



STATUS OF INHERITANCE RIGHTS OF CHILDREN FROM TRADITIONAL MARRIAGES OF THE KARO TRIBE WHOSE MARRIAGE IS NOT RECORDED FROM THE PERSPECTIVE OF A COMPILATION OF ISLAMIC LAW (CASE STUDY OF RUMAH MBANCANG VILLAGE)

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Abstract

This article examines the status of the inheritance rights of children from traditional marriages of the Karo tribe whose marriages are not recorded in state administration from the perspective of the Compilation of Islamic Law. This research departs from the problems that exist in Rumah Mbcang Village, where the practice of traditional marriage is still often carried out without official marriage registration. The main problem usually refers to the legal status of the child resulting from the marriage in relation to inheritance rights according to the Compilation of Islamic Law which requires a valid marriage both religiously and stately. The research method used is empirical juridical with a qualitative approach. Where the results of the study explain that traditionally children born from marriage are recognized as legitimate children by the Karo tribal community, but in the perspective of the Compilation of Islamic Law itself, the legal status of children greatly affects in terms of determining inheritance rights, due to the absence of concrete evidence so that their status will be weak in the eyes of the law. This study also recommends that there is continuity between customary law and Islamic law through marriage registration as an effort to protect the child's inheritance rights.

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I. INTRODUCTION

Marriage is one of the innate bonds between a man and a woman as husband and wife with the aim of building a happy family based on the provisions of Islamic religious law and the customary provisions that cover it. In a multicultural Indonesian society, marriage is not only based on national law but also regulated in customary law and religious law. (Ibn Rushdi, 2019: 50)

Marriage according to Moediarti Trisnarningsih in Yunanto's book "Indonesian Marriage Law: A Critical Study of Problems and Its Implementation" explained that in the history of human life, marriage has three meanings of interrelated dimensions, namely: a). Social dimension; The social dimension means that marriage is not only a forum for succession of offspring, but also serves to expand kinship. Marriage not only unites different types of human beings in a biological sense, but also brings together and unites two large families from each party. b). Religious dimension; The religious

dimension in a marriage is seen from the community's recognition of a belief system that gives birth to the dogma that the supreme authority over man and nature is God. This forms it into a marriage that cannot be separated from the existence of religious norms. c). Legal dimension; The legal dimension in marriage can be seen from the purpose of the law itself, by providing a set of norms to maintain a balance between justice and certainty. The balance between justice and certainty in the law is an effort to accommodate as an interest that develops in society. (Yunanto, 2010: 43)

Meanwhile, marriage according to customary law has its own meaning. Soepomo explained in the book Taufiqurrohman Syahuri (2013: 64), that marriage is not only a matter of the people concerned, in this case husband and wife, but also the interests of the whole family and even indigenous peoples are also interested in the issue of marriage. For customary law, marriage is an act that is not only worldly, but also spiritual and religious.

According to Bako Perangin-angin (2018: 45), marriage according to Karo custom is a bond between a man and a woman that is carried out in accordance with Karo customary procedures and norms, which not only unite the bride and groom but also the two clans (kalimbubu and anak baru) in an interrelated and sustainable kinship relationship. The process of Karo traditional marriage usually involves various stages such as ngembah belo a sheet, nganting manuk, pasu-vasu, and traditional work that shows the validity of marriage in Karo customary law.

The practice of marriage in the Karo tribe has a separate customary law in carrying out marriages, some of which are often not officially recorded in the state administration. Although the validity of marriage is recognized customarily and socially, administratively the state does not have standard legal force, so it often raises legal problems, especially regarding the status of children's inheritance rights in accordance with its provisions. (Stuart Scott, 2008)

The compilation of Islamic Law in the registration of marriages has an important role in the legal status of children and their position in inheritance rights. Children born from marriages that are not administratively registered by the state often face challenges in recognizing the validity of their status as heirs, even though the marriage is recognized religiously and statelily. This is made more complicated by the difference between customary law itself and Islamic law in determining the position of the child's inheritance rights.

The law of inheritance is a law that regulates the transfer of property left behind by a deceased person and the consequences for his heirs, one of the important elements in the life of the community, especially in indigenous peoples. The Karo tribe itself has an inheritance system that adheres to patrilineal descent where the right of inheritance is found in sons, while girls themselves do not have clarity in obtaining inheritance from their families. (Anto Soemarman: 2005).

