

Settlement of Inheritance Distribution According to Mare Customary Law in Maybrat Regency

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Abstract: This study aims to analyze the inheritance distribution system according to the customary law of the Mare Tribe in Maybrat Regency, Southwest Papua, with a focus on the role of the kinship system and the principle of inheritance based on lineage. The method used in this study is an empirical approach with data collection through interviews and document studies. Primary data was obtained from interviews with local indigenous communities and regional officials, while secondary data was collected through literature studies covering regional regulations, books, and relevant scientific articles. Data analysis was conducted qualitatively using descriptive methods to describe the practice of inheritance distribution in the Mare tribe community. The novelty of this research lies in its in-depth focus on the customary inheritance distribution system in Southwest Papua, particularly in the Mare District, which still maintains the tradition of primogeniture and the Tua Marga principle. This system shows that the first child of the family, especially the male, has the primary right to inheritance consisting of land and natural resources. This study also reveals the importance of the patrilineal kinship system in determining heirs and the dominant role of men in the management of inheritance. The results show that the inheritance system in the Mare tribe community still adheres to old traditions, where the distribution of inheritance is carried out from generation to generation, taking into account the position of Tua Marga as the main heir. However, this system also allows women to inherit property under certain circumstances, such as when there are no male children in the family. The conclusion of this study is that the customary law of the Mare tribe remains relevant in regulating the distribution of inheritance, taking into account social status in the lineage and the role of men in the management of inherited property.

Keywords: Customary Law; Inheritance Distribution; Mare Tribe; Tua Marga; Patrilineal

Abstrak: Penelitian ini bertujuan untuk menganalisis sistem pembagian warisan menurut hukum adat Suku Mare di Kabupaten Maybrat, Papua Barat Daya, dengan fokus pada peran sistem kekerabatan dan prinsip pewarisan berdasarkan garis keturunan. Metode penelitian yang digunakan adalah pendekatan empiris dengan pengumpulan data melalui wawancara dan studi dokumen. Data primer diperoleh dari wawancara dengan masyarakat adat setempat dan pejabat daerah, sementara data sekunder dikumpulkan melalui studi pustaka yang mencakup peraturan daerah, buku, dan artikel ilmiah yang relevan. Analisis data dilakukan secara kualitatif dengan menggunakan metode deskriptif untuk menggambarkan praktik pembagian harta warisan dalam masyarakat Suku Mare. Kebaruan penelitian ini terletak pada

*fokusnya yang mendalam terhadap sistem pembagian warisan adat di Papua Barat Daya, khususnya di Distrik Mare, yang masih mempertahankan tradisi pewarisan mayorat dan prinsip Tua Marga. Sistem ini menunjukkan bahwa anak pertama dari keluarga, terutama yang laki-laki, memiliki hak utama atas harta warisan yang terdiri dari tanah dan kekayaan alam. Penelitian ini juga mengungkapkan pentingnya sistem kekerabatan patrilineal dalam menentukan ahli waris dan peran laki-laki yang dominan dalam pengelolaan harta warisan. **Hasil penelitian** menunjukkan bahwa sistem pewarisan dalam masyarakat Suku Mare masih berpegang pada tradisi lama, di mana pembagian harta warisan dilakukan secara turun temurun dengan memperhatikan posisi Tua Marga sebagai pewaris utama. Meskipun demikian, sistem ini juga memperkenankan perempuan untuk mewarisi harta warisan dalam keadaan tertentu, seperti tidak adanya anak laki-laki dalam keluarga. **Kesimpulan** dari penelitian ini adalah bahwa hukum adat Suku Mare tetap relevan dalam mengatur pembagian warisan, dengan mempertimbangkan kedudukan sosial dalam garis keturunan serta peran laki-laki dalam pengelolaan harta warisan.*

