



## Clanless Children: A Study of Inheritance in Indigenous Batak Community

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**Abstract.** The Batak people adhere to a patrilineal family system, where kinship is traced through the paternal line. This patrilineal lineage significantly influences Batak customs regarding the distribution of inheritance. The status of a child without a surname has consequences for inheritance, so the inheritance process for descendants without a surname can cause problems later on. The purpose of this research is to determine the status of a child without a surname according to Batak customary law and the legal consequences for a child without a surname as an heir. The approach used in this paper is normative-empirical research (applied law research). Based on the research results, it was concluded that several factors contribute to a child being born without a surname: the parents' marriage is contrary to Batak customs. Children can also lose their surname or be born without a surname due to the withdrawal or removal of the surname by traditional elders/community members due to actions deemed humiliating, threatening, or provocative/inciting conflict. Furthermore, Supreme Court Decision Number 1537 K/Pdt/2012 in its decision, even though the child does not have a surname, as long as it can be proven that the child is the biological child of the deceased parent (heir), then the child has the right to appear as an heir even though the distribution of the inheritance uses Batak customary inheritance law.

**Keywords:** Clanless Children, Inheritance, Legal Consequences, Gender Equality.

**Abstrak.** Masyarakat Batak menganut sistem kekeluargaan patrilineal di mana sistem kekeluargaan ditarik dari garis keturunan ayah. Garis patrilineal ini sangat mempengaruhi adat Batak dalam melakukan pembagian harta warisan. Status anak tanpa marga memiliki konsekuensi terhadap pewarisan, sehingga proses pewarisan terhadap keturunan yang tidak memiliki marga menimbulkan permasalahan dikemudian hari. Tujuan penelitian adalah untuk mengetahui anak tanpa marga menurut ketentuan masyarakat adat Batak dan akibat hukum bagi anak tanpa marga sebagai ahli waris. Metode pendekatan pada tulisan ini adalah penelitian normatif-empiris. Berdasarkan hasil penelitian yang dilakukan, diperoleh kesimpulan bahwa terdapat beberapa faktor yang menyebabkan seorang anak lahir tanpa marga yaitu perkawinan orang tuanya bertentangan dengan adat istiadat batak, anak juga dapat kehilangan marga atau lahir tanpa marga karena alasan adanya penarikan atau pencopotan marga oleh tetua adat/masyarakat adat sebagai akibat melakukan tindakan-tindakan yang dianggap mempermalukan, mengancam dan memprovokasi/mengadu domba. Lebih lanjut, Putusan Mahkamah Agung Nomor 1537 K/Pdt/2012 dalam putusannya, meskipun anak tersebut tanpa marga, selama dapat dibuktikan bahwa anak tersebut adalah anak kandung dari orang tua yang meninggal (pewaris) maka anak tersebut berhak tampil sebagai ahli waris meskipun pembagian waris tersebut menggunakan hukum waris adat batak.

**Kata kunci:** Clanless Children, Inheritance, Legal Consequences, Gender Equality.

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## 1. Introduction

The numerous ethnic groups in Indonesia have led to the emergence of various customary laws that are applicable in society.<sup>1</sup> One of the notable systems in customary law and practice is inheritance which is broadly defined as a person who receives heirlooms from someone who has passed away. The customary inheritance system remains alive and continues to be utilized by indigenous communities in Indonesia to this day.<sup>2</sup> One of the ethnic groups that strongly adheres to its customary law is the Batak tribe. The Batak tribe is divided into six sub-ethnic groups: Karo, Toba, Simalungun, Pakpak, Angkola, and Mandailing.<sup>3</sup> The Batak tribe is the indigenous population of North Sumatra Province and adheres to a patrilineal system. The term “*patrilineal*” is derived from two Latin words: “*pater*,” meaning “father,” and “*linea*,” meaning “line.”<sup>4</sup> Thus, patrilineal refers to a customary system that governs the lineage or descent originating from the father.<sup>5</sup> Kinship systems are invariably linked to inheritance systems. In customary inheritance law, there are variations between different regions, including among the Batak ethnic group.<sup>6</sup> The Batak kinship system adheres to a patrilineal structure, which significantly influences its inheritance practices. In this patrilineal system, inheritance is generally individual in nature. Typically, Batak daughters

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<sup>1</sup> Chairul Fahmi et al., “The State’s Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1573. See also, Arjawa Jayantiari et al., “Forming legal culture in customary forest management: Local wisdom approach of customary law communities,” *Udayana Journal of Law and Culture* 8, no. 1 (2024): 67; Acacio Fernandes Vassalo, “Penyelesaian Tindak Pidana Pencurian Hewan Ternak Menurut Hukum Adat Masyarakat Kecamatan Alas Kota Madya Manufahi,” *Jurnal Komunikasi Hukum* 7, no. 1 (2021): 34; Anthony C. Diala, “The concept of living customary law: a critique,” *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (2017): 148.

<sup>2</sup> Adelina Nasution, “Pluralisme Hukum Waris di Indonesia,” *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 5, no. 1 (2018): 26.

<sup>3</sup> Sugiyarto Sugiyarto, “Menyimak (kembali) Integrasi Budaya di Tanah Batak Toba,” *Endogami: Jurnal Ilmiah Kajian Antropologi* 1, no. 1 (2017): 35.

<sup>4</sup> Thomas Kuehn, *Patrimony and law in Renaissance Italy*, (Cambridge: Cambridge University Press, 2022), 34. See also, Alimudin Boly et al., “Analysis of Actions Against the Law Case of Appointment of The Pagu Tribe Custom Leader (Sangaji) in North Halmahera Regency,” *Journal of Social Science* 4, no. 1 (2023): 308.

<sup>5</sup> Uchendu Eugene Chigbu, “Anatomy of women’s landlessness in the patrilineal customary land tenure systems of sub-Saharan Africa and a policy pathway,” *Land Use Policy* 86 (2019): 130. See also, B. L. Korobe, “Turkana kinship system and social structure: an analysis of the family, patrilineage, patriclan, and phratriic organization,” *Journal of African Interdisciplinary Studies* 5, no. 10 (2021): 121.

<sup>6</sup> Sulistyowati Irianto, “Competition and interaction between state law and customary law in the court room: A study of inheritance cases in Indonesia,” *The Journal of legal Pluralism and unofficial law* 36, no. 49 (2004): 98.

receive inheritance not through equal distribution but rather as a gift or bequest from their family, often granted after marriage.<sup>7</sup>

The Toba Batak customary society is structured around patrilineal kinship groups clans known as *marga*. A *marga* constitutes a lineage unit whose members trace their descent from a common male ancestor, often spanning twenty or more generations.<sup>8</sup> Membership in a *marga* signifies inclusion in an extended kinship network, which plays a central role in determining social identity, rights, responsibilities, and inheritance practices within the community.<sup>9</sup> Family and kinship ties within the Batak Toba customary society remain strong and are actively maintained to preserve awareness of familial relationships among individuals. This is achieved through genealogical tracing practices known as *martarombo* or *martutur*. *Martarombo* or *martutur* refers to the process of identifying or tracing the closest blood relations to determine the nature and degree of kinship between individuals.<sup>10</sup> The Clans (*Marga*) in the Toba Batak tribe is very important as it represents a valuable heritage. Clans (*Marga*) system embodies profound values that serve as a force to unify familial relationships within the Batak community. The purpose of Clans (*Marga*) is to foster solidarity and cohesiveness among its members, who are descendants of a common ancestor.<sup>11</sup>

The rapid pace of societal change has influenced the lifestyles and behaviors of communities, including the Toba Batak people, who have been affected albeit to varying degrees by modernization. In order to preserve his *marga* (clan lineage), a Batak man is expected to marry and have descendants. The cultural values of the Batak customary society strongly emphasize genealogically based legal alliances. Marriage within the Toba Batak tradition is governed by both recommended practices and strict prohibitions. Among these, the most ideal form of marriage is considered to be a union between a man and the daughter of his mother's brother, a practice known as *pariban*.<sup>12</sup> This cultural preference, however, also gives rise to

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<sup>7</sup> Harvina et al., *Dalihan Na Tolu Pada Masyarakat Batak Toba di Kota Medan*, ed. Bustami Abubakar, 1st ed., (Medan: Balai Pelestarian Nilai Budaya Aceh, 2017), 14.

