

DECISION REINFORCEMENT OF VILLAGE ADAT COUNCIL INSTITUTION IN RESOLVING THE DISPUTES BASED ON MINANGKABAU ADAT COMMUNITY

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ABSTRACT

The structure of traditional legal communities in West Sumatera is integrally reflected on villages (Nagari-Nagari). These villages have existed for centuries, before Dutchmen came to Indonesia, in particular to West Sumatera. In such a relatively - long period of time, Minangkabau community has lived under the leadership of adat functionaries (Penghulu) who have organized themselves in Kerapatan Adat Nagari or village Adat council in every village with respect to traditions and equity. The relationship among villages has also been governed by KAN. Since the enactment of the Act number 32 of 2004 concerning the government autonomy, KAN, however, has become an adat institution only and lost its authority over governmental administration of village level. The status of KAN as a partner of the provincial government in carrying out of development in West Sumatera has been restored since the provincial government of West Sumatera passed the provincial regulation of West Sumatera number 2 of 2007.

Keywords: Customary law is a basis of national law

INTRODUCTION

Indonesia is renowned as a nation with various cultures, ethnics, religions, races and classes. From de facto, the concept of *Bhinneka Tunggal Ika* (Divided in Unity) reflects national cultural diversity under the unitary nation of Republic of Indonesia. Indonesia territory stretches from Sabang to Merauke, in addition it also has various natural resources.

From theoretical side, multicultural society is a cultural configuration that reflects the national identity. Then, empirically it becomes the element that forms Indonesian Republic. Furthermore, cultural capital and cultural power drive the dynamic life of a nation. However, from the other side, cultural diversity also holds the potential conflicts that can threaten the nation's unity and integration, because intercultural conflict can cause conflict between ethnics, religions, races, and classes that are very sensitive and susceptible to a condition that leads towards the disintegration of a nation. This phenomenon is possible if that conflict is not managed, interpreted, and resolved in dignified, peaceful and wise manners by the government in cooperation with the society. Anthropologically, conflict is an inherent social phenomenon that is inseparable from human life, especially in a multicultural society. It cannot be avoided or ignored in the dynamic life of a national. However, the thing that needs to be done is how the conflict should be managed, controlled, accommodated, and resolved peacefully and wisely in order not to cause social disintegration, because the nuances after the conflict from the perspective of psycho-anthropology also create a more conducive atmosphere to strengthen social cohesion in life of society.

The order of adat community in the province, especially West Sumatera province is fully reflected in the form of a village. This village Institution has evolved for centuries before the colonial Dutch came to Indonesia. West Sumatra is known as Minangkabau, has been living under the leadership of organized adat functionaries within adat council institution in each

villages that governs its management based on the consensus or wisdom of alua Jo patuik (proper and appropriate), even the relationship between villages are governed by Village Adat Council.

When the colonial Dutch came to the Minangkabau region, they witness a stable society in the villages under the management of adat functionaries, and it also has been able to create various relatively high cultures, therefore the colonial Dutch is very careful in placing its power, this can be seen on the good intention from the Dutch Government by approving these agreements:

1. The delivery contract of Minangkabau kingdom to the Dutch Government on January 10, 1820, Article 5.
2. Masang agreement dated on January 20, 1824, the second part b.
3. Kramat De Steurs agreement, dated November 15, 1825, paragraph 2 and 7.

The colonial Dutch started to put its colonial foundations in villages, with Plakat Panjang Agreement on October 25, 1833, which reads as follows:

The appointed chiefs and adat functionaries as our representatives will be given salary by the Gubernemen, they do not possess great authority, but rather work as our indirect command, and enlighten us about all of the things that can improve the progress your villages.

From the Dutch colonizers, Village is also given the right to manage their own affairs. It can be seen in Article 128 IS, about village council that can be seen at Inlandsche Gemeente Ordinance Buitengewesten (IGOB).

After the independence day, West Sumatra Resident Notice no. 20 and 21 is issued on the March 18, 1946 about the change on the structure of Village Institution, Village Parliament, and Village Daily Board that are led by Village Representative, however it does not mention about Village Adat Council and adat matters that is under the competence of Village Adat Council. Based on the regulation of the West Sumatra Governor on March 18, 1963, no. 015/GSB/1963 about Principles of Village Government Regulations in West Sumatra, by stating village government as the Village Representative and the Village House of Representatives. However this decision was not performed because the society tendency to return to Village Adat Council.