Kata Kunci: Hukum Adat; Pembagian Warisan; Suku Mare; Tua Marga; Patrilineal

1. INTRODUCTION

Indonesia is a country that recognizes the validity of customary law. Customary law is a system of rules in Indonesian society that originates from customs and traditions and is passed down from generation to generation, respected and obeyed by the community.¹ Customary law is implicitly recognized in the 1945 Constitution of the Republic of Indonesia through a general explanation, which stipulates that "the 1945 Constitution is the written legal basis, while alongside it, the Constitution also applies unwritten legal foundations, namely basic rules that arise and are maintained in the practice of state administration, even though unwritten customary law grows and develops and is rooted in traditional culture as a manifestation of the people's law that is real in Indonesian society."² Customary law only applies in certain areas. However, one of the areas of law referred to is inheritance law.³ Regarding inheritance, there is no national inheritance law or legislation governing inheritance matters for all Indonesian citizens. The inheritance laws that apply in Indonesia consist of inheritance laws according to Western Civil Law, Islamic Law, and Customary Law.⁴

Inheritance law in Indonesia remains pluralistic, as there are currently three inheritance law systems in force, namely Customary Inheritance Law, Islamic Inheritance Law, and Inheritance Law under the Civil Code.⁵ Specifically, customary inheritance law covers all

¹ Achmad Asfi Burhanudin, "Eksistensi Hukum Adat Di Era Modernisasi," *Salimiya Jurnal Ilmu Keagamaan Islam* 2, no. 4 (2021): 96–113.

² Aprianti & Kasmawanti, *Hukum Adat Di Indonesia*, Refika Aditama, 2016.

³ Rita Khoerunnisa, Aceng Akbarul Muslim, and Eki Sirojul Baehaqi, "Tinjauan Hukum Islam Terhadap Hukum Kewarisan Masyarakat Adat Kampung Naga, Kabupaten Tasikmalaya," *PETANDA: Jurnal Ilmu Komunikasi Dan Humaniora* 5, no. 2 (2023): 97–113, <https://doi.org/10.32509/petanda.v5i2.3379>.

⁴ Hikmatullah Djamud et al., "Keadilan Hukum Waris Islam Versus Hukum Waris Burgerlijk Wetboek Di Indonesia (Analisis Perbandingan)," *Falah: Journal of Sharia Economic Law* 6, no. 1 (2024): 1–14, <https://doi.org/10.55510/fjhes.v6i1.282>.

⁵ Dewa Krisna Prasada et al., "Sacred Justice : The Autonomy of Traditional Villages in Resolving Customary

principles, norms, and legal decisions/rulings related to the process of succession and control of material and non-material assets from one generation to the next.⁶ In this traditional inheritance system, there are patrilineal, matrilineal, or alternating patrilineal and matrilineal or bilateral systems. This is determined by the characteristics of the region and the marriage system in each region. One region where traditional customs are still very dominant is Papua. Papua is a region with diverse customs in each area. This can be seen from the existence of very diverse tribes in Papua and Southwest Papua. There are around 250 tribes and 1,000 languages in Papua.⁷

The Mare tribe is one of the tribes located in Southwest Papua. The Mare tribe inhabits the administrative area of Maybrat Regency in Southwest Papua Province, which is located at the easternmost tip of Indonesia. The area covers approximately 2 million km². It is bordered by Tambrau Regency and Sorong Regency to the north, and Sorong to the west and south.

Territorially, the Mare indigenous community is divided into two areas, namely the Mare Raya District (behind) and the South Mare District (in front), which are indigenous communities that inhabit the area, namely indigenous communities that inhabit the inland area. The Mare indigenous community is led by a respected elder of the indigenous community. Those who can lead the Mare indigenous community are those who are considered elders of their respective traditional areas.

In terms of inheritance distribution, indigenous Papuan communities generally recognize inheritance distribution according to lineage.⁸ The indigenous community adheres to a patrilineal descent system, which is a system of descent traced through the father's line, whereby men play a more significant role than women in inheritance. In the distribution of inheritance, only sons are considered heirs. Daughters are only considered if the family has no sons.⁹ So that the daughter can be considered as an heir. The inheritance process takes place while both parents (the testators) are still alive. In this process, the distribution of inheritance is carried out when a child (heir) is born.¹⁰

In the Mare tribe's customary inheritance, it is carried out based on the principle of the eldest child, whereby the first child of the family is the one who has the right to inherit the customary rights of the family. This tradition is still upheld today. With the facts described

Disputes in Bali," *JUSTISI* 11, no. 3 (2025): 796–814.

⁶ Fikri Rafi et al., "Analisis Perbandingan Pembagian Harta Waris Berdasarkan Hukum Adat Minangkabau Dan KUHPerdara," *Jurnal Hukum Statuta* 3, no. 2 (2024): 115–27.

