

# The “Social Advocacy” Model Of Wakf LandSettlements Of Minangkabau Province West Sumatra

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## The “Social Advocacy” Model Of Wakf Land Settlements Of Minangkabau Province West Sumatra

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### ABSTRACT

Control over land in the Minangkabau community is regulated in customary regulations that are maintained and adhered to and carried out by the community from generation to generation properly so that if a conflict or dispute arises due to land, they will resolve it with customary regulations that exist in the community. Article 12 of Regional Regulation Number 6 of 2008 concerning Communal Land and Its Utilization, namely: "Ultimate land disputes in Nagari are resolved by the Nagari Adat Density (KAN) according to the provisions as long as the customs are in force, ascending and descending, and endeavored by way of peace through deliberation and consensus in form of peace decision. KAN has an important role in resolving customary land disputes. The settlement process in Minangkabau custom is a form of social advocacy model intended to provide an understanding that the form of problem-solving activities is carried out by involving and paying attention to values relating to the public interest. The findings in this study are that customary waqf land disputes do occur, especially over the customary lands of the people in the Nagari in the research location (Luhak Nan Tigo). As for the form of documented data on the occurrence of customary waqf land disputes, it is not found either at the lowest level in tribal society or at the level of the Traditional Density Institution in Nagari. In the Minangkabau community, the occurrence of customary land disputes, especially those on which there is waqf land, is considered something that will bring shame to the people of the people and is a taboo thing for their people. So that the occurrence of land disputes in the people of the people, efforts are made to resolve them first within the people and do not involve other parties outside the people.

**Keywords:** Social Advocacy, Ulayat Waqf Land, Minangkabau.

### INTRODUCTION

Basic Agrarian Law (UUPA) as a product of National Agrarian Law is based on customary law regarding land, is simple, and guarantees legal certainty for all Indonesian people without neglecting the elements of religion and customary law of the community as regulated in Article 49 of Law Number 5 of 1960 concerning Principal Agrarian, is the legal umbrella for the application of waqf regulations in national law (Habib, 2019). The existence of Article 3 of the UUPA makes the basis for the existence of customary lands related to living spaces known as ulayat rights. The existence of customary rights arrangements is not accompanied by a real form of legal relationship position between customary law communities and land that is jointly and not separated (Onny, 2016).

The polemic in the position of land controlled by customary law communities in the laws and regulations that have not received a clear spot is one of the causes of customary land disputes. One of the customary land issues that will be discussed is the waqf land dispute that occurred on ulayat lands that occurred in West Sumatra.

According to the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning guidelines for resolving the problem of customary rights of customary law communities, what is meant by customary rights is the authority which according to customary law is owned by certain customary law communities over certain areas which are the living environment of their citizens to take benefits from natural resources, including land within the

territory. for the survival and life arising from outward and inward relations that are hereditary and unbroken between the customary law community and the territory concerned.

Land tenure in the Minangkabau customary law community is regulated in Regional Regulation No. 6 of 2008 concerning Ulayat Land and its use as follows;

- a. Nagari Ulayat land is Ulayat land along with the natural resources that exist above and in it is the right of control by the ninik mamak of the Nagari Adat Density (AN) and is utilized as much as possible for the benefit of the nagari community, while the nagari government acts as the governing party for its utilization.
- b. Tribal Ulayat land is ownership rights to a plot of land along with natural resources that are above and in it is the collective property of all members of a certain tribe whose control and utilization are regulated by tribal leaders.
- c. The customary land of the people is ownership of a plot of land along with the natural resources above and in it is the property of all members of the clan consisting of the jurai/paruik whose control and utilization are regulated by the mamak jurai/mamak of the head of the heirs.
- d. Ulayat Rajo land is the ownership right to a piece of land along with the natural resources that are above and in it, the control and utilization of which is regulated by the eldest male from the maternal line who is currently still living in several nagari in the province of West Sumatra.

