

Settlement of *Pusako-Tinggi* Property Disputes in Nagari Sungai Tarab

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Abstract

This article examines the decision of the Batusangkar District Court Number 09/Pdt.G/2013 which authorizes the Nagari Adat Density (KAN) of Sungai Tarab to resolve disputes over the division of pusako-tinggi assets, while KAN does not yet have a clear norm regarding it. This study aims to see how KAN accepts the delegation of authority, then resolves disputes in its customary territory with all its implications. This study was conducted qualitatively and presented descriptively. Data obtained through interviews and documentation. This paper explains that the division of the pusako-tinggi assets by KAN Sungai Tarab is carried out with a consensus mechanism by niniak mamak and alim ulama, so that their decisions do not conflict with Islamic law. The status of the pusako-tinggi property is decided to remain in the ownership of the clan, except for parts that have been certified and have changed status to become the private property of clan members. This decision has a positive impact in the form of more clarity on the management and ownership of the people of property. While the negative impact is triggering members of other clans to demand a similar pattern of inheritance distribution, as well as efforts to disgrace each other to fight over inheritance.

Keywords: Pusako-Tinggi; Pusako-Randah; Nagari Customary Density; Inheritance

Abstrak

Artikel ini mengkaji tentang putusan Pengadilan Negeri Batusangkar No. 09/Pdt.G/2013 yang memberikan wewenang kepada Kerapatan Adat Nagari (KAN) Sungai Tarab untuk menyelesaikan sengketa pembagian harta pusako-tinggi, sementara KAN belum memiliki norma yang jelas tentang itu. Studi ini hendak melihat bagaimana KAN menerima pelimpahan kewenangan itu, lalu menyelesaikan sengketa di wilayah adatnya dengan segala implikasinya. Studi ini dilakukan secara kualitatif dan disajikan secara deskriptif. Data diperoleh melalui wawancara serta dokumentasi. Tulisan ini menjelaskan bahwa pembagian harta pusaka tinggi oleh KAN Sungai Tarab dilakukan dengan mekanisme musyawarah mufakat oleh niniak mamak bersama alim ulama, sehingga keputusan mereka tidak bertentangan dengan Hukum Islam. Status harta pusako-tinggi tersebut diputuskan tetap pada kepemilikan kaum, kecuali bagian-bagian yang sudah disertifikasi dan beralih status menjadi milik pribadi anggota kaum. Putusan ini memberikan dampak positif berupa semakin jelasnya bagian pengelolaan dan kepemilikan kaum terhadap harta. Sedangkan dampak negatifnya adalah memicu

anggota kaum lain untuk menuntut pola pembagian harta pusaka yang serupa, serta upaya saling membuka aib untuk memperebutkan harta pusaka.

Keywords: Pusako-Tinggi; Pusako-Randah; Kerapatan Adat Nagari; Harta Waris



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Introduction

In Nagari Sungai Tarab there is a case regarding a *pusako-tinggi* dispute that occurred in the Piliang tribe led by Datuak Rajo Pangulu as the head of the tribe. The leadership of Datuak Rajo Pangulu overshadowed two groups, namely the *rumah gadang* itself and the Datuak Mangkuto. This is because the Datuak Mangkuto group "*manyanda ka rumah gadang*" (rides with the Datuak Rajo Pangulu). This incident was caused because there were no more male descendants to replace the Penghulu in the Datuak Mangkuto people, so that the generation that was the successor to the head of the clan was cut off. The Datuak Mangkuto have been living with Datuak Rajo Pangulu since 1998 through consensus from the deliberations within the Piliang Tribe, which resulted in an agreement that the Datuak Mangkuto people were taking over the leadership of the Datuak Rajo Pangulu. The leadership of Datuak Rajo Pangulu is certainly not in the matter of the heritage which is separate from the Mangkuto's who rely on it. This resulted in the disorganized arrangement of the *pusako-tinggi* assets of the Mangkuto, as well as the management of existing heritage assets being neglected.

