



The Existence Of Customary Role In The Settlement Of Marriage Disputes (A Study Of The Role Of Mamak Limo Suku In Jorong Sungai Sanda)

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Abstract

This research aims to understand the existence of customary systems in responding to marital disputes that occur in society. In the Minangkabau community, customs are inseparable from daily life. One such place is Jorong Sungai Sanda, where the presence of customs is still very strong. In Sorong Sungai Sanda, the term *mamak limo* is known, which refers to the head of customs. Whenever issues arise in the community, they report them to the mamak as the elder in society. This research is a field study. Data was obtained through interviews with relevant parties such as the mamak, the community, and other related parties. This research concludes that the role of mamak in the Jorong Sungai Sanda community is still very strong. In resolving marital disputes, the mamak plays an active role; when conflicts arise, it is the mamak who mediates to find a solution. The advantage of resolving disputes through this system is that it allows for quick resolution and avoids the emergence of new problems. However, in this dispute resolution, the mamak does not instruct their nephews to handle their divorces in court, which may lead to new issues in the future.

Keywords : Marriage, disputes, niniak mamak

INTRODUCTION

Marriage is a bond of body and soul between a woman and a man to form a family that is *sakina, mawaddah* and *rahmah*. The bond of marriage is a universal teaching because it contains elements of ethnicity, religion, and culture, and the state has regulations related to marriage. In Indonesia, the regulations governing marriage are outlined in Law No. 1 of 1974 concerning Marriage; this law is pluralistic because it encompasses various marriage legal systems such as customary marriage systems, Western marriage systems, and religious marriage systems regulated according to the official religions in Indonesia (Dahwal, 2017)

A happy marriage without problems is the dream of every couple running a household, so each person has different concepts and ways of life in living their household life according to the compatibility and comfort they feel. In a diverse society, it will certainly be difficult if marriage is only viewed from the outside because uniting two different people is not an easy task if it is not based on mutual trust and upholding unity and togetherness between one another (Norman & Suryani, 2019). Conflicts that occur between husband and wife in marriage lead to many discussions that are very broad, as the factors causing disputes are very diverse. Household life through marriage is one of the chapters in life that every human will go through; this condition will demand the maturity of the husband and wife to achieve success in building a household. Not time in marriage will harmony always color the days of the husband and wife, because conflicts can occur at any time and sometimes lead to divorce; this depends on how the husband and wife can respond and prioritize rational thinking for the sake of maintaining household harmony (Hayali, 2005).

In response to every problem that arises in marriage, is not only addressed by the husband and wife or the family, but there are many systems used as mediators to resolve disputes in marriage, such as the contributions of each custom that applies in their respective regions. Customary law in the cultural aspect serves as a guideline for the community in living their lives within society. The systems found in customs are formulated as rules that are agreed upon and their existence only binds certain communities; customary rules are not rules formed through legislation, but their implementation is based on the conditions of the community without eliminating the sense of justice (A. Rahman, 2020). One of the regions that has a customary system for resolving issues is the community of Jorong Sungai Sanda, where the term *mamak limo suku* is known. When problems arise, they will act as mediators and a point of inquiry for every issue, including marriage problems that occur within the community.

In conducting this research, the author attempts to look at previous studies related to the topic being discussed. First, the research was conducted by Nice Widiani on the Role of Niniak Mamak in Land Conflict Resolution. Conflict prevention is carried out by ninik mamak through discussions with the community and negotiating with the company. The result obtained is that the company granted the community's demands by providing 10 hectares of plantation land to be managed and handed over to the village government. Thus, it is clear that ninik mamak of Muara Dilam Village has made efforts to address social conflicts by preventing conflicts from escalating and causing physical contact by making wise decisions that can be accepted by all (Widiani, n.d.) *Second*, the research conducted by Silvia Ayu Ningsih, Syuryani, and Jasman Nazar on the Role of Niniak Mamak in the Settlement of Pawn Disputes Regarding the Utilization of Ulayat Land in Kenagarian Bukit Limbuku, Lima Puluh Kota Regency. Disputes over pawned ulayat land still

occur, highlighting the legal regulations regarding prevention and punishment for those who pawn ulayat land without the permission of ninik mamak, which harms the parties involved (Ayu Ningsih et al., 2023).

