

The Role of Customary Law in Family Resilience and Divorce Prevention: Phenomenological Studies in Indonesia

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Abstract

This research aims to determine the role of customary law in creating family resilience and preventing divorce and the obstacles it faces. Based on data released by the Central Statistics Agency, the divorce rate in Indonesia continues to increase every year due to various factors behind it. The rise of divorce and the fragility of family resilience is partly due to the ineffectiveness of customary law in preventing this. This type of research is descriptive-qualitative with a phenomenological approach. Data collection was carried out through focus group discussions (FGD) with traditional leaders about customary rules that are applied to create family resilience and prevent divorce. The research results show that traditional institutions have made customary regulations to create family resilience and prevent divorce, including making customary rules to minimize divorce, requiring prospective brides and grooms to take pre-marital courses, resolving husband and wife conflicts and preserving marriage traditions. However, the application of customary law in creating family resilience and preventing divorce faces a number of internal and external challenges. Internally, the obstacles include weak competence of traditional leaders in carrying out their functions as executors of customary law, decreased public trust in traditional leaders, and decreased public awareness of implementing customary law in marriage processions. External challenges include government policies that amputate the role of customary law in society, and the lack of government support for

customary institutions. So the role of customary law needs to be revitalized as local wisdom which really functions to solve various problems in society.

Keywords: Customary law; family resilience; preventing divorce

Introduction

The divorce rate in Indonesia continues to increase every year, especially when the covid 19 pandemic occurred. Indonesian National Statistics Agency released the divorce rate from 2020-2022 showing an increase. In 2020 amounted to 291,667, in 2021 it will increase to 447,743, and in 2022 it will increase again to 448. 126. The main cause of divorce is continuous conflict between husband and wife and economic factors. Other factors that also cause divorce are domestic violence, apostasy and physical disability.¹

Another interesting fact is that 70 percent of divorces are initiated by the wife who files a lawsuit with the court. Divorce motives are caused by factors such as quarrel, cheating, leave one side, violence, economics, incompatibility, infertility and others. The most dominant factor of the fight as a cause of divorce, followed by economic factors and violence.²

One of the reasons for the high number of divorces and the fragility of community family resilience is the lack of functioning of traditional institutions in the present. In fact, traditional institutions are local wisdom that play a role in overcoming various social problems and conflicts in society. Traditional institutions are able to bring conflicting parties together through mediation and reconciliation, so that they are able to resolve problems without leaving resentment on both parties. Traditional institutions also have judicial institutions to resolve community problems, including family problems.³ In fact, mediation through traditional institutions has a higher success rate than the courts because it uses local wisdom.⁴ Traditional institutions are social systems that grow and develop in society based on the values and perspectives shared by the

¹ bps.go.id, 'Jumlah Perceraian Menurut Provinsi Dan Faktor', 2023 <<https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTIZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor.html?year=2022>>.

² Cindy Mutia Annur, 'Pertengkaran Terus-Menerus, Faktor Utama Penyebab Perceraian Di Indonesia Pada 2022'.

³ Dahlia Haliah Ma'u, Wagiyem, and Rita Mustika Rahayu, 'The Construction of Cerai Manis (Preferred Divorce) on the Border of Indonesia and Malaysia Communities', *Al-'Adalah*, 20.1 (2023), 19–34 <<https://doi.org/10.24042/adalah.v20i1.16518>>.

⁴ Sayful Mujab and Nabila Luthvita Rahma, 'Authority of the Chief of Village in the Customary Mediation of Marriage Disputes: Phenomenon in Madura, Indonesia', *De Jure: Jurnal Hukum Dan Syariah*, 14.2 (2022), 304–16 <<https://doi.org/10.18860/j-fsh.v14i2.18023>>.

community for generations.⁵ This institution is a forum for traditional leaders to carry out various traditional rituals. Traditional institutions can be found in various communities such as Malay, Batak, Acehnese and others.

The role of traditional institutions is still complementary to modern government structures, with a considerable level of efficacy, especially in intra-communal issues. However, it cannot be denied that the modern government system to a certain extent also restricts and ignores the role of traditional institutions, even though in reality many problems in people's lives still refer to the traditional system.⁶ For example, in the Minangkabau community, the traditional approach is an alternative for resolving disputes other than religion and positive law. This reality can also be found in other traditional communities in Indonesia⁷

Several studies above show that traditional institutions play a role in resolving community conflicts. However, no one has specifically and comprehensively studied the role of customary law in realizing family resilience and preventing divorce and the obstacles it faces today. From this background, the author is interested in exploring the existence of customary law in creating family resilience and preventing divorce. The existence of customary law in overcoming various social problems in society cannot be denied. Customary law is local wisdom which is one of the community's instruments in solving problems through traditional values. This research wants to see the extent of the contribution of customary law in realizing family resilience and preventing divorce so far.