<sup>8</sup> Eviatar Zerubavel, *Ancestors and relatives: Genealogy, identity, and community*, (Oxford: OUP USA, 2012), 24. See also, S. Joshua Swamidass, "The Overlooked Science of Genealogical Ancestry," *Perspectives on Science and Christian Faith* 70, no. 1 (2018): 23.

<sup>9</sup> J.C. Vergouwen, *Masyarakat dan Hukum Adat Batak Toba*, (Yogyakarta: LKIS, 2004), 11.

<sup>10</sup> Richard Sinaga, *Perkawinan Adat Dalihan Natolu*, (Jakarta: Dian Utama, 2020), 22.

<sup>11</sup> Jekki Tumangger et al., "Contestation of Marga Primordialism in Pakpak Bharat Regency Elections (Study on The Election of The Regent and Vice Regent of Pakpak Bharat Regency in 2020)," *International Journal of Regional Innovation* 2, no. 1 (2022): 40. See also, Krismono, and Muhammad Lutfi, "Matrilineal Tradition in the Framework of Contemporary Islamic Family Law: An Analysis of Same-Clan Marriage Prohibition in West Sumatra," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 1 (2024): 85.

<sup>12</sup> Elizabeth Siahaan, and Danang Tandyonomanu, "Marsaor Paradotan Pada Pernikahan Pariban Suku Batak Toba di Kota Surabaya," *The Commertium* 5, no. 2 (2022): 141. See also, Nathalya Deasy Arthauli Siregar, "Implikasi hukum perkawinan adat pariban dalam adat Batak Toba ditinjau menurut

instances where customary norms may be violated, leading to what are regarded as breaches of traditional law.<sup>13</sup>

Marriages prohibited by the Batak tribe include several categories: *namarpadan* (siblings prohibited from marrying due to blood relations), *namarito* (siblings), *dua pungu saparibotan* (children of the same generation), *pariban naso boi olion* (the daughter of a male sibling of the mother, or the sister of her husband), and *marboru namboru nioli anak ni tulang* (this prohibition pertains to a male marrying the daughter of his *namboru*, (which refers to the father's sister, or vice versa)).<sup>14</sup> Marriages prohibited under Toba Batak customary law carry significant consequences when performed in defiance of traditional norms.

One of the most serious outcomes is the symbolic loss of clan (*marga*), whereby children born of such unions may be regarded as having no *marga* (clanless children). This loss does not imply a formal or legal revocation of the clan (*marga*), but rather denotes a disconnection from the social and genealogical ties that bind individuals to the extended kinship network. Beyond marriage violations, another factor contributing to the loss of *marga* is migration, particularly when individuals do not return to their ancestral villages. Those who become disconnected from their village origins and no longer recognize or remember their genealogical lineage (*partuturan* or *tarombo*) are often referred to as *Batak dale* a term used for Batak individuals who have lost their cultural and kinship ties.<sup>15</sup> As a result, they may cease to identify with or use their clan (*marga*), despite being ethnically Batak. As reflected in Supreme Court Decision Number 1537 K/Pdt/2012, the case of Susie

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UU no. 1 tahun 1974 jo UU no. 16 tahun 2019 tentang perkawinan (*Studi kasus masyarakat Batak Toba di Karawaci Tangerang*),” (PhD diss., Serang: Universitas Sultan Ageng Tirtayasa, 2025), 23; David S. Moyer, “Matriliney among the Toba-Batak?” *Bijdragen tot de Taal-, Land-en Volkenkunde* 2/3 de Afl 2, no. 4 (1977): 360; Friska Widawaty Hutagaol, and Erfina Nurussa’adah, “Etnografi Komunikasi Tradisi Pariban Dalam Pernikahan Adat Suku Batak Toba,” *Verba Vitae Unwira* 2, no. 2 (2021): 146.

<sup>13</sup> Jaja Ahmad Jayus, “Eksistensi Pewarisan Hukum Adat Batak,” *Jurnal Yudisial*, 12, no. 2 (2019): 241.

<sup>14</sup> Gloria Agatha Hartono et al., “Bagaimana Keterlaksanaan Hukum Waris Dalam Hukum Adat Batak Yang Ada Di Indonesia,” *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 3, no. 3 (2023): 448. See also, Elfrida Ratnawati, and Esti Royani, “The Shifting Position of Inheritance of Daughter in Patrilineal Line of Indigenous Communities in Indonesia (Case Study: Bataknese and Balinese),” Paper presented at the *EL RUHA 9th (International Conference on Social Sciences*, Turkey: Sanliurfa, 2021), 12; Sonia Fatmawati, “Pembagian Harta Waris Terhadap Anak Perempuan Dalam Masyarakat Adat Batak Toba (Studi Kasus Di Desa Padang Mengkudu Kecamatan Ujung Padang Kabupaten Simalungun Sumatera Utara),” (PhD diss., Pekanbaru: Universitas Islam Riau, 2021), 9; Jayus, “Eksistensi Pewarisan Hukum Adat,” 242.

<sup>15</sup> Radot Maruli T. Sihombing et al., “Martarombo dalam interaksi sosial generasi muda Suku Batak Toba,” *Journal of Education, Cultural and Politics* 4, no. 3 (2024): 645. See also, Bonita Padang, “Integrasi nilai nilai sosial melalui pemahaman tarombo masyarakat batak dan penerapannya dalam pembelajaran Sejarah,” *Wiksa: Prosiding Pendidikan Sejarah Universitas Indraprasta PGRI* 1, no. 2 (2024): 264.

Siahaan illustrates the tension between state-recognized civil marriage and customary Batak Toba norms.<sup>16</sup> Although Susie Siahaan had legally married Fajar Sitorus as evidenced by a marriage certificate issued by the Protestant Church of Western Indonesia (*Gereja Protestan Indonesia Bagian Barat/GPIB*) Koinonia, Jatinegara, East Jakarta, Number 29/1816/71, and subsequently registered in the Civil Registry under Marriage Certificate Number 385/1971 dated April 23, 1971 the marriage was neither known to nor acknowledged by the family. The marriage eventually ended in divorce, as recorded in Divorce Certificate Number 16/1978 dated March 1, 1979, by the Civil Registry Office of DKI Jakarta.

From this marriage, a daughter named Debby Christina Marina was born. However, Debby was not granted the *marga* (clan name) of her father, Fajar Sitorus, due to the absence of a customary Batak marriage. As a result, Susie Siahaan's family deemed the marriage invalid under customary law and refused to recognize the child. This led to a subsequent inheritance dispute in which Susie Siahaan's siblings contested Debby's right to inherit, arguing that according to Batak customary law, only children born from customary marriages and who receive a *marga* are recognized as legitimate heirs. Moreover, under the patrilineal structure of Batak inheritance law, male descendants are typically prioritized as heirs.

Based on this background, the main issues examined in this study are, who is considered a "clanless children" according to the Batak customary law system; and second, what are the legal consequences for such a child in terms of inheritance rights, particularly as addressed in Supreme Court Decision Number 1537 K/Pdt/2012.

