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## WOMEN IN ADAT LAW (Study of the Position of Women According to Customary Law in the Indonesian Archipelago in Relation to the Community Kinship System)

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### Abstract

The study of women is always interesting. This is because women are human beings from whom new life is born as God's will. However, in the development of law on earth, the position of women is seen to differ depending on the legal system adopted by the community. It is interesting to study in this regard the position of women according to customary law in the archipelago which is influenced by the kinship system of the community. The research method that author use is descriptive normative legal research, using secondary data with qualitative analysis. The results of the study showed that the patrilineal kinship system was born as a form of thought and community life that gave priority to men. This has an effect on the position of women under men in terms of rights, obligations, roles and responsibilities. Vice versa with the matrilineal kinship system affects the privilege of the position of women in the lives of their communities. Meanwhile in a society with a parental kinship system, it affects the equality or balance of position between women and men. But of course development (change / shift) is also something that cannot be denied in the course of the customary law system.

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## INTRODUCTION

Talking about women both in terms of their position, role, rights and obligations in community life is rarely done even though it is interesting to discuss. This is due to the paternalistic culture adopted by most people in Indonesia and even in the world. In fact, as stated by Nyi Hadjar Dewantoro,<sup>1</sup> it is not human being able to carry out their obligations to continue the offspring, if they do not recognize women as mothers. Formerly in the Dutch colonial period, famous woman named Raden Ajeng Kartini as a female warrior who wanted women to get a place and have a big influence in society.<sup>2</sup>

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<sup>1</sup> Asti Inawati, "Peran Perempuan Dalam Mempertahankan Kebudayaan Jawa dan Kearifan Lokal", *Jurnal Musawa*, Vol.13, No.2, (2014):199. <https://doi.org/10.14421/musawa.2014.132.195-206>

<sup>2</sup> Ratna Asmarani, "Perempuan Dalam Perspektif Kebudayaan", *Jurnal Sabda*, Volume 12, Nomor 1, (2017):7-8. <https://doi.org/10.14710/sabda.12.1.7-16>

After the historic story of Raden Ajeng Kartini who in her life struggled for the lot of women as God's creatures who were always oppressed and only as "complementary sufferers", the role and position of women were seriously discussed again even regulated separately in the legislation in the state of nature today (especially after the onset of the reform era). In the current government of the Republic of Indonesia, women have gained a place and are aligned with men in the sense that women have the opportunity to sit in the government both executive, legislative and judiciary.

On the other hand, when discussing the position of women outside the context of state life, according to customary law as a regulator of people's lives from time immemorial (since human and community existed), different systems will be seen. As it is known, the lives of customary law communities are mostly arranged based on genealogical factors (heredity), where the community is united or arranged by the inheritance ties that exist between them, and some are arranged based on territorial factors (living areas).

Hereditary kinship systems (also known as kinship systems) indigenous and tribal peoples in Indonesia differ (although geographically they live in neighboring areas) and some are the same (although geographically people live in remote areas). This is because customary law is born from human and community life, based on the activities of the mind, heart and soul of the community, so that if the results of the activities of the mind, heart and soul of the community, there will also be differences in customary law. Conversely, if a community that is territorial far apart but has the same philosophy of life, then there will be a lot of similarities also in customary law.

Related to the birth of customary law in these societies, Bushar Muhammad said that like all legal systems in other parts of the world, customary law is always growing from a real necessity of life, way of life and overall outlook on life is the culture of the community where the customary law applies.<sup>3</sup> From the description it can be said that customary law is a reflection of the life (character, personality, or way of life) of the community where the customary law applies.

In line with the statement of Bushar Muhammad above, the kinship system of a customary law community will be determined by the way of life and the views of life of its people. Broadly speaking, the kinship system of customary law communities in Indonesia consists of 3 forms, namely "patrilineal" ( withdrawal of the Father's line), "matrilineal"

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<sup>3</sup> Bushar Muhammad, *Asas-asas Hukum Adat Suatu Pengantar* (Jakarta: Pradnya Paramita, 1975), 42

(withdrawal of the Mather's line), and "parental" (withdrawal of the father's and Mather's line).

Basically the form of kinship of a community greatly influences the customary law system that applies to that community. This is in line with van Vollen Hoven's statement as quoted by Soerodjo Wingjodipoero saying that in order to know customary law, it is especially necessary to investigate the nature and composition of the community.<sup>4</sup> Therefore to understand the customary law of a community, it must first be understood the system of heredity and or kinship.<sup>5</sup> Of course the kinship system will also greatly affect the position and role of women in a society. This is in line with the statement of Hazairin Harahap, as quoted by Tolib Setyadi, who said that "The form of family law of the Customary Law community (Patrilineal, matrilineal or bilateral) affects the government system".<sup>6</sup>

This Paper will further discuss how the influence or implication of the form of kinship of a customary law community on the position of women both in family governance, inheritance, assets, and governance / leadership systems in customary law communities.

