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### STRENGTHENING WEST SUMATRA'S KERAPATAN ADAT NAGATI (KAN) INSTITUTION IN GLOBALIZATION ERA

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#### **ABSTRACT**

Kerapatan Adat Nagari or KAN plays an essential role in settling customary disputes that may arise in a customary community in West Sumatra, although it is not formally recognized by positive law. This research is aimed at analyzing KAN's dispute settlement mechanism, as well as how to strengthen the role it plays in the globalization era. This research employs juridical-normative method by examining the facts of KAN's practices. This research concludes that several different measures may be taken to strengthen the role of KAN as a customary judiciary institution in this globalization era, such as recording the judicial process and decision on every case, archiving the case files, dissemination of the importance of dispute resolution mechanisms through KAN to the public, reforming regional regulations concerning KAN, as well as legal training for customary leaders and figures at KAN by the regional government.

#### **INTRODUCTION**

Each region of Indonesia has its own distinctive legal plurality. Legal pluralism demonstrates how multiple legal systems work together in a society, where a second legal system may be observed and upheld along with the national legal system. Legal pluralism examines how these legal systems work parallelly in this society (Irianto, 2005). Laws that are not derived from the national legal system play an essential role in guiding the society living their daily lives. There are various dispute settlement institutions available to choose from as alternatives to the state judiciaries. Dispute settlements at these alternative institutions are done in accordance with the chosen institution, as well as using the appropriate regulations that may be sourced from customary law, religious law, as well as other norms and values applicable in the society.

The enactment of Emergency Law No. 1 of 1951 Concerning Provisional Measures to Enforce the Unification of the Jurisdiction and Procedural of Civil Courts slowly abolished the existence of customary courts, autonomous (*swapraja*) courts, and other customary institutions that had existed and been acknowledged by the colonial legal system. This abolishment was further reaffirmed by Law No. 19 of 1964 Concerning Principal Provisions of the Judicial Powers. It is stated in the 'General Explanation' section of the Law:

"... that courts are defined as state judiciaries. Thus, there is no longer place within the judiciary system for autonomous courts or customary courts. If the said courts continue to exist, then they must immediately be dissolved, as they have gradually been. This provision is not meant to deny the existence of unwritten laws such as customary law, but rather to redirect the development and application of the said laws to state judiciaries."

Furthermore, the explanation of Article 1 of the Law states that:

"There is no longer place for feudalistic autonomous courts or customary courts that are not part of the state apparatus."

The abolishment of customary courts was also strengthened by the enactment of Law No. 14 of 1970 Concerning Principal Provisions of the Judicial Powers, where it is stated that:

"Abolishment of customary and autonomous courts is executed by the Government."

More recently, this unification and abolishment policy can be found in Law No. 49 of 2009 Concerning Judicial Powers (Wiratraman, 2018).

The enactment of these laws has, in theory, abolished the existence of customary courts and left state judiciaries as the only remaining judicial institution. However, these laws have slight to no effect in customary communities across the nation, where customary courts continue to thrive, even to this day. A customary court has existed long before colonial times and continues to exist with or without state recognition. This practice has been passed down from one generation to the next by customary and indigenous communities all over the country. The unity of society and its law is indivisible, and it has been so since prior to the conception of the Republic. Customary courts can be found in many parts of the country and have become unique and distinctive to each culture, where these courts are utilized as forums to settle disputes, both civil and criminal (Abubakar, 2014).

Community-based dispute settlement mechanisms have been previously addressed by the High Court of West Sumatra through the Circular Letter of the Chairman of the High Court of West Sumatra No. W3.DA.HT.04.02-3633 of 27 May 1985 Concerning Enactment of Minangkabau Customary Law on Inheritance (Pusako) Land Disputes and was later reaffirmed by the Circular Letter of the Minangkabau Cultural Assembly (Lembaga Kerapatan Adat Alam Minangkabau, LKAAM) No. 7/LKAAM-SB-VI-1985 of 10 June