## 2. Research Methods

The methodological approach used in this research is normative-empirical. Normative-empirical research (applied law research) involves the use of case studies that focus on normative-empirical legal behaviors.<sup>17</sup> Normative-empirical legal research originates from legal provisions that are applied to concrete legal events (in concerto) within society. Therefore, such research typically involves two stages of analysis:<sup>18</sup> The first stage involves the study of normative law and other applicable legal sources. The second stage is the application to specific events in concerto to achieve predetermined objectives. This application is realized through

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<sup>16</sup> Supreme Court, "Putusan Mahkamah Agung Nomor 1537 K/Pdt/2012," *Direktori Putusan Mahkamah Agung*, Retrieved in July 23, 2025 from <https://putusan3.mahkamahagung.go.id>.

<sup>17</sup> Muhammad Abdulkadir, *Hukum dan Penelitian Hukum*, (Bandung: PT Citra Aditya Bakti, 2004), 52.

<sup>18</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju, 2003), 34. See also, Abdulkadir, *Hukum dan Penelitian Hukum*, 52.



actual actions and legal documents. The results of this application will create an understanding of the realization of the implementation of the normative legal provisions under study, determining whether they have been executed appropriately or not. The use of both stages requires secondary and primary data.

The specification used in this research is descriptive-analytical. This study aims to describe and analyze issues based on research findings, journals, and court decisions relevant to the research topic. The techniques for processing and presenting data will involve collecting, processing, and selecting data according to the research object, or through an editing process. Relevant data will be used as material for analysis, while irrelevant data will be disregarded. Subsequently, the obtained data will be organized systematically, presented in the form of descriptions, and compiled into a research report in the form of a thesis. The data analysis method employed, in line with the approach, is qualitative.<sup>19</sup> The analysis will be conducted on all research objects, including case files, interview results, legislation, and related theories.

### 3. Results and Discussion

#### 3.1. Overview of Batak Customary Law and Inheritance System

Customary law is broadly defined as unwritten law that exists outside of legislative regulations.<sup>20</sup> It encompasses regulations that are alive and observed, even though they are not established by the authorities, but are adhered to and supported by the people based on the belief that these regulations possess legal authority. Customary law is defined as a set of rules or practices along with the norms that are prevalent in a specific region and are adhered to by a group of people in that area as a recognized source of law.<sup>21</sup>

For the Indonesian nation, the existence of law cannot be separated from the long historical continuum of customary law, which is an integral part of Indonesian society. This customary existence is spread across various regions in Indonesia,

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<sup>19</sup> Agus Budianto, "Legal research methodology reposition in research on social science," *International Journal of Criminology and Sociology* 9, no. 1 (2020): 1345.

<sup>20</sup> Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (2025): 264. See also, Sri Warjiyati et al., "The Legalization and Application of Osing Indigenous People's Customary Law Model in the Legal System," *Lex localis-Journal of Local Self-Government* 21, no. 4 (2023): 864; Syaikh et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 210.

<sup>21</sup> Hilman Hadikusuma, 2003, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju), 8. See also, David J. Bederman, *Custom as a Source of Law*, (Cambridge: Cambridge University Press, 2010), 34.

with each area exhibiting differences despite belonging to the same ethnic group.<sup>22</sup> These differences illustrate that the customary law in these regions continues to evolve and adapt to contemporary developments. Within each customary law system, there exists a system of inheritance.

One example is the Batak Toba community, which adheres to a patrilineal system, where lineage is traced through the father's line. Patrilineality, as a kinship system, emphasizes descent through the male line, meaning that in the event of any familial obligation or issue, the father or his male descendants are held responsible.<sup>23</sup> As bearers of the family clan's name (*marga*) in the Batak toba customary kinship system, men are expected to preserve and pass down the clan's name to the next generation. This patrilineal lineage strongly influences the distribution of inheritance within Batak Toba customary law. In matters of inheritance, male children typically receive the largest share of the estate, with the youngest son (referred to as *siampudan*) often receiving an even greater portion, and in some cases, the entirety of the inheritance compared to older brothers based on birth order.<sup>24</sup> However, if there is only one male child, that child will receive the largest share. Many members of the Toba Batak community in their homeland continue to adhere strictly to this patrilineal inheritance distribution<sup>25</sup>. Male child is granted access to the largest share of the inheritance, subject to certain conditions that must be upheld and followed. These conditions are based on customary teachings, which state that he must remain to accompany his parents. Consequently, the youngest son is given the right to inherit the family house<sup>26</sup>.

Batak Toba community, although adhering to a patrilineal inheritance system-where inheritance typically passes to male children-does not entirely exclude the

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<sup>22</sup> Evi Nurvidya Arifin et al., "Quantifying Indonesia's ethnic diversity: statistics at national, provincial, and district levels," *Asian Population Studies* 11, no. 3 (2015): 245. See also, Aris Ananta et al., *Demography of Indonesia's ethnicity*, (Heng Mui Keng Ter: Institute of Southeast Asian Studies, 2015), 34; Aris Ananta et al., "Declining dominance of an ethnic group in a large multi-ethnic developing country: The case of the Javanese in Indonesia," *Population Review* 55, no. 1 (2016): 21.

<sup>23</sup> Diane E. King, "The personal is patrilineal: Namus as sovereignty," In *Middle Eastern Belongings*, (London: Routledge, 2013), 73. See also, Linda Stone, and Diane E. King, *Kinship and gender: An introduction*, (London: Routledge, 2018); Ikhwanuddin Harahap, "Women's Position in Patriarchal Kinship System," *Jurnal Ilmiah Peuradeun* 8, no. 1 (2020): 136.

<sup>24</sup> Johannes B. Simatupang, "Perempuan dalam budaya adat Batak Toba," *Jurnal Pendidikan Tambusai* 5, no. 3 (2021): 10290. See also, Darlis Samuel Gultom et al., "Sejarah terbentuknya Kecamatan Pangaribuan Kabupaten Tapanuli Utara dan perkembangannya dari Tahun 2005-2015. *Jurnal Online Mahasiswa (JOM) Universitas Riau* 4, no. 1 (2017): 7; Ulung Napitu et al., "The Impact of Modernization on the Batak Toba General System," *Webology* 17, no. 2 (2020): 25.

<sup>25</sup> Daniel Chan Situmeang, *Hak Perempuan Terhadap Harta Warisan Di Masyarakat Batak Toba Melalui Upacara Mebat Dan Mangindabani (Studi Kasus Masyarakat Adat Batak Toba di Kecamatan Pintu Poban Meranti, Sumatera Utara)*, (Semarang: Universitas Katolik Soegijapranata, 2018), 5.

<sup>26</sup> Elpina, "Kedudukan Perempuan dalam Hukum Waris Adat Batak Toba," *Jurnal Hukum Kalam Keadilan* 3 no. 2 (2016): 5.

inheritance rights of female children.<sup>27</sup> Daughters in the Toba Batak community still receive assets when one of their parents passes away, although it is not formally referred to as inheritance. Instead, it is termed *ulos na so ra buruk*,<sup>28</sup> meaning a protector that never wears out, or *pa si indaban arian ni pabompu*, which translates to provisions for the grandchildren's meals. In Batak society, the provision of assets from parents to their children, whether male or female, is referred to as *holong ate*,<sup>29</sup> meaning love or affection. Additionally, fathers may give their daughters gifts while they are still young, including dowries and other items that will be presented at their daughter's engagement. If the community lacks male children, a recommendation will be made to the uncle. Such requests must be presented by the daughter to her father as he approaches death or to the male children when their parents have passed away, accompanied by the ceremonies of *mebat* and *mangindabani*.<sup>30</sup>

Moreover, there has been a noticeable shift in recent times toward civil or non-customary wedding ceremonies in recent times, including in Batak, with many couples forgoing traditional Batak matrimonial rites. As a result, an increasing number of Batak children are born without a recognized clan (*marga*), particularly in cases involving marriages that violate customary prescriptions or unions between Batak women and individuals from outside the ethnic group. These marriages not only disrupt kinship structures within the Batak customary system but also lead to the exclusion of descendants from inheriting clan identity and

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<sup>27</sup> J. C. Vergouwen, "Genealogical Structure: The Kinship System," In *the Social Organisation and Customary Law of the Toba-Batak of Northern Sumatra*, (Dordrecht: Springer Netherlands, 1964), 32. See also, Harisan Boni Firmando, "Sistem pertanahan tradisional pada masyarakat batak toba dan relevansinya di Kawasan Danau Toba (analisis sosiologis)," *Jurnal Ilmiah Sosiologi Agama (JISA)* 4, no. 2 (2021): 121.