II. RESEARCH METHODS

This research uses a type of empirical juridical research, which is research that examines law not only as written norms and regulations, but also in the practice of its implementation in society. This research focuses on customary law and Islamic law (Compilation of Islamic Law) applied to the socio-cultural practices of the community, especially in Karo traditional marriage in Rumah Mbaca Village. Where the village is still thick with customary traditions, especially in the practice of marriage, by examining the status of inheritance rights of children born from unrecorded marriage practices reviewed from the perspective of the Compilation of Islamic Law.

This research is also qualitative which aims to obtain a basic understanding of the phenomenon of inheritance rights of children who are customary marriages that are not recorded in the state administration. The data was collected through observations, interviews with traditional shops, religions, families implementing traditional marriages, village officials, and document studies.

III. RESULTS OF RESEARCH AND DISCUSSION

Marriage is one of the important events in the life of the community, especially the life of the Karo tribe. In several regions in Indonesia, there are various forms of customary marriage that always have their own legal rules and consequences. According to Karo customary law, marriage is a form of human life to continue the lineage and bring changes to the personal lives of both couples. In marriage, the Karo tribe has its own language for its pronunciation, namely "Erjabu" which is considered to have the meaning of a valid sign of a marriage in the traditional tradition. The traditional ceremony that takes place has a very distinctive and touching symbol in the marriage process. (Tridah Bangun: 2008). Marriage in the Karo tribe itself adheres to the exogamous system, where this exogamous system has a meaning, namely a system that must marry with other clan members. This exogamous system has a close relationship with the patrilineal system, by maintaining the paternal lineage. Customary marriages that adhere to this exogamous system have been carried out for generations, and if they violate, they will be subject to sanctions in accordance with the regulations of each custom. (Rosdiana Tarigan, 2018: 4-6)

The traditional marriage process of the Karo tribe usually begins with the arrival of the family from the groom's side to the jambur to hand over the sinamot in accordance with the agreed provisions, followed by marriage in accordance with their respective religious beliefs. If the bride and groom are Muslim, the marriage will be married in accordance with the principles and requirements of the Islamic religion, but it will not be married in front of KUA officials/Marriage Registration Officers. Usually the marriage is led directly by the local Islamic religious elder either as a guardian of the marriage or as a witness to the marriage alone.

After marrying each religion, it is followed by a traditional ceremony, namely the giving of advice from *Kalimbubu*, followed by the submission of ulos as a symbol of blessing and recognition

and binding of the relationship between the two families of the bride. After the traditional ceremony took place, it was followed by traditional entertainment in the form of the *Guro-Guro Aron* dance involving all invited guests. Then the event was closed with the *Ngulih Tudung* perosesi where this process is the delivery of the bride to the groom's house.

In Karo customary law, there are 4 stages for the marriage to be considered valid:

1. Erdemu Bayu's Work
2. The Work of the Traditional Scavenger Hunt
3. Kerja Adat Pasu-pasu Tumbuk Ngeranaken
4. A Walk in the Woods

While in Islamic law itself, legal marriage is regulated in Article 14 of the Compilation of Islamic Law, Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974. It is also explained in Article 5 of the Compilation of Islamic Law, in order to ensure the order of marriage for the Islamic community, every marriage must be recorded. Marriage registration must be carried out by the Marriage Registrar as stipulated in Law No. 22 of 1946 jo Law No. 32 of 1954 concerning Marriage Registration. In this case, the marriage must be carried out and supervised by the Marriage Registrar. If the marriage is carried out outside the supervision of the Marriage Registrar, it can be ascertained that the marriage does not have legal force, on the grounds that the marriage can only be proven by a marriage certificate made by the Marriage Registrar. (Muhammad Abdulkadir, 2004)

Marriage registration plays a very decisive role in a marriage, because marriage registration is a condition for the recognition and non-recognition of the marriage by the state, as well as the consequences arising from the marriage. Marriage registration has the purpose of making the practice of marriage clear to the person concerned and to others, because it can be found in an official letter. So that it can be used anywhere, and anytime, especially as authentic written evidence in a marriage. Underhand marriage is a marriage that is carried out without meeting the requirements and procedures of laws and regulations. (Abdul Shomad, 2010: 309) In Islamic Law, marriage under the hand can be said to be valid if the conditions and pillars of marriage have been met. However, in the aspect of marriage laws and regulations, it is not said to be complete if the marriage has not been recorded. Marriage registration is only the basis of administrative acts that do not affect the validity of a marriage.

