



## The Minangkabau Customary Legal Standing in the Settlement of Customary Land Disputes in West Sumatra and Its Problems in the Sociological Jurisprudence Perspective

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### **Abstract**

Describe and analyze the customary legal standing, problems in the application of customary law, and solutions to Minangkabau customary law problems in the settlement of customary land disputes in West Sumatra from the perspective of Sociological Jurisprudence. This research was based on qualitative non-doctrinal legal research. In this case, the law is not only conceptualized as the whole of the principles and rules that govern human life in society but also includes the institutions and processes in realizing the application of these rules in society as the embodiment of the symbolic meanings of social actors, as manifested and seen in and from their actions and interactions. The author set the research setting at the Bukittinggi District Court Jl. Veteran No. 219, Kubu Bancah Kubu, Mandiangin Koto Selayan District, Bukittinggi City, West Sumatra. Based on the research results of the Minangkabau Customary Legal Standing in Settlement of Customary Land Disputes in West Sumatra from the Sociological Jurisprudence Perspective, every legal problem, especially customary land disputes, was resolved by the rules of Minangkabau Customary Law. This was an effort to resolve disputes by the community through a traditional institution known as the Kerapatan Adat Nagari (KAN) which had been recognized and confirmed its position in the West Sumatra Province Regional Regulation No. 6 of 2008 concerning Customary Land and Its Utilization. The problem of the application of Minangkabau Customary Law in the Settlement of Customary Land Disputes in West Sumatra from the Sociological Jurisprudence Perspective is that the settlement of high heritage disputes was carried out through the judiciary. Ideas and Solutions to the Problem of Application of Minangkabau Customary Law in Settlement of Customary Land Disputes in West Sumatra was that it requires a codification that contains the rules of Minangkabau customary law starting from the regency/city, district, nagari to the jorong level in West Sumatra.

**Keywords:** *Minangkabau Customary Law; Customary Land; Sociological Jurisprudence*

## Introduction

Minangkabau shows an ethnic unity of people who adhere to the maternal/female lineage (matrilineal) spread across the province of West Sumatra, part of Riau province and part of Jambi province. West Sumatra is more of a government administration unit which since the Dutch colonial era has been translated by the term “*Soematera Westkoest*” which is part of Minangkabau (Rasyad, 2019). Furthermore, the terms *Matriachaat* and *Matrilineal* are commonly known in Minangkabau society. Literally, *Matriachaat* means power that is in the hands of women/women (Nugroho et al., 2021). *Matriachaat* means women are heirs and hold power. However, in the Minangkabau tribe, control, in this case regulating and managing heritage is the authority of men (Amran, 2018).

In Minangkabau society, assets are grouped into two types of assets: *Sako* and *Pusako*. *Sako* are intangible assets, such as the title of *penghulu/datuk* while *Pusako* are tangible assets, such as rice fields, fields or *gadang* houses. *Pusako* in Minangkabau is divided into 2 (two): High Heritage and Low Heritage. High heritage assets are received/obtained from generation to generation for more than 3 (three) generations, while low heritage assets are received/obtained from generation to generation for 2 (two) generations (Warman, 2012). Therefore, what is meant by customary land in Minangkabau society more precisely refers to what is known as High Heritage Assets.<sup>1</sup>

There is uniqueness in law enforcement related to customary rights disputes in Minangkabau indigenous peoples. Everything related to customary land disputes is resolved based on the rules of Minangkabau customary law. Besides being found in the settlement of local customs, it can also be found from various judges' decisions based on the rules of Minangkabau customary law. Based on the judges' decisions when resolving customary cases, it was found that the basis or reference in legal considerations was not the rule of national law but previous jurisprudence which had provided rules regarding the settlement of customary land cases. The problem is that ethnic groups in each district/city, especially in West Sumatra, have different types of customary law, even at the district, *nagari*<sup>2</sup>, and *orong*<sup>3</sup> levels. Thus, the use of a certain jurisprudence that decides cases in an area of course allows asynchronous in the application of customary law as a means of resolving customary land disputes in other areas (Azra & Sri Wahyu Ananingsih, 2017).