Third, the research conducted by Harry Saputra, Mulia Jaya, and Siti Maryam on the Position and Role of Customary Law in Conflict Resolution. Based on the results of their research, the position of customary law in Dusun Talang Silungko is divided into three, namely, (1) pucuk undang, (2) public law, and (3) private law. However, each of these has its own regulatory space or area, so that the implementation of customary law does not overlap. It clearly provides an understanding that the position of customary law is below religious law (Islam) or syarak. Meanwhile, the obstacles include some pros and cons in its application in the field, which is a normal aspect of community life, and the lack of independent or routine funding (Saputra et al., 2019). Fourth, research conducted by Muhammad Chairul Umar and Yulfira Riza on the Role of Ninik Mamak, Mamak, and Kamanakan in Minangkabau. In Minangkabau, the role of ninik mamak is very important, as ninik mamak is a leader in Minangkabau customs. The Minangkabau people adhere to a matrilineal system, which follows the lineage from the mother; in other words, the child born will follow the clan of the mother. Therefore, the role of mamak is very significant here. When the child gets married, they have two places to live, one at their wife's place and another at their mother's place. If they live at their wife's place, they will become “urang sumando”, while if they live at their mother's place, they will become “mamak rumah” for their sibling's children (Muhammad Chairul Umar & Riza, 2022). Fifth, research conducted by Hertasmaldi on the Role of Ninik Mamak in Preventing Divorce from the Perspective of Islamic Law. Ninik mamak is an elder or community leader appointed by the local community to lead customary events and to be consulted for opinions when there are issues in the nagari and concerning children and nephews. Meanwhile, mamak refers to a male sibling, thus he is automatically considered a mamak. A ninik mamak has two functions simultaneously: to govern and guide the children and nephews, referred to as the function of kinship, and to resolve disputes within his community, known as the function of a judge at the nagari level, where he serves as the council of the state and the council of judges. Ninik mamak or mamak also acts as al ishlah or a mediator in issues concerning his nephews or family (Hertasmaldi, 2022). Sixth, research conducted by Juswandi and Akbarizan on the Role of Mamak/Uncle towards Nephews in the Marriage Customs of the Community of Kuantan Hilir Seberang District, Singingi Regency. The role of a mamak or uncle or ninik mamak in the field of marriage can begin from the engagement and proposal, preparing the necessary documents to mamak balobe and mamak penghulu, and then to the village. Subsequently, it continues to the witnessing of the ijab kabul between both parties of the bride and groom, determining the wedding date, opening the offerings (tombo), followed by a communal meal. Finally, the giving of titles in front of the public, including both parents, up to the granting of the title of mamak to the male mamak and the female mamak, so that in the days following, they will address each other using the titles given. This means that after becoming husband and wife, they no longer call each other by name but by title, whether the title is obtained from their peers, from their name, or their social status, as well as from the pisoko title.

In the research that has been explained above, it can be concluded that the study discusses the role of the mamak in facing problems in the nagari, and no issues were found in

marriage, nor does it discuss the existence of niniak mamak within a nagari. In this study, the author wants to discuss how the existence of niniak mamak in the midst of society and the role of niniak mamak in resolving marriage disputes, especially in Jorong Sungai Sanda.

RESEARCH METHOD

In this research, based on its approach, it is classified as qualitative research (Sujarweni, 2020). The qualitative approach in this case is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. Therefore, the data collected is in the form of words or sentences as well as images (not numbers) (Trisliatanto, 2020). The type of research used in this study is field research, which is research conducted directly in the field, namely in the community of Jorong Sungai Sanda. This study uses descriptive research. Descriptive research is conducted to determine the value of each variable, whether one variable or more. The nature of this research is independent, meaning it does not create relationships or comparisons with variables (Jaya, 2020).

RESULTS AND DISCUSSION

Definition of Dispute Resolution

The large Indonesian dictionary defines a dispute as anything that causes differences of opinion, conflict, or objection (Department of Education and Culture, 1990). A dispute is also defined as anything that causes a difference between two conflicting parties. From this, it can be concluded that a family dispute is any matter that causes disagreements within a family (Sudarsono, 2002).