Number of families whose marriages are recorded and not recorded in Rumah Mbacang Village

No	Religion	Number of heads of household	Number of marriages recorded	Number of unrecorded marriages
1	Kristen	70	40	30
2	Islam	30	20	10

Overall Total	100 Heads of Families	60 Heads of Families	40 Heads of Families
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Source: Head of Rumah Mbacang Village who will take office in 2025

Mr. R. Sinulingga revealed the reason why there are still many marriages that are not recorded, that not many people in the village need a marriage certificate, because for them the recognition of marriage both according to customary law and the law of each religion is more needed in the validity of the marriage. In addition, the Karo tribe in the village does have a livelihood by living as workers in the fields or farming, so not many have to look for work outside the village.

As explained by Mr. R. Sinulingga, several factors that affect the Karo tribe in Rumah Mbacang Village do not record their marriages, namely:

1. Marriage has been carried out in accordance with the provisions of their respective customs and religions
2. Not many people need a marriage certificate
3. They have a livelihood in farming, so their children do not need a high education to have the ability to work in the fields.
4. Economic factors affect the non-registration of marriages

The perpetrators of traditional marriages whose marriages are not recorded consider their marriages to be valid without the need for such a registration. As in non-Muslim religions, there are still many who marry only with blessings, Islam that marries only in accordance with the pillars and sharia and then the customary payment is carried out. Many people still think that by performing a religious marriage, it will be considered valid without thinking about other administrative matters.

The practice of marriage that is carried out according to customary law is not prohibited because Indonesia has a variety of customs and cultures that are its own characteristics. Hazairin and Sayyuti Thalib emphasized that customary law is indeed acceptable with the provision that it does not contradict the applicable law, so that marriages carried out by the Karo tribe using customary procedures should be acceptable because they are in accordance with the applicable provisions. (Ministry of Culture and Tourism: 2002)

However, the implications for marital status that are not recognized by the state have a wide and severe social impact, namely in the form of cohabitation which, according to state law, is without a legal marital bond. This has legal consequences for children born from unregistered marriages. So that it causes the child to become a child born outside of a legal marriage. (Lisa Angrayni: 2014)

This unregistered marriage has juridical consequences for the child to be born. Every child born must have rights to both parents, one of the rights of the child is to inherit from both parents if one or both parents dies. The child is entitled to an inheritance as a child born of a perfect marriage. (Bdulrahman: 2011)

In customary law, the Karo Tribe has its own rules, where every child born from a customary marriage, whether recorded or unrecorded, is still recognized as a legal child in his family on the condition that the marriage receives recognition from the extended family through deliberation with the local customary head. The child who is born will be directly tied to his father's *clan* and have a customary relationship with *kalimbubu*, *sembuyak*, and *anak beru* from his father's lineage.

Mr. J. Perangin-angin and Mrs. S. Ginting revealed that children born from this customary marriage will definitely be bound by customary even though currently the marriage is not administratively registered by the state, on the grounds that the marriage is legally recorded customarily. So far, children born from this marriage practice have still obtained their status as legal children and have a clear status of inheritance, proving that the non-registration of the marriage does not cause serious conflicts.

There are several factors that are the background of whether a child's inheritance rights are acceptable or not in Karo customary law:

1. If the marriage is customarily accepted
 1. Children resulting from customary marriages will have full inheritance rights like other children
 2. Children resulting from customary marriages have the right to claim inheritance, and other customary rights status
2. If the marriage is not customarily accepted
 1. Children from marriage who are not accepted will have difficulty obtaining inheritance rights, especially if the extended family does not recognize the status of the child
 2. In some cases, the child will only get an inheritance from the mother's side and must first deliberate the family

In the Karo customary inheritance legal system, the patrilineal system applies, which is the inheritance for the children only boys. According to Imanta Imanuel Perangin-angin (2009: 18) with the patrilineal family system adopted by the Karo community, where only boys are the successors of the lineage of their parents, only boys have the right to inherit their parents' wealth. But in some recent cases, girls also get their rights as heirs even though their share is not the same as boys. Inheritance according to Karo customary law is all tangible and intangible assets.

Soepomo formulated the inheritance customary law containing regulations that regulate every process of passing on and transferring property and intangible goods (*immateral goederen*) from a human number (*génération*) to his descendants. (The process begins while the parents are still alive, then the process does not become acute because the parents have passed away). (Maria Kaban: 2016)

Mrs. F. Silalahi revealed that every daughter in the division of Karo customary law inheritance sometimes gets an inheritance but does not rule out the possibility of not getting inheritance. When girls get an inheritance then the ratio to boys becomes 3:1. On the grounds that the daughter will also get an inheritance from her husband's family after she gets married.