⁷ Benhur Raubert Putirulan, Kristi Warista Simanjuntak, and Paul Przemysław, "Settlement of the Malamoi Community Customary Land Dispute in Sorong Regency : A Review of Legal and Social Aspects," *Journal of Law Justice* 2, no. 2 (2024): 96–110.

⁸ Indah Sari and M Si, "Pembagian Hak Waris Kepada Ahli Waris Ab Intestato Dan Testamentair Menurut Hukum Perdata Barat (Bw)," *Jurnal Ilmiah Hukum Dirgantara* 5, no. 1 (2014): 1–20, <https://doi.org/10.35968/jh.v5i1.99>.

⁹ and Dia Aisa Amelda Cahyani, Firnanda Arifatul, "Kedudukan Perempuan Hindu Dalam Sistem Pewarisan Menurut Hukum Waris Adat Bali," *Jurnal Hukum Lex Generalis* 3, no. 6 (2022): 448–59, <https://jhl.rewangrencang.com/>.

¹⁰ Wilhelmus Jemarut et al., "Analysis of the Implementation of the Legalization of Customary Law Communities (MHA) in North Lombok Regency," *JUSTISI* 11, no. 1 (2025): 218–29.

above, the author became interested in learning more about the implementation of inheritance distribution according to the customs of the Mare tribe in Maybrat Regency, West Papua.

The Mare sub-tribe adheres to a primogeniture inheritance system, whereby inheritance is given to the eldest child, who is responsible for distributing the inheritance to all heirs. An example of the application of this system, which is now a tradition among the Mare Customary Tribe in Maybrat Regency, is that the eldest child of the first wife, as the eldest child of the family of heirs, is responsible for managing and controlling the inheritance that is not divided.

In the case mentioned above, the Mare Custom, which uses the primogeniture inheritance system, is prone to disputes between heirs, given that the absolute power to manage customary inheritance land is given to the eldest child, or Tua Marga.

2. METHOD

This study uses an empirical approach with the aim of analyzing the phenomenon that occurs in the practice of inheritance distribution based on Maybrat customary law. The empirical approach was chosen because this study aims to gather data directly from the field through interviews and observations, which will provide a clearer picture of the community's behavior in applying customary law in their social life. The specifications of this study focus on the analysis of customary law governing the distribution of inheritance in the Maybrat indigenous community. This study was conducted in Mare District, Maybrat Regency, West Papua Province, considering that this area is where Maybrat customary law is applied and is relevant to the issues that are the subject of this study.

The types of data used in this research consist of primary and secondary data. Primary data was obtained through direct interviews with the local indigenous community and Maybrat Regency officials. These interviews aimed to explore information regarding the application of customary law in the distribution of inheritance. Meanwhile, secondary data was used to strengthen the theoretical basis for answering the research questions. This secondary data was obtained through literature studies covering books, legal documents, laws and regulations, scientific articles, as well as print and online media relevant to the topic discussed.

To collect the necessary data, this study used two main data collection techniques, namely interviews and document studies. The interview technique was conducted through direct questions and answers with selected respondents, including indigenous peoples and local officials. The questions asked were designed to obtain in-depth information about the practice of inheritance distribution according to Maybrat customary law. The document study technique was carried out by analyzing relevant written materials, such as local regulations, official documents, books, scientific articles, and other written sources related to the topic of this study.

3. DISCUSSION

3.1. The Kinship System in the Mare Community in Maybrat Regency

3.1.1. Forms of Kinship in Mare Society

Kinship is a social unit consisting of several families who are related by marriage. Members of a kinship group include fathers, mothers, children, in-laws, grandchildren, older siblings, younger siblings, uncles, aunts, grandfathers, grandmothers, and so on. There are several types of kinship groups, ranging from relatively small to large, such as ambilineal families, clans, phratries, and paroh communities.

According to Hilman Hadikusuma, Kinship Law is customary law that regulates an individual's position as a member of a family, the position of children towards their parents and vice versa, the position of children towards relatives and vice versa, and issues of child guardianship. Clearly, customary kinship law regulates family relationships based on blood ties (descent), marriage ties, and customary ties.¹¹

Within the Mare community, cultural values are firmly upheld as the foundation for building kinship and family relationships. Cultural values are perspectives on what is considered good and what is considered bad. These values actually originate from human experiences interacting with one another. Furthermore, these values influence people's way of thinking, which then determines their attitudes. Attitudes give rise to certain patterns of behavior, which, when abstracted, become rules that govern human behavior in interactions.