<sup>28</sup> Darwin Herlis Manurung, et al., "Struktur Cosmos Masyarakat Batak dalam Simbol Ulos Cosmos Structure of Batak Society in the Symbol of Ulos," *Anthropos* 6, no. 1 (2020): 35. See also, Harisan Boni Firmando, "Kearifan lokal tenun tradisional ulos dalam merajut harmoni sosial di kawasan danau Toba," *Jurnal Sosiologi Dialektika Sosial* 7, no. 1 (2021): 5.

<sup>29</sup> Yessy Octavianna, and Nenni Triana Sinaga, "The Position of Daughters in the Distribution of Inheritance in Batak Toba and Minangkabau Communities," In *Aicll: Annual International Conference on Language and Literature* 1, no. 1, (2018): 382.

<sup>30</sup> Daniel Chan Situmeang, "*Hak Perempuan Terhadap Harta Warisan di Masyarakat Batak Toba Melalui Upacara Mebat dan Mangindabani*," (PhD diss., Semarang: Unika Soegijapranata Semarang, 2018), 12. See also, Rika Saraswati et al., "The Implementation of Low-Inheritance Customary Law Within Minangkabau Migrant Families in Indonesia: A Law, Power, Space Approach," *Space and Culture* 2, no. 4 (2025): 120; Sulistyowati Irianto, *Perempuan di Antara Berbagai Pilihan Hukum*, (Jakarta: Yayasan Obor Indonesia, 2003), 120.



associated rights.<sup>31</sup> According Jayus,<sup>32</sup> the principles of Batak Toba customary inheritance state that the rightful heirs to inherit from their father in Batak families are male children. In contrast, female children and the eldest child only receive provisions of land, livestock, and plantations owned by their father.

In addition, there are instances of marriage within the Toba Batak community in which a man and a woman from the same clan or lineage marry each other, despite sharing the same clan (*marga*).<sup>33</sup> Although such marriages are explicitly prohibited by Toba Batak customary law, these practices have become increasingly normalized in some communities, with many no longer viewing them as problematic. As a way of life, customary law functions as a set of binding rules that guide social conduct and community behavior. Violations of these customary norms, including same-clan marriages, are considered serious breaches of tradition.

Customary law (*hukum adat*) thus continues to serve as a guiding framework for daily life and social behavior among the Batak Toba community.<sup>34</sup> It plays a critical role in regulating social relations, and transgressions are subject to community-imposed sanctions.<sup>35</sup> Punishments for such violations may include expulsion from the village (*buta*), exclusion from one's clan group, loss of the right to bear a *marga*, or prohibition from participating in traditional ceremonies.<sup>36</sup> Despite the clear prohibition against intra-clan marriages in Batak Toba culture,<sup>37</sup> such violations are not uncommon. This reflects a gradual erosion of cultural meaning surrounding Batak marriage practices, which calls for renewed attention within the community to preserve its indigenous values.<sup>38</sup>

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<sup>31</sup> Ryna Leli Naibaho, "Efektivitas Penerapan Yurisprudensi Mahkamah Agung Republik Indonesia Nomor 179/K/Sip/1961 di dalam Persamaan Hak Mewaris Anak Laki-Laki Dan Anak Perempuan Pada Masyarakat Suku Batak Toba Perkotaan (Studi di Kecamatan Medan Baru)," *Premise Law Journal* 4 (2015): 14046.

<sup>32</sup> Jayus, "Eksistensi Pewarisan Hukum Adat," 244.

<sup>33</sup> David Andrian H. Siahaan, "Akibat Perkawinan Semarga Mrenurut Hukum Adat Batak Toba," *Novum: Jurnal Hukum* 3, no. 3 (2016): 177. See also, Monica Belinda Oksavina, "Keabsahan perkawinan semarga masyarakat adat Batak ditinjau dengan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan," *Jurnal Ilmiah Hukum dan Dinamika Masyarakat* 21, no. 1 (2023): 47.

<sup>34</sup> Bono Budi Priambodo, "Positioning adat law in the Indonesia's legal system: Historical discourse and current development on customary law," *Udayana Journal of Law and Culture* 2, no. 2 (2018): 154.

<sup>35</sup> Betsy Jose, *Norm contestation: insights into non-conformity with armed conflict norms*, (Springer: Springer, 2017), 45.

<sup>36</sup> Bartoven Vivit Nurdin et al., "Customary Sanctions: Social Control of Rural Development," *Jurnal Bina Praja* 15, no. 2 (2023): 329; Arina Adila, and Sallie Alexandra, "Implementation of Customary Law in Land Dispute Resolution in Indigenous Law Communities," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 1 (2025): 998.

<sup>37</sup> Samin Batubara, "Pelarangan Perkawinan Satu Marga Dalam Adat Batak Mandailing," In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 18, no. 1 (2018): 6.

<sup>38</sup> Hasan Bachtiar Fadholi, and Siska Diana Sari, "Hukum negara dan hukum adat: Dua kutub yang saling menguatkan," *Jurnal Mengkaji Indonesia* 1, no. 1 (2022): 16.

Customary law is unwritten and evolves dynamically from one generation to the next. Its implementation relies heavily on the indigenous community's belief in the continued relevance of their cultural values.<sup>39</sup> This reliance is what allows customary law to remain flexible in adapting to societal changes over time, while still preserving its core principles so long as these are upheld by the community itself.<sup>40</sup>

### 3.2. Case Study: Supreme Court Decision Number 1537 K/Pdt/2012

The brief chronology of this case began with a lawsuit filed by the petitioners for cassation, who were the plaintiffs/appellants in the previous proceedings, against Debby Christina Marina (the respondent in cassation, previously the defendant/appellee). The plaintiffs were members of the Siahaan family, who were the biological siblings of Debby Christina Marina's mother, Susie Sumihar Siahaan. Susie Sumihar Siahaan passed away in 2001, leaving Debby Christina Marina as her only daughter and sole surviving descendant (the respondent in cassation).

During her lifetime, Susie Sumihar Siahaan worked as a teacher and had once been married to Fajar Sitorus, as evidenced by a marriage certificate issued by the Protestant Church of Western Indonesia (*Gereja Protestan Indonesia Bagian Barat/GPIB*) Koinonia, Jatinegara, East Jakarta, Number 29/1816/71. The marriage was subsequently registered with the Civil Registry under Certificate Number 385/1971 dated 23 April 1971. However, this marriage was never acknowledged nor known to the family and ended in divorce according to Divorce Certificate Number 16/1978 dated 1 March 1979, issued by the Civil Registry of the Province of DKI Jakarta. From this marriage, a daughter named Debby Christina Marina was born.