A disagreement that leads to a dispute can be caused by internal factors such as a person's character, as well as external factors in the form of rules that apply to everyone. Owens, RG states that disputes can arise from existing rules with written and unwritten procedures that cause disputes if their application is too rigid and harsh; a rule that is not appropriate will prevent someone from acting or moving freely. According to Schut, a dispute is a situation in which there are two or more parties pursuing various goals that cannot be reconciled with each other, and they consciously attempt to oppose each other's goals (Rijkschoeff, 2001).

Various Methods of Marriage Dispute Resolution

Marriage dispute resolution can be carried out through the courts or outside the court. Resolution through the court is guided by procedural law that regulates the requirements for a dispute to be submitted to the court and for the court to take measures for its resolution. The advantage of resolving disputes through litigation is that the court's decision has binding legal force, is final, creates legal certainty with the positions of the parties being either winners or losers, and the enforcement of the court's decision can be compelled if the losing party refuses to accept and implement the content of the decision (Mortokusumo, 2009). The resolution of disputes outside the court is a resolution that is carried out based on the agreement of the parties, and the procedure for resolving each issue is entrusted to the parties. To resolve a dispute outside the court, several methods can be employed, such as:

1. Negotiation

Negotiation is the process of reaching an agreement to resolve disputes between parties. In negotiation, the parties establish an agreement to settle their disputes, usually with the assistance of advisors who aim to help the disputing parties find a consensus (Diah,

2016) Negotiation can be categorized into positive negotiation, where the parties involved seek to find a cooperative agreement, or negative negotiation, where the parties aim to identify a difference (Romsan, 2008)

In practice, negotiation can occur for two reasons:

- a. To seek something new that cannot be achieved independently, for example, in a buying and selling transaction, the seller and buyer need to determine the price.
- b. To resolve disputes or conflicts arising between the parties

2. Mediation

Mediation etymologically comes from the Latin word *mediare* which means to be in the middle. This meaning refers to the role displayed by the party as a mediator in carrying out its duties to mediate and resolve disputes between the parties. Being in the middle illustrates that a mediator must be in a neutral position and not take sides in resolving disputes so that they can maintain the interests of the parties fairly and equally, thereby fostering trust from the parties. Mediation is the process of involving a third party in resolving a dispute as an advisor (Hermanto et al., 2021).

In terminology, mediation is defined by several experts:

- a. Garery Gopaster defines mediation as a problem-solving negotiation process where an impartial third party collaborates with the disputing parties to help them reach a satisfactory agreement.
- b. Gunawan Widjaya states that mediation is an alternative dispute resolution process where a third party is requested to assist in the resolution process, remaining passive and not given any authority to provide input, let alone decide the dispute at hand.

With various definitions of mediation, it can be concluded that mediation is a neutral dispute resolution process conducted by a third party in an open dialogue atmosphere, which is impartial, honest, and involves exchanging opinions to seek an agreement.

The definition of mediation above also illustrates the essence of mediation activities and the role of the mediator as a third party. Mediation is a decision-making process carried out by the parties with the assistance of a third party as a mediator. The authority to make decisions is entirely in the hands of the parties, and the mediator merely assists the parties in the decision-making process. The presence of the mediator is very important because they can help and facilitate a better decision-making process, resulting in an outcome that can be accepted by those in conflict.

In its application, dispute resolution through mediation is a step towards resolving disputes through non-litigation channels. The main essence of mediation is the greater involvement of the disputing parties, based on good faith and voluntary participation in the mediation process so that a resolution of the dispute is achieved as a result of the agreement of the parties (Datumula, 2023).

The resolution of disputes through mediation is indeed not a solution that can resolve all disputes; however, by using this route, several advantages can be obtained, namely:

- a. To reduce the backlog of disputes in court
- b. To enhance involvement (decentralization of law) or empower the parties in the dispute resolution process
- c. To facilitate access to justice for the community

- d. Producing decisions that are accepted by both parties
- e. Faster and cheaper dispute resolution
- f. Confidential in nature

3. Arbitration

Arbitration is an effort made by the parties to resolve disputes that cannot occur after negotiation and mediation. Arbitration is conducted by the parties based on a written agreement to submit their dispute resolution efforts. This type of resolution is an out-of-court dispute resolution that is binding and final. Definitively, arbitration comes from the word *arbitrare* which means the power to resolve disputes based on discretion (H. Rahman, 2003).