The Minangkabau customary law community (West Sumatra) is known for three basic types of land tenure, namely; control in groups or villages, communally and individually or privately. Control over land in the Minangkabau community is regulated in customary regulations that are maintained and adhered to and carried out by the community from generation to generation properly so that if a conflict or dispute arises due to land, they will resolve it with customary regulations that exist in the community called "

Customary Civil Procedure Law" (Ali, 2017). The focus of this paper examines forms of customary land dispute resolution, especially against the waqf of customary land of the people which should be used and protected for the benefit of the community in general.

## METHODS

This research is directed to empirical legal research which is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation (Mukti and Yulianto, 2010). This research is descriptive in nature, which aims to accurately describe the characteristics of a particular individual, condition, symptom or group, to determine whether there is a relationship between a symptom and other symptoms in society.

The research data in this study includes 2 types of data: (1) Primary Data is data obtained directly from the field based on respondents and sources. Data collection in the field is carried out by researchers using interviews. (2) Secondary Data The collection of data in this literature study was carried out by research by studying and collecting data related to the object of research.

The location chosen in the study was chosen purposively, namely based on considerations of suitability with the focus of the theme, namely to find a social advocacy model for resolving Minangkabau customary waqf land disputes in West Sumatra. Taking into account the current social conditions and Minangkabau customs, the sample locations were selected based on areas that still have strong cultural elements (local wisdom) taking into account the existence of ulayat waqf land in the community.

In Minangkabau society, there is a regional environment called Luhak Nan Tigo which functions as local wisdom values in the form of:

1. The traditional value that the Minangkabau collective of the Luhak Nan Tigo customary area must know the real (natural) and supernatural nature and cause-effect relationships;
2. The traditional value that the Minangkabau collective, the customs territory of Luhak Nan Tigo, in terms of educating and

instilling the values of life to the next generation, has been carried out since they were still in the womb by prioritizing an exemplary approach or example; and

3. The traditional value is that the Minangkabau collective of the Luhak Nan

Tigo customary area must make the family the basis of education (Hasanuddin, 2015).

Because of these considerations, the location of the study was determined in the core area, namely:

**Tables 1.** Research sites

| No | Luhak                 | Region (District/City)                                                           |
|----|-----------------------|----------------------------------------------------------------------------------|
| 1  | Luhak Agam            | Agam Regency and Bukit Tinggi City                                               |
| 2  | Luhak Tanah Datar     | Tanah Datar Regency, Sijunjung Regency, Padang Panjang City, and Sawa Lunto City |
| 3  | Luhak Lima Puluh City | Lima Puluh Regency and Payakumbuh City                                           |

### III. ANALYZE AND RESULT

#### 3.1. The Customary Waqf Land of The People in West Sumatra

According to Abd. Shomad (2016), Waqf institutions are Islamic legal terminology that is solely a treasure of Islamic law that is closely related to the interests of Islamic life or typical institutions of Islamic law, therefore there is almost no point of contact between waqf and customary law values as long as concerning matters of substance. So between waqf and waqf-like social institutions that develop in the customs of indigenous peoples in Indonesia are two different things. Pure waqf-like institutions are social activities in the form of relationships between humans as social beings, while waqf activities are religious activities that have social value.

Islam is the religion that came to Indonesia to Islamize the Indonesian people. The waqf is the reality of enculturation of Islam in the custom principles of Indonesian people, which is proved by seeing the utilization of the custom wealth together or in the public community in the mosque forms or the places of the observance of the religious duties (Onny, 2018).

Minangkabau is a traditional circle in West Sumatra Province. So that the socio-cultural development of the people in West Sumatra is directly affected by the customary system of Minangkabau culture, including the land tenure system controlled by customary law communities or better known as ulayat rights. The implementation of waqf especially on the customary land of the people is still controlled by

the indigenous people, more than 65% of the waqf transfer comes from the customary land of the people (Onny, 2016). The notion of sekaum (one clan) is related to shared ownership (heirloom) It could be that one group is a household (Yaswirman, 2013). The organization of the people, their existence, and continuity are determined by the main elements, namely: government, members, and inheritance (Amir, 1984).

