

Dispute Resolution by Indigenous Functionaries as an Effort to Strengthen Indigenous Institutions

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Abstract—The resolution of disputes through the judiciary received sharp criticism, both from practitioners and from legal theory. Judicial roles and functions are considered to be *overloaded*, slow and waste of *time*, expensive and less responsive to the public interest, or considered too formalist and too technical. Indigenous peoples have long settled disputes that occur in deliberation through indigenous institutions. Customary law as a legal system has its own pattern in resolving disputes. Customary law has a distinctive and unique character when compared to other legal systems. Customary law is organized and built upon the values, rules, and norms agreed upon and believed to be true by indigenous communities. Rokan IV Koto Kabupaten Rokan Hulu community with its indigenous cultural potential consisting of various tribes such as Malay, minang, batak and jawa tribes and several other tribes became the basis of researchers' choice to conduct research related to dispute resolution by indigenous stakeholders in Rokan Hulu. This research aims to find out the dispute resolution model that is under a currently underused by indigenous institutions. This method of research is empirical juridical. The Research Stage consists of: Visiting the research area, to find data, interview data sources, then process and present it according to the theory used. The study found 3 (three) things: Almost all disputes in Rokan IV Koto are resolved according to Customary Law, the most dominant of which are Land Disputes, Marriage disputes and Fights. Indigenous institutions have full authority in resolving disputes between their nephews. The model of settlement of disputes is carried out by mediation.

Keywords—*dispute, resolution, functionaries, strengthen, indigenous institutions*

I. INTRODUCTION

Problems or disputes often occur in people's lives. Disputes are one of the things that can arise at any time in human life. Disputes can occur ranging from the nearest scope such as family, to a wider scope [1]. Since long ago, dispute resolution has existed in the cultural background of Indonesian people as a pattern of dispute resolution based on deliberation, such as village crushes and customary density. Law enforcement also provides an opportunity for disputes to be resolved customarily [2]. Disputes can be resolved by customary institutions [3].

In various regions in Indonesia, reality shows that the existence of customary courts in the settlement of disputes outside the courts, even the pattern has long been firmly institutionalized. From various research results that have been conducted by other authors, it can be identified that in some indigenous law communities still use indigenous judicial institutions in resolving disputes. Indigenous law communities believe that this institution can simply and quickly resolve disputes in society fairly [4]. However, as the development of the community the authority of indigenous institutions in dispute resolution began to weaken [4].

As society develops, the ratio of the number of cases to be settled by the court is increasingly not proportional to the capacity and ability of the court to accept, examine and decide the incoming cases. This can be seen from the perkara handled by the Supreme Court throughout 2019 as many as 20,275 cases consisting of the remaining cases in 2018 as many as 906 and the registered in 2019 as many as 19,369. Of the total burden of these cases managed to break as many as 20,258 cases or 98.93%. The number of cases decided increased by 13.72% compared to 2018 which cut 17,638 cases. Likewise, in terms of the ratio of productivity cut increased by 3.82% compared to 2018 which amounted to 95.11% perkara, including cases in the field of marriage. (<https://kepaniteraan.mahkamahagung.go.id>).

The composition of the People of Rokan Hulu Regency consists of various tribes such as Malay, Minang, Batak and Javanese as well as several other tribes describing the cultural diversity of the community. One area that is still recognized for the existence of indigenous institutions is the Rokan IV Koto Region. Rokan IV Koto masih Indigenous Institution is active in carrying out its role in resolving disputes that occur in its customary territories.

Based on the above description, it is necessary to conduct research on the model or pola settlement of sensitive disputes used by indigenous functionaries in Rokan Hulu Regency of Riau Province as an effort to strengthen indigenous institutions.

II. RESEARCH OBJECTIVES

This research aims: identifying the model or pola settlement of sensitive disputes used by indigenous functionaries in Rokan Hulu Regency of Riau Province as an effort to strengthen indigenous institutions.

III. RESEARCH METHODS

A. Research Location

This research was conducted in Rokan IV Koto, Rokan Hulu Regency. This type of research is a juridical sociological study that views law as an observable social symptom in the observation of people's lives. The selection of this type of research is related to the Dispute Resolution Model by Indigenous functionaries in Rokan Hulu. In this case, researchers will try to see the extent of the existence and authority of customary institutions in the settlement of disputes.

B. Types and Sources of Data

The type and source of data used in this study is primary data (data obtained directly from the first source through direct interviews of competent selected respondents at the research site and secondary data (data obtained from available sources, such as laws and regulatory documents and relevant reading literature).

C. Data Collection Techniques

To obtain the necessary data, data collection techniques are used through interviews (techniques of collecting data directly to the source through questions and answers), and the study of literature (law and relevant reading literature).