Based on the description of the background, the preparation of this paper basically aims to provide an overview of the law used to resolve disputes over customary land belonging to the Minangkabau community, especially in West Sumatra. This also explains the problems in enforcing civil law regarding customary land in Minangkabau in the perspective of Sociological Jurisprudence (Kartika, 2021). The preparation of this paper is important because if the application of law in Minangkabau society is not appropriate, it will cause injustice and hurt the spirit to realize the law that lives in Minangkabau society as the basis for law enforcement. The author realizes that this paper still requires further and in-depth research studies. However, this paper is expected to provide an overview of the existence of Minangkabau customary law as the basis for resolving customary land disputes and their problems (Nasir, 2022).

Based on the description of the background of the problem above, this paper focuses on the following problems: 1) What is the Minangkabau customary legal standing in the settlement of customary land disputes in West Sumatra from the perspective of Sociological Jurisprudence?, 2) What are the problems in the application of Minangkabau customary law in the settlement of customary land disputes

<sup>1</sup> Minangkabau Customary Civil Law Workshop for High Judges and District Court Judges throughout the Legal Territory of the West Sumatra High Court, 5-7 December 2009.

<sup>2</sup> Nagari is a nomenclature in the mention of the position of an area under the district and above the village in the province of West Sumatra.

<sup>3</sup> Orong is a nomenclature in mentioning the position of an area at the level of a village in West Sumatra Province.

in West Sumatra from the perspective of Sociological Jurisprudence?, 3) What are the ideas and solutions to the problem of applying Minangkabau customary law in the settlement of customary land disputes in West Sumatra?. The objectives and significances of this research are as follows: 1) To describe and analyze Minangkabau customary legal standing in the settlement of customary land disputes in West Sumatra from the perspective of Sociological Jurisprudence?, 2) Describe and analyze the problems of applying Minangkabau customary law in the settlement of customary land disputes in West Sumatra from the perspective of Sociological Jurisprudence?, 3) Provide ideas and solutions to problems with the application of Minangkabau customary law in the settlement of customary land disputes in West Sumatra?.

## **Research Method**

This legal research can be categorized as a doctrinal or non-doctrinal research. Doctrinal research is a prescriptive legal research in which the science of law studies the purpose of law, the values of justice, and the validity of the rule of law, legal concepts, and legal norms. Non-doctrinal research is a law that is conceptualized as a real institution associated with other social variables. The research design of the preparation of this legal writing is doctrinal legal research. It is a research that comes from the applicable laws or legal regulations and doctrines (Ishaq, 2017). This research is also based on qualitative non-doctrinal legal research because in this research, law is not only conceptualized as the whole of the principles and rules that govern human life in society, but also includes the institutions and processes that embody the application of these rules in society as the embodiment of the symbolic meanings of social actors, as manifested and seen in and from their actions and interactions. The research material used in this study is a systematic discussion related to case studies in the customary territory of West Sumatra. The material is then compiled systematically, reviewed, linked to the legislation and then used to draw conclusions on research problems (Ishaq, 2017).

## **Research Setting**

To obtain the necessary data, the authors used the research setting at the Bukit Tinggi District Court.

## **Data Types**

### **a. Primary Data**

It is data obtained from direct information/facts in the field, namely data obtained by the author from the research location at the Bukit Tinggi District Court.

### **b. Secondary Data**

It is data obtained indirectly, in the form of a number of information or facts by studying library materials in the form of books, documents, reports and so on related to the problems studied.

## **Data Sources**

Based on the types of research data mentioned above, the data sources are as follows:

### **a. Primary Data Source**

The primary data source in this study is an explanation or information obtained from judges who handle customary rights cases in the West Sumatra region.

## b. Secondary Data Source

It is a data source that indirectly provides information that supports the primary data source. Secondary data sources in the field of law in terms of their binding strength are classified into three as follows:

- 1) Primary legal materials are legal materials that are binding. The primary legal material in this legal research is Law No. 5 of 1960 concerning the Principles of Agrarian Law.
- 2) Secondary legal materials are legal materials that provide an explanation of primary legal materials which include: scientific books in the field of law, papers and scientific results of scholars, literature, and research results.
- 3) Tertiary or supporting legal materials are materials that provide instructions or explanations for secondary legal materials including dictionaries, encyclopedias, materials from the internet, cumulative indexes, and so forth.