Waqf that occurs on ulayat land in the community in West Sumatra has been going on for quite a long time. Although essentially, religious waqf with the surrender of inheritance is not the same as waqf. However, the handover of inheritance to his people is a social institution that in its designation is similar to family waqf. ulayat land waqf in West Sumatra is a form of beneficial waqf while preserving the ulayat land of the local community. The mechanism for implementing waqf on communal land is almost the same as registering waqf land with other land rights objects, but waqf on communal land must be based on the agreement of all members of the clan as evidenced by a statement letter signed by all members of the clan. However, until now there has been no normative uniformity in the form of ulayat land waqf registration in West Sumatra.

#### 3.1.1 Minangkabau Socio-Cultural Conditions

Minangkabau is a traditional circle in the province of West Sumatra and its surroundings. West Sumatra is synonymous with the term Minang realm, which is used to refer to Minangkabau land.

The province of West Sumatra can not only be seen in terms of the administrative area. The customs that are still very strong in the community have made the province of West Sumatra home to the Minangkabau ethnic group. This province has a population of 5,534,472 people with the majority being Muslim. West Sumatra consists of 12 regencies and 7 cities with the division of administrative areas after sub-districts in all districts called Nagari.

If it is related to the person, language, or art, the term used is "Minang". However, when it comes to the territory, the origin used is the term "Minangkabau" or "Ranah Minang". However, the word Minangkabau contains more socio-cultural meanings, while the word West Sumatra contains more administrative geographical meanings. Thus it can be understood that Minangkabau is located within the administrative geographical area of West Sumatra and also reaches out to the area of West Sumatra.

Noting De Jong's opinion in his book entitled *Minangkabau and Negeri Sembilan Socio-Political Structure*, the Minangkabau region is divided into two areas:

1. The original Minangkabau which the Minangkabau people darek consists of three Luhak namely: Luhak Agam, Luhak Tanah Datar, and Luhak Lima Puluh City;
2. Overseas area which is a colony-shaped expansion of each of the Luhak mentioned above, namely:
  - a. Rantau Luhak Agam covering West Coast from Pariaman to Air Bangis, Lubuk Attitude, and Pasaman;
  - b. Rantau Luhak Lima Puluh City covering Bangkinang, Kampar Kiri and Kampar Kanan valleys, and Rokan;
  - c. Rantau Luhak Tanah Datar includes Kubung, Tigabelas, West/South Coast from Padang to Indra Pura, Kerinci, and Muara Labuh (Amir, 1984).

Luhak Nan Tigo is the area of origin of the Minangkabau people and at the same time the center of Minangkabau culture. During the Dutch

administration, the luhak area was a government territorial area called afdeling headed by a resident; Minangkabau people still call him luhak the head of government by the community called Tuan Luhak (Navis, 1986). In addition, the personality of the people in each luhak is expressed by parables that are guided by the characteristics of nature. Luhak Agam is likened to: buminyo angek, aianyo karuah, ikannyo lia (the earth is hot, the water is cloudy, the fish are wild) and the red color of the flag is a symbol of the people who are hard-hearted, brave and like to fight; Luhak Tanah Datar is likened to: buminyo lapang, the aianyo tawa, ikannyo banyak (the earth is fertile, the water is fresh, the fish are many), and the yellow color of the flag is interpreted as a friendly, peace-loving and patient society; Luhak Lima Puluh Koto is likened to: minyo sajuak, aianyo janiah, ikannyo jinak (the earth is cool, the water is clear, the fish are tame) and the blue flag they have means that the people have a soft-hearted, calm and peaceful personality. In addition, each luhak is represented by an animal, such as the tiger for the luhak Agam, the cat for luhak Tanah Datar; and goats for the luhak Lima Puluh Koto.

