

Inheritance and Equal Rights for Toba Batak Daughters

T. Omas Ihromi

The author examines the persistence of discriminatory inheritance practices that exclude daughters from inheriting land, houses, and other unmovable property from their parents among urban Toba Batak people in Indonesia. These practices persist in spite of national legal policy mandating equal rights for men and women. Drawing on Sally Falk Moore's concept of the semi-autonomous social field, the essay argues that traditional forms of inheritance are maintained through the *marga*-association, which brings together people who share the same name and affirms principles of patrilineal descent as the defining characteristics of Batak identity in contemporary urban settings. Both men and women voluntarily affirm these principles, arguing that because a woman becomes part of her husband's lineage at the time of marriage, she is not entitled to her father's estate. The *marga*-association thus acts as an insulating mechanism between state law and traditional (*adat*) law, protecting the latter from the legal transformations imposed by the state.

In the past two decades Indonesia has begun to establish a legal policy of nondiscrimination toward women. Nevertheless, making this policy a reality has involved confronting traditional gender roles, especially among Indonesia's many ethnic groups with well-established customs that treat men and women differently. Among the Toba Batak of North Sumatra,¹ daughters were traditionally excluded from the right to inherit land. An examination of current inheritance patterns among the Toba Batak confirms that these practices still prevail even among members who have relocated in urban areas, so we must ask why the government policy of nondiscrimination has not succeeded among these people and what barriers exist to its full implementation.

I examine here some of the possible reasons why the policy of nondiscrimination has not changed inheritance patterns among the Toba Batak. First, I describe the pluralistic nature of Indone-

¹ The area of the Toba Batak is located in the center of Tapanuli, the so-called Batak-territory, around Lake Toba in the province of North Sumatra.

sian society. I delineate the policies supporting the principle of emancipation for both men and women and the attempts to change Indonesian culture by adopting new laws. Then I describe the Toba Batak people and their basic institutions, including customary rights of inheritance and conceptions of those rights. Finally, I analyze the impact of the legal policy of nondiscrimination on the rights of Toba Batak daughters.

For this research I have drawn on information gathered from in-depth interviews. In my interviews with the Toba Batak I explored the answers to three important questions:

1. To what extent are the Toba Batak people aware of the legal policy of nondiscrimination?
2. If the Toba Batak are aware of the legal policy, what authority do they attribute to the *adat* (customary law) denying women the right to inherit land and houses from parents?
3. Has the behavior of the Toba Batak, judged by current inheritance patterns, been affected by the policy of nondiscrimination?

The Gap between Indonesian Nondiscrimination Policies and Toba Batak Custom

Every five years the People's Consultative Assembly (consisting of the Parliament of Indonesia and representatives of provinces and national groups) issues a document on the main policy guidelines for the next five-year period. In 1978, for the first time, the need to improve the position of women and the desirability of encouraging and enabling women to participate in national development were stipulated in the *Garis-Garis Besar Haluan Negara*, or GBHN (National Policy Guidelines).

The government had been moving toward such a policy, introducing the principle of equal rights for men and women in a marriage law in 1974 and enacting into law the Convention on the Elimination of All Forms of Discrimination against Women in 1984. Article 5 of the convention illustrates the government's support for women's struggle to achieve social justice:

State parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of or the superiority of either of the sexes or on stereotyped roles for men and women.

We can conclude that the policymaking institutes in Indonesia favor a legal policy under which women and men enjoy the same rights and privileges as well as the creation of opportunities for women to participate in societal, economic, and political arenas without any longer suffering from injustices imposed by old traditions. If principles of equity regarding the right to inherit

are to have practical consequences, officials involved in the transfer of property in cases of death must know about the legal policy of nondiscrimination and must feel committed to act accordingly. Only then can we say that the ideology existing prior to the introduction of the new laws is amenable to change through the law.

When we observe real situations among the Toba Batak people, especially in families where death has occurred, we can see that daughters continue to be excluded from the right to inherit land, houses, and other unmovable property from their parents. Decisions about redistributing the property of deceased parents are usually made at a family meeting, where the male agnatic members play an active role. Thus the question that we need to ask is, How can the government ensure that the new regulations are carried out?