This research is a normative legal research that uses secondary data. Data obtained from literature study. The nature of the research is descriptive with qualitative analysis methods, then the authors draw conclusions deductively.

## **FORM OF KINSHIP SYSTEM OF INDIGENEOUS PEOPLE IN INDONESIA**

The existence of indigenous and tribal peoples throughout the Indonesian archipelago is basically structured based on 2 factors, namely genealogical and territorial factors. The genealogical factor is based on blood ties or genetic links, while the territorial factor is based on community attachment to a particular area.<sup>7</sup> The genealogical legal community focuses on hereditary relations or blood ties, so that a person becomes a member of the alliance that is meant because they have an affinity between members of the community with one another. The form of kinship from a customary law community is also called the form of kinship, which will be discussed further in this paper.

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<sup>4</sup> Soerodjo Wingjodipoero, *Pengantar dan Asas-asas Hukum Adat* (Jakarta: PT. Toko Gunung Agung, 1983), 77

<sup>5</sup> Zulherman Idris, *Hukum Adat dan Lembaga-Lembaganya, Keberadaan dan Perubahannya (Suatu Pendekatan Pemahaman Hukum Adat Sebagai Sumber Hukum Indonesia Yang tak Tertulis)* (Pekanbaru:UIR Press, 2005), 133

<sup>6</sup> Tolib Setyadi, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*. (Bandung:Alfabeta, 2008), 76

<sup>7</sup> Ibid. 78

In general there are 3 forms of kinship of indigenous and tribal peoples spread throughout the Indonesian archipelago, namely patrilineal, matrilineal and parental.

### 1. Patrilineal Kinship

Patrilineal means drawing of a father's (male) lineage. A society in the form of patrilineal kinship is also known as a patrilineal society, that is a society whose structure is drawn according to the father's lineage (male line). Each member of the patrilineal community feels himself as a descendant of a man of origin.<sup>8</sup> In the patrilineal system, men have a major role in community life, while women have little influence.<sup>9</sup> In patrilineal societies the maternal line is removed. The patrilineal community is easily recognized by their clan names such as the *Batak* people with the surname as their genealogical identity *Situmorang*, *Sinaga*, *Simanjuntak* and so forth. In Lampung with the surname *Buwai Nunyai*, *Nuwai Unyi* and others. Patrilineal community unit groups are large and some are small.<sup>10</sup> These patrilineal communities are also found in Bali, Nusa Tenggara, Timor, Maluku and Irian. Some are pure as in the Batak land and some are not as pure as in Lampung.<sup>11</sup>

### 2. Matrilineal Kinship

Matrilineal means withdrawal of maternal lineage. A matrilineal society is a society whose structure is drawn according to the maternal (female) lineage, while the father's lineage is removed.<sup>12</sup> Including matrilineal communities such as the Minangkabau community, the semendo community in South Sumatra, and several small tribes in Timor. The matrilineal system in the Minangkabau community is the oldest kinship system.<sup>13</sup> In general, matrilineal societies are not easily recognized or identified, because it does not become their tendency to include genealogical identities in the names of their members as patrilineal societies do. Genealogical identity of matrilineal society such as *Piliang*, *Domo*, *Chaniago*, *Jambak* and others.

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<sup>8</sup> Djamanat Samosir, *Hukum Adat Indonesia (Eksistensi Dalam Dinamika Perkembangan Hukum Di Indonesia)*. (Bandung: CV. Nuansa Aulia, 2013), 82

<sup>9</sup> Ade Irma Sakinah & Dessy Hasanah Siti. A, "Menyoroti Budaya Patriarki di Indonesia", *Share Social Work Journal*, Vol. 7, No. 1, 2017:72. <https://doi.org/10.24198/share.v7i1>

<sup>10</sup> A. Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini dan Akan Datang*. (Jakarta: Prenada Media Group, 2014), 61

<sup>11</sup> Hilman Hadikusuma, *Hukum Waris Adat*. (Bandung: PT. Citra Aditya Bhakti, 2003), 109

<sup>12</sup> Ibid

<sup>13</sup> Ni Nyoman Sukerti, "Jender Dalam Hukum Adat", *Jurnal Studi Jender Srikandi*, vol. 5, No. 1, 2005:5. <https://ojs.unud.ac.id/index.php/srikandi/article/view/2845>

### 3. Parental or Bilateral Kinship

Parental or bilateral itself means the drawing of a lineage from both parents (father and mother). A parental society is a society that is drawn along the parent line, that is, the father and mother together. So the kinship relationship between the father and mother runs balanced and reasonable. Communities that form parental kinship such as Java, Aceh, Kalimantan and others.<sup>14</sup> Parental communities generally do not have a genealogical identity such as the tribe "suku" in the Minangkabau community or clan "marga" in the Batak community.