Customary law is regulated the Emergency Constitution No. 1 of 1951, contained in Article 1 and Article 5. Article 1 is affirmed that apart from village court the entire judicial body which includes the judicial body gubernemenm autonomous judicial body (Zellbestuurrechtspraak) except for religious court if that court in accordance to the law that lives is a part of autonomous court, and village courts (Inheemse rechtspraak in rechsreeks bestuurd gebied) except for the religious court if that court in accordance to the law that lives is a separate part from adat courts have been abolished.

The central government of West Sumatra provinces is very responsive because it is deemed necessary to maintain the existence of Minangkabau Adat community, so that on August 13, 1983, a very basic and unique regulated has been issued, which is Local Regulation. 13 Year 1983 about Village as the unity of Adat community in the central province of West Sumatra., which returns the position, function and role of Village as the unity of Adat community that lives in the community of West Sumatra central province. Village, as governed in the central regulation No. 13 of 1983 of West Sumatra, its role and existence is not as the lowest government, rather as the unity of adat community in the villages that live in Minangkabau society.

The definition of village in the Constitution No. 5 of 1979 is different with the definition in Local Regulation No. 13 of 1983 West Sumatra, because the village definition in Local Regulation does not mention the explanation of "unity in adat community", where the unity of adat community in West Sumatra is fully reflected in the so-called Village. Village is a combination of several ethnics that has their own certain regions and properties, this can be seen in Article 1.c Local Regulation No. 13 of 1983, while the role to run the villages functions is performed by the Village Adat Council.

In the central regulation of West Sumatera Provinces, No. 13 of 1983 about the village as the unity of Adat community, can be viewed as a positive thing from the central government of West Sumatra Province, and it also can be interpreted as an application of statement in the Third Five-Year Plan Chapter XXVII about the development of National Law, which states that the development of national law can be reached by forming the new legislation as soon as possible, therefore the central government of West Sumatra Province issues a form of local regulations, which is Local Regulation No. 13 of 1983 where the authority is handed to the Village Adat Council (KAN).

In Article 4 of Local Regulation No. 13, 1983, Village Adat Council needs to be conserved because it is an appropriate institution with village function in the future, which is to organize the villagers' lives as a unity as long as it relates with adat and culture of Minangkabau. This article is one of the legal bases for the birth of Village Adat Council or better known as KAN.

The presence of adat community in Indonesia. In the Constitution of 1945 (the amendments), recognition and respect for adat community, embodied in Article 18B paragraph (2), namely: "The State recognizes and respects the unity of adat community along with their traditional rights as long as it still lives and in accordance with the development of society and the principles of Indonesia Republic, which is regulated in the Constitution". This article gives the constitutional position of adat community in relation to the nation; it also becomes the constitutional basis for state officials.

The Constitution No. 32 of 2004 about Regional Government is more focused on the affirmation of the adat community rights to manage the political system and administration in accordance with the regulations of the local adat. Article 203 paragraph (3), as the example, states that: "The election of the village chief, in the unity of adat community along with its traditional rights as long as it still lives and be recognized, follows local adat regulations specified in Local Regulations and based on the Government Regulation"

According to the Regulation of Domestic Affairs Minister No. 5 of 2007, in article 1, paragraph 10 states of adat institution is the society institution that either intentionally formed or naturally grown and developed in the history of the community or in a community of certain adat with law jurisdiction and rights of properties in that adat, as well as entitled and authorized to organize, manage and resolve various problems related with and refers to the valid customs and adat.

Village is the unity of adat community that has certain territory boundaries, and authorized to regulate and manage the interests of the local community based on Minangkabau adat philosophy (Adat Basandi Syarak, Syarak Basandi Kitabullah / Adat must be based on norm, and norm must be based on the Holy Bible of Al-Qur'an) and / or based on the origin and local customs in of West Sumatra province.

The village forms in West Sumatra are characterized by the following: babalai bamusajik (market and mosque); basuku banagari (ethnic and country); bakorong bakampung (hamlet and village); balabua batapian (road and sidewalk); basawah baladang (rice field and field); bahalaman bapamedanan (yard and arena); bapandam bapusaro (cemetery).

There is Village Adat Council in each village where Andiko adat functionaries of all ethnics or families sit together in equality is the form of adat structure Bodi Chaniago and Koto Piliang. Village Adat Council is the highest authority in the villages, and in these adat functionaries meeting all of affairs about village are decided and resolved. In order to hold that meeting, adat functionaries meet in a hall, here they sit and stand at the same height in taking an unanimous decision (sakato samufakat) which was attended by the entire society from law partnership. Village Adat Council also has concurrent role in the governing council and law-maker council, including the courts.

