

## The Position of the Chief Waris and His Authority in the Scope of High Customary Land Inheritance in the Minangkabau Traditional Community in West Sumatra

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**Abstract.** *This study aims to analyze: 1) The division of inheritance in the Minangkabau Customary Community in West Sumatra. 2) The position of the head of the heir and his authority in the scope of the high customary inheritance land in the Minangkabau customary community in West Sumatra. The method of approach used in this study is the empirical approach (sociological). This type of research is analytical descriptive research. The types and sources of data in this study are primary and secondary data obtained through interviews and literature studies. The analysis in this study is descriptive analysis. The results of the study concluded: 1) The division of inheritance in the Minangkabau Customary Community in West Sumatra is divided into inheritance property and livelihood property. Concerning livelihood inheritance property, it must first be reviewed whether the property has been partially or completely donated to his children or nephews. When it has been donated, of course the part that is donated is the right of the person concerned. If a remainder is found, it is distributed to his children, the bako (brotherhood from the father's family) asks for or demands a portion of the inheritance property, then it will be resolved in litigation. 2.) The position of the head of the heir and his authority in the scope of the high customary inheritance land in the Minangkabau traditional community in West Sumatra, namely as the leader of the clan who is fully responsible for the safety and welfare of the clan members with the utilization and management of the high inheritance property, as the representative of the clan in external affairs and acting internally for and on behalf of the clan, likewise the understanding that everything is in the hands of the head of the heir, as a mediator and a person who will resolve a dispute that occurs between clan members, both personal problems in daily interactions and inheritance property problems, as the clan representative in court, for example as a defendant or as a plaintiff, as the clan representative in carrying out transactions on the clan's inheritance land after obtaining*

*approval from all clan members, for example selling and mortgaging inheritance land, as the clan representative in matters of registering inheritance land, because the inheritance land must be registered in the name of the head of the heir, as the clan representative in tribal density, as the person responsible for going out in traditional ceremonies within the clan, as the person responsible for paying land and building tax (PBB) on inheritance land. people.*

**Keywords:** *Heir; Inheritance; Position; Mother.*

## 1. Introduction

Society is a form of communal life, whose citizens live together for a long period of time. Customary Law Society is a community unit that has the completeness to be able to stand alone, namely having legal unity, unity of rulers and unity of the environment based on joint rights to land and water for all its members.<sup>1</sup>

The existence of customary law has been stated in the formulation of Article 18B of the 1945 Constitution of the Republic of Indonesia which states, "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." The state's recognition of customary law community units is also recognition of their customary law. Thus, the application of customary law does not depend on the state authorities or on the political will of state administrators, but rather is part of the will of the constitution.<sup>2</sup>

Law in the thinking of indigenous peoples is an individual and personal understanding of the law, so in indigenous communities, law is their soul, because it is impossible for indigenous communities to live without law.<sup>3</sup>The relationship between law and society cannot be separated, because where there is society there is law (*ubi societas ibi ius*). Everyone has interests that are expected to be fulfilled, humans in their lives are surrounded by various dangers

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<sup>1</sup>Hazairin, 1970, Pancasila Democracy, Bina Aksara, Jakarta, p. 44.

<sup>2</sup>Yusuf Salamat, 2016, Regulations Concerning Land Rights of Customary Law Communities, Indonesian Legislation Journal, Volume 13 Number 04, p.412

<sup>3</sup>Dominikus Rato, 2011, Customary Marriage and Inheritance Law, LaksbangJustitia, Surabaya, p. 3

that threaten their interests, so that often causes their interests not to be achieved.<sup>4</sup>

An heir must seek the consent of the other heirs if intends to transfer the rights to his inheritance rights, because the other heirs also have rights to the inheritance. If a person who is entitled to the inheritance land raises the suspicion that he is the sole owner of the land, then the Transfer may not be considered to have been made based on the conditions secretly. However, if there are other heirs who are also entitled to the inheritance property who are not involved, meaning there is no agreement, then there will be a dispute over the Transfer process that occurs.<sup>5</sup>

