

Legal Protection of Indigenous Rights and Traditional Values of Bajapuik Marriage Traditions in West Sumatra

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ABSTRACT

Legal protection of the Bajapuik marriage tradition needs to be done as an effort to preserve and sustain Indonesian culture and in order to realize the cultural resilience of the Pariaman community. The protection referred to here is the substance and form of legal protection provided by the Regional Government in accordance with the mandate of the Regional Government Law and the Law on the Promotion of Culture. Globalization can have a negative impact on the Bajapuik marriage tradition. This happens because of the development of human thought, increasingly rapid technology, and economic principles that are used by the Pariaman community in their lives in West Sumatra. That is why it is necessary to build the concept of protection to maintain the existence of the Bajapuik marriage tradition so that it does not disappear as the local wisdom of the Pariaman community. The law studied is *ius constitendum*. The data used are primary and secondary data, data collection techniques such as in-depth interviews and participatory observation. Coordination and interaction between *ninik mamak*, pious clerics and *cendik* (*tungku tigo sajarangan*, *tali tigo sapilin*) must be harmonious and one voice in efforts to protect cultural traditions especially marriages in the Pariaman community.

Keywords: Legal Protection, Bajapuik Marriage, Tradition, Local Wisdom

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INTRODUCTION

One of the laws that arise in these communities is customary law. The dualism between European law and customary law in Indonesia has been a discourse among Indonesian legal experts since the independence period. One of the many issues that has been examined and discussed in this connection is the place of customary law today in Indonesia's legal structure.[1-5] An interesting thing is the opinion of customary law as a type of law that is no longer bound to old customs and customs but rather a type of law in Indonesia that is constantly adjusting to the development of modern society. Nevertheless, this association of customary law with the original law of the Indonesian people and its authenticity cannot be released in the composition of the community which is still in the pre-modern stage. [6]

The diversity of indigenous and tribal peoples also shows the diversity of customs in Indonesia. The diversity of these customs is a potential possessed by the Indonesian people as the ancestral heritage of the nation which provides rules of human behavior and actions. [7] One of these rules is the customary rules regarding marriage which vary in how they are carried out in accordance with the customs and kinship systems of a particular region.

Customary law as an unwritten law grows and develops in a community based on the mind of the Indonesian people which is not the same as the mind of the western legal system. In order to understand the customary legal system, people must understand the basic principles of the Indonesian people's minds. [8]

One of the marital traditions in Indonesia is also carried out by the Minangkabau Indigenous Peoples who adhere to a communal system of life with matrilineal systems.

This society places marriages as a matter and matters of relatives ranging from finding a partner, making agreements, engagement and marriage, even to all matters as a result of the marriage. This shows that marriage is not a problem of a pair of people who want to form a family or just form a household. This is also influenced by the Minangkabau philosophy which upholds togetherness so that the household becomes a common affair so that the problem of marital relations is inseparable from shared problems. [9]

The shift of the Bajapuik marriage tradition is seen to shift the social structure from extended family to extended nuclear family, so that the role of the *mamak* (head of the people) is shifted to the father of the prospective bride. If marriages were handled by *mamak* in the past, now the role of parents is increasing. In the past, marriage was a shared responsibility of the extended family, so that if a girl did not get married soon, it would become a big family disgrace. If the problem is because women cannot afford to pay money *japuik* (pickup that will be given to the groom's family), then it must be borne together, if necessary mortgaged *ulayat* land (joint family/clan land). In the past, the wedding procession was made very long, ranging from (*tando*, *baralek*) to (*manjalang mintuo*) and costly, now the wedding procession and party was made simpler. However, the shift has threatened the loss of values embodied in the Bajapuik marriage. This shift in anthropology is called cultural change, one of which is through acculturation. [10]

Protection of urgent Bajapuik marriage traditions is carried out to maintain the dynamic preservation of these traditions in order to establish cultural resilience.