There are three fundamental aspects in resolving disputes through arbitration, namely *first* arbitration is a non-litigation dispute resolution. *Second* the arbitration agreement must be in written form. *Third* the arbitration agreement is a dispute resolution conducted outside the general court, so arbitration is not intended for resolving disputes outside of civil disputes. Ahmad Ali states that the use of arbitration is limited to the resolution of civil disputes. Resolution through arbitration has several advantages, such as:

- a. The confidentiality of the dispute between the parties is maintained
- b. They can choose an arbitrator whom they believe has the knowledge, experience, and understanding of the issues they face
- c. The arbitrator's decision is binding on the parties with a simple procedure
- d. They can choose the law that will be applied to resolve their issues
- e. Can avoid delays due to procedures and administration (Rosita, 2021)
- f. Conciliation

Conciliation is one form of dispute resolution outside of court between parties involved in a case, involving a neutral and impartial third party. Essentially, both conciliators and mediators serve as intermediaries to facilitate communication between the disputing parties so that a solution can be found for the disputes they face. However, a conciliator's role is limited to actions such as organizing and providing a meeting place for the disputing parties, directing discussions, and conveying messages between one party and the other if they do not wish to meet. In contrast, a mediator can not only perform these actions but can also provide solutions or proposals for resolving disputes, which theoretically is not within the authority of a conciliator.

The role of *niniak mamak* in Minangkabau

1. Definition of *niniak mamak*

Niniak represents the most ideal traits for men in a certain clan in Minangkabau, *mamak* is a figure who becomes the “*tampek baiyo*” (place for deliberation) to resolve issues even if he is still young. *Niniak mamak* in a broader sense refers to adult men in a clan (Handayani, 2019). In simple terms, *mamak* is the leader of a clan. The presence of *niniak mamak* in the village serves as a leader who becomes the place for *baiyo bamolah*, which is where the nephews come to report problems they face; to become a *mamak*, one must be appointed with the consent of all clan members. To become a *niniak mamak* is not an easy task, as a leader he is expected to possess the qualities of a prophet, such as honesty, justice, trustworthiness, and wisdom. Therefore, a *mamak* must be someone who adheres to the religious law.

2. The role of *mamak* in Minangkabau

According to customary law, the adat emphasizes that “*anak dipangku, kamanakan di bimbiang*,” which means that the father is fully responsible for his children, educating them and so on. In Minangkabau adat, there are 4 main duties of a *mamak*, which are:

- a. *Manuruik aluab nan luruih*, which means a *mamak* must carry out all his duties as a *mamak* according to the provisions of *adat lamo pusako usang*, which is to position something in its rightful place.
- b. *Manampuah jalan nan pasa*, which means adhering to every rule that has been established within the community and not changing or violating it.
- c. *Malibaro harato pusako*, which means that the uncle must maintain the ancestral wealth of his community as stipulated in customary regulations.
- d. *Mamaliharo anak kamanakan*, which means that the uncle must possess a wise attitude to guide the nephews and nieces in all aspects of life (Marpensory, 2017)

Niniak mamak in traditional life plays a role based on the aspects of behavior in the life of the uncle and the nephews and nieces. This behavior is reflected in the actions of the uncle in his social life (Syahrul, 2017). In community life, the uncle acts as a regulator of the lives of the nephews and nieces in various aspects of life such as:

- a. Caring for the nephews and nieces

In this sense, the uncle has the role of a guardian, nurturing and educating the nephews and nieces to become good individuals who can lead their lives well, because essentially the presence of the nephews and nieces is under the protection of the uncle, who directs them according to the applicable customary regulations.

- b. In marriage

In marriage, the role of the uncle is very important because, according to custom, it is the uncle who will find a suitable match for his nephew or niece, and the uncle will discuss the negotiation process regarding the issues from start to finish within the marriage bond and grant permission for the marriage to his nephew or niece. After finding a suitable partner for the nephew or niece, with the approval of the uncle and the parents, the wedding will take place. In this case, the uncle's next task is to sign the marriage permission letter (NA) because, without the approval letter from the uncle, the marriage cannot be carried out.