After going on until 2013, there was a case of *pusako-tinggi* in the form of communal land against the abandoned property. The case of *pusako-tinggi* in the form of 2 hectares of garden land which initially occurred because there were members of the tribe who returned from overseas. This family is led by Mochtar, who holds the title Sutan Mangkuto as the Niniak Mamak of the Mangkuto People. Mochtar and members of the clan intend to certify the land in their clan. Therefore, Mochtar's party conveyed to Datuak Rajo Pangulu as the head of the clan so that the ownership was clear. However, Siti Adriani and other members of the Datuak Rajo Pangulu community denied this regarding the certification process on the grounds that the land belonged to their people. The dispute between the two parties did not meet an agreement at the niniak mamak level. then reconciled by Datuak Rajo Pangulu as the head of the clan. From the results of the deliberation consensus, it was determined that the property belonged to the Datuak Rajo Pangulu. However, the Mochtar people did not accept the results of the deliberations and submitted this issue to the Nagari Adat Density (KAN) Sungai Tarab. After being processed and mediated by the Nagari Customary Density Institute, the result was that the land still belonged to the Datuak Rajo Pangulu taking into account witness statements. However, Mochtar's side still

The case was heard by the Batusangkar District Court with case number 09/Pdt.G/2013 on behalf of Mochtar Degree Sutan Mangkuto et al. as the plaintiff and Siti Zilda Andriani et al. as a defendant. The result of the decision of the Batusangkar District Court stipulates that the land in question belongs to the people, therefore the court cannot decide on its ownership and it is returned to the customary rules which are authorized by the Nagari Adat Density in its settlement. The next problem is that the Nagari Adat Density Institution (KAN) in this case does not have the authority when the matter has been litigated in the District Court.

Many researchers have conducted studies on the Settlement of the Division of *pusako-tinggi* Assets. The study can be grouped into three, namely First, the settlement of the division of *pusako-tinggi* through litigation, which includes the settlement process carried out in the judiciary (Ardiansyah, 2021). Second, settlement of *pusako-tinggi* distribution through non-litigation channels. This study is more concerned with the settlement carried out by means of mediation and settlement by the Nagari Adat Density institution (Afadarma, 2010; Fauziardi, 2018; Murniwati et al., 2021; Rahmat, 2019; Setiawan, 2010; Setiawan Cahya et al., n.d.). Third, the settlement of the division of inheritance is high in the review of Islamic law, which is alluding to the perspective of Islamic law on its settlement efforts (Fitriyana, 2021; Indriana, 2019; Jendri, 2021). So far, there has been no study that specifically discusses the resolution of *pusako-tinggi* disputes that take the non-litigation route and proceed to litigation efforts, which are then returned back by the district court to the KAN Institution. Then, there is also no study that specifically discusses the impact of this *pusako-tinggi* division dispute in the form of positive and negative impacts.

Based on this problem, the question arises of how the steps taken in dividing the *pusako-tinggi* assets by the Nagari Sungai Tarab Traditional Density Institute, as well as the review of customary law and Islamic law related to the distribution of the *pusako-tinggi*, and the impact of the distribution of the *pusako-tinggi*.

Method

This research is a Field Research (Field Research). Data collection techniques through interviews and documentation. Interviews were conducted with the Head of KAN, the Traditional Leader, Niniak Mamak, 'Alim Ulama, and the parties to the dispute. Furthermore, the document used as a data source is a copy of the decision of the Batusangkar District Court. The data is processed and analyzed by parsing the data, information and related literature, and then collected, then the data is classified based on the categories in the study. The data is parsed with the right narrative, and data analysis is carried out by drawing the right conclusions about the problems studied so that they can answer the problems. (Miles & Huberman, 1994)

Results and Discussion

***Pusako-Tinggi* Inheritance in Minangkabau**

Minangkabau is one area that is still thick with customary law (Larasati & Pandamdari, 2019). In the division of inheritance, there are two parts of the property, namely the high inheritance and the *pusako-randah* (Eric, 2019). *Pusako-randah* is a legacy of parents or goods brought by a husband or wife into marriage, which originates from the inheritance of parents and continues to control and regulate its use for the benefit of the heirs together, because the inheritance is not divided among the all heirs (Anwar, 1997: 24; Noviardi, 2020). While the High Pusaka property is the property inherited by the ancestors of a people, which is decreased collectively or belongs together in a people. The decline from high inheritance from *mamak* to his nephew is used as a substitute for the relay in the leadership of the *penghulu* clan. Indigenous treasures in the Minangkabau community are basically both *pusako-tinggi* and *pusako-randah* assets that are jointly owned and managed collectively for the survival of life and civilization within the adat community (Shariah Faculty Committee of Al Azhar University Egypt, 2004; 36). The characteristics of *pusako-tinggi* treasures in the indigenous peoples of Minangkabau are: 1) The wealth in customary studies is obtained from a lawful way, but the origin of the property cannot be known with certainty where the initial derivative came from; 2) High Heritage Treasures can only be used for the benefit of the people, not private ownership; 3) In principle, this treasure cannot change hands and out of the tribal society of origin (Rajab, 1969: 21).

