

## **CUSTOMARY LAW OF *PEGANG PAKAI* IN *KAUM RAJO AMAN* (Comparative Study of *Sarak* in Mukomuko Regency)**

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### ABSTRACT

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In resolving the *sarak* (divorce) issue in Ipuh district of Mukomuko regency, the Rajo Aman tribal community prefers to resolve it through the use of customary law. The purpose of this study is: (1). To find out how to solve *sarak* in the traditional community of Rajo Aman, (2). To find out the solution of *sarak* by the head of the Rajo Aman tribe in the perspective of Islamic Law. The research type in this study was the empirical research. By using qualitative methods, the data was collected through in-depth interviews and documentation data collection. The results of the study show: (1). The custom that occurs in Mukomuko area originates from the Minangkabau custom, which is also known by the saying "*Adat bersendi syarak, syarak bersendi kitabullah, syarak mengato adat memakai*", (2). Mamak Rumah is given the authority to invite or appeal in the local customary language to the head of the tribe and invite families from both sides to give advice, meditation and a period of three weeks so that the wife and husband can think about the causes that will arise in the event of *sarak* and in order to prevent the breakup of the marriage after the specified time has ended, the head of the tribe and both sides of the married family come back, but the head of the tribe does not succeed in reconciling the husband and the wife who still insist on their want to end their husband-wife relationship, then witness the "*sighat talaq one*" which is handed down to wife, (3). *Sarak* in Islam is not a prohibition. It is the last decision from the household, when there is no way out. In Rajo Aman tribe, all of whom follow the religion of Islam, of course, the solution of *sarak* is in line with Islamic religious law.

## INTRODUCTION

The term Customary Law originates from Arabic, namely *hakama-yahkumu hukmah* meaning provisions and *'adah* which means custom. So, it can be concluded that "Customary Law" is rules.<sup>1</sup> Apart from that, the term "Customary Law" is a translation of the Dutch term "adatrecht". A legal expert who first used the term "adatrecht" was Snouck Hurgronje, who then quoted the term "adatrecht" and used it by Van Vollenhoven as a technical-juridical term.<sup>2</sup>

The Mukomuko people are very open to newcomers, this is because they are coastal residents, but they very firmly adhere to the customs adopted by their ancestors. This has been proven to this day, they still adhere to a social system based on a tribal pattern. Every immigrant who lives in the Mukomuko area, let alone marries a Mukomuko person, must become a member of one of the groups there. This aims to ensure that the immigrants have a traditional community. take responsibility for it and defend it socially. If something undesirable happens in society, such as a dispute or dispute, then there is a head of his tribe who will resolve the dispute.

In the Mukomuko area, any problems that occur will be resolved by deliberation and consensus, in order to avoid acts of violence. This is where the important role of tribal heads is to always look for and provide the best solution in a peaceful manner. Every dispute that occurs has legal sanctions which are stated in the daily customary laws.<sup>3</sup>

The customs that apply in the Mukomuko area originate from Minangkabau customs, which are also known as proverbs *Adat bersendi syarak, syarak bersendi kitabullah, syarak mengato adat memakai*. Another familiar saying is *Kemenakan berajo pado mamak, mamak berajo kepenghulu, penghulu berajo ke nan bana, bana badiri sandirinya sesuai alur dengan patut. Mamak bapadang tajam, kemenakan berleher gentin*.<sup>4</sup> Customs, namely the custom of holding and using, which also applies locally are recognized as rules that are obeyed by all members of society, such as what is prohibited according to religion is also prohibited according to custom. For example, gambling, cockfighting, cheering and so on.

Syarak here is the Shari'a or Islamic religion which came after the Minangkabau people had customs, while what is meant by Kitabullah here is the Al-Qur'an which is the main source of Islamic teachings. That is, what is ordained by syarak is implemented through custom. For example, Islam teaches its people to say or speak politely and wisely according to the situation and condition of the person they are

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<sup>1</sup> Siska Lis Sulistiani, *Hukum Adat Di Indonesia* (Jakarta: sinar grafika, 2020), Hlm 25.

<sup>2</sup> Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum*, 2004, Hlm 48.

<sup>3</sup> Sarwono Sarwit, *Sejarah Dan Adat Istiadat Kabupaten Mukomuko* (Mukomuko: bappeda kabupaten mukomuko, 2005), Hlm 73.