Max Weber argued that effectuating legislative coercion in the economic sphere is difficult, partly because of the complex interdependence of individual economic units in the market and partly because “the inclination to forego economic opportunity simply in order to act legally is obviously slight, unless circumvention of the formal law is strongly disapproved by a powerful convention” (Weber 1954:38). With the Toba Bataks, difficulties in introducing family regulations can also be attributed to ignorance of the new regulations. Even though new policies are publicized, not all members of society notice the announcements. The Toba Bataks find it sufficient in their daily routine to rely on principles in which they have been socialized since early childhood. The traditional relationships between men and women not only prevail but are constantly strengthened in rituals; they are accepted without question.

Sally Falk Moore’s (1983) concept of the semiautonomous social field is useful here. She argues that such fields can generate rules and customs and symbols internally, but that they are also vulnerable to rules and decisions and other forces emanating from the surrounding world (p. 55). For the Toba Bataks residing in Jakarta and other cities we can identify such semiautonomous social fields, which can induce compliance with traditional principles governing family relationships. Using Moore’s concept as a guideline, I hope to contribute to an understanding of the “forces that dictate the mode of compliance or non-compliance to state-made legal rules” (p. 57).

The Status of Toba Batak Custom under Indonesian Law

Indonesia is a plural society, with about 300 ethnic groups speaking 250 or so languages. The basic institutions (e.g., the kinship system) that prevail in these groups vary. The Toba Batak people, an ethnic group from North Sumatra near the shores of

Lake Toba, have a rigid patrilineal family structure. Among unilineally organized groups, male descendants of a patriarch or a common female progenitor tend to cluster together, sometimes sharing common property or enjoying the rights of usufruct to community lands. The Toba Batak live in the Toba Highlands in villages that mainly consist of members of a lineage—that is, people who consider themselves descendants of the same *sa-oppu* (grandfather). They are preoccupied with genealogy. Lineages can be classified into *marga* (clan) units, and when people identify themselves, they refer first to their *marga*. Families aspire for sons to continue the line of descent and consequently pass land and other valuable goods on to sons. Daughters are married off to members of other lineages from different *marga*, and because their welfare is the responsibility of the men of those lineages, daughters do not inherit valuable goods.

Redistribution of the property of deceased parents is generally related to the kinship system. Even after most ethnic groups in Indonesia became Islamized and some become Christianized, traditional concepts of inheritance were retained in several groups. In deciding legal policy in preindependence Indonesia, the Dutch colonial power took into consideration the plural concepts of family organization and the concomitant jural institutes among the various ethnic groups. For legal purposes they classified the population into Europeans—including people from countries with a system of civil law, especially family law, similar to the Dutch one—the foreign Orientals, and the Natives. Article 163 of the Basic Regulation of the Netherlands Indies (referred to as “Indische Staatsregeling,” abbreviated as IS), stipulates rules for all the categories of population. According to article 131, ordinances regulating substantive matters in all spheres of law, as well as procedural matters, would be either common to the groups or specific to certain groups or even subgroups. When such regulations had not been enacted, judges were to apply the existing religious laws and customs of the Native peoples insofar as these did not contradict generally recognized principles of justice and equity.

When Indonesia became independent, almost no special regulations governing matters of family law for Native Indonesians had been enacted by the colonial government. According to the stipulation on transitional matters in the 1945 Constitution of the Republic of Indonesia (art. II), then, religious laws and customary rules are valid sources of law. Various academic drafts of an inheritance law have been prepared, but none has been enacted; consequently, a multiplicity of legal systems regarding inheritance exist side by side.

Inheritance according to Toba Batak Custom

The Batak people can be classified into six subgroups: Karo, Simalungun, Pak-Pak, Angkola, Mandailing, and Toba (Bangun 1971:97). Recent census data do not enumerate the membership of ethnic groups, but calculations can be made on the basis of the census of 1930. According to Pajung Bangun (1971:98), there must have been between 700,000 and 1,000,000 Batak people in 1930; of those, 400,000 were Toba. The numbers have grown since then.

According to the 1992 yearbook issued by the Persekutuan Gereja-Gereja di Indonesia (PGI, the Community of Churches in Indonesia), one of the largest ethnic church affiliates is the Huria Kristen Batak Protestan (HKBP), mainly consisting of Toba Batak people, and it has a total membership of 2,000,000.