According to Helmus Bame, in the kinship laws of the Mare indigenous community, the most important and primary element in the system is descent. Descent is an absolute requirement for the continuation of a particular clan or tribe so that it does not become extinct. Therefore, descent is so important in customary kinship laws that individuals who are descendants have certain rights and obligations related to their position in the family concerned. The descent and kinship systems among Indonesian ethnic groups differ from one ethnic group to another, from one region to another, and the legal consequences and marriage ceremonies also differ.¹² In the customary inheritance of the Mare tribe, it is carried out based on the principle of *Tua marga*, which states that the first child of the family is the one who has the right to inherit the customary rights of the family. This tradition is still upheld to this day.

Given the facts described above, the author became interested in learning more about the distribution of inheritance according to the customary law of the Mare tribe in Maybrat Regency, West Papua.

3.1.2. Forms of Marriage in the Mare Indigenous Community

Customary marriage laws are customary legal rules that govern the forms of marriage, courtship, marriage ceremonies, and divorce in Indonesia. Customary marriage laws vary across different regions in Indonesia due to differences in society, customs, religion, and

¹¹ Abdul Rahim, "Pemberian Hibah Dari Orang Tua Kepada Anaknya Dapat Diperhitungkan Sebagai Warisan Analisis Pasal 211 Khi," *Al-Usrah: Jurnal Al Ahwal As Syakhsyah* 10, no. 1 (2022): 48–59, <https://doi.org/10.30821/al-usrah.v10i1.13736>.

¹² Felicia et al., "Analisis Hukum Adat Dalam Hal Pembagian Harta Warisan," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 18 (2023): 290–98.

beliefs. In addition, due to the progress of time, in addition to marriage customs, there have been shifts here and there, and there have also been many mixed marriages between different ethnic groups, customs, and religions.

Marriage according to the Mare community is a marriage that has consequences for the customary law that applies in that indigenous community. After the bond is formed, the rights and obligations of parents, including family members/relatives, arise according to local customary law, namely in the implementation of traditional ceremonies and subsequently in their role in nurturing and maintaining the offspring, integrity, and continuity of the lives of their children who are bound in marriage.

The Mare indigenous community uses a patrilineal system of kinship. In analyzing kinship relationships, a child follows the paternal line of descent. Kinship relationships are severed at the third cousin level. These kinship relationships are important because they are a major consideration in marriage matters.

The Mare tribe adheres to a system of exogamous marriage, which is a marriage system that only allows a person to marry outside of their own family/clan. The definition of outside the community can be broad or very narrow. According to Prof. DR. Koentjaraningrat, if people are prohibited from marrying anyone with the same "clan," it is called "clan exogamy."

In this case, the Mare tribe adheres to the clan exogamy system. They consider everyone with the same clan to be family or related. They prohibit marriage or mating with partners of the same clan. This is considered taboo and a violation. If a marriage between members of the same clan occurs, they will be expelled from their village or subjected to other customary sanctions. In Mare society, there is also a matchmaking system. They are trained to know how to work, hunt, and even fight. In addition, they are introduced to the customs of the Mare tribe and trained to become mature sons and daughters. The matchmaking is done when the parents consider their children to be old enough and capable of supporting themselves, such as by hunting and farming. When their parents have chosen a partner for their child, the child cannot refuse their parents' request. So when the parents have chosen a partner, the child will share some of their hunt or garden produce with their partner. The hunt or garden produce will be entrusted to the parents of the mentor/courier and will be delivered directly to their partner.¹³ This is a sign that when they marry, they will love each other and be able to take responsibility for supporting one another. In addition, matchmaking can also take place when the child is still a baby. This is intended to strengthen family relationships that have been strained due to a dispute, so that with the matchmaking, the family relationship becomes harmonious again.

