

# The Role of the Minangkabau Customary Law *Tigo Tungku Sajarangan* in Preventing Domestic Violence against Women and Children in West Sumatra, Indonesia

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## Abstract

*Women and children are vulnerable groups that need to be protected. Cases of violence against women and children still show a high number in Indonesia. Throughout 2021, the Ministry of Women's Empowerment and Child Protection recorded 11,952 cases of violence against children and 8,478 cases of violence against women. Because West Sumatra Province accounts for a great part of this statistic, appropriate countermeasures are needed. One of the countermeasures is the West Sumatran customary law with the maxim of adat salingka nigari, a Minangkabau customary value upheld by a social institution known as Tigo Tungku Sajarangan.*

*This paper discusses the role of Tigo Tungku Sajarangan in dealing with violence against women and children in West Sumatra. To address the issue, the study relied on primary data consisting of interviews with community leaders and law enforcement officers. It used the people-based method employing purposive sampling to collect data in six research locations. The study found that Tigo Tungku Sajarangan plays a significant role in preventing domestic violence through supervision and guidance in the forms of social, religious, and formal/non-formal educational activities.*

**Keywords:** Customary Criminal Law, Domestic Violence, *Tigo Tungku Sajarangan* Minangkabau Customary Law

## Introduction

Cases of violence against women and children are still on the rise in Indonesia despite the passing of numerous laws and regulations. This shows the need to protect women and children and other vulnerable persons within the households. Based on the Women's Commission or *Komisi Perempuan*, at the national level in the year 2021, there were 8234 cases of violence against women, of which 79 percent or 6480 cases were cases of domestic violence. While in West Sumatra, based on the Women's Conscience Institute or *Lembaga Nurani Perempuan*, there were 32 cases in 2020 and 47 in 2021 (Padang, 2022).

Domestic violence can sometimes result in the loss of life of the victim as in the case that took place at the Agam Regency where a woman died after she was stabbed by her husband (Sumbar, 2021). Victims of domestic violence are not just women, often time children, too, are the victims of domestic violence and neglect. Data from the Ministry of Women's Empowerment and Children's Protection shows that throughout 2021, there were 14,517 cases

of violence against children, of which 45.1% were cases of sexual violence (CNN, 2021). Additionally, the West Sumatra Child Protection Agency handled 87 cases of violence against children in 2021 (RRI, 2021).

Domestic violence is a crime that needs to be taken seriously given the fact that it takes place mostly within the family, a supposedly safe place for the victims. As stated above, women and children are the most vulnerable victims of domestic violence. Children are often subjected to harsh treatments and punishments. Studies and reports show that financial hardship is one of the major causes of domestic violence. Some reports also point out that domestic violence is caused by cultural considerations. In Indonesia, culturally, a child is viewed as the property of their parents to whom he/she must show absolute obedience. This lays the ground for violence against children.

In this view, if the child is negligent or disobedient, then the punishment will become something that is commonly accepted by not only the child but the community. In addition, unbalanced relationships in the family environment put the children in a physically weak position and still dependent on the adults. The need for child protection is an effort that has received international attention starting with the 1924 Geneva declaration on the rights of the children which was recognized in the Universal Declaration of Human Rights of 1948 and the Declaration of The Right of The Child passed by the UN General Assembly (Muladi et al., 2007: 190). Under these instruments, the government is obliged to provide security and legal protection to every child so that they grow up in a healthy and safe environment (Lubis, 2020). This has led to the enactment of Law No. 23/2002 on Child Protection which was amended by the Law No. 35/2014 and Law No. 17/2016 stipulated by a Government Regulation in Lieu of Law (Perpu) No. 1/2016 on the second amendment to Law No. 23/2002 on Child Protection (Insan & Wulansar, 2016). Additionally, domestic violence is also regulated in the Indonesian Penal Code (KUHP) and Law No. 23/2004 on the Elimination of Domestic Violence

However, a better implementation of these laws and regulations requires the active participation of not only parents but every community member. The better the relationship within a family, the lower the chance for domestic violence to take place within that family. Similarly, economic limitations and financial hardships increase the risk of violence within that family. In these conditions, the surrounding community and social institutions where the family lives have an important anticipatory role to play (Mardiyati, 2015).