In the field of inheritance law, until now there is no law that provides national regulation, and finally in the inheritance law system in Indonesia, 3 kinds of inheritance systems can be used, namely the inheritance system based on the Civil Code, the inheritance system based on customary law, and the inheritance system based on the Civil Code. Islamic law (Sa'adah, 2008: 137). West Sumatra is one of the regions of Indonesia that uses customary law, has stipulated Regional Regulation number 16 of 2008 concerning *pusako-tinggi* Assets in the form of *ulayat* land and its utilization. This Regional Regulation is a regional autonomy privilege which aims to make the government recognize the existence of customary law which is a legal community unit in the West Sumatra region. Customary inheritance law in West Sumatra is divided into two types, namely *pusako-tinggi* and *pusako-randah*. *Pusako-tinggi* assets are passed down from *mamak* to nephews, in which the customary law system applies, while for *pusako-randah* assets (which are joint livelihood assets) the distribution of assets is based on Faraidh law (Fiqh Inheritance) (Hamka, 1984: 96)

The inheritance of *pusako-tinggi* in West Sumatra is divided into two parts, namely in the form of *sako* and *pusako*. *Sako* is an intangible inheritance in the form of titles, rules of etiquette, and customary law. While *pusako* is an inheritance in the form of material or property. *Pusako* consists of two, namely *pusako-tinggi* and *pusako-randah*. High heirlooms in the form of rice fields, land,

gardens, fields, graveyard pandams, ponds, gadang houses, as well as symbols of greatness in the form of kris and also traditional clothes. So, Sako and Pusako are all inherited treasures that are passed down from generation to generation (Anwar, 1997; Murniwati et al., 2021). High inheritance inheritance in West Sumatra uses inheritance according to maternal descent. Descendants from the female side are a form of respect and security in adat in West Sumatra. This does not mean to degrade the self-esteem of men, because men in West Sumatra have roles and responsibilities in maintaining and maintaining these assets, such as inheritance rights inherited by a mamak (uncle/brother of the mother) to his sister's daughter (nephew) (Alfi Husni, 2016).

High heirloom assets in West Sumatra are maintained and protected, everyone who holds power over this property is not allowed to share or trade it, because this property is owned jointly in a clan (Ibrahim, 2020). However, customary law in West Sumatra is also not too passive, but there is relief for a people to pawn their high inheritance with a very urgent need for the benefit of their people. High heirloom assets can be pawned due to 4 things (Febriasi, 2015; Hendri et al., 2021) namely "*maik tabujua di ateh rumah*" (abandoned corpse on top of the house), meaning that the holding of the corpse of a family member/tribe who is considered honorable must be as great as the arrangement of marriages and the appointment of a penghulu. "*mambangkik batang tarandam*" (establishing the title of penghulu), namely appointing a new penghulu to replace the penghulu who can no longer carry out his role, due to resignation or death. "*gaduh gadang indak balaki*" (adult women who are not married), there is no cost to prepare and carry out their marriage. "*rumah gadang katirisan*" (Rumah Gadang leaks/damaged), which is for the cost of repairing a Rumah Gadang that has been damaged (Navis, 1984: 166-168). The pawn can be done because there is no way out that is obtained by a people. Therefore, a deliberation was held in advance led by the head of the clan to take the policy (Anwar, 1997: 70)