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Cultural resilience is a process of manifesting collective awareness that is composed in society to affirm, absorb and change according to various other cultural influences through the process of learning culture, including enculturation, socialization, and internalization which are based on the same historical experience. [11] To realize the cultural resilience of the Bajapuik marriage tradition in the Pariaman community so that it is not eroded by the negative impact of globalization, it is important to conduct a research on the protection of the Bajapuik marriage tradition. This paper aims to descriptively analyze the Pariaman community in its efforts to protect the values of the Bajapuik Marriage Tradition and the concept of protection of the Bajapuik Marriage Tradition by the Regional Government.

RESEARCH METHODS

In this research method the type of data used is primary data and secondary data. Primary data obtained through field research. The secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques used in this study was in-depth interviews and participant observation. Observation of participation is the process of involvement in certain activities with the aim of observing the community and the situation. The location of this research is in Pariaman City and Padang Pariaman Regency in West Sumatra Province. In these two research areas, four main villages were selected as the benchmark for the tradition of the Bajapuik marriage tradition using adat principles *salingka nagari*. The research locations in Pariaman City are Desa IV Angkek Padusunan and Desa Kurai Taji. In Padang Pariaman District, there are two villages that were selected as research locations, namely Nagari Gunung Padang Alai and Nagari Kudu Gantiang.

EFFORTS TO PROTECT THE TRADITION VALUES OF BAJAPUIK MARRIAGE

Currently, globalization encourages the strategies that are effective in strengthening the resilience of local culture. [12] The community in this case is led by traditional leaders, religious scholars, ninik mamak, bundo kundang and the younger generation should preserve and even develop Minangkabau customs and natural culture including bajapuik tradition based on the philosophy of *Adat Basandi Syara' / ABS, and Syara' Basandi Kitabullah/SBK*). This philosophical motto is an expression and underpins Minangkabau culture which is considered as a unique and respected community or tribe, both at national and regional levels. But, that philosophy is increasingly distorted and degraded. This is due to the influence of globalization, economic pressures and the social conditions of the Minangkabau people themselves. The most prominent symptom is the depletion of understanding, appreciation and care of the younger generation, including intervention and economic pressure associated with the increasing prominence of consumerism in Indonesian society including Minangkabau.

The existence of the conditions above shows that the regional regulations that have been determined by the City Government or the Pariaman Regency together with the legislature, such as the regulation of community life procedures and the *Salingka Nagari Customary order*, have not been implemented optimally. This is a shared responsibility between the Government, religious leaders and traditional institutions and the young generation

(*Tali Tigo Sapilin, Tungku Tigo Sajarangan*), that means *Tungku Tigo Sajarangan* is a symbol of the three elements of leadership in Minangkabau namely Ninik Mamak, Alim Ulama and Cadiak Pandai. Meanwhile, *Tali Tigo Sapilin* refers to the three foundations on which the three elements of leadership stand. These three foundations are the customary provisions that are held by ninik mamak, religious law or sharia held by the religious scholars and the law that is held or established by the cadiak. In other words, *Tali Tigo Sapilin* will be strong and not easily broken because the three strings of the rope are twisted into one, namely the customary law, religious law and positive law.

In the protection of the Bajapuik marriage tradition the role of *tungku tigo sajarangan, tali tigo sapilin* is seen at the beginning of the process of marriage traditions in Pariaman. When the woman wants to find a mate, her child asks and asks for consideration of the namaak mamak alim ulama and cadiak, followed by the engagement process, where the *tungku tigo sajarangan, tali tigo sapilin* functioned respectively. Niniak mamak gives customary judgment, religious scholars religiously, cadiak legally or legally. Until the next stage the *tungku tigo sajarangan, tali tigo sapilin* still runs according to their respective roles.