Debby Christina Marina was not given a marga (clan name), specifically her father's marga, which is Sitorus. Since the marriage did not follow traditional Batak customary rites, the family of Susie Siahaan did not recognize the marriage as valid and consequently did not acknowledge the child born from it. This issue surfaced in court during an inheritance dispute in which Susie Siahaan's siblings sought to claim her estate and filed a lawsuit against Debby Christina Marina, aiming to exclude her as a legal heir. Their argument relied on Batak customary law, which maintains that a child born from a traditional Batak marriage must receive a marga, and additionally, that inheritance rights traditionally belong to male descendants.

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<sup>39</sup> Leon Shaskolsky Sheleff, *The Future of Tradition: Customary law, common law and legal pluralism*, (London: Routledge, 2013), 54. See also, Brendan Tobin, *Indigenous peoples, customary law and human rights-why living law matters*, (London: Routledge, 2014), 23; Diala, "The concept of living customary," 152.

<sup>40</sup> M. Syamsudin, *Hukum Adat dan Modernisasi Hukum*, (Yogyakarta, Fakultas Hukum Universitas Islam Indonesia, 1998), 7.

The siblings of Susie Siahaan contested the lawful heir status of Debby Christina Marina by presenting several arguments. They asserted that the Plaintiffs are the biological siblings of Dra. Susie Siahaan, all born to the same parents, Fridolin Siahaan and Tiomas Hutagaol. The disputed property is the inheritance left by the late Drs. Susie Sumihar Siahaan, hereinafter referred to as the Heir.

The Plaintiffs explained that both their parents and the Heir have passed away. To the best of their knowledge, during her lifetime, Dra. Susie Siahaan was never married. Since both the Heir and the Plaintiffs belong to the Batak ethnic group, they argued that, under Batak customary law, all assets acquired by the Heir during her lifetime should be treated as inheritance property to be distributed among the rightful heirs. Given that the parents of the Heir had passed away earlier, the estate should therefore devolve upon all the Heir's biological siblings.

However, based on available official records, it was later discovered that the Heir had in fact been married to Fajar Sitorus, as evidenced by a marriage certificate issued by the Protestant Church of Indonesia (*Gereja Protestan Indonesia Bagian Barat/GPIB*) Kainonia Jatinegara, East Jakarta, Number 29/1816/71, and registered in the civil registry under Marriage Certificate Number 385/1971 dated April 23, 1971. This marriage was never known or acknowledged by the family and was subsequently dissolved through Divorce Certificate Number 16/1978 dated March 1, 1979, issued by the Civil Registry Office of DKI Jakarta Province. From this marriage, a daughter named Debby Christina Marina was born on January 7, 1978, as stated in Birth Certificate Number 433/1980 dated November 13, 1980.

According to the principles of inheritance law, when a person dies leaving behind an estate, the heirs have the right to determine the legal system governing the distribution of the inheritance. In this context, considering that the deceased and her family are of Batak ethnicity, the Plaintiffs argue that it is appropriate and justified for Batak customary law to be applied in the settlement of this inheritance dispute.

In the first instance, through Decision Number 1535/Pdt.G/2009/PN.Jkt.Sel dated May 6, 2010, the plaintiffs' lawsuit was rejected, and it was stated that the legitimate heir of Sus Siahaan is Deb.<sup>41</sup> Subsequently, at the appellate court, through Decision Number 628/Pdt/2010/PT.DKI dated April 7, 2011, it affirmed the decision of the District Court 1535/Pdt.G/2009/PN.Jkt.Sel, meaning that the plaintiffs' request was denied.

### **3.3. Legal and Social Status of Clanless Children in Batak Customary Law**

Based on the above-mentioned cases, a divergence in legal perspectives can be observed between the disputing parties and the court rendering the decision.

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<sup>41</sup> Mahkamah Agung, "Putusan PN Jakarta Selatan 42/Pdt.G/2009/PN JKT.SEL," *Direktori Putusan Mahkamah Agung*, Retrieved in July 23, 2025 <https://putusan3.mahkamahagung.go.id>.

Specifically, the plaintiffs adopted the perspective of Batak customary law, while the defendant and the court adhered to the framework of national law.<sup>42</sup>

Firstly, the plaintiffs relied on Batak customary norms to assess whether the defendant could be considered a legitimate heir, particularly in relation to the presence or absence of a *marga* (clan's name). According to the plaintiffs, Debby could be categorized as a child without a *marga*, because her mother's marriage (Sus, the deceased) was not recognized by the extended Siahaan family, as it was not conducted in accordance with Batak customary traditions. This view is exemplified in the cases of AS and MA, whose parents' marriages were also not carried out under Batak culture. AS's parents were married under Javanese tradition, while MA's parents were married solely under civil law without any customary rituals. Due to the absence of Batak traditional marriage ceremonies, such marriages are considered invalid from the perspective of Batak customary law. As a result, the children of these unions are not accepted within their parents' clans and thus do not receive a *marga*. Consequently, AS and MA, as children of such unions, were not granted a *marga* (clan's name) by their parents.

A child may also lose their surname if they engage in elopement, known as *mangalua*. Several factors contribute to the background of such elopements, including lack of parental approval, excessively high *sinamot* (dowry) requirements, economic factors, free association, differences in ethnicity and religion, and education. These factors lead individuals to elope, and if a child does so without their parents' consent, they automatically forfeit their adherence to Batak customs, resulting in their surname no longer being recognized as part of a Batak clan.

Based on an interview with Natalia Winda, she stated that because she does not have a surname, she is not entitled to inherit property from her parents. More specifically, due to her Batak heritage, Natalia Winda cannot be an heir because she lacks a surname and her status as a woman. In Natalia Winda's case, both her father and mother adhere to a patrilineal kinship system, which means she has no inheritance rights from her parents.

An interview with a source identified by the initials AS (who declined to have their full name disclosed) revealed that the absence of a *marga* (clan's name) has significant consequences for AS, particularly regarding inheritance rights. AS stated, that without a *marga*, they are not entitled to inherit from their parents. Moreover, this extends to the paternal lineage, as AS is also not entitled to inherit from their paternal grandparents (*Opung*). According to AS, because their parents' marriage was not conducted according to Batak customary law, both AS and their father have consequently lost their inheritance rights under Batak culture.

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<sup>42</sup> M. Najib Ibrahim, and Ade Saptomo, "Comparison of customary law in indonesia and australia from the terms of customary rights of customary law communities," *Jurnal Hukum, Politik dan Ilmu Sosial* 3, no. 1 (2024): 319.

A separate interview with another respondent, identified by the initials MA (who also chose to remain anonymous), presented a contrasting view. MA explained that despite not having a *marga* (clan's name), they still retain the right to inherit from their parents. MA further noted that their family has lived outside of their ancestral region (*merantau*) for a long time and, as a result, no longer strictly adheres to customary traditions. Consequently, MA maintains inheritance rights and is still considered a legitimate heir by their family. An interview with Hasian Prayitno revealed that the absence of a *marga* (clan's name) in his case is purely administrative. Socially and in terms of identity, he is still recognized by his clan as bearing a *marga*. Therefore, he retains his right to inherit from both of his parents.

In line with Hasian Prayitno, an interview with Anggreta Graciella indicated that her lack of a *marga* (clan's name) in official documents is not due to any particular or substantial reason. The *marga* simply was not recorded on her birth certificate.<sup>43</sup> Nonetheless, in terms of identity, Anggreta Graciella still possesses a *marga* and is acknowledged by her clan. In her daily social interactions, she is also recognized as Batak. She further stated that she retains inheritance rights from both of her parents as well as from her extended paternal and maternal families.