Each region is connected to the luhak where it originated, namely the Rantau Luhak Agam, Rantau Luhak Tanah Darat, and Rantau Luhak Lima Puluh City. The collection of the three luhaks with all their seas forms a wide circle, named Minang kabau with its boundaries (Chairul, 1997).

### 3.1.2. The Role of Nagari Customary Density in Settlement of Customary Land Disputes

As stated in Article 12 of the Regional Regulation Number 6 of 2008 concerning Communal Land and Its Utilization, namely: "Ultimate land disputes in the nagari are resolved by the density of the Nagari Adat, according to the provisions as long as the applicable customs are berjangjang naik bertanggo turun and managed by way of peace through deliberation and consensus in the form of a peace decision. So KAN has an important role in resolving customary land disputes. Kerapatan Adat Nagari (abbreviated as KAN) is a Minangkabau customary institution at the nagari level whose duty

is to guard and preserve <sup>6</sup> Minangkabau customs and culture.

KAN is under the supervision of the Minangkabau Natural Density Institute (LKAAM) from the sub-district to the provincial levels. According to Article 1 point 15 of the West Sumatra Regional Regulation Number 6 of 2008 <sup>19</sup> concerning Communal Land and Its Utilization, the Nagari Customary Density <sup>25</sup> is the highest customary village representative body that has existed and has been inherited from generation to generation <sup>22</sup> as long as it is customary in the midst of the nagari community in West Sumatra. The Nagari Customary Density Institution is an association of ninik mamak or penghulu representing their tribe or people which is formed based on the local customary law of the nagari. Ninik mamak or penghulu who are gathered in this institution have the position and authority and have the same rights to determine the life of the development of customary law. All consensus results obtained through the Nagari Adat Density are conveyed to their tribal members.

One of the tasks of the Nagari Adat Density is to settle civil cases of customs and customs, including resolving ulayat land disputes. The existence of KAN which is regulated in the West Sumatra Regional Government Regulation implies the settlement of disputes outside the court with a non-litigation process. The position of the Nagari Adat Density is not as a party to decide cases but to straighten out customary issues that arise from the dispute. The customary court owned by the Nagari Customary Density is interpreted as a process, namely a way to resolve a customer dispute by a customary institution. KAN (Kerapatan Adat Nagari) is an institution within the nagari that manages and maintains and preserves customs and culture in Minangkabau. KAN consists of various elements in the nagari such as;

- a. The Penghulu or the progenitor of each tribe in the nagarian.
- b. Manti or Cadiak Pandai are intellectuals in the nagari.
- c. Malin or Alim Ulama who are in the nagari
- d. Dubalang or security guard in the nagari.

In a village, the decisions of KAN are used as guidelines by the Wali Nagari in carrying out their government and must be obeyed by the entire

civil society as long as they do not violate the applicable laws and regulations. In addition to taking care of customs and preserving them, KAN is also an institution of customary justice in a nagari. KAN as a traditional judicial institution in the nagari functions to resolve disputes over sako, pusako, customary violations and syarak violations. However, not all cases that arise in the community can be resolved directly in customary courts.

### 3.2. Settlement of Customary Waqf Land Disputes through Social Advocacy in West Sumatra

#### 3.2.1. Understanding Social Advocacy

The term advocacy is closely related to the legal profession. According to Dutch, advocaat or advocate means lawyer or defender. Therefore, it is not surprising that advocacy is often defined as 'activities to defend a case or case in court'. In English, to advocate does not only mean to defend but also to promote (to put forward), to create, and to change (make changes) (Edi, 2009). In English, the definition of an advocate is broader, not only defending <sup>20</sup> but also in the process of change.