1985 Concerning Civil Customary Dispute Settlement Mechanism (Aristya & Utama, 2015).

Legal development in Indonesia continues to be affected by the dynamics of policies and the politics of the government, as it also continues to fulfill the demand of a legal system derived solely from the values and ideals of the Indonesian nation (Fathorahman, 2018). This development has also been affected by globalization and technological advancement. The Indonesian legal system is an integral part to the lives of Indonesians. It is a fundamental need, and its existence plays an important role in guiding Indonesians living their individual lives, social lives, as well as their lives as citizens of Indonesia. Indonesian people urgently need a legal system that can fulfill their needs for peace, justice, and welfare, and the fulfillment of these needs is essential in facing an everchanging world. Kerapatan Adat Nagari (Sub-district Customary Assembly, hereinafter KAN) as a customary institution that fulfills customary communities' needs seems to be always at odds with positive law and state judiciaries, and this has motivated of the authors of this article to examine customary dispute settlement practices in in Padang, West Sumatra, as well as KAN's place within the legal system in this modern era, weathering globalization.

## RESEARCH METHOD

The authors of this article performed a descriptive-analytical research to collect, examine, and analyze the data required. A descriptive-analytical research aims at analyzing systematical, factual, and accurate facts by utilizing available legal theories, as well as real-life practices (Soekanto, 2012). This research also employs juridical-normative approach, where it is based on theories, legal norms, as well as legal systematics (Mamudji & Soekanto, 2015). Interviews are done with relevant agencies such as customary leaders and public figures at KAN, as well as Judges of the District Court of Padang.

### *Analysis*

Customary courts seem to have always been at odds with the positive law and legislations enacted by lawmakers and the government. A legal system that materializes justice is one that sources its laws from norms, values, and principles that live and develop in the society (Ubbe, 2012). Although customary courts are not formally recognized, they are in fact favored as an alternative dispute settlement mechanism by seekers of justice in customary communities, where customary law and other local wisdom and values are still observed. The thirst for justice, often left unsatisfied by the state judiciaries, is then fulfilled by the mechanisms of customary court as a form of informal judiciary (Zulfa, 2013).

Indonesia observes the principle of rule of law and its constitution guarantees its citizens to be treated equally before the law. Based on this principle, every citizen is entitled to legal protection as well as remedy for rights violations suffered, and a just legal settlement. The state through its government is obligated to ensure the fulfillment of said rights to guarantee access to justice as a constitutional guarantee to human rights (Wiratraman, 2013).

The fact is the state, through its judiciary institutions, is yet to fulfill its people's needs for a quick and economical access to justice. The poor, marginalized, and customary communities are often hindered from settling disputes and seeking justice at a state judiciary institution. Moreover, it is a widely known fact that dispute settlement practices through customary courts have been going on for a long time, especially in settling and resolving customary disputes. Customary court is classified as an alternative, non-litigation dispute settlement mechanism outside the formal court, as stated in Article 18 of Law No. 48 of 2009 Concerning Judicial. Efforts must be made to improve access to justice, such as by strengthening and empowering customary courts so that disputes can be settled without needing to go to a formal court of law but are rather settled peacefully outside the court through mediation between the disputing parties.

KAN was first established in *nagari* (sub-district) even before the colonialization of Indonesia by the Dutch. These *nagari* used to be self-governing small kingdoms, federated within the Minangkabau Kingdom centered in Pagaruyung. Even after the Padri War of 1837 and during Dutch colonialism, *nagari* were still recognized as government administrators (Hakimi, 1988).

KAN is the highest customary institution in a *nagari* within Minangkabau communities, and is led by their headmen of the community. Article 1 Point (15) of West Sumatra's Regional Regulation No. 16 of 2008 Concerning Utilization of Ulayat (Communal) Land states that:

“Kerapatan Adat Nagari (KAN), or other similar names, is the highest representative, consultative, and deliberative customary institution within a *nagari*, that has existed and been passed down from one generation to the next in communities in West Sumatra, hereinafter abbreviated as KAN in this Regional Regulation.”

Currently, KAN continues to be the highest customary institution in a *nagari*, where disputes that have not been settled and resolved at the lower levels will be deliberated (Bangso, 2019).