This study is descriptive-qualitative, which is a research procedure for producing descriptive data in the form of written or oral statements from subjects and observable behavior.⁸ The descriptive method is a way of examining the status of a subject, a condition, a group of people, a system of thought or a case in the present. Descriptive research aims to systematically describe facts or paintings and the relationships between the phenomena studied.⁹ The approach used is phenomenology, namely data mining to find the fundamental meaning of a phenomenon, the reality of thoughts or experiences of the object of research. Researchers collect data related to concepts, opinions,

⁵ Inosentius Samsul, 'Penguatan Lembaga Adat Sebagai Lembaga Alternatif Penyelesaian Sengketa (Studi Terhadap Lembaga Adat Di Kabupaten Banyu Asin, Sumsel Dan Di Provinsi Papua)', *Negara Hukum*, 5.2 (2014), 127–42.

⁶ Samsul.

⁷ Arifki Budia Warman and others, 'From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 161–83 <<https://doi.org/10.18326/ijtihad.v23i2.161-183>>.

⁸ Lexi J. Moleong, 'Metode Penelitian Kualitatif' (Bandung: Remaja Rosda Karya, 2018).

⁹ Moh. Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2018).

stances, attitudes, assessments and giving meaning to a situation or experiences that occur in life¹⁰.

The data sources for this research were traditional leaders from four provinces in the Sumatra region, namely Aceh, North Sumatra, Riau and West Sumatra. These four provinces have different tribes and traditions. Those chosen as research informants were leaders of traditional institutions who had qualified insights related to the research theme. This kind of sample selection technique is also called purposive sampling to ensure that the informants really understand the issue or discourse that will be confirmed to them. Data collection was carried out through the focus group discussion (FGD) which is a data collection technique commonly used in qualitative research with the aim of finding the meaning or intent of a particular theme from a subject perspective.¹¹

Discussion

The Role of Traditional Institution in Society

Terminologically, a role is a set of behaviors that are expected to be possessed by those in society. Role means a person's duties or obligations in a business or job. Role also means the actions carried out by a person in an event.¹² According to Wulansari, role is a concept about what an individual must do in society or the behavioral demands of society towards a person, and is individual behavior that is important for the social structure of society. According to Soekanto, role is a dynamic aspect of position (status), if a person carries out the rights and obligations according to his position, then he has carried out a role. The roles inherent in a person must be differentiated from their position in social interactions. A person's position in society is a static element that shows the individual's place in the organization of society. Roles refer more to function, adjustment, and as a process.¹³

Role is a dynamic process of a person's position when carrying out their rights and obligations in accordance with their position. Role is taken from the world of theater. In theater, an actor has to play a certain character and he is expected to behave in a certain way. The actor's position in the theater is then analogous to a person's position in society. As is the case in theater, the position of a person in society is the same as the position of an actor in theater, namely

¹⁰ Nana Syaodih, *Metode Penelitian Pendidikan* (Bandung: Remaja Rosdakarya, 2017).

¹¹ Yati Afyanti, '(Diskusi Kelompok Terfokus) Sebagai Metode Pengumpulan Data Penelitian Kualitatif'.

¹² Era Era Hia, 'The Role of the Supervisor Board in Improving Drinking Water Service for the Community of Tangerang Regency', *Jurnal Ilmiah Administrasi Pemerintahan Daerah*, 11.2 (2019), 35–51.