This study argues that domestic violence in West Sumatra is attributed to the equality between men and women. Despite extensive legislation, women remain marginalized within the *Minangkabau* society. They are not seen as physically and mentally capable as men.

Ironically however, it is widely believed that women in *Minangkabau* have a special position within the family as they play a major role in determining the successful implementation of decisions made by the *ninik mamak* (mother's uncle or the brother), and *penghulu* (tribal head). This so called great position makes women considered as *Limpapeh Rumah Nan Gadang* (the main pillar of the house) (Koning, 2000).

The high rate of domestic violence in West Sumatra is also due to the existence of a patriarchal culture coupled with low education of women, discrimination against them, and their economic dependence on men. Therefore, this study argues that major actions must be taken to address this issue to save not only the families but more importantly, the lives of the vulnerable women and children. Although domestic violence may affect men, this study is concerned mainly with the violence against women and children given its frequency and seriousness. This study aims at proposing the *Minangkabau* criminal law, a non-penal approach to dealing with domestic violence. To achieve this goal, the study examines the role of *Tigo tungku sajarangan*, a traditional system in West Sumatra in dealing with domestic violence. Since the issue is related deeply to the *Minangkabau* tradition and values, such an approach is needed to better understand and address it.

Customary criminal law is an unwritten law that contains elements of religion. It is widely abided by and followed by the community. Violation of customary criminal is seen as an immoral behavior by the society and is punishable by customary sanctions, customary

corrections, or customary obligations (Zurnetti & Mulyati, 2022). This seems as one of the best recipes to eradicating domestic violence in West Sumatra.

## Literature Review

Studies on violence against women and children have been carried out widely by scholars, Non-government organizations and government agencies in Indonesia. The Women's Crisis Center in Yogyakarta reported that between January and August 2000, 86 cases of violence against housewives were reported by telephone, 45 through letters, 18 through unknown means. This makes it 149 cases overall (Martha, 2003). Although domestic violence has been condemned internationally, it has not received enough attention in Indonesia. This is due to lack public awareness, society's perceptions of women and violence against women, as well as the value of a society that always wants to appear harmonious and therefore difficult to recognize the existence of problems in the households (Martha, 2003).

Related to the protection of women and children against domestic violence through customary laws in West Sumatra, Zurnetti et al (2021) found that the counter measures model carried out against violence using customary criminal law and local wisdom in West Sumatra with the philosophy of *bajanjang naiak batanggo turun* means that every problem is resolved from the low-level community to higher level community leader (Zurnetti et al. 2021).

Furthermore, Zurnetti et al. (2018) propose a model for overcoming immoral crimes committed by children through the application of customary criminal sanctions in West Sumatra. Zurnetti et al. examine the collaboration between the police; the Nagari government through community policing programs in crime including domestic violence management and prevention in West Sumatra.

## Research Methods

This is an empirical research drawing on the people-based method to address the issues described above. It involves both primary and secondary data. The study is descriptive in nature as it describes and discusses the issue of domestic violence, a societal phenomenon. The conclusion of this study is drawn by using deductive logic or a general-specific pattern (Surakhmad, 1990).

Primary data consist of interviews and informal discussions with law enforcement and traditional leaders and of course victims of domestic violence. 10 police chiefs, 15 traditional/community leaders, 50 women and 25 children were interviewed in the research locations by using purposive sampling. Closed questionnaires were sent out to respondents in areas where face-to-face interviews were not possible.

Secondary data were obtained from the Police in several research areas such as the Agam Regency, Kenagarian Saria Kecamatan Sungai Pua, Nagari Cubadak, Limo Kaum Tanah Datar District, Nagari Baruang- Baruang Balantai, Koto XI Tarusan Pesisir Selatan District, and Padang city. This study also relies on data collected from the library as well as internet sources related to violence against women and children.

## Findings and the Discussion

### a. A Model for Combating Violence Against Women and Children.

The Criminal law policy covers a wide scope as pointed out by Hoefnagels who described the following as the counter-measures to implement to deal with the issue:

1. Application of *criminal law (criminal law application)*.
2. *Prevention without punishment*.
3. *Influencing people's views of society criminal punishment/mass media*.