Minangkabau customary law requires parties involved in a *pusako* (inheritance) dispute to resolve their differences by first employing means and processes available at the lowest level, such as through discussion at household, village, or tribe levels, before taking the matter to the *nagari* level to be settled. First, *mamak* (older gentlemen) of both conflicting families sit together and deliberate to resolve the matter. If no consensus is reached, then *penghulu pariuk* (headman) of the *persukuan* (tribe) is involved. If still no settlement or resolution is agreed upon, then and only then that the dispute may be brought to KAN by submitting a request to the KAN officials to deliberate on the matter. Additionally, all matters concerning the *nagari*, such as problems that may arise in it, must be deliberated at KAN. *Nagari* is a customary law community unit within the province of West Sumatra which consists of tribes and group of tribes, possessing their own defined territories with certain boundaries, a collective wealth, and is entitled to self-governance

and home-rule, as well as to elect its government leaderships (Malik, Marietta, & Safitri, 2018). A few examples of legal disputes that may arise in a nagari include the appointment of village heads, ulayat land disputes, inheritance disputes, etc. KAN's leaderships are elected in accordance with the applicable customs in each nagari. If there are difficulties in appointing the leaderships in accordance with the customs, then the KAN may elect a more eligible person to carry out the function of the leaderships in a plenary session (Bangso, 2019).

Minangkabau customary law as well as Regional Regulation No. 13 of 1983 Concerning Nagari as a Customary Law Community Unit require customary disputes that arise in a customary community to be resolved by the headman of the tribe. If one of the disputing parties is still dissatisfied with the resolve, then he/she may continue the effort to seek for settlement at the local KAN (Setyo, 2019).

To be a member of KAN, one must meet these following criteria:

Have good proficiency of *tali tigo sapilin* (the three knowledges) which include religious, customary, and legal knowledge.

Be honest, fair, and devoted to his religion. Members of KAN are sworn in according to customary law by the *camat* (head of the district) on behalf of the mayor or the regent.

Regional Regulation No. 16 of 2008 Concerning Utilization of *Ulayat* Land gives KAN the authority to peacefully settle disputes concerning *sako* (heirloom title) and *pusako* that may arise in the community, as stated in Article 12 (1) and (2):

“*Ulayat* land disputes are settled by KAN in accordance with applicable customary laws, gradually, and peacefully through deliberation and consensus to reach a peaceful resolution.”

If the disputing parties is still dissatisfied with the peaceful resolution, then they may continue the effort to seek for settlement at the district court.

KAN's decisions serve as guidelines for village leaderships in running the village governance. Government officials are obligated to enforce these guidelines, and all members of the communities in the *nagari* must adhere to them, only if they do not conflict with the prevailing positive laws and regulations in force. KAN's existence and the role it plays in the community are crucial in preserving the customs, supporting a continuous and sustainable development of the community, as well as to show cooperation and harmonious relationship between the government and the community.

As an institution, KAN has the power and authority to take following actions (Durin, 2000):

To assist the government to achieve a smooth running of development in all sectors, especially in socio-cultural sector

To handle affairs related to customs and customary law in the *nagari*.

To give legal standing according to customary law on matters relating to the assets and collective wealth owned by the *nagari* for the benefit of customary civil relations, as well as in the event of disputes of customary nature.

To formulate and organize the development of Minangkabau customary values, to enrich, preserve, and develop the Minangkabau culture as well as the national culture (Ananingsih, Azra, & Triyono, 2017).

To preserve, maintain, and utilize the *nagari*'s wealth for the purpose of welfare and betterment of the *nagari*.

To settle customary disputes

Although playing a crucial role in the society, KAN is not without its weaknesses, such as:

Limited legal knowledge and proficiency of the judges at KAN greatly affect the quality of KAN's decision, which resulted in dissatisfaction with the peaceful resolution that caused the dissatisfied party to continue seek for a settlement at a court of law.

Limited availability of human resources at KAN, including but not limited to the panel of judges which is dominated by the elderly so it cannot keep up with the everchanging recent developments.

Limited recognition and regard by regional government, such as inadequate infrastructure and insufficient operational costs that are left unaddressed.

A growing trend of preferring the state judiciary institution such as the district court over KAN to seek for resolution, as this can be seen from the ever-increasing rate of cases at district courts, whereas KANs are handling less and less cases, with some are handling as few as one to two cases per month.

