the wife returns to her original clan, important matters arise, including the management of children and property issues. Child management in relation to the family in a narrow sense, where the parents are no longer there so that the children become alone. Likewise, if the children left behind are not yet adults, the issue of who or which party is responsible for guiding and maintaining them will arise. The same applies to the issue of existing marital property. These problems are supported by the fact that sometimes in public at the time of death or shortly after the death of the husband, the wife is declared to return/return to the bosom of parents and/or family.

2. Method

The research method used in this research is empirical research. Empirical legal research in which this research collects data sourced from statutory documents and

library references and with an emphasis on field data. The type of data in this research is qualitative data while the data sources are primary data, secondary data and tertiary data. Primary data is data obtained in the field through interviews, secondary data is data obtained from literature studies and tertiary data is data obtained from applicable laws and regulations.

3. Analysis & Results

3.1. Rights Of Widows Who Have Been Married To Their Marital Property

Marriage not only unites a man and a woman in a family, but besides that it also brings legal consequences for husband and wife as well as for the position of property. Property in marriage is divided into two, namely innate property and joint property. Congenital property is property that already exists both husband/wife before marriage while joint property is property that exists when marriage occurs. In the acquisition of this joint property, the wife is not obliged to collect joint property, but the wife must carry out her obligations as a wife in married life. Joint property is obtained for the efforts of both husband/wife during the marriage bond period (Muhamad Beni Kurniawan, 2018).

The Civil Code (BW) considers that as a basic principle that if the husband and wife at the time of marriage do not enter into any agreement between them, the result of the marriage is the mixing of wealth between husband and wife into joint property between husband and wife. Joint assets are regulated in chapter VII articles 35 to 37 of Law Number 1 Year 1974 concerning Marriage. Article 35 of Law Number 1 Year 1974 can be studied in more depth including (Ahmad Zainudin, 2020):

- a) All property obtained during marriage becomes joint property. If the sentence is interpreted, then all assets obtained either jointly or individually will automatically become joint property.
- b) The innate property of each husband and wife and the property obtained by each as a gift or inheritance is under the control of each as long as the parties do not determine otherwise.

The inherited property brought by each party, both husband/wife, is not shared with the joint property but the inherited property returns to each of the husband and wife which is in the control of the parties, as long as the parties do not determine otherwise because of its nature and origin is personal property, whether in the form of congenital goods or property obtained as a gift grant or inheritance, then control over the personal property is fully in the hands of each husband and wife as long as the marriage lasts (Tria Anggraini Wagiran, 2018).

The Sabu community is classified as a parental and bilateral indigenous community where the kinship system is still strong within the indigenous community, especially after the breakup of marriage is resolved on the basis of deliberation for consensus between the husband's relatives and the wife's relatives in harmony and peace. This

is also involved in the issue of dividing the inheritance after the widow decides to *Kad'di*.

It should be noted that after returning to the home of her parents and returning to the home of her husband (*Kad'di*), the widow has limited rights to:

- a) What they both earned during the marriage after dividing it with their children;
- b) Goods given by the parents in the form of sorghum seeds, rice, green beans and others;
- c) *Kepepe pemahi*, which is a small woven palm leaf containing spices;
- d) *Kepepe wangngu* which is a container containing a tool to process cotton into yarn;
- e) Sometimes there are those who bring home the land called *rai haru keballa*.

Especially for the husband's inheritance in addition to the wife's inheritance when married, it must be divided between the mother and children. Based on an interview conducted by the author with one of the traditional leaders of the shabu community, in matters of property division, inheritance between mothers and children usually involves traditional leaders and local government officials with the aim of only being known by the local government.

If the marriage does not have children then the husband's inheritance which is the right of the children is given to the husband's family. The amount of the widow's share and the children's share cannot be determined because all of this is based on the consensus of both parties. What needs attention in this discussion is if there is an agreement in which both husbands tend to no longer heed the *Kad'di* wife, whatever if it happens that the husband is greedy and dishonest so that the rights of the children are ignored.

As the results of the author's interview with one of the community's traditional leaders explained that in reality sometimes the wife who is *Kad'di* does not bring joint property except for innate property not because of her willingness but the will of the husband's family who tends not to respect the wife who has been *Kad'di*. Furthermore, the results of interviews with other traditional leaders said that in the community sometimes there are families of husbands who are greedy and do not pay attention to children and children's property, used not for the benefit of these children.

Based on this, it can be concluded that regarding joint property, namely property obtained by husband and wife during marriage becomes the right of husband and wife. The issue of children getting a share from their father and mother, means that the share is not other parties including the husband's family as happened during the division of joint property according to local customary law.