However, the match was not disclosed to their children, either from the male or female side. Their parents would arrange for the children to always be together until adulthood. The

¹³ Dzul Fakhri Bula et al., "Analisis Yuridis Warisan Anak Angkat Ditinjau Dari Kompilasi Hukum Islam Dan Hukum Perdata," *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora* 3, no. 1 (2023): 42–55, <http://pijarpemikiran.com/index.php/Aufklarung/article/view/442>.

marriage procedure of the Mare indigenous community begins with a proposal by the male guardian to the female side, because the family lineage follows a patrilineal system that follows the father's line of descent. During the proposal, the female guardian asks the male guardian about the lineage of the prospective groom. After an agreement is reached, both parties will exchange their possessions, namely money or dowry. This also symbolizes their ability to support their children. After that, the couple will receive advice from their families, both from the groom's and bride's sides. This is intended to provide knowledge to the couple so that they can live harmoniously in the future. After a day of receiving advice, a traditional ceremony is held, where the couple wears bracelets made of bark as a sign that they are now legally husband and wife.

In terms of marriage ceremonies, the Mare people always follow the customs of the woman. If a Mare man marries a woman from another tribe, such as Bugis, Makassar, or others, they will follow the Bugis and Makassar customs for the wedding ceremony. This is because the Mare tribe greatly respects women, whom they consider to be their treasure, as women will produce offspring for the next generation.

Regarding elopement, the Mare tribe considers it a serious violation of their customs. This is because the perpetrator (male) who elopes with someone (female) to get married without the family's permission is considered to have insulted the family. This act will not be forgiven at all if elopement occurs. Therefore, if elopement occurs, the family of the perpetrator (male) will bear the consequences by providing a substitute to be treated similarly. It could be the mother or sisters of the perpetrator (male) who become the scapegoats for this act. This is intended as a deterrent so that such acts will not be repeated.

The purpose of marriage in the Mare Indigenous Community is, in principle, to produce offspring and thus form a family. Marriage is not only a matter for the prospective bride and groom, but also for the families of both the bride and groom. Especially after the birth of children from this marriage, the bond between the two families becomes stronger.

3.1.3. The Position of Children in Mare Society

Biological children hold the most important position in every indigenous society.¹⁴ In addition to being viewed by their parents as the next generation, children are also seen as a vessel (a source of support) for all of their parents' hopes for the future, when their parents are no longer physically able to earn a living for themselves. However, nowadays we often encounter cases of abnormal or illegitimate births, including children born out of wedlock and children born from adultery.

In the Mare indigenous community, the first child to be considered an heir is a son, followed by daughters (excluded) and their descendants (grandchildren), because the Mare indigenous community uses the Tua Marga principle, which is the first child of the family. A

¹⁴ Meylany Putri Winarti, Farid Putra Rachmansyah, and Mochamad Alvian Rafsanjani, "Problematika Hak Waris Bagi Anak Angkat Dalam Masyarakat Adat Bali," *Indonesian Journal of Social Sciences and Humanities* 4, no. 2 (2024): 1–8.

child still in the womb of a mother also becomes an heir as long as the child is born alive. Similarly, a child born alive to a mother who was pregnant when the biological father died is entitled to be the heir of the father.¹⁵

3.2. Inheritance Distribution According to Mare Customary Law in Maybrat Regency

Talking about inheritance means talking about an important event that occurs in a particular community, namely the death of one of its members.¹⁶ If the deceased person had assets, then the issue is not about death, but rather the assets left behind by the heir. Understanding the kinship system in terms of inheritance is very important. This is because the distribution of inheritance in indigenous communities is highly dependent on the kinship system adopted by the community.¹⁷ Basically, Papuan society generally adheres to a patrilineal system of descent, whereby the father's side of the family is more influential than the mother's side in terms of inheritance. However, the distribution of inheritance according to the customary law of the Mare tribe is based on the principle of *Tua marga*, whereby the first child of the family is entitled to inherit the customary rights of that family. The tendency of this inheritance system is patrilineal, implementing a collective system, where the heirs are not allowed to own the inheritance privately, but are allowed to use, cultivate or process it and enjoy the results. The distribution of inheritance in the customary law area of Mare, Maybrat Regency, West Papua Province, uses a traditional system that has been passed down from generation to generation and is implemented by the local indigenous community. According to Mr. Hengki Nauw, the custom is that inheritance consists only of land and all the natural resources on it, as well as other bequests. It is a customary rule that only land and the natural resources on it can be inherited. This is because, according to customary rules, there are three things that cannot be separated and must be owned by every Mare person, namely: people, clan, and land. These three things must be owned by every Mare person.