As for those who are entitled to receive inheritance based on the family structure in the Karo tribal inheritance law:

Family Status	Inheritance Rights	Information
Eldest son (Perana)	The Most Important Part of Inheritance	The most important and responsible heirs fully answer in family matters
Son other	Smaller Parts of Inheritance	Still get an inheritance though fewer parts
Daughter	Not Getting an Inheritance	Can receive a grant or will from her parents
A wife who Abandoned	Not having the right to inherit directly	If you have male offspring, then can inherit his property
Foster child	Not Getting an Inheritance	The existence of an agreement or grant from family Parties

Meanwhile, in Islamic Law, it is explained that the people who are entitled to inherit property from a person who dies are 25 people, consisting of 15 people from the male side and 10 people from the female side, namely: (M. hajar: 2014)

1. Son
2. The son of the son (grandson) of the boy's side, continues downwards, as long as the relationship continues to be male
3. Father
4. Grandfather on the father's side, and continue on the unbroken relationship from the father's side
5. Brother and sister
6. Brother of the father only
7. Brother and sister only
8. Son of a brother who is a father
9. Son of a paternal brother
10. Uncle of the father on the father's side who is the same as the father
11. Brother of the father who is the father only
12. A brother's son (uncle) who is a father
13. A father's brother's son (uncle) who is the same father
14. Husband
15. The man who freed her (the corpse).

With the clarity of the status of the child's inheritance rights in the Karo customary inheritance law, it does not cause a prolonged conflict regarding the child's inheritance rights. However, it does not rule out the possibility of conflicts between brotherhoods due to the difference in the amount of inheritance obtained between boys and girls. There is no record of marriage, so girls in the Karo tribe sometimes face obstacles when filing inheritance lawsuits. Traditionally, married women are considered to be part of their husband's family so that they

are no longer entitled to their parents. Meanwhile, unmarried women are usually blocked by brothers in the family.

Nevertheless, the implementation of the inheritance law of the Karo community is still maintained, because some people still maintain customary traditions that do not recognize girls as permanent heirs. So far, there has only been one case that has filed a lawsuit with the Court regarding the inheritance rights of girls, namely the Decision of the Supreme Court of the Republic of Indonesia Number 179 K/SIP/1961. But in the current case, it will be difficult to file a lawsuit because the marriage is not administratively registered by the state. (Stuart Scott, 2012).

Especially in the village of Rumah Mbacang there is no problem with the distribution of inheritance between boys and girls, because girls have never had a problem with the inheritance rights they get. The factor behind the lack of resistance from women is the lack of education and the continuous turnover of the times. The lack of understanding of the law also affects why girls do not attach much importance to inheritance rights because it is in accordance with the applicable customary provisions.

The legal consequence of this marriage is that children born from a marriage under the hand are considered non-existent by the state because their marriage is not recorded. A child born from an under-hand marriage is often considered an out-of-wedlock child even though the child is considered a child born of a legally legal marriage according to the Shari'ah. So that it has the impact that children born from unrecorded marriages only have a civil relationship with their mother and mother's family.

The legal protection of the inheritance rights of children in marriage under the hands of the law of this country can be seen from the position of the marriage, that the marriage is valid according to Islamic law because it is carried out in accordance with the applicable Islamic terms and pillars. Because in article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning Marriage it does not explain whether or not a child is valid from the recording of a marriage.

The legal protection of the inheritance rights of children whose marriage is not recorded is contained in article 171 letter c of the Compilation of Islamic Law, which stipulates that heirs are people who at the time of death have a blood relationship or marital relationship with the heir, are Muslim, and are not prevented by law from becoming heirs. The meaning of legal obstruction is explained in Article 173 of the Compilation of Islamic Law, a person is prevented from becoming an heir if by the decision of a judge who has the force of law is still punished because: a) he is guilty of murdering or attempting to kill or severely mistreating the heirs; b). Accused of defamatory having filed a complaint that the heir has committed a crime that is threatened with a penalty of 5 years in prison or a heavier punishment. (Jhon Brema Barus, 2022: 76).

IV. CONCLUSION

Based on the above discussion, it can be concluded that in the customary order, in the Karo tribal community, children born from customary marriage are considered legally legal children. Then,

they have the same position in the family, including in terms of inheritance according to Karo customary law, as long as the indigenous people recognize the truth and validity of the marriage.

Meanwhile, according to the Compilation of Islamic Law, it emphasizes the importance of marriage registration as a form of legality in the national legal system. Children born from marriages that are not recorded are considered children outside of marriage, so the child will encounter obstacles in legal recognition, especially related to inheritance rights. However, the Compilation of Islamic Law still provides a gap in the recognition of the child if it can be proven that the marriage of the parents meets the principles and requirements of marriage of Islamic religious teachings.

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Law Number 1 of 1974 concerning Marriage

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