¹³ Yohanis, 'Peran Lembaga Sosial Terhadap Pembinaan Moral Remaja Di Kelurahan Banuaran Nan Xx', *Jurnal Administrasi Publik Dan Pemerintahan*, 2.1 (2023), 47–56 <<https://doi.org/10.55850/simbol.v2i1.66>>.

that the behavior expected of him does not stand alone, but is always in connection with the existence of other people who are in contact with that person or actor.¹⁴

In a society or organization, each person has different characteristics in carrying out the duties, obligations and responsibilities given to him. These tasks are limitations for someone to carry out the work assigned based on organizational regulations so that all work is neatly organized and can be accounted. A traditional institution is an organizational forum that has a role in society. This institution was formed by the community itself to realize their needs. Traditional institutions are social institutions formed in a customary law community with legal territory and rights to property within that customary law area. Traditional institutions also have the authority to regulate, manage and resolve various problems in community life related to applicable customs.¹⁵ According to cultural science, traditional institutions are defined as a form of customary organization that is composed of relatively permanent patterns of behavior, roles and relationships that are directed and binding on individuals, have formal authority and customary legal sanctions for the purpose of achieving basic needs.¹⁶

Traditional institutions function to assist the government in solving various community problems through traditional rituals. The structure of traditional institutions starts from the village, sub-district, district and so on levels. To preserve indigenous communities, the government created traditional villages which are tasked with implementing regulations regarding the preservation of indigenous communities. Traditional villages are also given authority by the government to carry out village government duties in order to advance the village and implement effective village government regulations in village development efforts and provide guidance to the local community.¹⁷

The existence of customary law that applies in society can help the government in implementing the existing government system in the village, where customary law is born based on the decisions of traditional leaders in resolving various disputes in the village, which do not conflict with community beliefs and applicable laws. Custom is a habit or culture that has developed in a village in which it exists indigenous peoples who carry out the customary legal order

¹⁴ Yohanis.

¹⁵ Penghargaan Dan and others, 'Peraturan Daerah Provinsi Nusa Tenggara Barat Nomor _____ Tahun 2020 Tentang Pengakuan, Penghargaan Dan Perlindungan Terhadap Kesatuan-Kesatuan Masyarakat Adat', 2019, 5–48.

¹⁶ Anwar & Adang, *Pengantar Sosiologi Hukum* (Jakarta: Grasindo, 2013).

¹⁷ L Sensu and others, 'Kewenangan Kepala Desa Dalam Meningkatkan Pelayanan Pemerintah Desa Batubanawa Kec. Mawasangka Timur Kab. Buton Tengah Kepada Masyarakat', *Halu Oleo Legal* ..., 4.2 (2022), 288–307.

The Existence of Customary Law in Creating Family Resilience and Preventing Divorce

Based on research results, traditional institutions have created a number of traditional rules to create family resilience and prevent divorce in society, including:

1. Requires Taking Part in Pre-wedding Guidance for Prospective Brides and Grooms

To create family resilience and prevent divorce, traditional leaders seek provision for the bride and groom in the form of strengthening religious knowledge before the wedding takes place. Religious training is the first stage that the prospective bride and groom must go through before the marriage contract is carried out. In this case, traditional leaders act as religious teachers for the prospective bride and groom.

In Minangkabau customs in West Sumatra, traditional leaders play a direct role as religious guides for the community, including prospective brides and grooms. Traditional institutions form an Advisory Committee on Marriage, Divorce and Reconciliation (P3NCR) at the *nagari* (village) level which functions as an advisory institution for prospective brides and grooms before marriage. This institution is staffed by traditional Leaders consisting of imam (prayer leader), *bilal* (caller to prayer) and *qadhi* (cleric). In this institution, prospective brides and grooms are taught religion and how to marry. Participants who graduate from this education are given a certificate as a recommendation for marriage.

In the marriage traditions of the Minangkabau tribe, Islamic values and customs are always applied, starting from preparation for marriage, choosing a prospective partner, the time of the wedding, guardians and witnesses. Before getting married, the prospective bride and groom are first provided with information about the household by their parents, uncles and siblings. The material taught is related to how to serve your partner, earn money, maintain your attitude with your in-laws and other family members. All these things are conveyed to children/nephews before getting married. The aim of this teaching is so that the prospective bride and groom have moral and material provisions for their future domestic life.

Apart from family, the prospective bride and groom are also advised by cleric and traditional leaders about family life. Cleric convey religious provisions in marriage such as purification, worship, livelihood, relationship between husband and wife and so on. Meanwhile, traditional leaders convey the cultural values that must be adhered to by the bridal couple and the sanctions if they violate them. Traditional leaders emphasized that cultural values must be respected and implemented in life. This is a series of provisions for prospective brides and grooms before marriage in order to achieve a harmonious domestic

life. Guidance and supervision continues after the wedding to ensure a good relationship between the bride and groom.