An interview with Manguji Nababan revealed that, in the context of inheritance under Batak customary law, inheritance is not limited to material assets but also includes the transmission of identity, particularly the *marga* (clan's name). Manguji emphasized that in Batak society, the term "division of inheritance" is actually a misnomer; it is more accurate to refer to it as the giving of inheritance, since what is given is meant to be passed down again to the next generation. He further explained that, traditionally, the Batak people do not recognize the concept of selling inherited land or property-inheritance is considered sacred and non-transferable in that sense. Manguji also addressed a common misconception held by outsiders: the belief that women, although bearing a *marga*, are excluded from inheritance. According to him, while women may not inherit in the same manner as men, there is a customary mechanism for safeguarding their welfare known as *parmano-manoan* a system that ensures support and protection for women within the community. Ultimately, Manguji concluded that inheritance in Batak customary law is inseparable from a person's identity as a member of the Batak customary community. As long as an individual retains Batak identity, they inherently possess inheritance rights.

An interview with Rajista Damanik offered a different perspective, particularly regarding the consequences of losing one's *marga* (clan's name). He stated that if a person no longer bears a *marga* (clan's name), they can be regarded as no longer the

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<sup>43</sup> Olina Hartani Muliani Gultom et al., "Identity Negotiation in Mixed Marriage Couples Between the Batak and Other Ethnic Without Having to Adopt a Batak's 'Marga'(Clan)," *Interaksi Online* 10, no. 4 (2022): 68.



child of their parents. Rajista added that when someone loses their *marga* (clan's name) especially due to violations of customary norms resulting in customary sanctions it is as though their blood ties have been severed. Consequently, if an individual no longer has any genealogical or kinship connection with the decedent, they cannot be considered a rightful heir. Rajista further described traditional practices in which Batak individuals who were expelled from their villages for violating customary laws were deemed to have ceased to exist in that community. As a result, their rights and responsibilities toward the village, the community, and even their own family were considered terminated.

Secondly, the perspective used by the defendant is national law. This is evident from the defendant's argument, which bases her status as a legitimate child on national law rather than on applicable Batak customary law. The defendant asserts that "from the marriage of Dra. Susie Sumihar Siahaan and Fajar Sitorus, a daughter named Debby Cristina Marina was born on January 7, 1978, as stated in the birth certificate excerpt Number 433/1980 dated November 13, 1980". Furthermore, the defendant claims that upon the death of Dra. Susie Sumihar Siahaan, the rightful heir is the defendant, who is the sole daughter of the decedent.

On the other hand, the plaintiffs argue that the marriage between Susie Sumihar Siahaan and Fajar Sitorus is invalid. They contend that even though a marriage took place (according to national law under the Marriage Act), a genuine marital life never occurred, as Fajar Sitorus was withdrawn from the marriage by his family from the day of the wedding, leading to a customary divorce according to Batak traditions. An interesting fact is that the defendant was born after the marriage of the decedent and Fajar Sitorus ended due to divorce. This indicates that the defendant bases her status as a legitimate child and heir to the decedent on Article 42 of the Marriage Act.

Similarly, the perspective of the court also relies on national law. National law, in this case, refers to family law, given that there is no national inheritance law in place.<sup>44</sup> The court refers to the Marriage Act, which stipulates that a legitimate child is one born because of marriage or within marriage (see Article 42). This is reflected in Supreme Court Decision Number 1537 K/Pdt/2012, which has been discussed in the research findings, stating that a child born without a surname, even if both parents or one parent has a Batak surname, does not automatically sever the blood ties between the child and their parents.<sup>45</sup> One of the judges' considerations in Supreme Court Decision Number 1537 K/Pdt/2012 states: "The plaintiff, as a sibling of Dra. Susie Sumihar Siahaan (deceased) is not a rightful heir to the estate of Dra. Susie Sumihar Siahaan (deceased). Given that the decedent was officially

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<sup>44</sup> Nova Yarsina, "The existence of traditional law reviewing from pancasila values in the development of national law," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 142.

<sup>45</sup> Purnama Rika Perdana et al., "Clan names of the Simalungun Batak: The naming system of an Indonesian ethnic group," *ONOMA* 51, no. 7 (2016): 48.

married to Fajar Sitorus (who later divorced) and had a child (the defendant/Respondent/Debby Christina Marina), the defendant, as the child, is the sole heir of Dra. Susie Sumihar Siahaan (deceased) entitled to the estate...”.

The panel of judges held that, under customary inheritance law, the primary and principal heirs are the children (descendants) of the deceased. As such, children as the primary heirs exclude the rights of other potential heirs.<sup>46</sup> Moreover, the Supreme Court’s ruling in this case did not consider it problematic that the heir in question was a daughter of Susie Siahaan. According to Batak customary law, inheritance typically follows a patrilineal system, in which male descendants are prioritized as heirs. However, Supreme Court Decision Number 1537 K/Pdt/2012 affirmed that the defendant, Debby Christina Marina a daughter without a marga (clan name) was the legitimate heir of Susie Siahaan. This ruling aligns with an earlier Supreme Court decision, Decision Number 179 K/SIP/1961, which recognized that both sons and daughters have equal rights in matters of inheritance.

The Supreme Court further considered that the arguments presented by the plaintiff (the decedent’s sibling) in their cassation appeal, dated October 20, 2011, were unfounded. The plaintiff contested the inheritance based on Batak customary law, challenging the legitimacy of the child as an heir. However, the plaintiff failed to present sufficient or appropriate legal reasoning to justify the claim and did not clearly demonstrate any error in the legal judgment made by the lower courts (*Judex Facti*).

The Court found that the *judex facti* (District Court, upheld by the High Court) had correctly applied the law. The plaintiff, acting as a sibling of the late Dra. Susie Sumihar Siahaan, was not a legal heir entitled to her estate. The Court considered the fact that Susie Sumihar Siahaan had legally married Sitorus Fajar (from whom she later divorced) and had a biological daughter (the defendant/cassation respondent), who, as her child, is the sole and rightful heir to her estate.

Accordingly, the cassation petition submitted by the petitioner must be rejected. The Court concluded that the decision of the Jakarta High Court was not in conflict with existing laws and/or regulations. Therefore, the cassation request was denied, and the petitioner, being the losing party, was ordered to bear the legal costs incurred at the cassation level.

This ruling reflects the Court’s position that legal recognition of lineage and inheritance rights is determined by formal marital and filial relationships rather than customary affiliation. However, in practice, such legal determinations may not always align with the sociocultural realities of Batak customary norms, where clan membership (*marga*) serves as the foundation for one’s identity, social belonging,

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<sup>46</sup> Mahdi Syahbandir, “Kedudukan Hukum Adat dalam Sistem Hukum,” *Kanun Jurnal Ilmu Hukum* 12, no. 1 (2010): 8.

and inheritance rights. The divergence between statutory law and customary practice often produces complex situations in mixed-ethnic marriages, particularly when one party does not fully adopt Batak customary traditions.

Based on the interview with Natalia Winda, she stated that her mother is of Batak ethnicity, while her father is of Javanese origin. Her mother is a Batak woman with the clan's name *boru Napitupulu*, and her father is Javanese. At the time of their marriage, Natalia Winda's father was granted the Batak clan name Siregar as part of the customary requirement. However, after the marriage and the birth of Natalia Winda, she herself was not given any Batak clan name.

