

# Islamic Law on the Indigenous Court of *Kerapatan Adat Nagari* Institution in Minangkabau, West Sumatera

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**Abstract.** The existence of indigenous court in Indonesian adat society is still recognized as an effort to resolve problems of custom violation and crime. The social regulations governing the conduct and order of the Indonesians are reflected in the provisions of Customary Law, which are close to daily life (the living law) and found in many generations. This research aims at resolving the problems of Islamic Law as the basis to formulate indigenous court policies in the *Kerapatan Adat Nagari* (KAN) Institution of Minangkabau Community in West Sumatera. The method is based the socio-legal research with the *Kerapatan Adat Nagari* (KAN) Institution of Minangkabau Community in Padang, West Sumatera. The research results show that Islamic Law has become the fundamental principle in formulation of the Indigenous court's policies of *Kerapatan Adat Nagari* (KAN) Institution in Minangkabau, West Sumatera.

**Keywords:** Islamic Law, Indigenous Court, *Kerapatan Adat Nagari* Institution, West Sumatera

## 1. Introduction

The handling of criminal acts through indigenous court serves as an effort to reduce the weaknesses of and dissatisfaction with the retributive and rehabilitative approach used in general criminal justice system. The importance of the actualization of customary law society serves as an effort to restore cultural values as part of society life that understand the society's conditions and needs.

The existence of customary law society and its legal system are recognized and stipulated in article 18B of the 1945 Constitution of the Republic of Indonesia, that: (1) The State recognizes and respects units of regional authorities that are special and distinct, which shall be regulated by law. (2) The State recognizes and respects traditional communities along with their traditional customary rights as long as they remain in existence and are in accordance with societal development and the principle of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

This is also regulated in Article 103 item A Law No. 6/2014 on Villages (the Village Law) which stipulates that, "*regulation and governance implementation by indigenous village shall be based on their original arrangement.*" "Original arrangement" means the livelihood system of indigenous village that is locally believed or known.

According to Article 103 item a, d, and e of the Village Law, customary law institutionalization shall be in the form of indigenous court along with its own autonomous territorial legitimacy on that indigenous village only. This court may act not only as a judicial body of the indigenous village, but also serves as an arbitration body for settlement of disputes

between village members. Therefore, the Village Law only recognizes indigenous court that is designed as such.

Customary law has special different characteristics from other legal system, such as: a) The law is confirmatively unwritten; b) The law is originated from traditions and customs; c) The law is dynamic, ever-changing and adaptable; d) The law is made inadvertently; e) The law is religious; f) The law serves to organize social relations; g) The law is enforced by indigenous functionaries; h) The law has sanction.[1]Based on the aforementioned characteristics, the problem to be analysed in this article is to how the Islamic law is formulated and institutionalized into the indigenous court of the *Kerapatan Adat Nagari* Institution of Minangkabau community in West Sumatera.

## 2. Method

The research employs the Socio Legal Research approach and examines Islamic law which is taken to formulate the policies and mechanisms in the indigenous court of the *Kerapatan Adat Nagari* Institution of Minangkabau community in West Sumatera.

## 3. Result

Indonesia is a country of various cultures and local wisdom values with diverse social regulations, thus a process that is based on local wisdom values without legal process involvement is needed in an approach based on the appropriateness and justice principles in a mutually agreed mechanism. This is also regulated in Article 28 I of the 1945 Constitution point (3), that the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations. This means that every activity in the community that is related to traditional values and local wisdoms is respected and recognized in accordance with the times and civilizations.