In Minangkabau tradition, after the wedding the groom lives at his in-laws' house until he is able to build his own house. So parents emphasize to their children to be very careful about the feelings of their in-laws, wife's relatives and other people in the family. Minangkabau people live in extended families, namely families consisting of father, mother, children (whether married or not), grandchildren, and other relatives. A large family with a large number of family members is a challenge in maintaining feelings and harmony between family members.

According to local traditional leaders, it is best for the bridal couple not to stay at their in-laws' house for long. Want to immediately start an independent life by building their own house or renting one. This is to minimize disputes within the household. If there is a dispute with the in-laws or other people in the family, the groom must leave the house and return to his parents' house. To return, the mother-in-law must pick up her daughter-in-law. So to avoid disputes and maintain harmony, it is better for husband and wife to live separately to form a nuclear family. Living with your in-laws should not be more than three months¹⁸.

In Acehese tradition, religious training for prospective brides and grooms is carried out by clerics. Religious authority in Aceh is handed over to clerics at the village, sub-district and so on levels. Clerics are responsible for guiding the community in religious knowledge as preparation for marriage and afterward. While traditional leaders play a role in directing and facilitating it. Traditional and religious leaders work together to strengthen the community's religious knowledge.

In Aceh, all activities carried out by the community must refer to Islamic values, including marriage. Society must follow Islamic provisions regarding marriage and carry out them according to these provisions. Many couples fail to maintain their current marriage due to neglect of religious values in the family. Marriages are carried out solely because of lust, not the motivation outlined by religion. Choosing a partner prioritizes beauty and wealth over religion, so that household become fragile and divorce.

The contrast is different from the marriages of ancient people who strictly adhered to religious regulations so they rarely divorced, on the contrary, polygamy often occurred. Divorce is quite rare, unless it is no longer possible to maintain it. Nowadays, divorce is caused by communication tools, poor communication styles between husband and wife and the low level of

¹⁸ Muhammad Natsir, 'Minang Kabau Traditional Figure, West Sumatra' (June, 2022).

responsibility of husband and wife in the household. All of this is due to the lack of religious knowledge and the mental weakness of husband and wife.¹⁹

In the Riau Malay traditional community, the strengthening of religious knowledge for prospective brides and husband and wife is carried out by *ninik-mamak*. The aim is to create family resilience and prevent divorce. *Ninik-mamak* is obliged to teach her nieces and nephews religious knowledge in preparation for marriage. If she cannot afford it, the *ninik mamak* takes her niece's child to a cleric to study religion. The Riau Malay traditional institution has also launched an “*ustaz kunjung*” (cleric visiting) program to teach Malay people in various regions.

The Riau Malay Traditional Institute carries out recitations in the community to strengthen understanding of religion. And also socialize Malay customs for students through local content curriculum. The aim is to increase people's understanding of customs while raising awareness to preserve and implementing customs in life activities, including marriage.²⁰

2. The Wedding Procession Must Be in Accordance with Customary Law

Part of traditional institutions' efforts to create family resilience and prevent divorce is to preserve marriage customs. The marriage procession must be carried out according to custom. Marriages that refer to custom will guarantee harmony and resilience because of the involvement of traditional Leaders in the marriage process. Traditional leaders are responsible for supervising and caring for the marital relations of nieces and nephews so that they do not get divorced. If a problem occurs in their household, traditional leaders act to resolve it.

Wedding customs include choosing a future wife, marriage, reception, and so on. Each stage must be accompanied by traditional rituals performed by traditional Leaders. In Riau Malay tradition, the traditional marriage procession starts with “*merisik*” (looking for a future wife), proposing marriage, delivering groceries, “*pingitan*” (not leaving the house for a certain time until the marriage), marriage contract and reception. This tradition is still valid and is carried out well by the rural communities or grass roots. Marriages with traditional processions can be guaranteed to rarely divorce.²¹

In fact, divorce often occurs in urban communities who get married without traditional processions and do not involve traditional Leaders, so that their relationship is separated from the control of traditional Leaders. City society is heterogeneous and inter-ethnic marriages make it difficult for traditional institutions to regulate and supervise these couples, because there is

¹⁹ Syeh Marhaban, ‘Acehnese Traditional Figures’ (Oktober, 2022).

²⁰ Junaidi Dasa, ‘Malay Traditional Figure Riau Province’ (June, 2022).