The transfer of rights to inherited land must also be carried out at the Land Office. In addition to providing legal certainty, the implementation of the transfer of rights to land due to inheritance at the Land Office can provide legal protection and justice for the community. To ensure legal certainty that a legal act has been carried out regarding the transfer or burden by the parties, the transfer of rights must be made with authentic deed where the deed must be made before an appointed/authorized official for that purpose so that it can be used as perfect evidence. This is intended to guarantee legal certainty regarding rights and obligations and even legal consequences by the parties.<sup>6</sup>

Regarding inheritance itself, it becomes a very complex matter if connected between the traditions of customary law and Islamic law. Inheritance in the Minangkabau community is unique compared to other tribes in Indonesia. The uniqueness lies in the family system, namely the matrilineal system. The matrilineal system is a system that draws lineage from the mother's side which is calculated according to the mother's line, namely brothers and sisters, grandmothers and their siblings, both male and female. Through this system, all children can only be heirs of their own mother, especially for high inheritance, namely inheritance that is passed down from several generations.<sup>7</sup> In Minangkabau customs it is mentioned from niniak to mamak and from mamak to nephew, and in principle the property cannot be traded. The heirloom property is obtained from the results of staking and malateh from previous elders. The

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<sup>4</sup>Sudikno Mertokusumo, 2010, *Understanding Law as an Introduction*, Cahaya Atma Pustaka, Yogyakarta, p. 1

<sup>5</sup>Said Ali, Wira, *Legal Protection for Heirs Against Inheritance That Transfers Without the Consent of All Heirs*, *Journal of Law & Notary Student Affairs*, Volume 1, Number 1, December 2021, p.282

<sup>6</sup>Istanti, Akhmad Khisni, *Legal Consequences of Land Sale and Purchase Deeds Before PPAT Which Are Not Made in Accordance with PPAT Deed Making Procedures*, *Jurnal Akta* Vol. 4 No. 2 June 2017, Unissula Semarang, p. 273

<sup>7</sup>Dwi Sartika, 2021, *Dualism of Inheritance Law in Minangkabau Society*, *Journal of Economics, Law & Humanities*, Volume 3 Number 3, p.1

heirloom property is used and utilized by members of the clan for the welfare of the family, especially the children and nephews. High heirloom property is mostly in the form of rice fields, fields, land and housing.<sup>8</sup>

As explained above, the matrilineal system emphasizes more on the maternal lineage. In the matrilineal system, the important role is played by the mother's brother, namely as the Mamak Kepala Waris who has the authority to regulate and supervise the inheritance so that it is maintained and preserved. Therefore, the Mamak Kepala Waris in his position will manage and develop the high inheritance for the benefit of his children and nephews. Based on this background, the author is interested in researching "The Position of the Mamak Kepala Waris and His Authority in the Scope of Customary High Inheritance Land in the Minangkabau Traditional Community in West Sumatra".

## **2. Research Methods**

The approach method used in this study is an empirical (sociological) approach. This type of research is analytical descriptive research. The types and sources of data in this study are primary and secondary data obtained through interviews and literature studies. The analysis in this study is descriptive analysis.

## **3. Results and Discussion**

### **3.1. Distribution of inheritance in the Minangkabau Traditional Community in West Sumatra**

Minangkabau is an area that adheres to customary inheritance law with a matrilineal system as mentioned in the description above, the customary inheritance law system applied by the Minangkabau area is a system where the position of the daughter has more influence or is more prominent than the position of the son. The matrilineal system in marriage, the husband will follow the wife but remains part of the original relatives and is not interested in entering the wife's relatives. Different from the position of children from the marriage, the children follow the relatives of the mother's side.<sup>9</sup>This matrilineal system has the goal of saving the lives of women. This goal has its own background because it is believed that women have weak bones, even though tomorrow the mother no

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<sup>8</sup>Yahya Samin and Team, 1997, *The Role of Mamak Towards Nephews in Contemporary Minangkabau Culture*, Department of Education and Culture, p. 97

<sup>9</sup>Ellyne Dwi Poespasari, 2016, *Understanding Customary Inheritance Law*, Kencana, East Jakarta, page 16

longer has a husband, the mother is still able to support her family and her children because she has inheritance property that is her property.<sup>10</sup>