The Batak customary system follows a patrilineal kinship structure, meaning that lineage and clan names are inherited through the male line. According to this principle, Natalia Winda should have inherited the Siregar clan name from her father. However, in reality, she did not inherit her father's clan name, with the reasoning that her father continued to uphold Javanese customs and identity. Natalia Winda further explained that the process of granting the clan's name to her father was merely an administrative formality required by Batak customary society to permit the marriage between her father and her mother.<sup>47</sup>

The results of the interview with the source identified as AS (the source requested not to be named) indicate that AS's father is Batak with the surname Sihombing, who married AS's mother, who is Javanese. AS recounted that when AS's parents married, AS's mother's side requested that the marriage be conducted according to Javanese customs, and thus the wedding was held in accordance with Javanese traditions. However, AS's father's family, which strictly adheres to Batak customs, believed that the marriage should be conducted according to Batak customs due to the principle of patrilineality. This contradiction in customary marriage led to consequences for AS's family, as the marriage of AS's parents was not recognized under Batak customs, ultimately preventing AS from adopting her father's surname because, from her father's family's perspective, there was never a valid marriage since it was "not conducted according to Batak traditions." Consequently, AS is unable to include her father's surname in her name.<sup>48</sup>

The results of the interview with the source identified as MA (the source requested not to be named) revealed that she has Batak ancestry through her mother, who has the surname, Nasution. MA also does not have a surname because her mother is Batak while her father is Minang. MA explained that her parents' inter-ethnic marriage resulted in her not receiving a surname. The reason is that her father, being Minang, follows the matrilineal principle for passing down surnames, while her mother, being Batak, follows the patrilineal principle. The differences in kinship systems in MA's parents' marriage imply that MA does not

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<sup>47</sup> Natalia Winda, interviewed, Jakarta, 24 Mei 2024.

<sup>48</sup> AS, S.H., interviewed, Jakarta, 24 Mei 2024.

inherit a surname from either her father's or mother's lineage. Therefore, despite having Batak blood, MA does not carry a Batak surname.<sup>49</sup>

An interview with Hasian Prayitno revealed that both of his parents are of Batak ethnicity meaning that both his father and mother are Batak. However, Hasian Prayitno does not carry a Batak clan name (*marga*) in his official name. The reason, as explained by both Hasian Prayitno and his parents, is that the omission of a clan name (*marga*) was intended to avoid having an excessively long name in administrative matters. As a result, his birth certificate, academic diplomas, and national identification card do not include any clan name (*marga*). Hasian Prayitno emphasized that the absence of a clan name (*marga*) in his name was not due to any cultural or personal reasons but was solely a matter of administrative convenience.<sup>50</sup>

In line with Hasian Prayitno, the results of the interview with Anggreta Graciella also revealed that she has both parents who are Batak; however, her name does not include a surname. The reason for this is that when her birth certificate was created, her surname was not included, resulting in it not being recorded in subsequent administrative documents.<sup>51</sup>

An interview with Manguji Nababan as Head of the Center for Batak Cultural Documentation and Studies at HKBP Nommensen University emphasized that Batak identity is fundamentally characterized by three elements: possessing a clan's name (*marga*), speaking the Batak language, and having a native village (*bona pasogit*). According to this conceptualization of identity, individuals who do not possess a *marga* cannot be recognized as Batak or as members of the Batak ethnic community. The Batak kinship system is patrilineal, meaning that clan names are inherited from the male lineage. To be formally accepted within traditional institutions or customary assemblies, one must possess a clan's name (*marga*)-this is considered an absolute requirement. Without a clan's name (*marga*), an individual does not meet the legal or cultural criteria to be acknowledged as a Batak person. Manguji Nababan further asserted that a *marga* is not a title, but rather a destiny. There is no event or circumstance that can revoke a person's clan's name (*marga*). Even when an individual commits acts that are deemed inappropriate or violate Batak customs, the one thing that remains and cannot be taken away is their *marga*. According to Manguji Nababan, if a person is considered to have "lost" their *marga* due to violating customary norms, this is merely a societal perception; genealogically, the person still retains their clan's name (*marga*).<sup>52</sup>

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<sup>49</sup> MA, S.H., interviewed, Jakarta, 24 Mei 2024.

<sup>50</sup> Hasian Prayitno, interviewed, Semarang melalui Whatsapp, 09 Mei 2024.

<sup>51</sup> Anggreta Graciella, interviewed, Semarang Whatsapp, 09 Mei 2024.

<sup>52</sup> Manguji Nababan, interviewed, Head of the Center for Batak Cultural Documentation and Studies at HKBP Nommensen University, Semarang, 24 April 2024.

The results of the interview with Rajista Damanik as Simalungun Batak customary authority figure indicated that, in certain circumstances, an individual may lose their clan's name (*marga*) if they engage in actions deemed inappropriate according to Batak customary law. Such inappropriate actions may include causing disturbances in the village, resulting in expulsion from the community, or entering prohibited marriages, such as marrying someone of the same surname or lineage. Additionally, an individual may no longer identify as Batak. Those who are expelled from their village often do not use their clan's name (*marga*) in their new location, which can lead to customary sanctions, including the non-recognition of their clan's name (*marga*). A person subjected to customary sanctions may also lose their clan's name (*marga*), and once this occurs, they can no longer participate in customary events within the Batak community. Even if their parents, in this case, their father, still carry a clan's name (*marga*), those who face customary sanctions have their kinship with their parents and their parents' clan's name (*marga*) revoked.

Furthermore, Rajista Damanik stated that specifically for Batak individuals who marry within the same surname, there is a proverb in Batak customary society: "*na bancit ma antong naso markula dongan, suada dongan tu si martulo, na bancit ma antong na mambuat dongan samargai dongan, rubut ni adat angkon diparsirang*," which means that if one marries within the same surname, they will be ostracized and removed from Batak customary kinship. This ostracism can result in an individual losing their surname according to Batak customs.<sup>53</sup>

### 3.4. Legal Consequences for a Clanless Child as an Heir

Based on the court decision, it is evident that a child without a *marga* (clan's name) was recognized by the judges as a legitimate heir of the decedent. As a legal consequence of this decision, Debby Christina Marina was declared entitled to inherit the entire estate of the deceased (her late mother). The ruling demonstrates that the judges did not consider the presence or absence of a *marga* (clan's name) to be a determining factor in assessing one's status as an heir. As long as the child was born in accordance with the provisions of Article 42 of the Indonesian Marriage Law, the child is deemed a legitimate descendant of the deceased.<sup>54</sup>

The court held that the presence or absence of a Batak *marga* (clan name) from either parent was not relevant in determining the legal and biological relationship between parent and child, as customary affiliation could not nullify a legitimate civil relationship.<sup>55</sup> In its Decision Number 1537 K/Pdt/2012, the Supreme Court

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<sup>53</sup> Rajista Damanik, interviewed, Simalungun Batak customary authority figure, 23 April 2024.

<sup>54</sup> Dona Salwa et al., "Implikasi Perubahan Undang-Undang Perkawinan Mengenai Batas Usia Perkawinan dalam Sistem Hukum Keluarga di Indonesia," *Journal of Islamic and law studies* 8, no. 1 (2024): 146.

<sup>55</sup> Widasari et al., "Penetapan Anak dari Perkawinan Campuran Ditinjau dari Undang-Undang Perkawinan," *UNES Law Review* 6, no. 3 (2024): 9345.



concluded that the plaintiff, as the sibling of the late Dra. Susie Sumihar Siahaan, was not a rightful heir to the deceased's estate. The Court reasoned that since the deceased had lawfully married Fajar Sitorus (though later divorced) and had a biological child, Debby Christina Marina, the latter was recognized as the sole and legitimate heir entitled to the inheritance, thereby affirming the primacy of civil law over customary considerations in determining inheritance rights.