²¹ Tarlaili, ‘Malay Traditional Figure Riau Province’ (June, 2022).

no relationship and communication with the tribal communities. This factor makes husband and wife couples in urban areas often divorce.²²

This fact is one of the important findings of this research and is the answer to the high divorce rate in society so far. It turns out that some people, especially in urban areas, have abandoned traditional values in their wedding processions, so that they are separated from the attention and supervision of traditional institutions. This condition results in fragile marital relationships and is vulnerable to divorce. Apart from ignoring traditional rituals, urban marriages also occur between different tribes, making it difficult for traditional institutions to regulate and supervise their marriages due to differences in traditions.

Married couples in urban areas who want to divorce immediately register a lawsuit with the Religious Court to be decided. This is different from rural or grassroots communities who marry members of their same tribe and strictly follow the marriage traditions of their tribe. These marriages are rarely divorced because they are protected and supervised by traditional institutions. Divorce Seen as a shameful disgrace and as much as possible to avoid it, *Ninik Mamak* as a traditional Leader tries his best to resolve the problem and reconcile his niece's children so they don't get divorced. *Ninik mamak* is responsible for maintaining the marital relationship of her nephew's children, not just uniting them in marriage.²³

The preservation of marriage customs is also found in the Batak traditional community in North Sumatra, in fact this tribe is known to adhere very strictly to its marriage customs. According to Batak custom, marriage is a sacred thing and goes through a long ritual starting from *mangaririt* (choosing a girl), *mangalebontanda* (giving a sign), *marbusip* (negotiating), *martumpol* (engagement), *marbata sinamot* (dowry discussion), *martonggo raja* (gathering family), *manjalo pasu-pasu* (wedding/blessing), *marjuk* (blessing from the family) and *dialapjual* (bride-to-bride). Apart from the long process, traditional Batak marriages also require quite a lot of money.

In Batak tradition, especially the Toba Batak, each clan is seen as a traditional king, so a Batak man marrying a Batak woman is the same as proposing to the king's child. The marriage process involves two clans, aka two kings, and goes through a complicated and long process. The purpose of marriage according to Batak custom is to unite two clans in a kinship relationship called "*Dalihan Na Tolu*", which is a relationship framework that includes relations between blood relatives and marriage that unite one group.

Dalihan Na Tolu means a stove with three legs, not four or five legs. A stove with three legs absolutely requires balance so that it doesn't collapse. If one of the three legs of the furnace is damaged, the furnace automatically

²² Afrizal, 'Malay Traditional Figure Riau Province' (June, 2022).

²³ Natjib Efendi, 'Malay Traditional Figure Riau Province' (June, 2022).

cannot be used. In contrast to four or five leg stoves, if one leg is damaged it can still be used. Therefore, relationships formed based on the *Dalihan Na Tolu* principle are very strong and never divorce.

Dalihan Na Tolu is a kinship relationship built on three elements, namely: (1) *Somba marbulabula* (an attitude of worship/respect towards the wife's family); (2) *Elek marboru* (attitude to persuade/protect women); and (3) *Manat mardongan tubu* (careful attitude towards fellow clan members). These three elements are likened to three furnaces that support the kinship relations of the Batak tribe. If one of these three elements is missing, the kinship relationship will be destroyed. So *Dalihan Na Tolu* family members must really maintain these three elements in their lives and never violate them. This is the value of wisdom built by the ancestors of the Batak tribe as a philosophy of life in managing kinship.

Batak marriages involve many parties and witness the formation of a new family. Batak men who marry traditionally (*mangadati*) with Batak women involve two main clans and several other clans who become *bula-bula* or bones, then the marriage has been locked by custom and is very difficult to separate. Such a complicated and expensive traditional procession has a positive impact on the durability of the husband and wife relationship, especially if the three elements of *Dalihan Na Tolu* kinship are truly implemented.

In Batak custom, the divorce process is as complicated as marriage. All members of the clan who are invited to the traditional wedding party must be invited to decide on the return of a wife to her family (divorce). All parties will certainly disagree, they will advise and criticize the man. According to Batak custom, it is impossible for a woman to ask for a divorce, but a man can divorce his wife. The position of the wife in Batak custom is as if she had been "bought", and only the man has the right to divorce by returning the wife to her family.²⁴

The Dalihan Na Tolu kinship system is effective in preventing divorce, even if there are many problems in the household. Such a strict customary system makes married couples, especially men, think repeatedly about divorcing their wives considering the complexity of the process they have to go through. The *Dalihan Na Tolu* kinship relationship is the strongest barrier to divorce, because it is closely tied between the two clans. So divorce according to Batak custom is almost impossible.

