

# The Role of Ninik Mamak in The Settlement of Criminal Abuse Through the Process of Adat Justice (Study: Kerapatan Adat Nagari Kinali)

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**Abstract:** Based on the Regional Regulation of the Province of West Sumatra Number 7 of 2018 on Nagari, Nagari is a unit of Indigenous Law Society genealogically and historically, has boundaries in certain areas, has its own wealth, has the authority to elect its leaders by deliberation and regulate and manage the interests of local communities based on philosophy and customary code, Adat Basandi Syara' - Syara' Basandi Kitabullah.

**Key Words:** Role, Ninik Mamak, Crime of Persecution, Adat Court.

## INTRODUCTION:

The customary settlement process is better known as the customary court. What is meant by customary court is the procedure that applies according to customary law in examining, considering, deciding and settling a customary error case. Customary law does not recognize the Police, Attorney General's Office, Courts and Prisons, the duties of investigation, prosecution, and trial are carried out by the relevant adat prowtin who is assisted by young people.

Based on data obtained from Kerapatan Adat Nagari (KAN) Kinali, in 2019 there were (three) criminal cases handled by ninik mamak members of the Kerapatan Adat Nagari (KAN) Kinali, where one of the cases was a case of persecution, after further investigation this case occurred in the *tupak adat* ninik mamak area which was called the gala draw langik.

This case of persecution occurred in 2019 and ninik mamak drew langik in this case of persecution chose to resolve the case himself by means of mediation by means of customary courts and determining compensation for victims who felt aggrieved, but not all parties are happy with this method of settlement because ninik mamak seems to be forcing these two conflicting parties to accept the settlement and there will be no other settlement after this. The Kinali Sector Police, through Babinkamtibmas, confirmed this and provided further information that the Nagari Adat Population (KAN), which consists of ninik mamak salingka nagari, has a permanent decision against nephews and cannot be contested by any party.

## 1.1 CONCEPTUAL FRAMEWORK

- Law Enforcement

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and embodied rules and attitudes as a series of final-stage value descriptions, to create, maintain, and maintain social peace.[1]

- Criminal

According to Simons, "Criminal (straf) is an affliction which by the criminal law has been linked to a violation of a norm, which with a judge's decision has been passed on to someone who is guilty.[2]

- Perpetrator

Perpetrator is a person who commits the criminal act concerned, in the sense of a person who intentionally or unintentionally as indicated by law has caused an effect which is not desired by law, whether it is subjective elements or elements. -Objective element, regardless of whether the decision to commit the crime arises from himself or not because of a movement by a third party.[3]

- Ninik Mamak

Is a man from an older people and so "looks baiyo and bamolah" (deliberation) even though he is still young.

- Customary Justice

In Regulation West Sumatra Provincial Number 7 of 2018 concerning Nagari, Adat Justice is a court created based on the Customary Law Community Unit genealogically and historically, has the authority to adjudicate cases / disputes that occur between the Minang Kabau community, Customary Court as well authorized to manage the interests of the local community based on the philosophy and customary code,

Adat Basandi Syara '- Syara' Basandi Kitabullah and / or based on local origins and customs within the territory of West Sumatra Province.

## 1.2 THEORITICAL FRAMEWORK

- Theory Role  
According to Phillipus M. Hadjon Authority or authority is a term in our law that should be used in the concept of public law.[4]
- Law Enforcement Theory  
Law functions as a protection for human interests.

## 2. LITERATURE REVIEW:

The Indonesian state consists of various varieties, styles and various ethnic groups, so that the Indonesian nation has a variety of languages, cultures, races and customs. With a variety of languages, cultures, and customs in society, there are also various kinds of norms and norms that live and grow and develop in each society.

Ninik mamak is a man from an older society and becomes baiyo and bamolah appearances" (deliberation) even though he is young.