For the Toba Batak the first permanent contact with the outside world came in 1881, when missionaries from the Christian Missionary Institute of Barmen, Germany, were permitted to do work among the Toba people (Aritonang 1988:198). They put up schools, at first near the main settlement area; but requests soon came from more remote areas, because the Batak people realized that compared to people living in adjacent east Sumatra, they were backward. They could not read or write, so when the enterprising among them traveled east, they could not find jobs (*ibid.*, p. 1988:215).

Around 1900, Toba people started to migrate extensively to the eastern part of the Simalungun area in search of better chances to earn a living. After 1949, when the restriction of movement of indigenous peoples imposed by the Dutch colonial government was abolished in independent Indonesia, the Toba migrated in large numbers to Medan, to other areas in Sumatra, and, later, to all other parts of Indonesia (Bruner 1973:376).

Toba Batak names have two components: the personal name given at baptism (most of them are Christians) and the family name, which is the name of the patrilineal clan to which the person belongs. After marriage a woman belongs to the clan of her husband, but she continues to use the family name of her father; she is addressed as *boru*, meaning "daughter of," as in *boru Sinaga* (Sinaga is a *marga*). When two or more Toba emigrants meet, they must find the proper way to interact, and for that purpose they must know each other's *marga* and village of origin. They can then discover whether they have common kin and determine how to address one another and what mutual obligations they have in the celebration of life cycle rites.

The village of origin, or the *huta* where their "grandfather" came from, tells the localized patrilineage to which a person belongs. A *marga*, however, is not a localized group; rather, it comprises people who, it is believed, are related through a common

male progenitor whose name they share—namely, the marga name. People belonging to the same marga do not make up a corporate social unit. Reunions attended by marga members are only momentary gatherings. But the idea of belonging to the same big family—the idea that people related through a marga are brothers and sisters—is shared. One consequence is that marriage between members of the same marga is considered incestuous.

Prior to the inclusion of the Toba area within the territory of the former Netherlands Indie, the *huta* functioned as an autonomous social and political unit ruled by the local chief—the *raja huta*. The right to function as a *raja huta* was vested in the male descendants of the village founder, who established the village either on previously unoccupied land or on land that he owned. Sons-in-law and other people of the same marga who were not among the founder's descendants could also become villagers if permitted to do so. Inhabitants of a village were thus related to each other.

Neighboring villages were likewise ruled by founders and their male descendants, and the *raja huta* of adjacent villages solved common problems together, held certain (pre-Christian) religious rites together, and fought when they could not resolve their problems. Before the missionaries came, a founder, by the mere fact of opening up a territory—which included making offerings to the Supreme God, *Debata Mulajadinabolon*, and asking for blessings, the aversion of danger, and a guardian spirit for the *huta*—established a spiritual link and a legal relationship with the village. Given such a link, male descendants would, by implication, share in the privileges of the founder (Vergouwen 1964:111).

The village was autonomous in that it ran its own affairs. Negotiations and transactions related to marriage, performance of marriage rites, settlement of quarrels between husband and wife, presentations of gifts to grandchildren, purchases of cattle from neighbors, departures of villagers seeking a better living—such were matters that the *raja huta* witnessed or legalized. What we would probably consider private matters were not excluded from his control. There was no rigid separation between private and public. Everything important for the village was potentially within the jurisdiction of the *raja huta*. The village community had to accept his leadership, but at the same time he had a reciprocal responsibility for maintaining the villagers' welfare and for keeping law and order.

Marriage is exogamous among the Toba people. Once the family of the groom pays the bride price, the woman is withdrawn from the lineage of her father and henceforth belongs to the lineage of her husband. The purpose of marriage is to have legal descendants, especially sons, to perpetuate the husband's

line of descent. Even after marriage, however, a woman is not dissociated from her father's lineage but functions as a permanent link in the network of affinal groups.