In the Local Regulation No. 2 of 2007 about the Principles of Village Government on Village Adat Council (KAN) in the First Section about the position in Article 28 that regulates: KAN has position as the highest adat community representation and deliberation institution that has existed and inherited from generation to generation throughout the custom.

In the second section of Article 29, it sets about tasks and functions, structure and function as well as the rights and obligations of KAN will be further governed in City / District Local Regulation.

The difficulties faced by communities in order to resolve disputes in Village Adat Council, is the result of nullification performed by the Indonesian Government itself that only admits the formal judicial system that can provide legal assurance, and also without the recognition to the institution of Village Adat Council that exists in the middle of adat community as adat court.

The structure of adat court in adat community has been created from a long time ago, adat court can reduce the burden of formal court that becomes heavier with the increasing numbers of the cases, and therefore it is decided to create an alternative in resolving the dispute in the middle of society. There are two kinds of solutions, the first one is the settlement through litigation, which is the settlement through civil or state court, and the second one is the non-litigation settlement by using consensus settlement outside the court or in other words outside of the court settlement, this second option has its own significance for each of the party, because there are religious values, culture, goals benefits, and others.

The dispute resolution through the formal judicial institution or litigation must be the last option in finding justice. The settlement outside of disputes settlement outside of the formal or state court is basically allowed. It can be seen in Chapter XII, which is Article 58-61 of the Constitution No. 48 of 2009 about Judicial Power, as well as in Article 130 HIR that has explicitly outlined the judges for each incoming civil cases not to be checked and formally decided, by stating that even though the judge should put civil cases in trial, but first they need to attempt for peace settlement. Then it is explicitly mentioned in Article 2, paragraph 2-3 Supreme Court Regulation No. 1 of 2008 about Mediation Procedures in the Court which read as follows: "Every judge who has civil cases is required first for both of the parties to resolve their disputes by peace through mediation mechanism. If the judge does not advocate resolving the dispute through reconciliation in mediation mechanism, then the court's decision is nullified in front of the law". So here we can see the fact that not all of the disputes have to be resolved through the formal justice.

Definition of Adat community and Kinship System in Minangkabau

Adat community is the community that develop within the society range; it is also believed that each individual interests needs to be appropriately adjusted to the society interests. It is caused by the fact that individuals are the part from their society. The characteristic of living together from adat community itself can be seen from the strong cooperation such as mutual assistance in building or establishing facilities for public use.

According to Hazarin, adat community can be defined as the with the following opinion: Adat community is an entity that has a totality to be able to stand up by its own, which is by having a set of laws, leader and territory based on mutual rights to wealth and property for all members of community.

Adat community in Indonesia basically are or can be divided into 2 (two) categories according to the structure of the society, which is based on territory and genealogy.

Adat community that is structured on territory is adat communities whose members feel united by the bond between each of them to the land that they live since their births for generations with their parents and great grandparents before.

Adat community that is structured on genealogy are adat communities whose members feel bond in an order based on the belief that they all come from the same lineage, according to the mother line (matrilineal) or father line (patrilineal) or both.

Genealogy means the relationship by blood between a person with others who come from the unity of a marriage. For example, the smallest unit in community is called family or Gesin that consists of father, mother and children. Children who have grown will form a family by producing offsprings, and so on from generation to generation.

From those families, they will form a clan, ethnic or relatives in an environment of adat community. In other words, a descendant is an essential element and absolutely necessary for an ethnic that wants to develop their ethnic through the next generations.

In the structure of adat community based on genealogy, it means that a person become a member of related adat community because he becomes or considers himself as the descendant of an father origin (male ancestors) through a single male lineage, or of a mother origin (female ancestors) through a single female lineage or from both of father and mother lineage.

From the principle of lineage (the term used Hazarin for community system), the people can know about their rights and obligations from individuals as a descendent (family members), for example, they can use the family name, they are entitled for share of the family wealth, they shall take care and help between each family members, they are able to represent the legal actions with the third parties, and so on.

Indonesia is a wealthy country with a lot of culture and customs, almost every region in Indonesia has culture and customs, and every region has different culture and customs. It can be seen from the descendants of adat community in Indonesia.