Advocacy is a systematic and organized effort to influence and push for changes in policies <sup>10</sup> that are in favor of the community in stages. Therefore, advocacy is more of a social change effort through all democratic channels and tools, political processes, and legislation contained in the democratic system that applies in a country (Teuku, 2014). The role of advocates on the one hand rests on the tradition of social reform and the other hand rests on social services. This role is an active and directive role, where community workers carry out advocacy or defense functions that represent community groups that need assistance or services, but the institutions that are supposed to provide assistance or services do not care (negative or rejecting the demands of citizens). In carrying out the advocacy function, a community worker often has to persuade professional groups or certain elite groups to achieve the expected goals (Isbandi, 2008).

Understanding the word "social" is a term that comes from the Latin "socius" which means everything that is born, grows and develops in life

together. According to the Big Indonesian Dictionary (KBBI), the word social relates to society or social characteristics that pay attention to the public interest.

Social advocacy is intended to provide an understanding that the form of problem-solving activities is carried out by involving and paying attention to values relating to the public interest.

Solving legal problems (legal advocacy) can be carried out through litigation and non-litigation processes. The dispute resolution process through litigation is carried out by the disputing parties through the state judiciary. This means that the dispute will be examined by a court judge in a series of trials. By Sudikno Mertokusumo (1993) it is said that court decisions have three kinds of powers which are the privileges of litigation dispute resolution, namely court decisions have binding power, evidentiary power, and executorial power of power to be implemented.

Dispute resolution through litigation (court) is not the only dispute resolution method that can be taken by the disputing parties. In addition to litigation, there is dispute resolution out of court (non-litigation), namely dispute resolution through negotiation (deliberation), mediation, arbitration, and conciliation. In addition, there is also a form of dispute resolution that is very familiarly actualized in people's daily lives, namely the peaceful settlement of disputes by the village head. Dispute resolution in this way is acceptable to the disputing parties because the process is based on self-regulation and is still heavily colored by local customs. All things that have been agreed upon are the joint decisions of the disputing parties (R. Rosita, 1979).

### 3.1.2. Ulayat Waqf Land Dispute

Based on the results of the research at the research location in Luhak Nan Tigo, samples were taken in the Agam Regency, Lima Puluh City Regency, and Batusangkar City area to obtain data on the occurrence of customary waqf land disputes.

The causes of conflicts and disputes over land waqf are several factors, including the non-utilization of ulayat waqf land according to its designation, such as waqf for educational facilities that are no longer used properly by the nazhir, the wakif or his heirs question it, giving rise to waqf

land disputes. The ulayat land is waqf by the Mamak of the head of the heir who is not known by the members of his clan so that it becomes a waqf dispute over the ulayat land. Another factor that causes waqf disputes over the customary land of the people is the waqf land which has been going on for a long time from generation to generation.

In the field, the causes of waqf conflicts or disputes are still found because the regulations regarding waqf have not been accommodated in Law Number 41 of 2004 concerning Waqf and other regulations regarding the registration of ulayat land. According to Yulia Mirwati, land conflicts/disputes including customary land rights of the Minangkabau customary law community in West Sumatra are caused by the difference in paradigm between state law and customary law. The state law paradigm that regulates land and forests is individual, and formal and focuses on the economic side, clashing with the customary law paradigm which is communal, informal, not only economic but also socio-cultural. This difference has not been actually accommodated by state law, thus creating a legal gap between state law and customary law which of course encourages the marginalization of customary rights over forest land in state law (Yulia, 2016).

The findings in this study are that customary waqf land disputes do occur, especially over the customary lands of the people in the nagari in the research location (Luhak Nan Tigo). As for the form of documented data on the occurrence of customary waqf land disputes, it is not found either at the lowest level in tribal society or at the level of the Traditional Density Institution in Nagari. In the Minangkabau community, the occurrence of customary land disputes, especially those on which there is waqf land, is considered something that will bring shame to the people of the people and a taboo thing for their people. So that the occurrence of land disputes in the people of the people, efforts are made to resolve them first within the people and do not involve other parties outside the people.