## **THE INFLUENCE OF THE KINSHIP SYSTEM ON THE OCCURRENCE OF WOMEN**

As previously discussed, the kinship system was born as a form of culture (the result of thought, heart and soul) of a society. People who in their lives see that men are more important in life, then they will give birth to a patrilineal system (drawing a lineage from men). Society which in life has privileged the position of women, eventually gave birth to a matrilineal kinship system (drawing a line of descent from the woman). While societies where the system of kinship is parental (bilateral), originated from the thought of community groups that balance the position of men and women (not men who are more important than women, or conversely are not women who are more important than men).

It has been explained before that the kinship system of an adat law community influences the adat law system of a community, including influencing the rules on the position of women. Kusmana said that women's nature is liquid, so women's nature depends on time and space.<sup>15</sup>

Customary law can not be separated from the concept of space and time, because customary law was born from culture that can not be separated from the influence of the natural place of life and developments that occur in people's lives. As proof, we see that in reality the customary laws of the people in the archipelago are different and some are similar, depending on the culture that gave birth to the kinship system. Therefore, to understand customary law, we first need to understand the kinship system (genealogical) of the community. In terms of the position of women, the influence of the kinship system can be

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<sup>14</sup> Hilman Hadikusuma, *Hukum Waris Adat*. (Bandung: PT. Citra Aditya Bhakti, 2003), 109

<sup>15</sup> Kusmana, "Menimbang Kodrat Perempuan antara Nilai Budaya dan Kategori Analisis, Refleksi", *Jurnal Refleksi*, Volume 13, Nomor 6, April (2014):796. <http://dx.doi.org/10.15408/ref.v13i6.1000>

seen in various fields, including the fields of family government, inheritance, marriage, and even the government of the community.

## 1. Status of Women in Marriage

### a. In Communities with Patrilineal Kinship System

Speaking of the position of women in the field of marriage within the patrilineal community, is determined by the form of customary marriage as a legal act that is the basis for the birth of the law according to customary law. In a patrilineal society, the form of marriage that is carried out is a “jujur” marriage (*perkawinan jujur*).

The form of a “jujur” marriage is a marriage made by “jujur” payment (“*onjok*” in Gayo, “*beli*” (buying) in Maluku, “*belis*” in Timor) from men to women as found in the Batak Land, Nias, Lampung, Bali, Sumba, Timor etc.<sup>16</sup> According to Bushar Muhammad,<sup>17</sup> as soon as the wife receives “jujur” from the husband's side, the clan (family) of the prospective wife releases him from his family ties and automatically the prospective wife enters into the clan environment of the prospective and thus become a new member of her husband's clan. With the receipt of “jujur” money, women commit themselves in the marriage, or as it applies in the Batak and Lampung areas for the rest of their lives.

Furthermore Hilman Hadikusuma said that the receipt of money and “jujur” goods meant that the woman bound herself to an agreement to participate with her husband, both personal and property would be subject to the husband's customary law.<sup>18</sup> After the wife is in the hands of the husband, then the wife in all legal actions must be based on the husband's approval, or on behalf of the husband, or with the consent of the husband's relatives. In the bond of an “jujur” marriage the responsibility of upholding the ladder rest is in the hands of the husband, while the wife is only as a companion. So the wife's rights and position are not balanced with the rights and position of her husband.<sup>19</sup> It can be seen that the position of women in patrilineal societies is lower or not equal to men as a result of “jujur”

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<sup>16</sup> Hilman Hadikusuma, *Hukum Perkawinan Adat* (Bandung: PT Citra Aditya Bhakti, 1995), 73

<sup>17</sup> Bushar Muhammad, *Asas-asas Hukum Adat Suatu Pengantar* ( Jakarta: Pradnya Paramita, 1975), 25

<sup>18</sup> Hilman Hadikusuma, *Op. Cit.*, 73

<sup>19</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* ( Bandung: Mandar Maju, 1992), 207

marriage and patrilineal forms of community kinship. Wives cannot act alone on behalf of personal decisions.