In the customary laws of the Mare tribe, there are two types of land: clan land and inherited land. Clan land is communal land that can only be occupied by people of the same clan. Inherited land is land that is managed continuously for plantation or agricultural purposes and passed down from the first generation (ancestors) to subsequent generations. Inherited land is located within clan land that is managed continuously. However, if the land is left unmanaged, it will revert to clan land that is jointly owned.

In the rules of the Mare Customary Tribe, there is a separate division of the areas that constitute clan land, so that each clan has its own area that they control jointly. The Mare Customary Area is a region in the province of Southwest Papua that adheres to a system of

¹⁵ Rika Maryani and Rezi Rezi, "Konflik Pewarisan: Perspektif Hukum Waris Adat Dan Kedudukan Anak," *Justisia: Jurnal Ilmu Hukum* 1, no. 1 (2023): 12–16, <https://doi.org/10.56457/jjih.v1i1.39>.

¹⁶ Emanuel Boho and Hadi Tuasikal, "Kepastian Hukum Mengenai Hak Pengelolaan Hutan Masyarakat Adat Moskonah Di Kabupaten Teluk Bintuni," *Journal of Law Justice (JLJ)* 1, no. 1 Agustus (2023): 1–17, <https://doi.org/10.33506/jlj.v1i1.2399>.

¹⁷ Wahab Aznul Hidayat and Muharuddin Muharuddin, "Penerapan Diversi Undang-Undang No 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak (Studi Kasus Polres Sorong Kota)," *JUSTISI* 6, no. 2 (2020): 52–63, <https://doi.org/10.33506/js.v6i2.965>.

division based on the eldest clan or a system of inheritance that is accumulated by the first child of the family.

In inheritance where the inheritance is ancestral land, it falls entirely to the first child. In this case, the second and subsequent children will adjust if the first child is a girl and she marries and leaves, then the inheritance is passed down to the second child who inherits the inheritance. This is because she will leave her family and enter her new family by following her husband. However, in certain cases, if there are male children in the family but they are not the firstborn (Tua Marga), they will adjust to the decision of the Tua Marga or the firstborn. They (women) can be considered as Tua Marga of the family, to replace the position in the inheritance of the family. However, the woman can only control the inherited land as long as she is unmarried or for her lifetime. When the woman dies or marries, the inherited land must be returned to her parents to be given to other male family members. In addition, women can also be considered in obtaining inherited land if the family has sons. In Mare terminology, this is referred to as *finya reran*, meaning a woman who acts like a man and plays the role of a man. There are still many possibilities that can occur in the distribution of inheritance in the Mare indigenous community, which has inherited property in the form of land and all the natural resources on it (crops and forest products) that can be inherited. There is no certainty as to when the distribution of inheritance will take place in the Mare indigenous area.

In the traditional inheritance distribution system in Indonesia, inheritance distribution can be carried out before or after the death of the heir. Based on research and respondent answers, the distribution of inheritance is carried out before the heir dies. This is because inheritance in the form of land has become an absolute right to use and a right to manage for the heirs to enjoy the results.¹⁸

4. CONCLUSION

In the kinship system of the Mare Indigenous community, a patrilineal system is adopted. In analyzing kinship relationships, a child follows the father's line, where the position of men is more dominant than that of women as heirs. Kinship ties are severed at the third cousin level. These kinship ties are important because they are taken into consideration, especially in matters of marriage. In the system of inheritance distribution among the Mare indigenous community in Maybrat Regency, which still adheres to customary law passed down from generation to generation, inheritance consists of land and natural resources located on the land. However, in the system of inheritance distribution based on the Mare Adat community, they adhere to the Tua marga system, whereby the first child of the family is the person who has the right to inherit the customary rights of the family. This tradition is still upheld today.

¹⁸ Muhammad Ilham et al., "Proses Penyelesaian Tindak Pidana Berdasarkan Adat Suku Moi (Studi Kasus Di Polres Kota Sorong)," *Justisi* 8, no. 1 (2022): 40–54, <https://doi.org/10.33506/js.v8i1.1503>.

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