Efforts to protect from mamak niniak, namely mamak niniak are always *takalok manjagoan, talupo ma ingek an* (if you fall asleep are built, if forgotten, reminded), meaning that the tradition of Bajapuik marriage still exists then in every pre-wedding process, namik mamak will convey *adat di isi limbago dituangkan*. Then the role of the ulema while maintaining the tradition of the Bajapuik marriage tradition is that the ulama position themselves as advisors or *suluah bendang dalam nagari* which means the ulama will maintain the values of friendship. When determining the pickup, the village head's function is as a witness that the two bride and groom candidates have been bound by agreements and other customary conditions including pickup. The initial effort to protect the continuity of the Bajapuik marriage tradition came from the ninik mamak in a people. Ninik mamak plays an important role in implementing and applying the tradition of traditional marriage to his nephew. Ninik mamak must animate the Bajapuik marriage tradition as the "clothes" attached to his people. If they do not apply the tradition of Bajapuik marriage to their nephews, the mamak ninik will feel ashamed and likened to not dressing. Because the role and function of mamak ninik is still very calculated in his people, this Bajapuik culture will naturally be maintained in the midst of the current globalization that enters the local culture.

Ninik Mamak is very instrumental in the protection of traditional marital traditions in the Pariaman community, which is known as the Bajapuik marriage tradition. The Bajapuik marriage tradition is not only a matter of pickup but also the Bajapuik marriage tradition also includes the traditions of marriages with traditional values. [13]

ROLE OF LOCAL GOVERNMENT IN PROTECTING BAJAPUIK MARRIAGE

Law No. 32 of 2004 concerning Regional Government which has been replaced by Law No.23 of 2014 concerning Regional Government which regulates the government system and the distribution of authority in accordance with the level of authority. This law also provides regulations regarding the authority of regional governments to regulate and determine the existence of

indigenous and tribal peoples through regional regulations. This Law regulates the smallest community institutions, namely villages, namely the legal community unit that has territorial boundaries that are authorized to regulate and manage the interests of local communities based on local origins and customs that are recognized and respected in the system of government. [14] The Law regulates that the authority delegated to the regional government is to manage the local indigenous people so that it is time for the regional government to form policies related to the local cultural inventory and documentation activities as regional assets. [15]

Efforts to protect the tradition of Bajapuik marriage for all parties must be involved by both the community (NGOs/non-governmental organizations, community groups, cultural observers, academics, businesspeople and community leaders) as well as regional governments. Attention or protection efforts by the Regional Government in protecting local culture are with a legal product. Legal products in protecting the tradition of Bajapuik marriage by the regional government of the City and Regency of Pariaman can be in the form of regional regulations governing or accommodating the rules of a Pariaman regional cultural tradition for local wisdom as the wealth of the Pariaman region can be preserved. To protect the culture of the Minangkabau community, especially the tradition of Bajapuik marriage, regional regulations such as Regional Regulations are needed. Based on the results of researchers' interviews with several informants about the concrete form of the role of local government in the protection of Pariaman culture, one of which is the tradition of Bajapuik marriage, the informant who is a Pariaman indigenous community proposes the creation of a regional regulation such as a Regional Regulation on the Protection of the Culture of the Pariaman Indigenous Peoples. This is related to wider recognition and protection of indigenous rights in Indonesian legal system nowadays. [16-17]

CONCLUSION

The concept of protection of the Bajapuik marriage tradition for the future can be seen from the protection of the substantial values of the Bajapuik marriage tradition and the strengthening in the concrete form of the protection of this tradition by the Pariaman indigenous people and the Regional Government. The values of the protection of the Bajapuik traditional marriage tradition in the Pariaman community must be based on philosophical, sociological, and juridical aspects. These three aspects strongly prioritize or prioritize the values contained in the Bajapuik marriage tradition such as the value of mutual cooperation, the value of respect for men as head of the family and the values of deliberation to produce an agreement between the two families of prospective brides and grooms. In maintaining the noble values contained in the Bajapuik marriage tradition, the Pariaman community is not rigid with the current development of globalization. The Pariaman community remains open to the progress of the times while maintaining the philosophical elements of customs. This is evident that the Pariaman community continues to implement the local wisdom of the Bajapuik marriage tradition with the greatness of its noble values by accepting changes in the forms of change in this tradition procession. Like the procession in the tradition of Bajapuik marriage which used to take a long time, now the Bajapuik marriage tradition is carried out by

trimming time without reducing the noble values contained in the tradition. To maintain the continuity of the Bajapuik marriage tradition in the Pariaman community, the results of this dissertation study found that the participation of the community and traditional institutions greatly influences the Bajapuik marriage tradition.

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