The matrilineal system in Minangkabau customs has several characteristics, namely descent is calculated from the mother's line, tribes are formed according to the mother's line, Minangkabau people are required to marry outside their tribe or called exogamy, power in the tribe is in the hands of the mother, matrilineal where the husband visits the wife's side, heirlooms and rights are inherited by the mother to her nephews from the mother's brother to the child of the sister.<sup>11</sup>

Heirs of Minangkabau inheritance will receive two types of property, namely high inheritance property and low inheritance property. High inheritance property will belong to family members from the mother's line after death if the mother dies then the first heir is her child then the second is her grandson and the third is the closest heir. The executor in determining the inheritance is regulated or represented by the *ninik mamak* he who regulates the continuity and continuation of the inheritance property but he has no right and no power over the inheritance property.

The Minangkabau customary inheritance law determines that there are two types of inheritance that will be received by the heirs, one of which is high inheritance, the distribution of which is passed down from generation to generation from the mother's line, which according to Minangkabau customary law consists of:

1. Mother's Daughters
2. His granddaughters
3. Daughter of granddaughter
4. And so on, it is drawn based on the mother's lineage.

However, when there are no more *warih nan dakek* (close heirs), then *warih nan jauh* or distant heirs will be sought. *Warih nan jauh* are distant family members who are blood relatives of the mother but not directly related to the deceased mother or her heirs. *Warih nan jauh* or distant heirs are the mother and heirs if they are still alive or if they are no longer there, they will be replaced by the brother or sister of the mother of the heir. If there are none, they will be replaced by family members who are still in the mother's line of descent.

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<sup>10</sup>Krisna Bhayangkara, 2023, Distribution of Customary Legal Inheritance According to the Matrilineal System, *Journal of Law, Politics and Social Sciences (JHPIS)*, Volume 2, Number 1, p.74

<sup>11</sup>Ahmad Muliadi, 2015, Application of the Matrilineal System to the Distribution of Inheritance, *Jurnal NuansaKenotariatan*, Volume 1 Number 1, p. 34.

There are two types of inheritance in Minangkabau customs, namely *suko* and *pasuko*.<sup>12</sup>*Suko* is a legacy of customary greatness titles consisting of *dubalang*, *manti*, *malin*, *penghulu* and so on. This title is a title that is given down through generations according to the maternal lineage of a clan. This *sako* functions as a title given to the head of the clan, this *sako* is an element of the existence of a clan. *Sako* is the identity of a clan, therefore the *penghulu* has an obligation to maintain and preserve *sako* for the community. There is also a greatness title, namely *sangsako*, this *sangsako* is a title given to someone who is obtained through mutual agreement by means of consensus, the nature of this *sangsako* is not hereditary. *Sangsako* is a title that is not fixed or can move from one environment to another. *Sangsako* is not included in the high heirloom property because *sangsako* is not a title obtained from ancestors.

*Pasuko* or also called *pusaka*, is one type of inheritance among others, this *pasuko* has material properties that are owned by a deceased person and can be transferred to another person due to a legal event, namely death.<sup>13</sup>The difference between *sako* and *pusako* is that *sako* itself is a type of immaterial inheritance, while *pusako* is an inheritance in material form. The difference is that the grant is not caused by death but is caused by a legal act that he did while he was still alive in the world.

Minangkabau initially only had one type of property, namely heirloom property, which was intended to meet the needs of the family and was the joint property of all family members. It is mandatory for adult men to have the responsibility to develop the heirloom property. Over time, a new term emerged regarding this heirloom property, namely low heirloom property. This low heirloom property emerged because of the development of the needs of family members so that livelihood property was needed, which was also referred to as low heirloom property. Thus, the term high heirloom property and low heirloom property were introduced.<sup>14</sup>

High heirloom property is all heirloom property that is inherited from generation to generation. High heirloom property is property whose management is inherited to women or *bundo tubuh*. High heirloom property is property obtained by ancestors passed down to their children and grandchildren drawn in the maternal line. This property becomes the joint property of all family

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<sup>12</sup>Minangkabau Natural Customary Density Institute, 2002, *Basandi Syarak Adat, Syarak Basandi Kitabullah Banagari Life Guidelines, Sako Batuah*, Padang, p. 64.