In Minangkabau, family system or kinship system is the customary rules that govern the relationship between one adat community with other adat community in the family or kinship ties.

Minangkabau community is still bound through a unity based on maternal lineage, the descendants on that lineage basis are called ethnic. Because the descendants were taken according to the female lineage, then it is called matrilineal lineage. In Minangkabau, women or mothers have the most power in community in a sense that aside from the continuing the descendant's lineage, women also hold the power lies in their hands on all aspects of life and they are the center of family and community.

Village Adat Council

The Constitution No. 22 of 1999 has been replaced with the Constitution No. 32 of 2004 and has further been replaced with the Constitution No. 12 of 2008, it states that Regional

Government gives opportunity for the region to change the terms of local government unit to the situation in accordance with the local community social and cultural conditions, therefore the position of villages is also recognized as a set of law community regulated in Local Regulation No. 9 of 2000, which was later replaced by the Local Regulation No. 2 of 2007 about the Principles of Governing Village and therein it is also explained that Village Adat Council (KAN) is the highest institution in the village that are recognized by the government to solve all kinds of problems from community members related with sako jo pusako (heritance and inheritance).

According to the adat teachings of Minangkabau that in the event of a dispute within adat communities is settled by mamak kepala waris (village respectable community member). If the decision does not satisfy one of the parties, then it is settled in Village Adat Council.

Village Adat Council is an adat institution in the Minangkabau villages based on the village government system in West Sumatra province, Indonesia. Village Adat Council is the representative of law community that has boundaries authorized to manage and take care of the interests of every people and ethnic in the village, based on the origins and customs that are recognized and respected in the government system of West Sumatra province. Village Adat Council (abbreviated as KAN) is Minangkabau adat institution in the village level that has duty as guards and conservations on Minangkabau customs and culture.

KAN is placed under the supervision of Minangkabau Adat Council Institution (LKAAM) ranging from district to provincial level.

KAN consists of several elements in Minangkabau adat community, namely:

1. Adat functionaries or elder from each ethnic
2. Manti, comes from intellectuals (scholars)
3. Malin, comes from religious leaders and practitioners
4. Dubalang, in charge to guard the security and safety of citizens.

The elements besides adat functionary are called Tungku Tigo sajarangan and when the elements of adat functionary are added then it is called Nan Ampek Jinih (Four Type Elements).

Every village (with several ethnic or families inside) is led by Andiko adat functionary, accompanied by Pandito who deals with matters of religion. High adat functionary, Monti (Manti/Menteri), Malin (Mualim/Alim Ulama), Dubalang (Hulubalang), Andiko adat functionary, Pandito (Scholars) are called "Urang Nan Bajinih".

"Urang Nan Bajinih" also includes mosque leader (held by Melayu ethnic); Khatib (held by Patopang ethnic); Bilal (held by Supanjang ethnic). Ongku Kali (Kadhi) Silungkang Special is also included as "Urang Nan Bajinih", meanwhile Tunggani who lead the ethnic or family, is usually called Mamak Kaum (village respected community member) or Mamak Kepala Waris (village respected community member), they are not included as "Urang Nan Bajinih". In the perspective of cultural or local law, the dispute resolution through settlement between mamak (village respected community member) in a place called Surau has been an institutionalized behaviour. This shows that the state law is not used as a reference, the state law is even avoided in order to solve the conflict problem between different ethnics, but it is resolved through the community cultural channel.

The process of dispute resolution in the village is resolved through the so-called bajanjang naiak, batanggo down (up with the ladder, down with the stairs), in the resolution of disputes concerning sako and pusako (heritance and inheritance) is implemented starting from the

lowest to the highest structures. It means starting from the mamak (village respected community member) in every ethnic, inter-ethnics, ampek suku (four ethnics), and finally to the Village Adat Council.

In regards to the decision of adat institution, it is generally obeyed by the dispute parties in terms of customary dispute, but there are also parties that bring their dispute to the formal court institutions or civil court.

CONCLUSION

Based on the description that has been given in the discussion above, several conclusions can be formulated as the answers from the two research problems above, as follows:

- a. The position of Village Adat Council is very important by adat community in terms of dispute resolution on sako and pusako (heritance and inheritance).
- b. In the process of dispute resolution sako and pusako (heritance and inheritance) in adat community is implemented with bajanjang naiak batanggo turun (up with the ladder, down with the stairs), starting from each ethnic to the last step in Village Adat Council.
- c. The decision from Village Adat Council is generally obeyed by adat community in that village.

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