Traditional society believes that humans are part of the macro cosmos (universe) and not to be separated from God Almighty as the Creator, and unite with the nature and environment. Their existence is in an interrelation and mutual influence and is in harmony or balance, therefore any violation of the balance must always be returned to harmony. Violation of customary rules, which qualifies as violation of customary act, is essentially violation of harmony. There is a need for harmonization/ synchronization/ consistency between the development/ renewal of national law and socio-philosophical and socio-cultural values or aspirations existing in society, thus assessment and exploration of national values that are based on Pancasila and on existing values in society (religious values and cultural/ customary values) are needed.[2]

According to Hildreed Greertz, the society culture's basic values are a) "*urmat*" (respect) and b) "*Rukun*" (maintain social harmony). *Urmat* is a rule that, in every situation, people should behave in such a way that they speak and interact while respecting others in accordance with their level and position. "*Rukun*" is an attitude of the social dimension aimed at maintaining constant harmony in the community. With regard to social behaviour, Javanese individuals should always prioritize these two basic principles: behave politely and respectfully according to their level and position and actively participate in maintaining harmony in social context.[3]

According to Hart, customary law is closer to the order of "primary rules of obligation" than to intentionally (purposefully) made state law and is, therefore, closer to the order of

"secondary rules of obligation". Customary law is closely related to local culture. The word culture shows a strong emotional-traditional element in customary law. Customary law is also laden with certain noble values (value laden).[4] Ayodele discusses the implications of the traditional justice system in crime control in Oshogbo. The study finds that traditional and formal justice systems respectively reduce custom violation and are complex with norms and laws. It concludes that formal-traditional partnership will reduce crime. This reduces crime and increases security for people in Oshogbo. Traditional Justice System is considered to be primitive. The two systems do not maintain the same community order. The partnership between the two systems is considered useful to achieve stability in the community. Traditional Justice System more efficiently deals with conventional crimes, while Formal Justice System more powerfully controls sophisticated modern crimes.[4]

Minangkabau people are a religious community (devout Muslims), *basandi sarak basandi kitabullah*. Minangkabau people, in their social relations and life, have very strong and institutionalized principles and guides called "*Tali Tigo Sapilin*". They also adhere to sublime teachings arranged and taught in day life, namely the four good teachings (*Tau Jo Nan Ampek*) that they always hold and is institutionalized in their life. In daily life, many Minangkabau people use the word *adat* (custom), especially with regard to worldview and norms in community life, which are expressed in the form of *pepatah petiti mamang*, expressions and others. Traditionally, Minangkabau indigenous people have quite complete legal institutions, both in substance and structure, in criminal law and civil law, and in formal and material law.

One of the Minangkabau traditional leaders, M Rasyid Manggis Dt. Rajo Panghulu, in his book entitled "*Sejarah Ringkas Minangkabau dan Adatnya*" (A Brief History of Minangkabau and Its Customs) states that "Adat is older than 'Adat'. Adat is derived from Sanskrit words *a* and *dato*, "*a*" which means no, "*dato*" which means something material.[5]

"*Adat*" is essentially anything that is not material. Although they have different definition, but both have the same goal in regulating the community's life order, both individual and together, in every behaviour and action in interaction based on good character, thus every individual will able to feel what others feel, as in the saying "*Bak adat bapiek kulik, Sakik dak awak sakik dek urang, nan elok dek awak katuju dek urang*". *Adat* is none other than spiritual perfection, which cannot be measured by the five senses, other than the five senses with heart.[6] This brief reflection may define *adat*.

The term *adat* is derived from Arabic, *Al 'Adat*, which etymologically means people's habits which grow themselves or are grown on agreement. This term is widely adopted by Minangkabau people, which is derived from the book of '*Adatut Thalibin*, the Shafi'i school of faith which in principle is the people's prevalence which grows by itself or is grown on agreement. *Al 'Adat* is the fifth source of law for Minangkabau people after Koran, Sunnah Rosul, Qiyas and Ijma".[6] In the book '*Adatut Thalibin*, the recognition of *Al 'Adat* as the fifth source of law is emphasized in the sentence "*Al 'adatum muhkamatun*" which means *Al 'Adat* is one source of law. *Adat Basandi Sara'*, *sara'* regulates human relations with God, relations among humans and relations of humans with nature. Therefore, in Minangkabau, the definition of *sara'* is equated with '*Adat*. More clearly, as viewed in *Bai'ah Marapalam* (oath on Marapalam hill) between the clan/ *adat* and the religious people on Marapalam hill during the Padri War, it is stated "*Adat nan Lhazhim Sara' nan Qawi*" which means that *adat* is people's prevalence which may be changed by people's agreement.