The panel of judges held that, under customary inheritance law, the primary and principal heirs are the descendants (children) of the deceased.<sup>56</sup> As such, the presence of children as heirs excludes other potential claimants. Moreover, the Supreme Court's decision went further by affirming the status of the heir as a daughter without a *marga* (clan's name) which, under traditional Batak inheritance law (which follows a patrilineal system), would typically disqualify her. However, the Supreme Court nonetheless ruled that the defendant (Debby Christina Marina), despite being female and without a *marga* (clan's name), was the rightful heir. This interpretation is in line with an earlier ruling, Supreme Court Decision Number 179 K/SIP/1961, which affirms that sons and daughters possess equal inheritance rights.

The case illustrates the legal position of a child without a *marga* (clan's name) under Batak customary inheritance law. On the one hand, the absence of a *marga* (clan's name) does not preclude a child from inheriting from their parents under national law. On the other hand, within the framework of Batak customary law, the lack of a *marga* (clan's name) is seen as severing one's Batak identity and, consequently, their customary inheritance rights. By comparison, in Western civil inheritance systems, there is no concept of disqualification from inheritance based on ethnic or cultural identifiers.<sup>57</sup> Rather, the Civil Code regulates disinheritance on moral and legal grounds. Article 838 of the Indonesian Civil Code specifies individuals deemed "unworthy" to inherit, including those who: have been convicted of killing or attempting to kill the deceased; have been found guilty of falsely accusing the deceased of a crime punishable by five years or more of imprisonment; have obstructed the deceased through violence or coercion from making or revoking a will; or have embezzled, destroyed, or falsified the deceased's will.

Thus, while customary inheritance law can exclude heirs based on identity, modern civil law restricts inheritance only in cases of specific unlawful or immoral conduct.<sup>58</sup> Furthermore, Article 912 of the Indonesian Civil Code stipulates that

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<sup>56</sup> M. Syaikhul Arif, "Mengenal sistem hukum waris adat," *Siyasah: Jurnal Hukum Tata Negara* 5, no. 1 (2022): 254.

<sup>57</sup> Aisyah, and Novia Alexia, "Keberadaan Hukum Waris Adat Dalam Pembagian Warisan Pada Masyarakat Adat Batak Toba Sumatera Utara," *Mizan: Jurnal Ilmu Hukum* 11, no. 1 (2022): 5.

<sup>58</sup> Cindy Aoslavia, "Perbandingan Hukum Waris Adat Minangkabau Sumatera Barat Dan Hukum Perdata Barat," *Mizan: Jurnal Ilmu Hukum* 10, no. 1 (2021): 59.

any person who has been convicted of murdering the testator; anyone who has embezzled, destroyed, or falsified the testator's will; or anyone who, through force or coercion, has prevented the testator from revoking or amending their will along with their spouse and children shall not be entitled to benefit in any way from that will.<sup>59</sup>

Given the Supreme Court's ruling, the plaintiffs' expectation that the entire estate accumulated during the lifetime of the deceased (heir) should rightfully be inherited by all the deceased's full siblings, to be distributed in accordance with Batak customary inheritance law, could not be fulfilled.<sup>60</sup> Similarly, the plaintiffs' desire to apply the customary Batak inheritance rule where only male children are entitled to inherit, while female children may only receive a *pausageang* (a gift from parents to daughters, typically in the form of gold jewelry or other assets deemed appropriate by the parents based on their total estate) was ultimately not granted by the court.<sup>61</sup>

This Supreme Court decision aligns with established jurisprudence, particularly Supreme Court Decision Number 179 K/Sip/1961, which involved an inheritance dispute between Lang Tewas and Benih Ginting of the Batak Karo ethnic group. In that earlier case, the Court emphasized principles of humanity, justice, and gender equality, affirming that daughters must be acknowledged as rightful heirs entitled to inherit from their parents. By referencing this precedent, the Court reaffirmed its consistent stance that inheritance rights are to be determined based on universal principles of fairness and equality, rather than restricted by customary norms that discriminate on the basis of gender or lineage.

The Supreme Court's stance in addressing inheritance disputes within the Batak Mandailing community known for its patrilineal kinship system demonstrates the progressive evolution of customary inheritance law in Indonesia. In Supreme Court Decision Number 415 K/SIP/1970, in the case of Usman versus Marah Iman Nasution, the Court observed that the traditional practice of *pambeanan* (granting use rights without transferring ownership) represented an early attempt to soften the rigidity of pre-World War II customary law, which excluded daughters from inheritance.<sup>62</sup> The Court recognized that customary law in the Tapanuli region has since developed toward acknowledging equal inheritance

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<sup>59</sup> Elviana Sagala, "Hak Mewaris Menurut Ketentuan Hukum Waris Perdata," *Jurnal Ilmiah Advokasi* 6, no. 2 (2018): 123.

<sup>60</sup> Sari Pusvita, "Keperdataan Anak Diluar Nikah dalam Putusan Mahkamah Konstitusi dan Implikasinya terhadap Harta Warisan," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 1, no. 2 (2018): 39.

<sup>61</sup> Riska Putri Anggita, "Kedudukan Akta Keterangan Hak Mewaris Yang Dibuat Oleh Notaris Berdasarkan Keterangan Sebagian Ahli Waris (Studi kasus Putusan Mahkamah Agung Nomor 2180K/Pdt/2017)," *Indonesian Notary* 2, no. 3 (2020): 27.

<sup>62</sup> Nasution, "Pluralisme Hukum Waris di Indonesia," 26.

rights for both daughters and sons. This development, as the Court emphasized, has been consistently reinforced through judicial decisions affirming gender equality in inheritance rights within the region.

A similar line of legal reasoning is reflected in Supreme Court Decision Number 1589 K/SIP/1974, issued in the Tapanuli region on February 9, 1978. In this decision, the Court affirmed that, consistent with the evolving customary understanding (*fiqih*) in Tapanuli and Lombok, daughters should be recognized as rightful heirs. Accordingly, the Court ruled that the sole daughter of the deceased was entitled to inherit her father's entire estate. This marked a significant departure from earlier customary practices that would have redirected the inheritance to male relatives on the father's side, illustrating the Court's continued commitment to advancing equality and justice within Indonesia's evolving framework of customary inheritance law.

#### 4. Conclusion

Based on the analysis conducted in this study, it can be concluded that a child born to parents either both or one of Batak ethnicity may possibly not bear a surname (*marga*/clan's name), even though *marga* (clan's name) constitutes a concrete marker of Batak lineage and identity. There are several factors contributing to a child being born without a *marga* (clanless children). One such factor is when the parents' marriage violates Batak customary norms or contravenes Batak customary law, leading to the marriage not being recognized by the Batak community. In such instances, if the marriage is deemed non-existent, then the resulting child is likewise not acknowledged as a legitimate member of the *marga* (clan's name) group. A child may also lose their *marga* (clan's name) or be born without one due to sanctions imposed by traditional leaders or the customary community. This typically results from conduct that is considered shameful, provocative, or damaging to the Batak community or village, leading to the withdrawal or revocation of the individual's *marga* (clan's name). In other cases, a child may be considered "without a *marga*/clanless children" not due to any violation of custom or loss of traditional rights, but simply for administrative reasons such as shortening the length of the name in formal documents, leading to the exclusion of the *marga* (clan's name) in identification records.

The Supreme Court Decision Number 1537 K/Pdt/2012 affirmed that even though the child in question did not possess a *marga* (clan's name) and was female, she was nonetheless entitled to inherit, as long as it could be proven that she was the biological child of the deceased (the heir). This applies even when inheritance distribution follows Batak customary law. The absence of a *marga* (clan's name) and the child's gender do not automatically nullify her status and rights as an heir. Her

position as a daughter does not preclude her from inheriting, in line with Supreme Court Decision Number 179 K/SIP/1961, which affirms the principle of equal inheritance rights between sons and daughters.

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