The preservation of marriage customs also applies in Acehese society. Acehese customs are based on Islamic values and are related to each other like substances and properties. Traditions must be preserved by community from generation to generation so that it does not disappear over time. There is an adage expressed by the Sultan of Aceh named Iskandar Muda regarding the

²⁴ (Sulon Nasution 2022)

need to maintain customs, namely: "*Mate Aneuk Meupat Jeurat, Mate Adat Pat Tamita*" (a dead child has a tomb, if the custom dies where will it be looked for). This adage shows that the loss of traditions is more crucial than the death of a child. Lost traditions are very difficult to revive, therefore traditions need to be preserved.²⁵

In Aceh society, the wedding procession is also quite visible with traditional rituals, starting from "*keumalôn*" (seeing the future wife), *mê tanda* (proposing marriage), marriage, reception and so on. According to traditional Leaders, this traditional procession contains positive values in strengthening husband and wife relationships and the bonds of brotherhood between two families. The "*keumalon*" procession, namely sending traditional Leaders by the male bride's family to the female groom's house to explore the personality of the prospective female bride and ensure that no man has proposed to her. Traditional leaders ensure that the bride-to-be has good morals and religious knowledge. The results of this observation were conveyed to the groom's family to consider further steps, namely proposing marriage or not.²⁶

In marriage traditions there are various important values that have a positive impact on family resilience. Traditional rituals contain the values of brotherhood, manners, mutual cooperation, education, advice and so on. Traditional leaders strive to realize positive values in people's lives through various traditional rituals.

3. Resolving Family Conflicts Through Customary Law

To maintain marriages so they don't get divorced, traditional institutions make efforts to resolve disputes between husband and wife. In Aceh there is a Qanun (regional regulation) which clearly regulates the authority of traditional institutions in resolving family disputes, namely Aceh Regional Regulations Number 9 of 2008 concerning the Development of Traditional Life and Customs. In the regional regulations considerations, domestic disputes are cases that are resolved by traditional institutions at the village level. Traditional settlements are carried out by traditional Leaders consisting of "*keuchik*" (village head), "*imeum meunasab*" (prayer leader), "*tuba peut*" (village legislator), village secretary, cleric and scholars.²⁷

Traditional institutions resolve domestic disputes through the judiciary customs as regulated in Article 13 Chapter VI. The efforts made to resolve household disputes are to reconcile husband and wife who are at odds through advice, mediation and reconciliation. This role is always carried out by traditional leaders whenever there is a dispute in the household. Dispute resolution at the village level must be carried out before submitting to the

²⁵ Syeh Marhaban.

²⁶ Tarmizi, 'Acehnese Traditional Figure' (Oktober, 2022).

²⁷ Syeh Marhaban.

religious court. If the mediation process at the village level has not been carried out, the court has the right to return the case to the village to be resolved by traditional institutions. If this is not successful then the religious court takes over the case to be mediated and tried by a judge. The mediation process in religious courts sometimes also involves traditional leaders if necessary.

In Minangkabau society, traditional institutions also play a role in resolving domestic disputes. If a dispute occurs, the *ninik mamak* as a traditional leader tries to reconcile his nephew's child through advice and mediation. The first step taken was to investigate and interrogate the husband and wife separately to confirm the cause of the dispute. Information from each husband and wife was recorded. Next, the husband and wife's *ninik mamak* sit together to discuss the causes of the dispute, making provisions that must be obeyed by the husband and wife. The provisions made by the *ninik mamak* are conveyed to husbands and wives to obey and advise them not to repeat the same mistakes.²⁸

In the Minangkabau tradition, guarding feelings "*raso baraso*" is also a special concern, namely taking care of each other's feelings so that they don't get offended. Husbands and wives must not be selfish, regardless of the interests and feelings of other people. This is how Minangkabau custom teaches husband and wife to maintain harmony. *Ninik mamak* is a mentor for husband and wife in building a household, and resolving problems if occur. The Minangkabau traditional institution strengthens the mentor's position as the party who recommends marriage and divorce for children and nephews. However, it is unfortunate that these traditional efforts have been amputated by the policies of the Ministry of Religion and the Religious Courts, the role of traditional institutions in preventing divorce has been ignored.²⁹

In Batak custom, divorce is something that is prohibited and is a disgrace for the husband and wife as well as families from both parties. Divorce is avoided wherever possible and a solution is sought by traditional leaders to reconcile. In Batak tradition, the term *paulakhon dipaulak* is known, which means to return. The mechanism or method of *paulakhon* is that the husband explains to his parents or closest relatives about his household problems. Then discussed with *dongan sabutuba* (clan). If the relationship can no longer be repaired, several of the husband's relatives are sent to convey to the wife's relatives about the divorce.³⁰

4. Make Customary Rules to Prevent Divorce

Part of the role of customary law in creating family resilience is to minimize divorce. Culture view divorce as dangerous and having a negative impact on the existence of society. Datuk Fauzi Bahar, General Chair of

²⁸ Safrizal Ucoc, 'Malay Traditional Figure Riau Province' (Oktober, 2022).