<sup>4</sup> *Ibid*, Hlm 75-76.

speaking to, which is then translated into traditional proverbs.<sup>5</sup>

*Sarak* (divorce) in customary law, basically the family and community hope that the marriage that has been entered into will last until the end of life. But in reality there is a breakdown of marriage or divorce in the community. In customary law, in general the things that become and encourage the cause of *sarak* a marriage is adultery, not giving or getting a living, disputes, physical/health defects, and abuse.

The term *sarak* is another word for divorce, the word *sarak* (divorce) is often used in traditional rituals regarding husband and wife who are about to separate. The end of a marriage is due to the will of the husband or wife and/or the wishes of both, due to disharmony in the household, this is called *sarak* (divorce), which originates from not carrying out and fulfilling the rights and obligations as husband and wife as they should in accordance with the applicable Marriage Law. in Indonesia. Concretely, the lack of harmony between husband and wife which gives rise to the desire to end a marriage relationship by means of *sarak* (divorce), such as the relationship between husband and wife who do not respect each other, do not keep each other's secrets and then a household situation that is not peaceful and safe, and occurs mutual disputes or differences of opinion that can change the principles between husband and wife.<sup>6</sup>

Divorce according to Islamic Religious Law has been positive in Article 38 and Article 39 of Law Number 1 of 1974 and has been explained in Article 14 to Article 18 and Article 20 to Article 36 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage (hereinafter abbreviated to PP No. 9 of 1975), includes: firstly "divorce talak", namely a divorce where a petition for divorce is submitted by and on the initiative of the husband to the Religious Court, which is deemed to have occurred and is in effect with all its legal consequences since when the divorce is declared (pledged) before a Religious Court session; secondly, "contested divorce", namely a divorce filed for divorce by and on the initiative of the wife to the Religious Court, which is deemed to have occurred and is in effect with all its legal consequences since the decision of the Religious Court which has permanent legal force.<sup>7</sup>

The Compilation of Islamic Law does not regulate the interpretation of divorce, but matters regarding divorce are regulated in articles 113 to article 148 of the Compilation of Islamic Law. This reason is absolutely mandatory according to law. This is confirmed in article 115 of the Compilation of Islamic Law which contains the following: "Divorce can only be carried out in front of a court after the court has tried and failed to reconcile the two parties." So what is defined by divorce from the perspective of the Compilation of Islamic Law is a way of pronouncement of the divorce agreement which must be carried out in front of the court and witnessed by

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<sup>5</sup> Ahmad Kosasih, "Upaya Penerapan Nilai-Nilai Adat Dan Syarak Dalam Penyelenggaraan Pemerintahan Nagari," *Humanus* 12, no. 2 (2014), Hlm 11.

<sup>6</sup> Syaifuddin Muhammad, *Hukum Perceraian* (jakarta timur: sinar grafika, 2013), Hlm 26.

<sup>7</sup> *Ibid*, Hlm 7.

the judges of the Religious Court. If the pronouncement of the divorce agreement is carried out outside the court, then the divorce is an illegal divorce which is considered illegal and has no binding legal force.

Based on observations at the research location, researchers found that divorce in society is very worrying. They did not divorce because one of them died, but they both divorced alive, meaning they were still alive and then decided to immediately end the marriage. Disagreements, quarrels, disputes and disputes that continue to drag on cause the loss of a feeling of love and affection. Arguments increase anger and suspicion towards your partner. Increasing disputes lead to loss of trust and ultimately divorce. Another reason for divorce is the increase in marriages between minors. Underage marriage makes them unprepared to face the details of the conflict they face.<sup>8</sup>

## RESEARCH METHOD

The research method used in this research is to use a type of empirical research (field research), namely legal research whose task is to look at the law in its true sense and examine how the law works in society.<sup>9</sup> This research is a descriptive analytical legal research, an approach carried out by conducting research directly in the field in order to obtain an overview of the data relating to Holding and Using a Customary Law of the Rajo Aman Comparative study of sarak dispute resolution in Ipuh Mukomuko District.

## DISCUSS AND ANALYSIS

### A. THE PROCESS OF RESOLVING SARAK IN THE RAJO AMAN

#### 1. Settlement of *Sarak* based on Hold and Use

Handholding is the name of the traditional rules in Ipuh District, Mukomuko Regency, these rules have been passed down from generation to generation from the time of our ancestors to our current generation and the determination of this handholding will never be changed at any time. Holding and using is a culture and habit of society and we also need to correct it together to make it a reference in the state and nation, because holding on to this has positive and negative values.