In the light of what precedes, it is important to note that efforts to fight crime can be divided broadly into two, namely through the penal route (criminal law) and through the non-penal route (not/outside the criminal law) (Himawan, 2022). In the above division, the efforts referred to in

items (b) and (c) may be included in the group of non-penal efforts. The West Sumatra Province is currently a province with a high number of cases of violence. According to the Office of Women's Empowerment and Child Protection (PPPA), West Sumatra received 426 reports related to violence experienced by women and children, and it is possible that many other cases may have not been revealed, because they are motivated by several factors (Antaran, 2022).

Based on the theory of counter measures in the context of positive law, it can also be understood as a penal effort, where this method will use all existing positive legal instruments, be its efforts through the formation of laws and regulations, forming supporting institutions, and optimizing community participation whether it is educational, or directly involved (Azriadi, 2021). The mitigation of criminal acts of violence against women and children is carried out by applying all regulations related to violence against children and women as written in the background section and previous discussion.

The application of the regulation aims to overcome violent crimes that have occurred in the hope of providing justice to the victims. The West Sumatra government in carrying out its duties has made various efforts ordered from the center to issue circulars related to the acceleration of handling sexual violence. This was done to reduce the number of violence that occurred in West Sumatra. The seriousness of the West Sumatra government is one of the repressive counter measures (Padang, 2022).

Penal facilities in tackling violent crimes in West Sumatra Province use not only written regulations that contain criminal sanctions but also various customary criminal sanctions in tackling domestic violence. People in the West Sumatra Province use *the nan duo puluh law* (*Minangkabau Customary Criminal Law*) which is divided into two: *the duo baleh law* and *the salapan law* (Aria Zurnetti, 2020).

This law implies that the sanctions can be manifested as follows: reimbursement of immaterial losses in various forms of coercion, such as marrying a girl who has been defamed; paying customary money to the victim, which is a powerful object in place of spiritual loss; performing a rescue (victim) to rid the society of all supernatural impurities; cover shame, as well as an apology; various legal remedies up to death penalty; given exile from the society and placing people outside the customary law system (Soepomo, 1994:113).

Customary criminal sanctions in West Sumatra Province are based on the proverb that says "*Manimbang Samo Barek, Maukua Samo Panjang, Mahukum Adaik, Bakato Bana*". This means that proportionality and justice must be based on religion. Although customary criminal law is unofficial, it remains widely popular among the local community and a viable alternative to tackling the increasing rate of domestic violence (Afadrian, 2019). The data from West Sumatra South Coast Resort Police shows violence against women and children include but not limited to harassment, molesting, copulation, obscenity, abuse/mistreatment, and kidnapping/abduction. Based on the West Sumatra Police 2021 report, these awful acts violate the article 82 of the Law No. 23/2002, the article 81 of Law No. 1/2016, the articles 170, 286, 332, 335, 352, and 385 of the Criminal Code.

A respondent women leader (also known as *Bundo Kanduang* (Zainal, 2013)) claims that normally, domestic violence should not occur in West Sumatra because the *Minangkabau* community members have a high respect for women given that it is a matrilineal society (Thaib, 2021). The respondent also claims that to prevent domestic violence, the husband must practice *maloko*, a customary model consisting of bringing together in-laws from both sides of the family to resolve issues.

In an attempt to address the issue of domestic violence, the West Sumatra Province passed Regional Regulation No. 5/2013 on the Protection of Women and Children. The regulation says that the constitutional rights of women and children as well as improving their quality of life must be guaranteed and protected by the local governments. Apart from the form of legal protection, the West Sumatra Province also provides customary protection to women and children against violence. The local government has made it clear that every woman and child who is a victim of domestic violence shall be accompanied by a *ninik mamak* (clan leader) and the perpetrator shall be prosecuted and punished according to the *Minangkabau* customary criminal law if found guilty.

The local government also ruled that victims shall be asked carefully by their mothers regarding the violence they have experienced to provide solutions or advice on whether the case be resolved customarily or through court litigation. This step is very crucial because recourse to a court of law would imply that the perpetrator of the violence comes from a different family. But if brought before a customary court, chances are that the matter ends up in a consensus and reconciliation (*mufakat musyarawa*) between the parties because it only involves members of the same family.