The relationships between lineages linked by marriage is a cornerstone of Toba societal life. The lineage from which male members of a certain group receive their brides is the *hula-hula*, and the group receiving the brides is the *boru*. The *hula-hula* is related to the lineage of an individual, which is related to the *boru*. Traditionally, certain concepts underlay the relations between the affinal groups and determined the nature of their interactions. J. C. Vergouwen, who observed Toba Batak society from 1927 to 1930, described these relationships (1964:54):

The *hula-hula* is a source of supernatural power, of individual vitality for its *boru*. The *boru* sees the members of its *hula-hula* as being endowed with *sahala*, that special power which can be regarded as a rich, more than usually potent force of the *tondi* = soul. . . . This means that the *boru* should avoid doing anything that would be harmful or offensive to its *hula-hula*. . . . A person should not quarrel with the near related *hula-hula*, he should fear its *tondi* = soul force.

This same ideology prevails among the Toba Batak even today in urban centers, as well as in the area of origin. When families gather to hold ceremonies at various points in the life cycle and on other important occasions, respect is shown to the *hula-hula*, and the *boru* helps ensure that each ceremony is performed in the most appropriate way. An exchange of gifts takes place, symbolizing values proper for the relationships between the affinal groups.

Rules on the distribution of property when someone dies are very much related to the kinship system. Male descendants are expected to continue the line of descent. When they prosper in life—number of descendants, wealth, and prestige in the community are measures of success—they have contributed to the *sahala* (“good fortune”) of the family, and their property should be passed on to their sons. The welfare of daughters should also be promoted, and if a father on his deathbed has enough rice fields, when the daughter comes with food offerings and requests a portion of his fields or other valuable goods, the request will be granted. She could also plead with her brothers after the father dies. When she is given away as a bride, she and her husband's family customarily ask for a gift, usually a rice field, and a father with the means usually responds positively to such a request. But even though daughters are given rice fields, land, and other valuable goods, they are denied the right to inherit their father's property.

Toba Batak Custom in Urban Society

Hildred Geertz uses the terms *metropolitan superculture* and *biculturalism* to explain the complexity of the cultural dimension of the life of urban Indonesians. People with sufficient modern education, who have occupations in the modern sector, typically live in the metropolitan superculture—that is, in accordance with values and customs that have arisen in modern city life. Changes result from different food habits and new patterns of entertainment, for example, and the dominant influence of newspapers and other mass media. But where family matters are concerned, many city dwellers retain the values and habits that originated in their traditional cultures—they have a bicultural orientation (Geertz 1963:35, 36).

The Toba immigrants in Jakarta at all social levels adjust very well to the requirements of modern city life. For instance, they send their children to better schools to improve their chances of success in life. In that they participate in various modern institutions, we could say that they are applying the values of the metropolitan superculture in their lives. They dwell in modern houses, and they use modern equipment; in many respects, their life-style differs little from that of non-Batak neighbors. But their ceremonial life is markedly different.

Most Toba Batak join at least one of the two ethnic groupings for which Edward Bruner has introduced the term *marga-association*. A marga-association comprises people with the same family name (*marga*). People join groups of their own *marga* and of the *hula-hula*. When many people in a city belong to the same *marga*, there are often subdivisions of the *marga-association* (e.g., the east Jakarta division of the *Siahaan* association). To celebrate routine life-cycle events, only members of certain sections or those descended from the same patrilineal lineage in the Toba area proper gather regularly. The larger association usually gathers for special occasions—at the new year or upon the death of a prominent old man or woman. When a *marga-association* does not have many members, it usually gathers in its entirety every time there is occasion for celebration. The part of the association that meets regularly can be regarded as a semiautonomous social field, to reinvoke Moore's term.

The marriage plans of a young man whose parents belong to an association will be discussed within the group. The officials of the association or the elders in the section of the association, referred to as the *raja*, convene meetings for that purpose. When the bride-to-be is also Batak, not too many problems are posed. If she comes from a different ethnic group or has a different religious affiliation, problems are likely. Some *marga-associations* are rigid in their recommendations about marrying people from other ethnic groups, requiring the adoption of the bride-to-be or

the groom-to-be into a particular lineage. Then that lineage plays the role of hula-hula (in case the woman is from a non-Batak group) or boru (in case the man is not Batak). The biological parents are replaced by the Batak adoptive parents during the negotiations preceding the wedding and during the ceremony itself. The negotiations, the exchange of obligatory gifts, the speeches—all take place in the Toba Batak language. Henceforth the woman and adopted man are considered members of the adoptive lineage, and they are given the related marga name.