When discussing the position of girls from the results of “jujur” marriages in a patrilineal society, every girl will consider herself a "other" child. The daughters of the parents are prepared especially by their mothers, from childhood to adulthood to become indigenous people of others (her husband's side). However, this does not mean that the legal relationship and biological relationship between the daughter and the parents of her original relatives are completely lost, but her role and role should prioritize her husband or in-laws.<sup>20</sup>

The role and position of women in the patrilineal community is more determined by the husband and relatives of the husband. Women take care of the household and help her husband such as craftsmen or light work without having to go far away from home as described by John B. Pasaribu about the lives of Batak women who are mostly craftsmen of *ulos* weavings, and play a role evident in various kinds of *Dalihan Natolu* ceremonies as in traditional marriage ceremonies.<sup>21</sup>

b. In Communities with Matrilineal Kinship System

The form of marriage that will affect the position of women in matrilineal society is “Semenda marriage” (*perkawinan semendo*). “Semenda marriage” is a form of marriage without an “jujur” payment from the man to the woman. After marriage the man settles on the wife's kinship (the woman's side) or is responsible for continuing the woman's offspring on the wife's side.<sup>22</sup> It is said “semenda” (*semendo, semende*) means that men come from outside brought to the place of women.<sup>23</sup> In the true meaning of semenda marriage is a marriage in which the husband after marriage settled and domiciled on the wife's side.<sup>24</sup> Settling of a husband in a wife's relative is called the scientific term "matrilokal". A matrilokal

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<sup>20</sup> Hilman Hadikusuma, Op. Cit.

<sup>21</sup> John B. Pasaribu, *Pengaruh Injil Dalam Adat Batak Pendekatan Praktisi* (Jakarta: Papas Sinar Sinanti, 2002), 20-22

<sup>22</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 1992), 82

<sup>23</sup> Tolib Setyadi, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)* (Bandung: Alfabeta, 2008), 236

<sup>24</sup> Zulherman Idris, *Hukum Adat dan Lembaga-Lembaganya, Keberadaan dan Perubahannya (Suatu Pendekatan Pemahaman Hukum Adat Sebagai Sumber Hukum Indonesia Yang tak Tertulis)*. (Pekanbaru: UIR Press, 2005), 95

husband in the wife's residence is referred to as "urang sumando" or ("*ughang limbago*"), as the term is found in the Kampar area.

It can be seen from the *semenda* marriage description of the above marriage that the position of women in marriage is more dominant, especially in the case of residence after the marriage. The legal consequences of a *semenda* marriage in terms of offspring are children born from the marriage into the maternal clan or following the maternal lineage (woman side).

c. In Communities With Parental Kinship Systems

The form of marriage in a parental community is *mentas* marriage which of course also affects the position of women. *Mentas* marriage ("*mencar*", Java) is a form of marriage in which the position of husband and wife is released from the responsibility of parents / family to be able to stand alone to build an independent family.<sup>25</sup> In this *Mentas* marriage it is not determined whether the husband joins and settles into the wife's kinship or vice versa the wife joins and settles in the environment of the husband's relatives, but the husband of the independent living husband and wife have the same responsibility in building an independent family. In the case of the position of women in this parental society, it is the same as the position of men, which are equally having duties, responsibilities, rights and obligations that are balanced both with one another and with the relatives of both parties.

2. Position of Women in the Field of Family Government

Talking about the position of women in the field of family government, it can not be separated from the form of marriage which is the basis for the birth of the legal consequences of the marriage of the husband or wife in the household. That matter will further elaborate the following writer:

a. In Communities With Patrilineal Kinship Systems

In patrilineal societies with a form of "jujur" marriage (as described above), the position of women in family government is under the husband. Husband and wife do not have a balanced position. The husband is the head of the family, while the wife is only as a companion. The wife is bound to the husband and family of

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<sup>25</sup> Hilman Hadikusuma, Op. Cit., 89



the husband and is not free to carry out legal actions without the husband's or husband's family's permission. Concrete examples in the patrilineal community in Lampung, where as the Cultural Impact of the Patriarch in Coastal Lampung (*Sebatin*) who prioritized men over women, women were placed in unfair positions.<sup>26</sup>

b. In Communities With Matrilineal Kinship Systems

Discussing the position of women as wives in family government in matrilineal communities, of course also influenced by the form of marriage according to the customary law of the community where from time to time the form of marriage has experienced a very significant development.

As the original form of marriage, the marriage ceremony is “*semenda bertandang*” (“travel semenda”), in which the husband is merely a guest (at night) at the wife's house. Husband guest status in his wife's environment. In this marital trip, wives who have more role in family governance such as power over property, education and family problems.<sup>27</sup> The husband is not the head of the family in a marriage ceremony because he is only a "guest" in the wife's house. The responsibility of the husband is to multiply his wife's offspring without the obligation to provide for his wife and children. The husband's income is for himself and for his sister and children of his sister (nephew). “Semenda marriage” has developed from time to time caused by various factors, especially Islamic religious factors.