²⁹ Intan Banas, 'Batak Traditional Figure Sumatera Utara' (September, 2022).

³⁰ Mangi Naibaho, 'Batak Traditional Figure Sumatera Utara' (September, 2022).

LKAAM West Sumatra, said that divorce has a negative impact on families, especially children. They do not receive good care from their parents, so the physical and mental growth of children is not optimal.

Most children of divorced couples have the potential to become scoundrels or social scum in the future such as thieves, robbers, drug users, promiscuous sex and so on. This is due to weak faith and knowledge and financially, so you don't hesitate to do anything. Children without good parenting will grow up with negative behavior and are vulnerable to falling into evil activities. Therefore, divorce is a crucial problem and should be prevented. To minimize divorce, Minangkabau traditional institutions have also launched a mentor program for married couples, where each married couple has a responsibility for the longevity of their household. Mentors consist of *ninik mamak*, while husband and wife are children of nephews. The mentor is in charge of fostering the nephew's household so that it lasts forever and if there is a dispute, the mentor reconciles it. To get a divorce, a nephew's child must get permission from his mentor.³¹

To minimize divorce, Minangkabau traditional institutions have also launched a mentor program for married couples as those responsible for the continuity of their household. Mentors consist of *ninik mamak*, while husband and wife are nephews. Mentors are tasked with building their nephew's household so that it remains lasting and if there is a dispute, the mentor reconciles it. To divorce a children and nephews, you must get permission from the mentor.³²

Batak society has many unique things in terms of language, marriage system, kinship system and the philosophy of life they hold, namely *Dalihan Na Tolu*. Every activity Batak people refer to this philosophy of life. For the Batak people, *Dalihan Na Tolu* is a value that should not be abandoned at any time. Even though the implementation of wedding processions has undergone several changes, the sacredness of traditional ceremonial processions related to *Dalihan Na Tolu* should not be ignored.³³

The Batak community's kinship system *Dalihan Na Tolu* is very strong and has succeeded in preventing divorce. Such strong kinship ties make the divorce process quite difficult. *Dalihan Na Tolu* is a source of inspiration for the Batak tribe and is a philosophy of life that regulates the kinship system, cultural system and way of life of the Batak people. For generations, *Dalihan Na Tolu* has survived in Batak families and has become a guide for interaction between Batak people.

³¹ Fauzi Bahar, 'Minang Kabau Traditional Figures in West Sumatra Province' (September, 2022).

³² Fauzi Bahar.

³³ Siakupon Nasution, 'Batak Traditional Figure North Sumatera' (September, 2022).

Customary law has taken various roles in efforts to realize family resilience and prevent divorce. These efforts include requiring the prospective bride and groom to take part in marriage guidance, resolving disputes through traditional institutions, requiring the marriage procession to comply with customary law, and the existence of various customary provisions aimed at preventing divorce. Customary law has shown a significant role in realizing family resilience and preventing divorce, even though according to data the divorce rate is still high.

Traditional institutions as community social institutions have demonstrated their function as protectors of the community through various traditional provisions and rituals.³⁴ Traditional institutions still exist today carrying out their social function in governing society through traditional values, including preventing divorce.

Challenges of Customary Law in Creating Family Resilience and Preventing Divorce

In realizing family resilience and preventing divorce, customary law faces a number of challenges in such as weak competence of traditional leaders, weak regulations and minimal support from facilities and budget for operations. For that it is necessary to strengthen the competence of traditional leaders in this field. Traditional leaders must have adequate competence in the field of customs and authority so that their functions run smoothly. Apart from that, there is also a need for supporting facilities for the operations of traditional leaders.