<sup>13</sup>Amir Syarifuddin, 1984, *Implementation of Islamic Inheritance Law in the Minangkabau Customary Environment*, Gunung Agung, Jakarta, 1st Edition, p. 212.

<sup>14</sup>Alif Husni, 2016, *Distribution of immovable low-income inheritance in the Minangkabau society of the Kurai village*, *The Indonesian Journal of Islamic Family Law*, Volume 1 Number 2, p. 304.

members and cannot be owned privately. Heirloom property included in high heirloom property is the traditional house, fields, rice fields, fish ponds, rice fields, and equipment or supplies of the penghulu himself. This high heirloom property is a form of guarantee for the lives of children and nephews in Minangkabau.

Low inheritance is the result of the father's or mother's livelihood during a legal marriage. This low inheritance can be transformed into high inheritance. After the father dies, the inheritance is divided into two between the father who will earn a living for the wife and also the children who have been left behind, because the one who will earn a living is the man. This low inheritance can be in various forms, for example in the form of a house, car, and so on.<sup>15</sup>

### **3.2. The Position of the Chief Waris and His Authority in the Scope of High Customary Land in the Minangkabau Traditional Community in West Sumatra**

The descent system adopted by the Minangkabau indigenous people is the matrilineal descent system, which is a descent system that connects the lineage through the female side, this system is known as the maternal system. Hazairin explained the principle of matrilineal descent, namely that the Minangkabau people have a different way of drawing the lineage that determines the lineage for their family, namely that each man and woman draws the lineage upwards only through female connections as blood vessels, namely that each person draws the lineage to their mother and from their mother to their mother's mother and so on. This kinship system is only found in the Minangkabau people.<sup>16</sup>

Inheritance law according to society with a matrilineal system which draws the lineage from the mother's side is calculated according to the mother's line, namely brothers and sisters, grandmothers and their siblings, both male and female. With a matrilineal kinship structure, children can only be heirs of their own mother, both for high inheritance, namely inheritance that is passed down from one generation. If the deceased is a son, his children and his widow do not become heirs for high inheritance, while the heirs are all his nephews. There is a Minangkabau adage quoted by Eman Suparman, which says that the heirloom is from the grandmother to the mother, from the mother to the nephew, the heirloom that is passed down can be about the title of the heirloom or about the inheritance.<sup>17</sup>

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<sup>15</sup>Cindy Aoslavia, 2021, Comparison of Minangkabau Customary Inheritance Law of West Sumatra and Western Civil Law, *Journal of Legal Studies*, Volume 10 Number 1, page 61

<sup>16</sup>Hilman Hadikusuma, 1987, *Customary Kinship Law*, Sarana Media, Jakarta, page 33.

<sup>17</sup>Eman Suparman, 1985, *The Essence of Indonesian Inheritance Law*, Armiko, Bandung, p. 49

The Minangkabau indigenous community adheres to a collective inheritance system, namely an inheritance system where the inheritance as a whole and not divided is owned jointly by the heirs. Such as high inheritance, namely inheritance that is owned jointly by kinship that continues from generation to generation, while low inheritance is inheritance that is passed down from mother to daughter, the owner of which is not to be distributed individually but enjoyed together, which over time will also become high business assets.

Psychologically, the Minangkabau people have a relationship with their customary rules. According to customary beliefs, customary provisions regarding inheritance must be obeyed. They believe that the spirits of deceased ancestors remain connected to the members of the tribe who give laws and punishments or in the form of laws or gifts, if customary rules are obeyed and ignored, this is in accordance with the opinion of Bushar Muhammad, who said that Indonesians basically think, feel and act driven by belief (religion) in supernatural (magical) forces that fill, inhabit the entire universe (the Cosmos world), and large and small plants.

As is known, "kaum" in Minangkabau society is a customary law association that has a certain area called "kaum ulayat land" and the members of the kaum are represented by their ancestors by a "mamak kepala waris". The member of the kaum who becomes the mamak kepala waris is usually the eldest brother of the mother, the mamak kepala waris must be intelligent and clever. However, the highest power in the kaum lies in the kaum meeting, not in the mamak kepala waris. The members of the kaum consist of nephews and these nephews are the heirs.