As a form of further development of semenda marriage is a *semenda menetap* (“permanent semenda marriage”) . In this form of marriage the husband is no longer just a guest in the wife's house, but has settled in the circle of relatives.<sup>28</sup> The settlement of the husband in the wife's relatives is usually due to the gadang house/ rumah gadang (home of origin) which has begun to narrow, so there is an initiative to get out of the *rumah gadang* (traditional family house) and make a separate house which usually also remains in the wife's relatives. In this

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<sup>26</sup> Zuhraeni, “Perumpuan dan Hukum dalam Masyarakat Hukum Adat Lampung Sebatin”, *ijtimayya: Jurnal Pengembangan Masyarakat Islam*, 10 (02) (2017) : 197-215.. <https://moraref.kemenag.go.id/archives/journal/97874782241955349?issue=Vol+10%2C+No+2+%282018%29+%3A+Ijtimayya+%3A+Jurnal+Pengembangan+Masyarakat+Islam>

<sup>27</sup> Bushar Muhammad, *Pokok-Pokok Hukum Adat* (Jakarta: Pradnya Paramita, 2008), 15

<sup>28</sup> *Ibid*, 16

form of permanent marriage, the wife no longer plays a dominant role in family governance. This development also occurred as a result of the influence of Islam. However, women still have the right to inheritance is high and in the process of regeneration.

The next stage of *semenda* marriage in the development of matrilineal society is a *semenda bebas* (“free *semenda* marriage”) in which the husband and wife in the marriage physically leave the *gadang* house, leave the village and go abroad (usually to the cities).<sup>29</sup> This free agenda can be said to lead to the marriage of *Mentas* as is the custom of Javanese people or other parental societies that align the position of husband and wife in the family.

c. In Communities With Parental Kinship Systems

Speaking of the position of women in the field of family government in parental society, basically the parental community adheres to the principle of the balance of position between husband and wife, including in the field of family governance. This is because the parental system itself is born from a society's view of life that balances or does not differentiate between the position of men and women. But in its development as a form of influence from Islamic law, the main leader in family governance is the husband (male) which of course does not eliminate the role and position of women as housewives who also play an important role in caring for the family.

3. The Position of Women In The Field of Wealth in Marriage

a. In Communities With Patrilineal Kinship Systems

In indigenous peoples whose patrilineal arrangement is in the form of “*jujur*” marriages, where the position of the wife is subject to the husband's kinship law, in general all marital assets are controlled by the husband as the head of the family and assisted by the wife as the housewife. So all livelihood assets (shared property), luggage (gifts and inheritance) and “*harta pusaka*” (inheritance), the authority is held by the husband who is assisted by the wife as a companion.<sup>30</sup> In a society with a patrilineal kinship system, there is no known

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<sup>29</sup> Ibid, 16-17

<sup>30</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 1992), 198

asset with a husband and wife that can be divided if the marriage is broken because of divorce.

“Jujur” marriage carries the consequences of the wife remaining on the husband's side until the end of his life. So if a divorce occurs and the wife leaves her husband's place of residence, it means that the wife violates adat, and she has no right to claim part of the shared property or her property or take her child away from her husband's place of residence.

Thus, the position of women towards wealth according to customary law in patrilineal communities, of course, in the development of the life of the patrilineal community more or less has experienced development (change). As a result of the development and shifting of the mindset of the people as well as the influence of modern life and general rule of law, many of the problems of property ultimately lead to settlement through a State court. As in the ruling of Supreme Court of The Republik of Indonesia (MA) No. 1031 of 1971 which has justified the lawsuit of a wife (from South Tapanuli) who does not recognize shared property in her customary law. Judge's consideration explained that although the customary law of South Tapanuli and Islamic law did not recognize shared property, in accordance with legal awareness and the development of Indonesian law it was considered fair to determine that all assets obtained during marriage were shared assets which had to be divided between husband and wife in case of divorce.<sup>31</sup>

b. In Communities With Matrilineal Kinship Systems

Basically, the position of women as wives of assets in marital marriage in the matrilineal community is very strong. This is because in the beginning (formerly) the form of a “semenda” marriage was a “*semenda bertandang*” (marriage trip), where the husband only visited the wife's house (at night) without having the obligation to support his wife and children.<sup>32</sup> The only duty of a husband is to multiply his wife's offspring without being obliged to provide for his wife and children. While the wife (as a daughter in a matrilineal family) usually acts as the party who continues the management of the “*harta pusaka*”

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<sup>31</sup> Zulherman Idris, *Hukum Adat dan Lembaga-Lembaganya, Keberadaan dan Perubahannya (Suatu Pendekatan Pemahaman Hukum Adat Sebagai Sumber Hukum Indonesia Yang tak Tertulis)*. (Pekanbaru:UIR Press, 2005), 122-123