In this research, document study is used as a data collection technique which is one way to obtain data and information related to the subject through documents and to examine materials related to research problems. The data analysis technique used in this research is qualitative data analysis using interactive method. Qualitative data analysis is data processing in the form of data collection and decomposition which is then compared with related theories, which are ultimately used to draw conclusions. The interactive method is an analysis model consisting of three components consisting of data reduction, data presentation, and conclusion drawing in which the data is processed through these three components (Ishaq, 2017).

## **Research Results and Discussion**

Sociological Jurisprudence is a flow that requires that the process of forming legal reforms must pay attention to the legal awareness of the people by taking into account the legal values that apply in society. In social life, the laws that exist and develop in society are used as rules that apply to the regulation of the joints of social life. Sociological Jurisprudence emphasizes its attention to legal reality rather than the position and function of law in society (Tiara et al., 2022). Legal reality is basically the will of the public so that it is not just a law in the sense of law in books but according to the needs of the legal community for the creation of legal certainty (positivism law) and living law as a form of appreciation for the importance of the community's role in law formation and legal orientation. The strategic role of judges in the perspective of sociological jurisprudence is to apply the law which is not only understood as a formal social control effort in resolving conflicts, but also designs the application of the law as a social engineering effort (Yunus & Muddin, 2019). The judicial task of judges is no longer understood only as the application of the law to concrete events (in the form of various cases and conflicts) or the mouthpiece of the law (*boncha de la loi*) but also as a driver of social engineering<sup>4</sup>.

In the colonial period, there was a dualism in land law which resulted in the dualism of land rights, namely land with western rights subject to western land law as regulated in *Burgerlijk Wetboek* (BW) and land with customary rights subject to customary law on land. This dualism causes many problems in the field. Thus, after the independence of the Republic of Indonesia, the issue of unification of agrarian law became a priority for the government's legislation program and has been successfully realized through the issuance of Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) (Ismi, 2012). In the general explanation of the UUPA number III (1), it is emphasized that the UUPA is based on the provisions of Customary Law, as the original law, which is perfected and adapted to the

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<sup>4</sup> Marsudi Dedi Putra, The Contribution of Sociological Jurisprudence to the Development of the Indonesian Legal System. In the Scientific Journal. Faculty of Teacher Training and Education. ISSN: 1410-8771. Vol. 16, Number 2, page 45-59.

interests of the people in a modern state and in relations with the international community and adapted to Indonesian socialism as stipulated in the constitution of the 1945 Constitution of the Republic of Indonesia (UUD 1945). This has become a foundation for reforming national laws that are oriented towards the protection of the rights of indigenous and customary peoples (Tanuramba, 2020).

The reasons for adopting the principles and rules of customary law regarding land in national agrarian law must be based on legal provisions that are in accordance with the legal awareness of the Indonesian people. However, because national agrarian law must also be able to meet the legal needs of the Indonesian people in modern times, in national agrarian law, the provisions of customary law regarding land should be perfected by adopting legal rules that are in accordance with the times. Being reviewed more closely, the UUPA also does not adopt all provisions of customary law regarding land. Some provisions of customary law which are considered feudalistic and can hinder national development in an effort to prosper the community are not adopted in national agrarian law (Samosir, 2013).

In addition to recognizing individual rights to land, customary land law also recognizes customary rights of legal alliances over land within its territory, which in the customary law literature is referred to as "customary rights". For example, in Ambon it is called "*patuanan*", in Bali it is called "*prabumian*" and in Java it is called "*wewengkon*". This shows that Indonesia has a variety of customary laws that live in alliances of customary law communities throughout Indonesia (Liani, 2021).

The UUPA has recognized and protected the customary rights of indigenous peoples but on the condition "as long as this fact persists". One of the provinces that still enforce community customary rights under customary law is West Sumatra. So far, there have been many disputes concerning the application of customary rights inward (disputes within the indigenous community itself) as well as concerning the application of customary rights outward (against parties outside the community, especially the holders of Right to Cultivate in the plantation sector). The central government and local governments, especially the West Sumatra Provincial Government, have made arrangements for customary rights, in order to create legal certainty in the community (Citrawan, 2021). Thus, customary land can provide benefits not only for the members of the customary law community concerned, but also for the interests of national development for the welfare of the people as mandated by the 1945 Constitution<sup>5</sup>.