Other marga-associations and sections of associations are not so strict. The biological parents of a prospective bride or groom participate in the prenuptial negotiations and play the role of hula-hula or boru during the ceremony, but they need to be assisted every step of the way by the affinal groups of the parents of the Batak groom or bride. The speeches are translated so that the non-Batak can participate according to traditional rules. More modern sections even perform wedding ceremonies where non-Batak hula-hula or boru participate without the assistance of Batak affinal groups and where the Indonesian language is used.

Many other kinds of ceremonies are performed in the context of membership in a marga-association. As the marriage example illustrates, the associations and their sections can make rules. Often the core rules are the same rules that their ancestors applied in the area of origin, but some modifications may be due to urban conditions—to allow non-Batak people to participate in the adat system, for example. The modes of accommodation differ in the various marga-associations and their sections. Some leaders are open-minded, but others grasp the opportunity to exercise power and thus force on the young people and outsiders the realization that adat still functions as a system of binding rules.

Many non-Batak are amazed that modern Batak people voluntarily subject themselves to such familial institutions and spend so much time in adat-related events. Many young people among the Toba Batak, as well as others with a modern orientation, try to dissociate themselves from such events. A great many enjoy being included in community life, however. In the marga-associations, Batak people can perform roles not available elsewhere. A man who performs the role of hula-hula (bride giver) is venerated. He is given symbols of honor, and his wife is also an honored participant. At other times he may play the role of boru (another form of bride giver) and can expect protection and assistance from the hula-hula. In either capacity he is called raja, a title of honor. During the ceremony he steps into a world full of symbolic meanings that are shared by all the participants.

Association members could live like ordinary Indonesians, without being bothered by all the Batak rules. From the legal point of view, a couple can marry according to the rules of their

church. But many Toba people consider that a marriage ceremony has to comply with adat to be legal. If, say, no agreement is reached regarding adoption for a non-Batak bride or groom and the couple has only a church wedding, they are expected eventually to undergo an adat ceremony if they want to participate in the marga-association on an equal standing with all the other married couples.

At the ceremonies celebrating life-cycle events, people are very much aware of the wealth, prestige, and achievements of certain families. The traditional indicators are apparently still applied, and the inference is made that such families are endowed with special charisma. Signs of prestige are being added—having a university degree or a high military rank—which is why those who issue invitations to ceremonies have their titles printed in front of their names. The prestige of the family, of the lineage, comes to the fore at the ceremonies and is a recurring theme in many aspects of the Batak culture (Hoebel 1954:13). Sons are expected to uphold the prestige of the family, and parents work hard to ensure that their sons will be successful—they consider the task the most important in their life.

The Impact of Nondiscrimination Laws on Toba Batak Women

Underlying the laws to ameliorate various forms of social injustice toward women is an assumption described by Moore, following Roscoe Pound, as the “social engineering” capability of law—that is, in Moore’s (1983:54) words, “the assumption that social arrangements are susceptible to conscious human control, and that the instrument by means of which this control is to be achieved is law.” Many scholars have expressed their belief in the capacity of law to effectuate change, especially to achieve goals in development programs. In seminars in Indonesia where the formation of national laws has been discussed, the desirability of using laws to bring about social change has been voiced (Ihromi 1981:180). But lawmakers should proceed with caution in areas related to family life and deep-seated values.

From the outline of the Toba kinship system and the importance of patrilineal descent, it is clear that the principle of patrilineality pervades Toba Batak life, determines self- and group identity, and perpetuates the links between generations. The individuals so linked are constantly stimulated to commit themselves to the lineage, the primordial group generated by the system, by contributing to its prestige. In the modern urban context, the Toba people must construct conditions under which the role of patrilineal descent can be retained in their lives. This they accomplish through regular gatherings, enforcement of the rules regarding adat relationships, and marga-associations. Mean-

ings and symbols that were significant in their villages of origin, though somewhat modified, are reenacted in their interactions with each other and with those whom they have adopted into their system. The ideology of patrilineal descent is at work in the marga-associations, and within that framework there is no place to consider equal rights of inheritance for men and women. To do so would potentially affect the system in a negative way.