<sup>32</sup> Bushar Muhammad, *Pokok-Pokok Hukum Adat*. (Jakarta: Pradnya Paramita, 2008), 15

(inheritance) as the backbone of family survival. In the event of divorce, the husband does not have the right or part of the inheritance owned by the wife, because those who are entitled to the marriage property are the wife or relatives of the wife.<sup>33</sup>

In the development of matrilineal society, where there are families who live separately from their kinship, if divorce occurs between husband and wife a division of marital property (joint property) of husband and wife (*harta suarang*: Minangkabau).<sup>34</sup> The existence of this joint property is known as “*semenda menetap*” (permanent *semenda* marriage) and “*semenda bebas*” (free *semenda* marriage) as stages of a marriage which is a consequence of developments in the matrilineal society. It can be seen that in development there has been a change that has led to a system of control of assets in marriage according to the habits of parental societies that adhere to the principle of equality between men and women. Despite developments, the position of women is still important in terms of the property of the marriage.

c. In Communities With Parental Kinship Systems

In parental or bilateral indigenous communities, the role of “*somah*” households is more prominent and the influence of family relatives in marital property is not strong.<sup>35</sup> In a parental society that aligns the position of men and women, known as joint property (husband and wife) in marriage. The husband as well as the wife are equally entitled to the property as long as the asset can be obtained during or in marriage. If a divorce occurs, the shared property will be distributed by divorced husband and wife. Not only the husband has the right or not only the wife who has the right to the property, but both of them have the same rights.

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<sup>33</sup> Hilman Hadikusuma, *Hukum Perkawinan Adat*. (Bandung: PT Citra Aditya Bhakti, 1995), 190

<sup>34</sup> *Loc.cit*

<sup>35</sup> *Ibid*, 191

#### 4. The Position of Women In The Field of Inheritance

According to Hazairin Harahap as quoted by Hilman Hadikusuma, customary inheritance law has its own style from the mind of traditional communities with a form of kinship that is patrilineal, matrilineal, parental or bilateral.<sup>36</sup>

##### a. In Communities With Patrilineal Kinship Systems

Widows in a patrilineal community such as in the Batak, Lampung and Bali areas in the form of an “jujur” marriage, after a husband dies remain domiciled in the place of a husband's relatives. He still has the right to enjoy the wealth left by the husband even though he is not the heir of the husband. Does a widow have children or not then it is the same. He may not return to his original relatives, he is not free to determine the attitude of his actions, because everything must get the approval of the husband's relatives.<sup>37</sup>

In line with this, related to the position of girls as heirs, Soerjono Soekanto said that it seems that in a society that adheres to the principle of patrilineal lineage (but this is not too), the heirs are only boys. In the Batak area, the only heirs are sons only, as well as in Bali.<sup>38</sup> In its development, along with the changing legal awareness of society as the influence of European law, many people (in this case women) are trying to fight for their rights as heirs through state justice mechanisms such as in the case of “Tangsi Bukit” versus “Pangidahan Br Beliala” (Decision of Supreme Court No. 100 K / Sip / 1967). In this case the judge decided that the widow had the right to joint property left by her husband and at the same time was entitled to inheritance. Judge's consideration is based on the growth of society which leads to equality between men and women and the recognition of widows as heirs.<sup>39</sup>

Even though daughters are not heirs, they can be the recipient of inheritance to be brought as inheritance into the marriage following the husband's side.<sup>40</sup> In the Toba community, for example, those who receive inheritance according to their customary law are boys. As for girls, wealth can be given by way of a

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<sup>36</sup> Hilman Hadikusuma, *Hukum Waris Adat*. (Bandung: PT. Citra Aditya Bhakti, 2003), 24

<sup>37</sup> *Ibid*, 84-85

<sup>38</sup> Soerjono Soekanto, *Hukum Adat Indonesia*. (Jakarta: PT. Raja Grafindo Persada, 2008), 263

<sup>39</sup> R. Subekti, *Hukum Adat Indonesia Dalam Yurisprudensi Mahkamah Agung* (Bandung: Alumni, 2006), 81

<sup>40</sup> Hilman Hadikusuma, *Op. Cit.*, 69-70

grant.<sup>41</sup> Furthermore according to Soerjono Soekanto in the community in Bali, although daughters and widows are not heirs, but they have the right to enjoy some of the inheritance as long as their rights are not severed. The loss of the rights of these women can occur if: married out, fired (not recognized) as a child by parents (for girls), whereas for widows the right can be lost if the widow remarries with a man outside the husband's relatives.<sup>42</sup>