Although the matter regarding customary land in West Sumatra has been regulated in the Regional Regulation of the Province of West Sumatra No. 6 of 2008 concerning Customary Land and Its Utilization, however, the regional regulation only regulates the general rules regarding the technical control and ownership of customary land. It does not adopt in more detail the customary law principles of each region in the West Sumatra region from the district/city level to the *orong* level which are used as guidelines in resolving customary land disputes, especially for judges in making decisions (Fatmi & Jember, 2018).

## **Minangkabau Customary Legal Standing in the Settlement of Customary Land Disputes in West Sumatra from a Sociological Jurisprudence Perspective**

Every legal issue, especially customary land disputes or what is known as high heritage in West Sumatra, is resolved based on the rules of Minangkabau Customary Law. Minangkabau customary law has always lived and is recognized as a rule of law that is guided by the community, government and judiciary in the settlement of high heritage disputes which are customary assets of an association of customary law communities. This can be seen from the dispute resolution efforts by the community through a traditional institution called the *Kerapatan Adat Nagari* (KAN) which has been recognized and confirmed its position as stated in the Regional Regulation of the Province of West Sumatra No. 6 of

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<sup>5</sup> Minangkabau Customary Civil Law Workshop for High Judges and District Court Judges throughout the Legal Territory of the West Sumatra High Court, 5-7 December 2009.



2008 concerning Customary Land and Its Utilization. The existence of these regional regulations shows that the West Sumatra Provincial government also recognizes and protects Minangkabau customary legal standing in the settlement of high heritage disputes for the people of West Sumatra (Riardo, 2019).

In addition to the community and local government who still adhere to Minangkabau customary law in the settlement of high heritage assets in West Sumatra, the judiciary also prioritizes customary law in resolving high heritage disputes for the Minangkabau community. This can be seen from various court decisions in the jurisdiction of West Sumatra regarding civil disputes over high heritage assets which stipulate jurisprudence on customary law principles as the basis for making decisions (Syarfina, 2019). Thus, viewed from the perspective of Sociological Jurisprudence, the community in resolving high heritage disputes through customary institutions, local governments in issuing regulations regarding customary rights and also judicial institutions in their decisions make Minangkabau customary law as a guide in making decisions, it shows that the rules of law that applies and develops in society is still recognized today.

### **Problems in the Application of Minangkabau Customary Law in the Settlement of Customary Land Disputes in West Sumatra in the Perspective of Sociological Jurisprudence**

When problems regarding high heritage disputes occur, the people of West Sumatra first resolve them through the *Kerapatan Adat Nagari* (KAN) institution. KAN is basically not a judicial institution, but is a justice institution which later, in the process of resolving high heritage disputes, will issue a conclusion as the estuary of the settlement. Parties who do not accept KAN's conclusion can take their case through the judiciary. The existence of KAN at the *nagari* level throughout West Sumatra is interpreted as an institution that understands the rules of customary law in the *nagari* area because the *penghulu*<sup>6</sup> in KAN are appointed from people within the tribes in the region. Thus, there are no problems related to the application of Minangkabau customary law which are resolved through KAN because the resolution of high heritage disputes is carried out by exploring and applying legal values that apply in the community in a *nigari* (Wijaya, 2020). The problem is the resolution of high heritage disputes through the judiciary. Various court decisions that resolve high heritage disputes are based on existing jurisprudence. Meanwhile, the jurisprudence was formerly a court decision in a certain legal area (certain district/city) where the provisions of customary law in that legal area are very likely to be different from the provisions of customary law in other jurisdictions. However, it is still used as a guide in making decisions for judges in other areas in West Sumatra Province (Yarsina, 2018).