- c. In dispute resolution

In a diverse society, there are certainly instances of conflicting opinions and misunderstandings that sometimes lead to arguments. In this case, *niniak mamak*, as a leader and figure in the community, plays the role of someone who will resolve these issues. As stated in the customs, the role of *niniak mamak* is described as 'kuiik manyaliasian, karuah manyaniahan,' meaning that *niniak mamak* is someone capable of resolving existing problems and finding the best solutions for those issues through deliberation. In matters of marriage, *niniak mamak* will gather all parties involved in the problem, listen to each of their explanations, and only then seek a solution to the issues at hand (Marisa Anjela, 2014).

Resolution of Marital Disputes Through Customary Sanctions

In order to maintain harmonious families in several families in Indonesia, customary law has been established to regulate the model of resolution in the event of marital disputes. (Wijayanti, 2021). Customary law adjudication is a set of customary legal rules that govern the form of resolution of a problem or dispute to obtain a legal decision based on customary law

provisions, and the process of resolution and determination of the verdict in the case is pursued through customary adjudication (Iqbal et al., 2020)

The concept of customary law and customary adjudication is essentially the root of restorative justice. The main elements of restorative justice are the willingness and participation of the victim, the perpetrator, and the community in making amends for the crime that has occurred, which is also a characteristic of customary law. In addition to criminal law, other laws such as land law, civil law, and marital law that exist within customary law are essentially crystallizations of the values of justice that live, grow, and develop in society (Amalia et al., 2018)

The follow-up to disputes that arise within society certainly involves efforts to resolve them through a forum determined by the community itself, starting from the smallest groups in society (such as families) to state institutions equipped with a set of legal rules as guidelines for implementation in daily life. For instance, village peace judges have long been established within customary law communities, which usually resolve customary disputes through these traditional institutions. (Fitriani, 2017)

Resolution of Marital Disputes According to Custom by Niniak Mamak Balimo in Jorong Sungai Sanda

The existence of niniak mamak in a region of Minangkabau is essential; in carrying out community life, the role of niniak mamak is very important in various aspects of life, one of which is in conflict resolution. According to customary provisions, niniak mamak is appointed based on a collective decision of the clan and is responsible for every nephew within that clan. One area in Minangkabau where the presence of niniak mamak plays a significant role is in Jorong Sungai Sanda, Sangir District, Solok Selatan Regency. The community of Jorong Sungai Sanda as a whole consists of Minangkabau people, so Minangkabau customs still hold significance in community life. In the terminology of the Jorong Sungai Sanda community, niniak mamak as the head of customs is known by the term mamak nan balimo (the five mamaks), where the five mamaks are the heads of customs from five clans in Jorong Sungai Sanda, with each clan having a mamak as the head responsible for their kin. Each clan has a mamak with their respective titles, namely: the first clan kutanyia with the title of their mamak malano kayo. The second clan suku melayu with the title of their mamak datuak manjadi rajo. The third clan suku melayu tapi with the title of their mamak datuak melayu rajo and the fourth clan suku caniago with the title of their mamak datuak camin.

These five figures play a role as traditional leaders in Jorong Sungai Sanda, and their presence is highly respected and esteemed by the community. Whenever issues arise within the tribe, they are the ones the people of Jorong Sungai Sanda turn to for solutions and considerations. In the marriages of the Jorong Sungai Sanda community, niniak mamak plays an important role, starting from the selection of candidates who will become the partners of their nieces and nephews. The considerations of the mamak are one of the aspects that are taken into account. Every member of the community who wishes to marry must first report their intentions to the mamak and explain who the candidate will be. This activity in the Jorong Sungai Sanda community is referred to as manyilau mamak. After the selection of candidates, in determining the day, date, and even the costs of the wedding, niniak mamak plays an active role as a form of responsibility to their kin. This determination is made by holding a meeting at the home of the niece or nephew who will be getting married. This meeting is attended by the mamak nan balimo

and other community leaders, and the mamak will provide money or other supplies that can help with the wedding expenses.