As a matter of fact, it must also be known that customary law has developed from time to time. This development was influenced by many factors, such as religion, state law and foreign culture. These developments can be in a positive form and can also be in the negative form. As an example of positive development, it can be seen in the position of girls in the field of inheritance in Balinese society with a patrilineal kinship system. In Bali, nowadays girls tend to get the same share as boys over inheritance. This development occurred because of regulatory factors (in this case state law that equalizes men and women), the development of community paradigms and the improvement of the family economy.<sup>43</sup>

b. In Communities With Matrilineal Kinship Systems

In Minangkabau as heirs are daughters. In its development, the inheritance inherited from this daughter is classified as an “*harta pusaka*” (inheritance).<sup>44</sup> The inheritance itself does not belong to individual heirs, but belongs to a large family whose status is “*ganggam bauntuak*” (usage rights), which means that it is assigned to certain holders (in this case women) as usage rights, the implementation of which will be overseen by the “*mamak kepala waris*” (uncle head of inheritance),<sup>45</sup> While in the case of inheritance of livelihood assets, the inheritance of the treasure is inherited depending on the will of the deceased while

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<sup>41</sup> Elpina, “Kedudukan Perempuan dalam Hukum Adat Waris Batak Toba”, *Karya Ilmiah Dosen*, Biro Sistem Informasi Data & Hubungan Masyarakat, Tahun 2016: 4

<sup>42</sup> Soerjono Soekanto, *Hukum Adat Indonesia*. (Jakarta: PT. Raja Grafindo Persada, 2008), 264

<sup>43</sup> Ni Nyoman Sukerti & I Gusti Ayu Agung Ariani, “Perkembangan Kedudukan Perempuan dalam Hukum Adat Waris Bali”, *Jurnal Magister Hukum Udayana*, Volume 6, Nomor 2, 2014: 256. . <https://doi.org/10.14710/mmh.40.1.2011.86-92>

<sup>44</sup> Amir, M.S, *Tanya Jawab Adat Minangkabau*. (Jakarta : PT. Mutiara Sumber Widya, 2003), 70

<sup>45</sup> Chairul Anwar, *Hukum Adat Indonesia (Meninjau Hukum Adat Minangkabau)*. (Jakarta: Rineka Cipta, 1997), 89

still alive.<sup>46</sup> As the influence of Islamic law, which is increasingly thick Islamic law in the environmental of the matrilineal society, many also divide the livelihood according to faraidh law (Islamic inheritance law). This is in line with the slogan "adat bersendi syarak, syarak bersendi Kitabullah" (adat based on Islamic law, Islamic law based on the Al-quran). This means that in its development the wife is the heir of the husband, the daughter of the father's heir in accordance with Islamic law, although initially according to customary law of society with matrilineal kinship, the wife is not the husband's heir.

Nur Hidayat said that Islamic law is very influential on the traditional inheritance of the Kampar community (which adheres to the matrilineal kinship system). In the substance of customary law and institutionalization, *Soko Pisoko* customary basic law upholds the principle of propriety, the principle of deliberation and the principle of respect in respect of the settlement of inheritance cases. The tendency of the identity between the customary inheritance of Kampar law with Islamic inheritance law is the reason for the evolution or development of customary law of Kampar both from the legal structure, legal substance and legal framework.<sup>47</sup>

c. In Communities With Parental Kinship Systems

In principle, according to Javanese customary law (which is parental), widows are not the heirs of their deceased husbands. But the widow is entitled to get a share of the inheritance of her husband together with other heirs for the cost of living onwards. As stated by Soedarso as quoted by Hilman Hadikusuma, regarding the position of girls as heirs in a parental society, their rights are the same as boys, although it does not mean that the type and amount of inheritance is shared equally among boys and women.<sup>48</sup>

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<sup>46</sup> Ibid, 91

<sup>47</sup> Nur Hidayat & Asril, "Analisis Konvergensi Sistem Hukum Waris Adat Kampar dengan Sistem Hukum Waris Islam", *Melayunesia Law*, Vol.3, No.1, Juni 2019:137. <http://dx.doi.org/10.30652/ml.v3i1>

<sup>48</sup> Hilman Hadikusuma, *Op. Cit.*, 88

## 5. The Position of Women In The Field of Community Government

### a. In Communities With Patrilineal Kinship Systems

Speaking of the position of women in the government of society that is based on patrilineal genealogical factors, of course there is no place for women to be able or to be leaders in society. As in the field of marriage, inheritance, assets discussed above, the position of women is not the same as men in the sense that the position of men is far higher than women.