According to customary law in Minangkabau, *pusako-tinggi* assets in the form of land are grouped into four groups (Wulandari, 2020) that is: a) *pusako-tinggi* (ulayat land) belonging to the Nagari, controlled/public HGU, Right of Use, Right of Traditional Management owned by the youth of the village and Management carried out by Ninik Mamak KAN (Kerapatan Adat Nagari). Utilization arrangements by the Nagari Government. So, in this group the management power is fully held by the local nagari (Fauziardi, 2018); b) *pusako-tinggi* Assets (ulayat land) belonging to the tribe, collective ownership/civil ownership rights/groups of a tribe, customary rules and utilization by tribal chiefs; c) *pusako-tinggi* belonging to the clan, namely ownership or a group of collective property rights for members of a clan. Arrangement and utilization by a mamak jurai/mamak head of heirs. So, ownership rights are held and controlled by groups of people; d) *pusako-tinggi* (ulayat land) belonging to the

King/Rajo, group ownership and use rights and management rights by the eldest male based on the lineage of the eldest male from the maternal line.

Settlement of inheritance disputes by customary density

The issue of the division of *pusako-tinggi* occurred in the Piliang Tribe (one of the tribes in Nagari Sungai Tarab) led by the Penghulu Datuak Rajo Pangulu. This *pusako-tinggi* dispute occurred among members of the same clan, namely the party of Mochtar, the title Sutan Mangkuto, and Siti Zilda Andriani. Since 1998 these members of the clan from Datuak Rajo Pangulu have relied on the leadership of Datuak Rajo Pangulu. This is because the leader of the Datuak Mangkuto no longer has a successor. Therefore, after deliberation was carried out and resulted in a consensus from the Piliang Tribe that in terms of Adat, the inheritance from Datuak Mangkuto was assigned to Datuak Rajo Pangulu (Interview with Dt. Rajo Pangulu).

After 12 years under the leadership of Datuak Rajo Pangulu, in 2013 the family from Mochtar, who had previously migrated, returned to their hometown. The Mochtar family is a respected person from a material point of view. After a while, the Mochtar family took the initiative to certify the community's land in the form of 2 hectares of garden land, so that the position of the land was clear. Mochtar's party then conveyed to Datuak Rajo Pangulu that the Mochtar people assumed the land was part of the heritage of his people. After the meeting, it was discovered by members of the Datuak Rajo Pangulu that the land was not a relic of the Mangkuto, but belonged to the people of Datuak Rajo Pangulu. In this case, Datuak Rajo Pangulu as the head of the tribe who was entrusted with leading this group explained that the ownership of the land was not clear, so it was managed alternately. However, Mochtar's side did not accept this decision, because the land was a will from his people (Interview with the Head of the Nagari Adat Density of Sungai Tarab).

At that time the Nagari Customary Density was chaired by Datuak Pangulu Pucuak. After carrying out administrative matters, the Adat Density summoned both parties for their explanations. From the results received by the Sungai Tarab Nagari Adat Density (KAN) due to the unclear existence of this land status in writing, and it can only be proven through the statements of both parties and witnesses, the Tarab River Tarab Indigenous Density Institution took the peaceful path that the land is managed by the two parties to the dispute alternately. However, Mochtar's side persisted in claiming the land belonged to members of his clan. Therefore, Mochtar and members of his clan took this case to the Batusangkar District Court because they could not find a point of agreement. After taking care of the administration at the Court, the case is being tried. The Court's decision considering that the land is not private ownership, but is communal land, the Court decides that the settlement is returned to the Sungai Tarab Nagari Adat Density Institution in accordance with the applicable customary rules (Interview with the head of KAN Sungai Tarab).

As a result of the deliberation that was held, it was decided that 1 hectare of the property was handed over to the Mangkuto people for its management, and 1 hectare to the Datuak Rajo Pangulu. This decision was taken after deliberation with both parties to the litigation and it was agreed that the assets were divided fairly and proportionally. This is done because the disputed property is 2 hectares wide, and is divided equally and fairly, so that each party gets 1 hectare. In rotation, the management of each clan was handed over to the niniak mamak who were in each family head of the Mangkuto and Niniak Mamak of the Datuak Rajo Pangulu. Then these niniak mamak arrange the turn of each family head they lead by managing for 1 year for each family head. Within the scope of the Mochtar/Sutan Mangkuto family there are 2 heads of families, while for the Datuak Rajo Pangulu they occupy 3 heads of families which must be rotated for 1 year continuously. From the results of the consensus carried out by the Nagari Adat Density, it certainly has a good purpose for the disputing people, therefore both parties to the consensus have the same authority and benefits (Interview with the Datuak Rajo Pangulu/Sofyan/Sutan Malano).