As one of the efforts to maintain harmony and peace in Jorong Sungai Sanda, when a nephew or niece is about to get married, they must inform their mamak\, and the mamak nan balimo\ will sign a letter for the processing of the NA at the Wali Nagari office. In an interview that the author conducted with the former head of Jorong Sungai Sanda, he stated that the existence of this letter as a requirement for the issuance of the NA is a form of respect for the leadership of the mamak in society and as an anticipation of potential problems that may arise. The letter of approval from the mamak indicates that the mamak will be responsible if conflicts occur in their household later on. This letter also serves as a form of cooperation between the wali nagari and the mamak, so that every member of the community who gets married knows about themselves and their family, thus anticipating any undesirable situations in the marriage, such as the possibility of concealed polygamy.

When problems arise in a household and no best solution is found, the nephew can convey this to the niniak mamak\ of his own clan, so that later, if both husband and wife are members of the Jorong Sungai Sanda community, the five niniak mamak\ will gather to find the best way to resolve the issues faced by their children. If one of the spouses is from outside, then the mamak will act as a mediator to find a solution. One example in the Jorong Sungai Sanda community in 2023 is between R and D, where a problem occurred causing the wife to return to her parents' house. The mamak then visited the parents and family of the wife to resolve the issue, and they did not end up divorcing.

In another case, between I and P, there was a continuous dispute making it difficult to reconcile them. All efforts had been made by the family to prevent them from divorcing. Knowing this, the mamak nan balimo\ convened to seek a solution, but since there was no longer any solution and their desire to reunite was gone, they decided to divorce. The gathering of the mamak took place at P's (the wife's) house because at that time the husband had left the wife and returned to his mother's house. The gathering was attended by I and P, family members from both sides and the mamak balimo.

Another case that often occurs is when a husband leaves his wife, thus failing to fulfill his obligations to her. In 2022, such cases occurred four times. In facing this situation, the mamak will try to contact the husband, and if that fails, the mamak will meet with the husband's family to inquire about the state of their household. In resolving marital disputes, the mamak also pays attention to the division of joint property acquired during the marriage, as this often becomes a trigger for major conflicts that can involve not only the husband and wife but also the extended family. To avoid problems or injustices in the division of property, the mamak will seek an agreement for both parties, ensuring that harmony and comfort in the village are maintained even after a divorce.

Analysis of dispute resolution through the mamak limo clan in Jorong Sungai Sanda

The existence of mamak in Jorong Sungai Sanda is still very strong to this day; for every problem that arises, niniak mamak as the customary leader in the nagari plays a significant role in its resolution. Dispute resolution is prioritized on unity and kinship. With the involvement of iniak mamak in various issues such as marriage, it is hoped that unity within the nagari can be maintained, so that problems can be resolved without new issues arising. The influence of mama

is so great that the appointment of a mamak is not just given to anyone; in Jorong Sungai Sanda, mamak\ is chosen collectively, considering many factors such as their wisdom in resolving every issue that arises.

In several cases that have occurred, the existence of mamak is considered capable of being a mediator for their nephews who are facing problems. In addition, the resolution is also relatively quick because the presence of mamak in the nagari allows the nephews to report any issues at any time, thus preventing the problems from escalating and creating new issues. The resolution of the problems prioritizes deliberation and consensus, which can lead to an agreement between both parties. This certainly helps maintain security and comfort in community life, even in the event of a divorce. However, even though the resolution of disputes in marriage, such as divorce, conducted through customary systems has a positive impact on harmony within Jorong Sungai Sanda, until now niniak mamak/ does not require their nephews to handle their divorces in court. This is because most of them initially entered into marriages under the table or through unregistered marriages, and their understanding of divorce in court is still minimal, leading them to believe that divorce outside of court is sufficient. This will certainly create new problems in the future, as couples who divorce will encounter other difficulties.

CONCLUSION

The resolution of marital disputes outside the court can be done in various ways. In the Minangkabau community, the resolution is carried out through the customary system led by the head of the customary law, known in Jorong Sungai Sanda as mamak limo suku, who plays the role of an elder in the community. The role of the mamak in resolving disputes is very evident; when a marital dispute occurs, the mamak will be the party to negotiate to find a solution. In marital disputes, the mamak will also participate in the division of joint property to prevent issues arising from disputes over assets. Such dispute resolution is very quick and prioritizes family ties; however, until now, the mamak does not require their nephews to handle divorce proceedings in court.

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