*Minangkabau* society is known for its philosophy of '*Basandi Syarak adat, Syarak Basandi Kitabullah*', which implies that problems ought to be resolved through *Minangkabau* custom that are intertwined with religion to reach consensus and reconciliation. This makes many scholars view *Minangkabau* as a traditional democracy (Westenenk, 1918). This model, along with the *maloko* model mentioned above, and the "*duduak samo randah tagak samo tinggi*", which is discussed below, best fit the *Minangkabau* society as they are both rooted in the *Minangkabau* customary law.

## b. The Role of *Tigo Sungku Sajarangan*

*Minangkabau* is unique not only in its bloodline but also in its leadership system in the concept of a *tigo tungku sajarangan* whose authority and role revolves around three leaderships i.e., *ninik mamak* leadership, *Alim Ulama* leadership, and *Cadia Padai* leadership:

### 1. The *Ninik Mamak* Leadership (Clan Leadership)

*Ninik mamak* is a traditional leadership according to the pattern that has been outlined by the *Minangkabau* custom that has been handed down from generation to generation (Jamil, 2021). Basically, the *ninik mamak* are the clan leaders, and they are the male siblings of the mother of a family. Because West Sumatra, which is home to the *Minangkabau* ethnic group, is a matrilineal society, important family issues such as inheritance, rights to land, marriage, budlings and other commodities are decided by the side of the mother (*samande*) and this is where the role of the *ninik mamak* comes to play (Regional Regulation No. 13 of 1983).

In an interview, the chairman of the Nagari Meeting Council or Kerapatan Adat Nagari (KAN) Datuak Panghulu Basa argued that *ninik mamak* not only play a crucial within the *Minangkabau* society, but they are the guardians of the matrilineal *Minangkabau* tradition. As time evolves, the term *ninik mamak* has evolved to become a traditional institution now consisting of several *penghulu* who come from various other *Minangkabau* clans or tribes. This institution is staffed by elderly men from each clan and who are seen as capable and can lead wisely.

*Ninik Mamak* is often used as a representative in resolving conflicts that cannot be resolved through formal courts. This includes conflicts that often arise between their nieces and nephews, conflicts within clans and conflicts within adat. These conflicts are often resolved in community building mosques, traditional family houses, and small shops where *ninik mamak* and the parties gather to discuss the issue. Besides resolving conflicts, *ninik mamak* are the ones to obtain permission from when holding any event in the community. Because the *Minangkabau* people uphold kinship ties, it makes every conflict resolved only in a family manner under the guidance of *ninik mamak* (Ramayani et al. 2019).

### 2. The *Alim Ulama* Leadership (Religious Leadership)

As previously stated, in West Sumatra tradition and religion are intertwined. This means that both go hand in hand and complement one another. Consequently, religious institutions and leaders (*alim ulama*) are highly regarded and play significant roles within the *Minangkabau* society, just like their counterpart *ninik mamak*. *Alim ulama* examines the religious law based on *sharak mangato adat mamakai* (religion instructs and customary law) that regulates what is valid and void, *halal* (the accepted) and *haram* (the prohibited), and the understanding of *nahu and Sharaf* (syntax). In general, *alim ulama* guides the spiritual to take the right path in life, and the path to the afterlife.

In an interview, Heru Adzanul, a religious leader (*alim ulama*) claims that within the community, the role of the *tigo tungku sajarangan* is to ensure that customary law is feared

and abided by (Adzanul, 2021). Based on *sharak* or religion, the Quran must be recited to the nagari children and therefore, there must be a Quranic school (TPQ) in every sub-district. Besides the quranic school, there are also, in every mosque, Quran reading sections known as *tahfiz* to guide teenagers. This is meant to prevent violence. But when violence occurs, three steps are taken, namely: the customary step is "*duduak samo randah tagak samo tinggi*". If there is a problem, it must be brought to the customary court to reach consensus deliberations (*Alim ulama* Heru adzanul, 2022).

### 3. **The Cadiak Pandai Leadership** (Wiseman Leadership),

This leadership consists of a group of individuals deemed wise and knowledgeable to solve the community problems including family problems. They are considered leaders who accompany assist *ninik mamak*, and *alim ulama* (Sajaringan, 2022). Based on an interview with *walinagari* in Nagari Baruang-baruang Balantaexplained by Mrs. Nelwita, there are five pillars of *walinagari* (Nelwita, 2022).