In terms of customary inheritance law in Minangkabau, judging from the decisions taken by the Batusangkar Nageri Court, it is in accordance with customary rules, because in the decision it is returned to the Nagari Sungai Tarab Customary Density Institution. Regarding the land disputed in the decision, it belongs to the people and the distribution is adjusted to the applicable customary rules. The division carried out by the Nagari Sungai Tarab Indigenous Density Institution by taking steps of deliberation between the tribes because there were no rules for the distribution of *pusako-tinggi* in the form of land after it was decided by the Batusangkar District Court that the distribution by the Nagari Sungai Tarab Customary Density was in accordance with applicable customs, because the Density Institution Adat is agreed upon to remain in the possession of the clan and its management is rotated among the members of the clan.

According to the study of Islamic law, *pusako-tinggi* is included as part of the waqf (Rahman, 2014; Fitriyana, 2021). As the author understands, *pusako-tinggi* goes to family waqf / people to manage and get results together within their community. Therefore, this *pusako-tinggi* property cannot be personally owned, and in its management it is collective and cannot be sold, granted or inherited to individuals for the property. Islamic inheritance law is limited to the transition from those who inherit to those who are still alive because of death, the transition occurs by itself and does not depend on the wishes of the possessor and the recipient. The results of the deliberations from the Nagari Sungai Tarab Indigenous Density Institute are in accordance with the teachings of Islam and also customary rules, because the *pusako-tinggi* property is still managed and owned by the people in the custom.

Impact After Dispute Resolution

Regarding the division of *pusako-tinggi* in the form of communal land, of course it has positive and negative impacts. Positive impacts are: first, the status of the land becomes clear. In its distribution, the Nagari Sungai Tarab Indigenous Density Institution divides the land between the two parties to the dispute over its management. In this case, clearly the part that will be managed by the clan members will make the status of the management clear. Second, land will be well managed. The rotation of land management will create an orderly benefit between clan members, so that the maximum results from the land can support the survival of clan members. Third, people's land disputes will be minimized. By having the management divided by the Nagari Sungai Tarab Density, disputes over the ownership share of the clan can be anticipated properly and clearly, so that the clan members focus on managing the share that has been given. Fourth, maintaining the existence of *pusako-tinggi*. Deliberations from the Nagari Sungai Tarab Customary Density Institution resulted in an agreement that the property belonged to members of the clan, and its management was distributed among each clan, but not private ownership. Of course, this agreement becomes a reinforcement within the people regarding the preservation of the inheritance of the people.

It's negative impacts are: first, influence on other indigenous people. The division of property carried out by the Datuak Rajo Pangulu will influence other indigenous people to dispute their *pusako-tinggi*. Second, the opening of the 'disgrace of the people. *Pusako-tinggi* is a privilege of the Minangkabau people, so its existence must be maintained and managed properly, if the inheritance is disputed it will make the view of the people will be bad from other people. Third, broken friendship. The existence of *pusako-tinggi* is also related to family ties which will be stronger if we take care of each other's *pusako-tinggi*, therefore problems between clans in terms of division of *pusako-tinggi* will result in breaking the ties of kinship between clan members.

Conclusion

The division of *pusako-tinggi* assets by the Nagari Adat Density Institute (KAN) of Sungai Tarab is carried out by means of consensus deliberation with Niniak Mamak and the Alim Ulama who are in the community. The division does not conflict with customary law or Islamic law, because the status of the *pusako-tinggi* property remains the property of the clan, unless it has been certified and the status has changed to become the private property of a clan member. The occurrence of a *pusako-tinggi* dispute which was resolved by KAN Sungai Tarab after being given a mandate to settle it by the Batusangkar District Court had both positive and negative impacts. The positive impacts that occur include clearing the status of the land, the management of the land will be well organized, land disputes between the people will be minimized, and the maintenance of *pusako-tinggi* assets. Meanwhile, this also has a negative impact,

namely: can have an influence on other tribes/customs related to the *pusako-tinggi* property, the disclosure of the disgrace of the people, and the breakdown of *slaturrahmi*.

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