In Lampung, for example, the management of adat government is held by families from “*kebuwayan*” (descendants) according to male lines. Likewise in the patrilineal community in Maluku, the management of the customary community in a *negorij* (village) is headed by a “negorij leader” called “raja” (the king) and held down through generations through the father line. Negorij (unity of relatives) itself consists some “*Aman*” (family, clan) led by an “Ama” (Mr / Sir).<sup>49</sup>

### b. In Community With Matrilineal Kinship Systems

When discussing the position of women in the government of society with matrilineal kinship forms, different colors or patterns will be found as the influence of the forms of kinship that apply to these communities. In addition to being known by traditional leaders held by men (as the main leader / top leader), on the other hand also known as female leaders. Women have a place in the governance of matrilineal indigenous peoples, whose tasks and responsibilities are in accordance with the field of "womanhood" such as guarding “*rumah gadang*” (traditional houses) and other inheritance heirlooms.

In the Minangkabau community, for example, women occupy a special place in the customary government called the “*Bundo Kanduang*”. “*Bundo*” is “mother”, “*kanduang*” is “true”, *Bundo Kanduang* is a true mother who has maternal and leadership qualities. As the intermediary of offspring he has the main task in forming and determining human nature in continuing descent. In the Minangkabau tradition, the *Bundo Kanduang's* voice in deliberation has the same rights as men.<sup>50</sup>

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<sup>49</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*. (Bandung: Mandar Maju, 1992), 137

<sup>50</sup> Idrus Hakimi Dt. Rajo Penghulu, *Pegangan Penghulu, Bundo Kanduang dan Pidato Alua Pasambahan Adat di Minangkabau*. (Bandung: PT. Remaja Rosdakarya, 1994), 69-75



The Minangkabau adat proverb says by Amir,:<sup>51</sup>

*Elok nagari dek penghulu* (Good State Because The Clan Leader)

*Elok masajik dek tuanku* (Good Mosque Because of Religious Leaders)

*Elok tapian dek nan mudo* (Good Banks of The River Because of Youth)

*Elok rumah dek bundo kanduang* (Good House Because of True Mother)

Same is the case with the Kampar indigenous people (with matrilineal kinship) who also know women leaders but by the title of “*Si Ompu*”. The title of the “*Ompu*” (the *Ghompu*) is actually the title of the top (female) lineage of the Kampar indigenous people who have been handed down from pre-Srivijaya era until now. The customary leadership of the Kampar community is led by each tribal chief (*Datuk Penghulu*) who has different titles and the “*Ompu*” (female leader) as a symbol of traditional leadership who is domiciled as the queen or leader of the village / tribe.<sup>52</sup>

The “*Ompu*” is the mother of a tribe who carries out the function of guarding the *rumah gadang* (Minangkabau house), and *limpopo uma godang* (traditional house jewelery). The *Ompu* is a place to ask questions for a niece, a place to complain for rice when hungry, a place to ask for a drink when thirsty, so that the *ompu's* clothes reflects the heart and tenderness of a mother, describing the unity and gentleness of a woman.<sup>53</sup>

Although the leader of the adat (supreme leader) in the matrilineal community is still held by men, the influence of the descendant system based on the maternal lineage can still be seen in the continuation of the adat leadership. A traditional leader will not be replaced by his son, but will be replaced by a nephew (son of a sister) who is also known as “*mamak*” (uncle) to “*kemenakan*” (nephew).

c. In Communities with a Parental Kinship System

Speaking of indigenous leadership in parental societies which generally also have a territorial structure, then basically both men and women alike have the right to occupy the position of customary leader. This is as an influence of the way of life of the people who position men and women at the same level so that

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<sup>51</sup> Amir, M.S, *Tanya Jawab Adat Minangkabau*. (Jakarta : PT. Mutiara Sumber Widya, 2003), 74

<sup>52</sup> A. Latif Hasyim Dt. Bagindo, *Menelusuri Jejak Sejarah Kejayaan Negeri Melayu Nusantara*, Disampaikan pada seminar internasional “Kampar Sebagai Pusat Peradaban Melayu Tua Nusantara”, Bangkinang, 23 Desember 2014

<sup>53</sup> M. Syarfi &LSM Nakhoda, *Adat Jati Kabupaten Kampar*. (Pekanbaru: Dinas Perhubungan, Pariwisata, dan seni Budaya Kabupaten Kampar dan UNRI Press, 2007), 271

they adhere to the parental system. It's just that in the reality of parental life, men tend to be more appointed as traditional leaders than women.

## CONCLUSION

From the description above, it can be concluded that the kinship system that applies to a customary law community will affect other parts of the customary law, especially those discussed in this article on the position of women. In societies in the form of patrilineal kinship, the position of women is lower than the position of men. In a society with a form of matrilineal kinship, women get a special position in various fields of life. Whereas in a society with a form of parental kinship, the position of women is equal or equal to the position of men. This proves that customary law is a legal system where each rule is related to one another or related to each other. But of course development (change / shift) is also something that cannot be denied in the course of the customary law system. That customary law system as a legal system that has its own peculiarities among other legal systems.

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