D. Population and Sample

The residents in this study were the entire indigenous law community in Rokan IV Koto and the indigenous institutions authorized in the settlement of disputes. Respondents in the study were Village Chief Rokan IV Koto, Indigenous Leaders, Community Leaders and Youth. Sampling is done using purposive sampling techniques. Primary data and secondary data obtained through this research activity will be identified according to a specific target group, then will be analyzed qualitatively, then presented descriptively, namely by explaining, explaining, and explaining in accordance with the problems in this study.

IV. RESULTS AND DISCUSSIONS

A. Settlement of Customary Disputes diRokan IV Koto

Riau Province is one of the areas whose indigenous peoples are still recognized. One of these indigenous peoples is found in Rokan Hulu Regency, Riau Province. The majority of the indigenous population of Rokan Hulu regency is one part of the

Minangkabau Family. According to its history, formerly the rokan hulu area was called The Rokan *Region* or *Luhak* Rokan Hulu because it was the overseas area of the Minangkabau people in the past (*Nan Tigo Jurai Region*). At that time it was termed as '*Rantau Nan Tigo Kabuang Aie*' which is the Eastern Region of Minangkabau around Kampar and Kuantan now. These areas include the area of river flow to the downstream of the large rivers that flow to the East Coast. Among them are the Rokan River, Kampar and Inderagiri (Kuantan), which are now all included in Riau Province. In everyday life, the people of Rokan Hulu use Malay customs and language.

Based on the provisions of Article 18 B paragraph (2) of the 1945 Constitution, the State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of the people and principles of the unitary State of the Republic of Indonesia stipulated in the law.

The existence of Alternative Dispute Resolution in accordance with the spirit built in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, namely; (1) Prevent the buildup of litigation, (2). Optimization of the role of society in dispute resolution, (3). Expand access to justice, (4). Facilitate settlement through mutual agreement.

In Indonesian society, Alternative Dispute Resolution has long been known in the construction of customary law. Historically, Indonesian culture has strongly upheld the family approach. If it is a problem in indigenous peoples, members of the disputing community choose to resolve disputes customarily as well as through their customary elders or through deliberation. Indeed, the settlement of customary disputes is the seed of the development of Alternative Dispute Resolution in Indonesia. In this case, indigenous institutions have a very large role in the resolution of disputes in the community. Settlement of disputes outside the court is necessary because of the increasingly piling of unresolved cases in the judiciary. So that the resolution of disputes outside the judiciary is one way to solve problems in society.

One of the dispute resolutions carried out is the resolution of disputes based on customary law. The resolution of this dispute is done through customary institutions. Customary Institutions are local wisdom that is considered able to solve problems in the community [5]. Indigenous institutions can be a means in dispute resolution. Indigenous institutions as an organization have a strategic role in various aspects of life with the community [5]. Settlement through indigenous institutions is flexible, structures and norms are loosely adapted to social change. Dispute resolution through indigenous institutions relies on local authority and legitimacy. The public prefers the non-state judiciary primarily because of the authority of the perpetrators in rural environments to solve problems and implement verdicts [6].

In this dispute resolution one of the roles is *Ninik Mamak*. *Ninik Mamak* is a very large person in the midst of his family, because he has the right and obligation to take care of children and nephews and their federal rights, both in and out [7].

Ninik Mamak's role in his legal alliance (tribe) and/or his people is as follows:

- Ninik Mamak is the head heir of the heirloom, so he has the authority to take care of the heirloom to be used by his nephew.
- Ninik Mamak has an obligation to organize and guide every member of the people in the association of daily life in society, as well as ordinances related to other members of society who are outside the tribe or their people, especially those related to the land of ulayat, so that the use of this ulayat land is not contrary to the public interest.
- Preserving the inheritance so as not to let the property sell or move on to another party.
- Reprimanding or if necessary punishing members of the people who make mistakes in terms of the use of ulayat land if it violates the public interest and applicable customary law.

Rokan IV Koto is one of the areas that still uses customary institutions in resolving disputes between communities. Rokan IV Koto has a stretch of customary territory including Rokan, Lubuk Bendahara, Sikebau Jaya and Pendalian. Rokan IV Koto uses a matrilineal kinship system, almost similar to West Sumatra. Rokan IV Koto consisted of 6 (six) large tribes, which in total later became 10 (ten) tribes. The large tribes are the Malays, Pitopang, Chaniago, Bendang, Mais, and Mandailing [8].

The System of Government in Indigenous Institutions consists of: (1) *Rajo*, (2) *Andiko*, and (3) *Ninik Mamak*. The three levels in this customary institution have their respective competencies related to the right to decide or resolve each case or dispute that becomes its authority given based on the agreement of indigenous peoples. The kewajiban Ninik Mamak in the tribe is: Amar Makruf Nahi Munkar; Saying Straight-Bis true; Run Tell and Mstop Larangan.