Article 1 Paragraph 15 of the Regional Regulation of West Sumatra Province Number 7 of 2023 concerning Customary Land defines the Mamak Kepala Waris as the oldest or most senior male in a clan. The Mamak Kepala Waris is the title of a position in a clan whose duty is to lead all members of the clan and take care of, organize, supervise and be responsible for the clan's heirloom matters. So the Mamak Kepala Waris is the one who will take care of and develop the high inheritance for the benefit of his children and nephews who are currently growing day by day and for the sake of the continuity of the high inheritance itself.

Mamak head heir is a strategic position and plays an important role within his clan, therefore the person who occupies this position "takes precedence, and is exalted Sarantiang" meaning that a mamak chief heir is more respected and has an elevated position than other members of the clan, he is made leader within the clan and has the authority to act within and outside the clan.



According to the provisions of Minangkabau Custom, the head of the waris is the eldest (eldest brother or eldest brother from the mother), if there is no eldest (eldest brother from the mother) then the one below him and so on, according to customary advice but in practice it is not always the case, based on research results in certain conditions the eldest brother from the mother or the one below him does not always become a head of the waris. This happens because:

1. The mother no longer has a brother (for example, he has died) but if he has a son, his son will be the chief heir for his people;
2. The mother's brother did not want to serve as the head of the heirs and handed over the authority and responsibility to his eldest nephew or his sister's eldest son.

According to customary law, there are several considerations in determining the head of the heirs, namely as follows:

1. Mother's eldest brother.
2. No memory problems, in the sense of being healthy and well.
3. As much as possible, do not migrate, because if you migrate, you will not be able to follow the developments of your clan and the inheritance of your clan.
4. Smart and responsible.

If someone who according to customary provisions is entitled to become the head of the heir but he does not fulfill the requirements as above, then the meeting of the members of the clan determines or elects another clan member who will become the head of the heir within the clan, within the bloodline heir environment. Usually the head of the heir is the oldest male in the clan and hereditary, but in some nagari this provision is not a measure / criterion in holding the position of head of the heir, because the appointment of the head of the heir is based on the election or consensus of the clan.

There is a traditional proverb that is the basis of guidelines for family life in Minangkabau, which states the relationship between a mother and her nephew, which reads that a child held in the lap of a nephew is guided, the village people are guided. This means that a mother must weigh her nephew with educational guidance, so that for the children of the Minangkabau people there are two places to lean on, first the father and second the mother, or with the traditional proverb it is said that mother because of data, father because of blood.

The relationship that is formed between the mother and the nephew gives rise to rules for being a mother and nephew. Guidelines regarding this matter according to custom are found in several traditional advice or proverbs, including the following:

1. Mamak Kayo in the customs of his nephew is cheap according to him.
2. The nephew is under the command of the mamak, the mamak is under the command of the headman, the headman is under the command of the "bana".
3. Mamak manunjuak taught, at night danga-dangkalan during the day caliak-caliakan.
4. Manjunjuang's nephew ordered Manuruik to replace Tagah.
5. Mamak Pai looked back and looked home.
6. Pai tampek batanyo, come home tampek babarito

Based on the description above, it is clear that the kinship of the uncle and nephew is a kinship that is grown for the needs of continuity and stability of leadership in the social environment, from home, village to nagari. Thus, it is clear that the role and responsibility of Minangkabau men as uncles are very large towards their nephews and nagari. And there is a reciprocal relationship between uncles and nephews, so that it creates an orderly relationship between uncles and nephews in Minangkabau society which is based on the Matrilineal system.

The position of the Chief Waris Mamak can be formulated as follows:

1. As the leader of the clan, he is fully responsible for the safety and welfare of the clan members through the use and management of these high inherited assets.
2. As a representative of the family in outgoing affairs and acting inwardly for and on behalf of the people, the understanding of everything is in the hands of the head of the heir.
3. As a mediator and a person who will resolve disputes that occur between members of the clan, whether personal problems in daily interactions or problems regarding inherited property.
4. As a representative of the community in court, for example as a defendant or as a plaintiff.
5. As a representative of the clan in carrying out transactions on clan inheritance land after obtaining approval from all clan members, for example selling and mortgaging inheritance land.
6. As a representative of the clan in the matter of registering inherited land, because the inherited land must be registered in the name of the head heir
7. As a representative of the tribe in tribal density.
8. As the person in charge of going out in traditional ceremonies in the tribe
9. As the person responsible for paying land and building tax (PBB) on ancestral land.