### 3.2.3. Social Advocacy Model Settlement of customary waqf land disputes in West Sumatra

Waqf according to the constitution is defined as a legal act to build or donate some assets to be used permanently or for a certain period of time for purposes of worship (religious interests) or general welfare based on sharia law. As regulated in Article 22 of Law Number 41 of 2004 (Onny, 2022). In Law Number 41 of 2004 concerning Waqf, in principle, it is not much different from PP Number 28 of 1977 concerning Waqf of Property Rights in terms of resolving waqf disputes, only that the Act provides alternative dispute resolution through negotiation, deliberation, mediation, arbitration (called non-litigation settlement) and settlement through the Court institution (litigation settlement).

In customary land disputes, the settlement that must be taken is through customary institutions that exist in the Minangkabau community, starting from a lower level to a higher level, as confirmed in Article 12 of Regional Regulation Number 6 of 2008 concerning Ulayat Land and its Utilization, namely: "Ultimate land disputes in the nagari are resolved by the density of the Nagari adat according to the provisions as long as the adat is in effect, ascending and descending, and shall be endeavored by way of peace through deliberation and consensus in the form of a peace decision".

The form of advocating for the settlement of land disputes in West Sumatra also forms a system that prioritizes the local wisdom of Minangkabau culture. The Minangkabau philosophy of "bajajang naiak batanggi turun" by resolving land disputes through deliberation to reach a consensus. As the customary fatwa states "lek ai tarano pambuluah, bulek kato dek mufakat" (round the water because of the vessels, round the word because of consensus). It means prioritizing the pattern of deliberation and consensus in decision-making. So it is appropriate that the advocacy model in Minangkabau, West Sumatra is carried out with a local wisdom approach called Social Advocacy.

Methods for resolving customary disputes are non-litigation efforts carried out by indigenous peoples (Kaum) in Nagari. Minang people do not want to directly involve other parties in resolving land disputes within their people, because this will bring shame and is a taboo for their people.

When this dispute is not resolved within the clan, then the next problem is asked to be

resolved with the Balai in each Nagari. Balai is a **ninik mamak ampek jinih** which represents each tribe in Nagari.

Settlement of customary land disputes in the customary density is carried out at the Customary Hall by a panel of judges determined by the adat leader in the Nagari Customary Density. In making a decision, evidence is a very decisive element in the trial so that the parties are given the opportunity to submit evidence in the form of letters or witness statements and other evidence that can prove the truth of the ownership of the land.

#### IV. CONCLUSION

Minangkabau's natural culture has characteristics and peculiarities in the social order of its people. For the Minangkabau people, the land is a very valuable inheritance left by their ancestors, not only for now but also for the next generation. The inheritance land of the Minangkabau indigenous people is called ulayat land which has a way of controlling and managing it in the form of ulayat nagari, ulayat tribe, ulayat Kaum, and ulayat Rajo.

The implementation of waqf, especially on customary lands is still controlled by indigenous peoples, more than 65% of waqf transfers come from customary lands which are understood as ownership rights over a plot of land along with natural resources that are above and in it are the property of all members of the tribe who belong to the community. consists of a jurai/paruik whose mastery and utilization is regulated by the mamak of the jurai/mamak of the head of the heir.

As for the occurrence of ulayat land disputes, they will be resolved through customary institutions in the Minangkabau community, starting from a lower level to a higher level or starting at the tribal level to the Nagari level which is carried out by the Nagari Customary Density Institution (KAN).

Disputes over ulayat waqf land do occur, especially over the ulayat lands of the people in the nagari in the research location (Luhak Nan Tigo). As for the form of documented data on the occurrence of customary waqf land disputes, it is not found either at the lowest level in tribal society or at the level of the Traditional Density Institution in Nagari. In the Minangkabau community, the

occurrence of customary land disputes, especially those on which there is waqf land, is considered something that will bring shame to the people of the people and is a taboo thing for their people. So that the occurrence of land disputes in the people of the people, efforts are made to resolve them first within the people and do not involve other parties outside the people.

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# The "Social Advocacy" Model Of Wakf LandSettlements Of Minangkabau Province West Sumatra

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