The term criminal offense is a translation of the word *Dutch strafbaar feit*. *Feit* means part of a reality, while *strafbaar* means punishable, so literally *strafbaar feit* is translated as "part of a fact that can be punished". [5]

According to R. Soesilo as quoted by the Legal Online site, stated that the notion of persecution according to jurisprudence, that persecution is deliberately causing bad feelings (suffering), pain or injury, and deliberately damaging people's health, including the crime of persecution. [6]

Customary courts are norms that exist in customary law that govern how to act to resolve a case and to make decisions according to customary law.

## 3. METHOD:

The method used in this research is sociological or empirical juridical, which is a study that uses literature or secondary data as the initial data and then continues with primary data or field data. [7]

## 4. DISCUSSION:

Basically, crime is an act that is seen as a deviant act. Settlement of cases through formal court channels is in accordance with the prevailing laws and regulations in Indonesia, it turns out that in the Minang Kabau community in West Sumatra many are settled through customary law channels. This is because the process of resolving criminal cases through the law is familial in nature and can be tied back to brotherly relations. In upholding customary law, there are still obstacles in addition to the lack of community understanding of customary law, as well as non-binding judicial decisions. However, the existence of customary law is still maintained by the Minang Kabau community because the settlement of criminal cases through customary law always puts forward the principle of peace, based on the principle of deliberation / consensus.

In Minang Kabau, each community group is led by a tribal chief called mamak or what we know is ninik mamak, in the Minangkabau customary saying that the function of ninik mamak is *kapai tanpaik batanyo kapulang tampek babarito* (when going to a place to ask when returning to give news) means ninik mamak is a place to ask questions and report all events so that ninik mamak can know the situation of the members of the tribe they lead. [8]

In practice, customary dispute resolution is carried out by customary stakeholders. In Nagari Minangkabau, West Sumatra Province, for example, settlement of customary disputes is carried out in stages, as the saying goes; *bajanjang up, batanggo down*. The settlement of these disputes starts at the level of the clan, tribe and finally the nagari.

## 5. ANALYSIS:

### • The Role of Ninik Mamak in Settling the Crime of Persecution through the Kinali Kenagarian Court

Based on the results of the research that the author got from Kerapatan Adat Nagari (KAN) Kinali, in 2019 there were (three) criminal cases handled by Ninik Mamak, a member of Kerapatan Adat Nagari (KAN) Kinali, where one of the cases was a case of persecution, after being traced. furthermore this case occurred in the customary area of tupak Ninik Mamak who was called thegala *Imbang Langik*.

Through the collaboration carried out by Bhabinkamtibmas together with KAN Kinali, minor cases can actually be resolved at the Nagari level, without having to be brought to trial. In the amicable settlement to the customary settlement in mediation, an agreement is obtained, so the case does not have to go to the trial process. Thus, the

process of settlement of cases can be carried out by way of restorative justice, the settlement of cases of this criminal act can involve the perpetrator, the victim, the family of the perpetrator or the victim, and other related parties to jointly seek a fair settlement.

- **Forms of Customary Sanctions Imposed When a Party Is Proved Guilty of a Criminal Act at the Kinali State Customary Court**

Basically, customers customary are an act that violates the sense of justice and appropriateness that lives in society, resulting in disruption of the balance and peace of the community.

As a result of these violations, recovery efforts / customary efforts or also called customary reactions are needed in the form of imposing certain obligations / imposing certain sanctions on the person who commits the act. Sanctions in customary law are not always in the form of material sanctions, but can also take the form of immaterial sanctions. Customary reactions or customary corrections to customary offenses.

## 6. CONCLUSION:

- Ninik plays a very big role in the life of the customary law community in Minangkabau. A Ninik Mamak can be said to be the father of the community, because a leader is indeed representing his people in solving customary law problems that occur within the community itself.
- In the Minangkabau justice system, there is no punishment that is of a physical nature, such as imprisonment or even death. In the expressions found, wrongdoing or crime is not due to physical or bodily errors but is an error due to fiil or temperament. So, what deserves to be punished is that fiil or temperament.

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