It is also said that *adat babuhua sentak, sekali aia gadang sekali tapian baraliah*. The word *Qawi* means firm and cannot be changed. This explanation is based on Kitabullah surah Al-Hadid (57) verse (25). The consequence is that, after *Bai'ah Marapalam*, all old traditional events that are not in compliance with Islamic teaching are stated as *jahilyah*, *bis'ah* and must

not be used and developed again in the community. *Bai'ah Marapalam* divides indigenous people into four categories:[6]

1. *Adat Nan Sabana Adat*

It is God's Revelation in Kitabullah and Allah's standard law of nature, such as sun rises in the east and sets in the west, fire burns. This standard natural law is written in the Holy Al Qur'an.

2. *Adat Istiadat*

It is the long-standing custom in the community including daily habits and behaviours, such as women's long clothes, *baju kurung*, sumando people sitting in the middle of house sumando straight in front of door to room and others;

3. *Adat Nan Teradat*

It is *adat* of the newly developing society which has been thoroughly removed by the society such as women wearing trousers, men wearing a suit like Europeans and others. It is previously said that women who wear trousers are not attractive since trousers are men's outfit. Wearing Europeans' suit means wearing infidel's clothes and is forbidden by Islam;

4. *Adat Nan Diadatkan*

It is *adat* that is habituated by agreement, both at Minangkabau level and *Nagari* level.

There is philosophical root intersection between the Minangkabau Customs originating from the truth and *alam takambang jadikan guru*. With regard to Minangkabau Customs, the customs are based on one's character, thus the word *martabat* (dignity) is used, like that used by chief. The word *hukum* (law) is used for the purpose of law settlement process, such as *hukum bainah*, *hukum karinah*, *hukum ijihad* and *hukum ilmu*. According to the information above, the closest meaning which entirely contains the purpose of the rules that will guide someone in world life.[7]

The definition of Minangkabau Customs is *bapucuak sabana bulek, basandi sabana pandek*, (have rounded tip, have solid/strong joint). This means that Minangkabau people believe in Allah SWT of which teachings are written in Al Qur'an and implied in the *Alama* (*Alama takambang jadi guru*). Conditions which supports such Minangkabau customs are commonly used definition of word (idiom), moral sanction, attitude, behaviour, rule, dignity, law, guidance, habit, *barih balabeh*, mind, reason, shame and so on.[6]

The sources of law in Minangkabau are:[8] a. Al Qur'an; b. Sunnah; c. Qiyas (pilot/analogue); d. Ijma' (agreement) by a scientist assigned to represent the community; and e. *Al 'Adat* people's customs that do not conflict with Al Qur'an, Sunnah, Qiyas and agreement made.

In Minangkabau customs, corporal punishment is uncommon, but only mind punishment is imposed. Minangkabau people live in families, thus it is a humiliation to someone when he/she is excluded from family relations. Humiliation is a punishment that Minangkabau people cannot stand, as reflected in the saying "*nan sakik kato, nan malu tampak*". The point is that Minangkabau people cannot stand humiliation *kato tasinggung labiah bak kanai*. [6] Minangkabau people are ashamed when their mind is perceptible. That is why each family puts *ameh* in their house to keep their family from getting ashamed.

#### 4. Conclusions

Minangkabau Indigenous People has quite complete legal institutions both in substance and structure, and in formal and material laws. In regard with the material substance, the indigenous court of *Kerapatan Adat Nagari* Institution of Minangkabau community in West Sumatera is implemented and formulated based on Islamic Law.

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