When I told Toba people about the U.N. convention on eliminating discrimination against women, they reacted fairly consistently:

A convention on an international level, made into law, and equating the rights of men and women in cases of inheritance? That cannot work for the Batak people. The women themselves would not be willing to accept such a matter. They do not want to deprive their hula-hula of what is rightfully theirs. They even want to help so that the hula-hula becomes more powerful.

Do you really think that such a law, this convention, shall be forced upon the Toba Batak people?

It is not a question of the exclusion of daughters from the enjoyment of the property of the father. Gifts are given to daughters. When a daughter marries, she can receive a piece of land; when her oldest child is baptized, she is also able to receive a rice field; and when her father dies, she can also get another rice field. But, you see, she is part of the lineage of her husband, and thus it is not right that she has rights to her father's estate.

Another person asked specifically, "Do you think that in the near future we will be held accountable for our actions when we continue to distribute the property of a deceased man without giving the same right to daughters?" I explained that at present, Toba people distribute the property of deceased fathers through family deliberations at which they consider the goods that the children, including daughters, have received as gifts over the course of time. In my observation, some families are more inclined to regard daughters as equal to sons, but the prevailing attitude is to assign a daughter to the lineage of her husband. Daughters tend not to inherit unmovable goods, though they receive other goods, like their mother's jewelry.

Given the newly enacted laws and past decisions of the Supreme Court, Batak daughters who are denied the right to inherit the estate of their father can forward their claims to the Court. So far, however, only Batak women who have no brothers have brought suit. The Supreme Court decided in one such case in 1961 that adat, even in Batak circles, should give to women the same rights to inheritance as men.

Most of my Toba respondents who were members of a marga-association had not heard about the decision that the Supreme Court made in 1961 or about the legislation favoring an emanci-

pated relationship between men and women. Upon learning about the laws, they wondered about the impact on their institutions; but essentially they think that their kinship system does not treat women in an unjust way. They think that women have the same opportunities as men. Daughters attend school, and fathers take pride when they graduate from college, which also means that they will have a better chance of marrying a good husband. The future in-laws will welcome a daughter-in-law who is a *sarjana*—a university graduate. The prestige of the family is heightened, and educated women teach their children well.

Batak women themselves do not make too much fuss about this matter of discrimination regarding the right to inherit. When they have no brothers, and uncles (father's brothers) want to claim the property of the deceased man, they certainly will take the case to court. But when brothers are given land and houses and they themselves are given proportionally less, they tend to accept matters. And as one respondent correctly pointed out, not many families have much to quarrel about, because only a few of the urban residents own a lot of property. Much of what is earned is spent—in part, to educate children. The more well-to-do Batak people apparently tend now to regard daughters and sons as more nearly equal.

In many cases Batak parents now admit that they can depend more on their daughters than on their sons to succeed when given the chance to attend an institute of higher learning. Once the daughters are married off and included in the lineage of the husband, the parents think that they will nonetheless be able to count on their daughters' support. Thus they no longer think that investing in a daughter's education is a waste. But they are all of the opinion that patrilineal descent defines Batak identity and must be preserved.

Batak women are very critical of the division of labor among the Toba people. They believe that women are treated unjustly and are searching for ways to improve the situation. Most, however, do not accept confrontation as the right approach.

In sum, Toba Batak people in the urban centers accept the ideology of patrilineal descent and the traditional relationships between affinal groups, hence create conditions enabling them to have a partial community life centered on the concomitant symbols and meanings. Their values seem to act as a barrier to information from various government agencies about the legal policy of nondiscrimination as it pertains to inheritance rights. When they receive more information, women who have no brothers will be in a position to make use of the new policy. On the whole, however, the policy has had little effect on the Toba perception of women's rights. If the government designs a more coercive policy, the Batak people may be more inclined to take such matters into consideration, but so far the government seems

to think that a declaration of support for the principle of nondiscrimination is sufficient, especially regarding inheritance, which is related to deep-seated values and to religious laws. For now, when individual members of society wish to correct an injustice, they can bring their cases to court. The tendency of the court is to recognize the right of women to receive part of the unmovable property of their fathers.