Therefore, these following actions need to be adopted to reform KAN to survive and continue to provide justice for the community, such as:

Recording court proceedings, processes, and decisions, as well as archiving case files systematically, clearly, and accurately Case files such as letters of agreements containing customary decisions must be stored and archived securely by customary leaders or judges. This is a necessary step to take to ensure a streamline judicial process for future similar cases, and to give them guidelines and references in carrying out their judicial duties and giving decisions on future customary disputes. The decisions of KAN can also be recorded by a *keliling* (traveling) judge. A traveling judge is young judge that serves at a district court, but also travels around to customary courts within his court's jurisdiction to explore customs and values that live in the community (Peni, 2018).

Dissemination of the importance of dispute resolution mechanisms through KAN as an alternative dispute settlement institution that highly upholds

peaceful resolution, with high regard to the customary rights of indigenous people's cultural identity (Sudantra, 2018). Approaches can be made through persuasive efforts that aim at raising awareness and inculcating understanding to all stakeholders regarding the current situation of the nagari, by using various existing platforms available in the society. This dissemination as a form of outreach to the community will cost the nagari government. Thus, they must start planning on how to use available resources in the village efficiently to avoid wastefulness, so that it also becomes a productive source of income for the nagari. Availability of this productive source of income will later reduce nagari's dependence on funds from the central government, thus enabling the *nagari* to become more autonomous and self-sufficient (Rahmad, 2016).

### ***Reform on Regional Regulations Concerning KAN***

The government has enacted regional regulations along with all the privileges enjoyed by customary law. This action is aimed at maintaining the sustainability of the efforts made to conserve Minangkabau customary law as well as its institution such as KAN. Along with the implementation of regional autonomy policies, regions must also carry out efforts to promote the welfare of the people, as mandated by the constitution, such as protecting, respecting, and empowering indigenous peoples as well as their customary institutions. Law No. 23 of 2014 Concerning Regional Governance defined regional governance as the administering of government affairs by the regional government and the regional people's representative council in accordance with the principles of autonomy and duty of assistance with the broadest possible autonomy within the Unitary State of the Republic of Indonesia as enshrined in the 1945 Constitution of the Republic of Indonesia (Ndaumanu, 2018).

#### **Strengthening the Role of Customary Leaders at KAN through Legal Trainings by Regional Government**

Essentially, customary leaders at KAN also function as paralegals, providing legal assistance. This practice is encouraged and made possible due to the lenient qualifications required to become a paralegal. Furthermore, peaceful dispute resolution mechanisms have long been practiced by communities across Indonesia. In Minangkabau communities, one who acts as the mediator also has the authority to decide upon cases brought before him. This practice is reaffirmed by customary law that places the tribe's headman as the mediator and decides upon customary disputes between members of the community (Koesno, 1971). Therefore, regional governments must start recognizing customary courts and other alternative judiciary institutions as 'aides' to help alleviate the strain from the already on-the-limit state judiciary institutions and start encouraging legal aid organizations to give priority to cases in customary courts in handing out legal aids (Muhlizi, 2019).

Reforming, strengthening, and empowering KAN will help it to achieve its function according to Article 7 (1) of Regional Regulation No. 13 of 1983 Concerning the Function of KAN which are as follows:

Managing customary affairs, especially on matters related to *sako* and *pusako*.

Resolving customary cases and customary civil cases.

Establishing peace and giving legal standing to disputing members of the community, as well as giving legitimacy to its decisions in enforcing them in accordance with applicable customary laws.

Developing culture of the community in *nagari* to preserve regional culture as well as to enrich national cultural identity.

Inventorizing, preserving, maintaining, managing, and utilizing *nagari*'s collective wealth for the welfare and betterment of the community in the *nagari*.

Fostering and coordinating customary communities within the *nagari* in accordance with applicable customary laws, as well as promoting a high regard of kinship in the community to increase social awareness and the spirit of cooperation.

Representing *nagari* and acting on behalf and for the *nagari* and its members of customary communities in all legal actions inside and outside its jurisdiction for the interests and/or matters relating to the rights as well as collective wealth and assets of the *nagari*.

## CONCLUSION

Several different measures may be taken to strengthen the role of KAN as a customary judiciary institution in this globalization era, such as recording the judicial process and decision on every case, archiving the case files, dissemination of the importance of dispute resolution mechanisms through KAN to the public, reforming regional regulations concerning KAN, as well as legal training for customary leaders and figures at KAN by the regional government.

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