In the area of Rokan IV Koto, if there is a dispute between communities, always involve Indigenous Institutions. This ruling is then carried out by the disputing party. Disputes resolved by customary institutions include marriage disputes, land disputes, inheritance, including fights [8].

B. Dispute Resolution Model in Rokan IV Koto

Settlement through Indigenous Institutions begins with: (1) Settlement in Tribes (between families and *Pucuk Suku*), (2) Settlement between tribes represented by *Bintaro*, which will be severed by the *Pucuk Suku*. The place of dispute resolution is where the person who objects. If not completed just brought to *Penghulu* to be completed in a high house or palace. In every tribe there has a house of *temptation* which is a gathering place of each tribe. Sanctions given to the disputing parties are determined based on deliberation [8].

The stages of dispute resolution are as follows:

- Stage called a of the Parties; Ninik Mamak as the mediator will call the parties to the dispute, this is intended to get the essence or view of each party over the existing dispute.
- Call for Witnesses; It is intended to seek additional arguments for *Ninik Mamak* to be confident enough in making decisions on disputes later, so that the decision can be accepted by both parties with great heart.
- Put forward Musyawarah and Mufakat; The basic concept of dispute resolution in custom is deliberation. Place and time are conditioned in accordance with mutual agreement for the convenience of negotiations. [8].

Basically in every process of resolving a dispute, *Ninik Mamak* acts as a Mediator who will try to condition that all parties present focus their attention on deliberation, each party is given the same opportunity and balanced so that the deliberations run in a family and effective manner. If the conditions of places deliberation are considered conducive and the participants of the deliberation have focused on starting the meeting then *Ninik Mamak* as the mediator starts the deliberation by beginning the prayer together according to agama and their respective beliefs, as part of relying on all the results that will be lived to Allah SWT Almighty God.

Listen to the witnesses presented by both sides. It was the witness on the part of the respondent who was first given the opportunity to give his testimony. In delivering his testimony the witness can convey on the initiative of the mediator. From the answers to questions posed to witnesses, it will be able to help the mediator to find a solution to the dispute that is being offered for the consideration of the settlement. After the parties are deemed sufficient to convey their arguments and all their interests related to the disputed tang field and the testimony submitted, the mediator will provide another opportunity for the parties to offer their respective solutions to the dispute offered.

Mediators with extensive experience easily find a solution to the disputes they handle because basically the disputes that occur between one and the other contain similarities. Alternative dispute resolution through customary institutions is used to resolve disputes with mksud seeking a win-win solution that is a form of settlement that benefits both parties to the dispute because there is no win or loss, both have the same position. If in the settlement of alternative disputes that have been done experiencing a dead end because both parties do not accept the solution offered by the mediator then *Ninik Mamak* will remain willing as a facilitator until an agreement is reached or found the best way out for the dispute and both parties are satisfied with the agreement.

Judging from the stages of the dispute resolution process carried out above, it can be known that the model of dispute resolution carried out by customary institutions is in the form of mediation. Because there are elements of mediation, in this

case there is the role of Ninik Mamak as mediator of the disputing party. Mediation or in English called mediation is the resolution of disputes by mediating. The mediator is the one who mediates. Mediation is a dispute resolution process that requires the help of a neutral third party in negotiation efforts in dispute resolution. In terms of using mediation, several elements are needed in realizing the mediation process, among others: (a) dispute resolution is voluntary, (b) there is neutral and impartial intervention or assistance of third parties, (c). decision making is left to the parties on a Konsensus, (d). the decision-making process is carried out on a participational basis [9].

Currently the role of Indigenous Institution has begun to fade [10]. There are several factors of the weak role of this indigenous institution:

- Absence of strengthening of the Nuclear Family; absence of suri tauladan from the older generation
- Education; education levels and patterns affect the way they look at problem solving.
- Economy; There is no emergence of economic independence, making people's views distracted from the urgency of indigenous values.

V. CONCLUSION

Strengthening the role and function of Indigenous Institutions is an inevitability as part of carrying out constitutional mandates as referred to in Article 18B paragraph (2) of the 1945 Constitution. Indigenous institutions as the vanguard in maintaining indigenous values still exist as the main benchmark in solving community problems. As the development of institutional existence and function begins to weaken as the factors outlined above, but the optimization of the role of indigenous institutions in solving community problems becomes important and urgently carried out, indigenous institutions have proven to be able to solve

problems in society from time to time. Each element plays an active role in instituting customary values as the basic value of ancestors that are believed to be true according to community reason through the means of customary institutions in the community.

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