According to Riau Malay traditional leaders, the competence of today's traditional leaders is weak and has changed a lot compared to traditional leaders in the past. Traditional leaders used to be dedicated and selfless in taking care of community problems, so their position was highly respected. Currently, many traditional leaders' lifestyles have changed to become hedonistic, so that people do not respect traditional leaders and their advice.³⁵

The same opinion was expressed by one of Aceh's traditional leaders, that most of the traditional leaders currently in office, especially at the village level, do not have sufficient capacity to carry out their roles as traditional leaders. So his existence as a traditional Leader lacks legitimacy from society. For this reason, what is urgently needed now is to strengthen the capacity or knowledge of traditional leaders regarding their duties and functions in society. The community lacks trust in traditional institutions to solve their problems due to the inadequacy of traditional leaders. The coronation of traditional leaders

³⁴ Yohanes Wendelinus Dasor and Stanislaus Hermaditoyo, 'Revitalisasi Peran Lembaga Adat Dalam Penanganan Konflik Sosial: Studi Di Manggarai Nusa Tenggara Timur', *Sosio Konsepsia*, 9.3 (2020), 213–28 <<http://ejournal.kemensos.go.id/index.php/SosioKonsepsia/article/view/1859>>.

³⁵ Tarlaili.

has so far been full of political and financial elements, not a factor of character and knowledge capacity. So that people lack respect for traditional leaders and are reluctant to solve problems with them.³⁶

Apart from competency issues, budget issues and facilities for traditional institutions to implement customary law are also still minimal. This is also a challenge for traditional institutions in carrying out their roles. Many traditional institutions in districts/cities in Aceh are hampered in carrying out their duties and functions because they do not have offices, office facilities, lack staff and lack operational funds. This affects the performance of traditional institutions in fostering the community's traditional life. Traditional institutions have prepared various programs including implement customary law, but their implementation is hampered by lack of budget support. So the government is expected to pay attention to budget issues for traditional institutions.

In Minangkabau, West Sumatra implemented customary law also face a number of challenges in carrying out their role in the field of family development. Some customary policies were amputated by government agencies. For example, the Marriage, Marriage, Divorce and Reconciliation Advisory Committee (P3NCR) at the *nagari* (village) level which is tasked with guiding prospective brides and grooms and resolving family conflicts, the role of this institution has been taken over by the Ministry of Religion and the Religious Courts. So that traditional institutions lose their function.³⁷

Considering the important roles of customary law in building family resilience and preventing divorce in society and the many challenges faced, efforts to revitalizing the role of customary law in realizing family unity is a must. Revitalization is the process of reviving or reactivating something that once existed.³⁸

Customary law should be respected by government institutions because their existence is recognized by the constitution. as stated in Article 18 B of the 1945 Constitution, the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Customary law must be maintained and empowered so that their existence continues. The position of traditional institutions must be given the opportunity to exercise their traditional rights in the form of local wisdom as long as they have positive values and do not conflict with state policies. Therefore, revitalizing the role of customary law in solving various community problems is very important and urgent.

³⁶ Junaidi Dasa.

³⁷ Efendi Rozak, 'Minang Kabau Traditional Figures West Sumatra' (September, 2022).

³⁸ 'KBBi Online' <https://kbbi.web.id/revitalisasi#google_vignette>.

Revitalizing customary law means re-functioning the law as it should be by positioning customary law as an important instrument for solving community problems. Customary law grows in society as local wisdom that is adhered to by the community. This will be effective if used to create family resilience and prevent divorce.

Public awareness of the importance of solving problems through customary law needs to be raised, because it is in line with strengthening the regional autonomy system through Law Number 23 of 2014. The government must empower customary law to resolve various social problems in society.

Conclusion

This research succeeded in identifying the role of customary law in the Sumatra region in creating family resilience and preventing divorce. Customary law plays a role in efforts to create family resilience and prevent divorce through requiring pre-marital guidance for prospective brides and grooms, resolving husband and wife disputes through customary law, requiring marriage processions to comply with traditional rituals and the existence of customary regulations aimed at reducing divorce. Traditional institutions through their various traditional values have attempted to create family resilience and prevent divorce. Although in reality these efforts have not really been successful. This is caused by various challenges faced by customary law in the field.

The implementation of customary law faces a number of challenges, such as 1) weak competence and authority of traditional leaders, so that public trust in them decreases. 2) Low public awareness of implementing customary law in marriage processions 3) There is discrimination against customary law by government policy. As a result of these obstacles, customary law becomes ineffective in building family resilience and preventing divorce. For this reason, the government needs to revitalize customary law by empowering it as an instrument in preventing social problems in society.

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