For instance, the difference in customary law provisions between one region and another, namely within the jurisdiction of the Minangkabau community, is known as the *Kerapatan Ninik Mamak Jorong* institution. However, other places do not recognize this institution and only recognize the term *Kerapatan Adat Nagari*. An understanding of the two institutions is very important because conclusions regarding the resolution of high heritage disputes issued by these institutions can be used as judges as consideration for making decisions. When the judge judges that the *Kerapatan Ninik Mamak Jorong* institution in a *jorong* does not exist (illegitimate) because it is usually unknown in other areas, the product of that institution in the form of a dispute resolution conclusion will be ruled out or not considered in the judge's decision. Another example is the existence of a *penghulu* in a Minangkabau customary tribe. There are several tribes in the Minangkabau indigenous people who do not have a *penghulu*. This is a problem when in the process of proving in the trial the existence of a tribe that is closely related to the existence of a people<sup>7</sup> cannot be separated from the ownership of high heritage in that people. Usually, in a tribe there is a *penghulu* as the head of the tribe. The existence of the *penghulu* reflects the existence of a tribe consisting of several tribes and has a high heritage (Rasyad, 2019). Based on this description, there are

<sup>6</sup> Penghulu is a term for people who have the position as tribal heads in the Minangkabau indigenous people.

<sup>7</sup> The tribe is a pulmonary unit (members come from one mother) based on blood/heredity factors. Meanwhile, a group of several tribes forms a tribe.

problems related to the application of Minangkabau customary law as stated in the court's decision in the jurisdiction of West Sumatra, although at first glance the court's decision seems to have reflected the perspective of Sociological Jurisprudence. (Andiki et al., 2019)

## **Ideas and Solutions to Problems in the Application of Minangkabau Customary Law in Settlement of Customary Land Disputes in West Sumatra**

Legal issues as described above, various court decisions still use the same jurisprudence in applying a rule of Minangkabau customary law in various regions in West Sumatra. Thus, the author provides a contribution of thought to the problem that it requires a codification containing the rules of Minangkabau customary law starting from the regency/city, district, *nagari* to the *orong* level in West Sumatra. This is very important when in resolving a high heritage dispute case, judges need clear and definite guidelines in their settlement, especially the values of customary law that apply in certain regional communities. Although basically judges can explore the legal rules that apply to an area from the statements of witnesses, but it is possible that the information presented by the witnesses in the trial will not be like what happened and occurred in the field even though they have been sworn in, and only for the benefit of one party, including information relating to legal rules in a customary law community in a certain area.

### **Conclusion**

Minangkabau Customary Legal Standing in the Settlement of Customary Land Disputes in West Sumatra from the Sociological Jurisprudence Perspective, it is concluded that in every legal issue, especially disputes over ulayat land or known as high heritage assets in West Sumatra, are resolved based on the rules of Minangkabau Customary Law. This can be seen from the dispute resolution efforts by the community through a traditional institution called the *Kepadatan Adat Nagari (KAN)* which has been recognized and confirmed its position as stated in the Regional Regulation of the Province of West Sumatra No. 6 of 2008 concerning Customary Land and Its Utilization. In addition to the community and local government who still adhere to Minangkabau customary law in the settlement of high heritage assets in West Sumatra, the judiciary also prioritizes customary law in resolving high inheritance disputes for the Minangkabau community. This can be seen from various court decisions in the jurisdiction of West Sumatra regarding civil disputes on high heritage assets which make jurisprudence on customary law principles as the basis for making decisions. It reflects the recognition of the laws that apply in society in the perspective of Sociological Jurisprudence.

Problems in the Application of Minangkabau Customary Law in Settlement of Customary Land Disputes in West Sumatra in the Sociological Jurisprudence Perspective are the resolution of high heritage disputes through the judiciary. Various court decisions that resolve high heritage disputes are based on existing jurisprudence. Meanwhile, the jurisprudence was formerly a court decision in a certain legal area (certain regency/city) where the provisions of customary law in that legal area are very likely to be different from the provisions of customary law in other jurisdictions. However, it is still used as a guide in making decisions for judges in other areas in West Sumatra Province.

Ideas and Solutions to the Problem of Application of Minangkabau Customary Law in Settlement of Customary Land Disputes in West Sumatra is that it requires a codification containing the rules of Minangkabau customary law starting from the regency/city, district, *nagari* to the *orong* level in West Sumatra. This is very important when judges need clear and definite guidelines in resolving a high heritage dispute case, especially the values of customary law that apply in the community in certain areas.

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