3.2. The Rights Of Widows Who Have Been Widowed Over The Management Of Their Children

The indigenous Sabu community recognizes marriage as a relationship between a woman and a man of legal age that is recognized by custom with the aim of forming

a happy family. In a marriage, of course, the husband and wife go through a customary marriage which is recognized as a legal bond and the offspring of the marriage are also legally recognized. In the indigenous Sabu community, descent is singleness, ancestry means that there is a blood relationship between one person and another.

In general, we see that there are legal relationships based on the familial relationship between parents and their children. We can also see that in general the consequences associated with descent go hand in hand with ancestral unicity, and these legal consequences are not all the same in different regions. But even though they are not the same, in reality there is a common basic view on the issue of descent, namely that descent is an essential and absolute element for a tribe or kin who want themselves not to become extinct, who want there to be a successor generation.

According to customary law, a legitimate biological child is a child born from a valid marriage between the father and mother, even though the marriage may have taken place after the mother became pregnant.

If there is only one parent in a family (deceased), and there are still minor children, then the parent in a parental family is the parent who is still living, unless the children are left to the relatives of the deceased.

As explained in Law No. 23/2002 on Child Protection section 4 article 26 that in the event that parents are absent, or their whereabouts are unknown, or for some reason, cannot carry out their obligations and responsibilities, the obligations and responsibilities as referred to in paragraph (1) may be transferred to the family in accordance with the provisions of the applicable laws and regulations. When both parents have ceased to exist, one of the closest paternal or maternal relatives is responsible for the care of the children left behind, usually the one whose circumstances are most conducive to this.

The legal effect of *Kad'di* for children resulting from the death of their father is that if the mother is *Kad'di* then the status of the children remains orphaned. *Kad'di* has the legal effect of transferring the care of the children from the wife/widow to the family of the deceased husband, which of course has a psychological effect on the children.

The transfer of the status of management and maintenance of children from their mother to the family of their deceased father, not only contradicts the sense of appropriateness and compliance so that there are implications for children psychologically but also contradicts the applicable law. Legitimate children of marriage certainly have rights and responsibilities as stipulated in articles 4-49 of the Marriage Law (Elfirda Ade Putri, 2021). Article 45 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage states that:

- 1) Both parents are obliged to maintain and educate their children as well as possible.
- 2) The obligations of the parents referred to in paragraph (1) of this article shall apply until the child is married or can stand on his own, which obligation shall continue even if the marriage between the parents breaks down.

One of the Sabu traditional community leaders said that *Kad' di* is not an obligation because in daily practice wives who are left dead by their husbands do not perform *Kad' di* for reasons of children, especially if there are still small children/babies, or because of the will of the widow herself even though urged by her family. When the *isti* performs *Kad' di*, the children become the responsibility of the deceased husband's brother. The problem is if the children left behind are still small or still breastfeeding while the right to care for them lies with the husband's family, this encourages the wife not to do *Kad' di*.

If the wife has been *Kad' di* then according to the custom of the Sabu community, the widow automatically has the obligation to look after the children because the widow has been asked to return to the bosom of the children or the husband's family. So the widow can fulfill her obligation to take care of the children, in accordance with Article 45 paragraph (1) of the Marriage Law, although it is emphasized in paragraph (2) that the obligation continues until the child becomes an adult or marries even if the parents break up the marriage.

While *Kad' di*, which is carried out by the wife due to the death of the husband, should be in accordance with the marriage law, the wife is still obliged to maintain and educate her children, but because local customary law (Sabu customary law) applies in this case *Kad' di*, the obligation and maintenance of children is fully the obligation of the wife and the brother of the deceased former husband (joint obligation).

4. Conclusion

Kad' di culture is still maintained in the Sabu community because *Kad' di* is a legal event where a widow is left dead by her husband either with children or without children is obliged to be requested by the family of origin so that the widow leaves the residence with her late ex-husband. For this reason, the husband's family and children can negotiate with the wife's original clan family to ask the mother to return home to her former husband to live together with the children. Carrying out the *Kad' di* culture (returning to the clan of origin and returning to the husband's family to take care of children and inheritance) usually goes through a very tough and cultured customary process that requires the right time, place and conditions. In addition, the widow's rights after returning to the clan of origin and returning to the husband's family or children (*Kad' di*) for the management of children and inheritance. *Kad' di* has an influence on the management of children and marital property where the management of children becomes a joint right with the husband's relatives and marital property must be divided between mother and child. In the process of dividing property involving traditional leaders and the local government, consensus is reached, although sometimes this is not the case. In the division of marital property between the mother and children, the mother usually only brings home her inherited property while the joint marital property of the husband and wife is left for the children.

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