The role of the head of the heirs in overseeing the continuity of high ancestral property, apart from being carried out within the clan, cannot be separated from the role of a tribal chief, because a chief in tradition is a leader who is responsible to the community and has 5 (five) roles in carrying out leadership, namely:

1. As a member of society
2. As a father in the family
3. As a leader (mamak) in the clan As a sumando over his wife's house As a ninik mamak in his country.

Nowadays, regarding the development of high ancestral property, it seems to have decreased. The transfer of rights to the high ancestral property land is carried out through a mechanism of deliberation and consensus of the community first and approved by the head of the heirs. The application for the issuance of the land certificate is made by the head of the heirs of the community or other members of the community with the approval of the head of the heirs concerned with various intentions and purposes, including to be guaranteed or used as collateral in the credit application process at the bank. Problems will arise if the process of issuing certificates for the high ancestral land does not go through a mechanism of deliberation and consensus between the head of the heirs and his community or the head of the heirs acts alone without the knowledge of his community. Things like this are what later cause conflict within a community. However, in practice it will rarely happen because the process of making a certificate requires the agreement of the entire community and the approval of the head of the heirs.

The head of the heirs has the authority to manage, organize, supervise and be responsible for the high ancestral property of the clan so that it is maintained and preserved. In this context, a head of the heirs in his position as the head of the heirs will manage or regulate the management of the ancestral property of his clan, for example, if there is ancestral land that is not maintained, then the head of the heirs recommends that the lands can be utilized, likewise if the situation still allows the head of the heirs invites his nephews to invest in order to get new land as an addition to the existing lands. In addition, a head of the heirs also manages the results of the ancestral property and maintains its sustainability and makes efforts to utilize it for the members of the clan.

The Head of the Waris as the executor of power in the clan only grants *ganggam bauntuak* rights. The holder of *ganggam bauntuak* rights does not have the authority to own, sell, or transfer the land to another person and must have the consent of the head of the waris and the agreement of the clan. If without the knowledge of the head of the waris the heirloom property is transferred or

transferred, then the head of the waris as the holder of the power has the right to sue and withdraw the *ganggam bauntuak*.

#### 4. Conclusion

The division of inheritance in the Minangkabau Traditional Community in West Sumatra is divided into inheritance and livelihood assets. Regarding livelihood assets, it must first be reviewed whether the assets have been partially or completely donated to children or nephews. When it has been donated, of course the portion that has been donated is the right of the person concerned. If a remainder is found, it is distributed to the children, the bako (brotherhood from the father's family) asks for or demands a portion of the inheritance, which will be resolved in litigation. This Minangkabau custom is different from other customs, namely where the share of women is greater than that of men. This is because women are considered incapable of seeking wealth, working, or earning a living, while men are considered capable of being demanded as the backbone to work and earn a living. The position of the head of the heir and his authority in the scope of the high customary inheritance land in the Minangkabau traditional community in West Sumatra, namely as the leader of the clan who is fully responsible for the safety and welfare of the clan members with the utilization and management of the high inheritance property, as the representative of the clan in external affairs and acting internally for and on behalf of the clan, likewise the understanding that everything is in the hands of the head of the heir, as a mediator and a person who will resolve a dispute that occurs between clan members, both personal problems in daily interactions and inheritance property problems, as the clan representative in court, for example as a defendant or as a plaintiff, as the clan representative in conducting transactions on the clan inheritance land after obtaining approval from all clan members, for example selling and mortgaging inheritance land, as the clan representative in terms of registering inheritance land, because the inheritance land must be registered in the name of the head of the heir, as the clan representative in tribal density, as the person in charge of going out in traditional ceremonies within the clan, as the person in charge of paying land and building tax (PBB) on the clan inheritance land. The position of the head of the waris plays an important role because it is considered as the protector of the family members. In addition, the head of the waris is also responsible for his nephews.

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