- a. The existence of mosques as worship.
- b. Work as a worship charity.
- c. Culturally healthy living behaviors.
- d. The devotion of worship.
- e. Religious education is the main capital force.
- f. Development in the field of education is prioritized, one house oneundergraduate.
- g. The synergy of the *tigo tungku sajarangan* with the preservation of cultural customary values.

Preventive measures are as follows:

- a. Socialization, empowerment, and training in various areas of training
- b. The custom of *salingka nagari* in solving problems.
- c. Mosque-based financial management.
- d. Synergize, collaborate with *babimkantibmas*, LKPN, *linmas*.
- e. Establishing regulations and customary mechanisms of *salingka nagari*, in its application is to apply the principles of deliberation and consensus.

The above three systems of leadership are decisive components of the *tigo tungku sajarangan* or *tali tigo sapilin*. They complement and strengthen each other. The *tigo tungku sajarangan*, is a philosophy in the leadership of the *Minangkabau* community. These three elements are the symbols that influence life and the wellbeing of the *Minangkabau* community both religiously, culturally and even economically. The existence of the three informal leaderships is institutionalized in the traditional idiom of the *tigo tungku sajarangan*, the *tali tigo salipin*. These three forms of leadership were born and are inseparable from the *Minangkabau* history which is led by morals according to maxim "*adat basandi syarak, and syarak mamutuih adat mamakai*," which means that custom is based on religion and when religion decides, custom follows.

Cultural values in this leadership system have become a system of living in a positive relationship or social order that even encourages and stimulates, the driving force of dynamizing one community activity in the state. This includes maintaining and maintaining the character of the state children by having traits and habits to develop economic activities such as avoiding the habit of saving a frugal life, and maintaining capital so as not to be destroyed. The leadership pattern above can be manifested in its role in fighting violence against women and children such as fostering women and carrying out religious activities against children, and *niniak mamak* associations, *alim ulama*, and community leaders every month.

Requiring the resolution of problems that occur always involves *niniak mamak*, *alim ulama*, and *cadiak pandai* known as *tigo tungku sajarangan*, the *tali tigo salipin*. Traditional and religious events involving the entire community are carried out periodically both in mosques and in traditional halls.

## Conclusion

Matrilinearity is one of the main aspects in defining the Minangkabau community identity. *Minangkabau* custom and culture place women as heirs to inheritance and kinship. One characteristic of the Minangkabau matrilinealism is that the family lineage is drawn from the mother's line; hence the reference to women as *bundo kanduang*. This shows that women hold not only a higher position within the family but the survival of the entire kinship depends on them. Unfortunately, however, despite their higher position and the crucial role in the family, women and their children are victim of domestic violence. The study argues that this is due to financial hardship, their low level of education and cultural beliefs.

In the *Minangkabau* society, there are three pillars that build and maintain the integrity of culture and customs under the leadership of *ninik mamak*, *penghulu*, and *cadiak pandai* religious, intellectuals, and *ninik mamak*. These three leaderships work collectively and harmoniously under one system known to the *Minangkabau* people as the *Tigo Sungku Sajaringan*. All three complement each other and work hand in hand in the same high position. In a democratic *Minangkabau* society, all community affairs are deliberated by these three elements in a consensus manner. This shows the importance of custom and religion in the life of the *Minangkabau* people, especially in the resolution of domestic conflicts and violence.

The role of the religion and the customs in West Sumatra is cemented in a well-known maxim that says '*adat basandi syarak, syarak basandi Kitabullah*' (custom is based on law and the law is based on Quran) which means that the custom is based on Islamic teachings. The study has also argued that in addition to the *tigo sungku sajarangan*, the practice of *maloko*, a customary model consisting of bringing together in-laws from both sides of the family to resolve issues may be used as one of the efficient ways to deal with the domestic violence in West Sumatra.

## Recommendations

It is thus recommended that the local governments cooperate more with the traditional leaders such as *niniak mamak*, *alim ulama*, *cadiak pandai*, and *bundo kanduang* (*tigo tungku sajarangan*) in addressing domestic violence. The local government must also increase the communication with *tigo tungku sajarangan* to find adequate solutions that involve children and nephews in the decision making process and organize activities that can empower the community and instill moral values that lead to a decrease in the violence against women and children.

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