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<sup>8</sup> Armansyah Matondang, "Faktor-Faktor Yang Mengakibatkan Perceraian Dalam Perkawinan," *Jurnal Ilmu Pemerintahan dan Sosial Politik* 2, no. 2 (2014).

<sup>9</sup> Tripa Sulaiman, *Diskursus Metode Dalam Penelitian Hukum* (Banda Aceh: bandar publishing, 2019).

For the Rajo Aman indigenous people, the method for resolving *sarak* is certainly not the same as the Religious Courts, they have their own way of resolving this problem. In a meeting between the two families of a husband and wife who want to divorce with the Head of the Clan and the High Priest, of course the following dialogues occur:

*“sirih sekapu mitak dimakan, kato sepatah mitak didenga”*

The Chief of the Clan ate the betel and asked what was the meaning of their invitation. Both answered:

*“antaro kaming laking bining,  
idak abih menghabiskan,  
idak juo buruk memburukkan,  
abih umu dunia tingga,  
abih kasih basarak diam”*

The Head of the Clan answered:

*“mide sapai betuk tunah?  
apo buruk idak idak baik aging,  
keruh idakkan jernih?  
kusuk idakkan selesai aging?  
Hendaklah bajalan serancang, berbalik,  
Tidu sekelok mimpikan?”*

From this dialogue, the Head of the Clan and the High Priest will decide what they should suggest or give advice to the husband and wife who want to divorce. In this case, the time given by the Head of the Clan for the husband and wife to think again about whether they are sure they want to divorce is 3 weeks, within this time it is hoped that the husband and wife will be able to think clearly and make their final decision.

If during this time it turns out that the husband and wife still want to have sex, the Head of the Clan is obliged to send the husband and wife to the Religious Court.<sup>10</sup>

## **2. Settlement of *Sarak* by Family and Traditional Leaders**

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<sup>10</sup> “Wawancara Kepala Kaum Rajo Aman, Datuk Ali Sadikin” pada tanggal 2023 .

Talking about the process of resolving *sarak* in Kaum Rajo Aman, Ipuh District, Mukomuko Regency, where the majority of the people adhere to Islam, a religion that has been taught and passed down from generation to generation by their ancestors. So that the Rajo Aman people can be harmonious and follow religious orders regarding the *sarak* process experienced by several families, the researcher succeeded in conducting interviews and the researcher summarizes them as follows.

Mamak Rumah is given the authority to invite or appeal in the local traditional language to the head of the family and also invite the families of both sides of the couple to convey advice, meditation and also three weeks for the husband and wife to think about the causes and consider the reasons that will arise. If *sarak* occurs and the aim is to prevent the end of the marriage after the stipulated time has expired, then the head of the clan and both sides of the couple's family come back but the head of the clan has not succeeded in reconciling the husband and wife who are still determined in their stance to end the relationship. husband and wife then witness the "*sighat talak one*" imposed on the wife.

### 3. *Sarak* Between Husband and Wife

The process of *sarak* experienced by the children of the Rajo Aman community is very diverse, there are those whose husbands say directly to their wives that they want to imprison them, there are also those who leave their wives and small families to wander and do not return and then send messages online containing *sighat talak*.

The *sarak* process in Ipuh District, Mukomuko Regency, is still very strong with customs and a sense of family, some people still carry out divorce according to family customs and then only go through the Religious Court (PA) procedure.

Apart from the family method which only involves the couple's parents and local traditional leaders, the husband also makes a divorce decree so that the divorce falls on his wife.

## B. THE PROCESS OF RESOLVING SARAK FROM THE PERSPECTIVE OF ISLAMIC LAW IN KAUM RAJO AMAN

Basically, Islam wants every marriage to last, so that husband and wife can always run the household together and raise their children very well. Without the basics of guidance from parents regarding the child's life, it is possible that human life and even the culture of every nation will be destroyed. This allows every parent at home to see the results of their child's daily life interactions.

Marriage bonds based on Islamic law can be threatened by various actions of the perpetrators of the marriage themselves, both men and women. These actions can also damage a marriage, end the marriage temporarily, for a very long time and

even end it forever, this really depends on the type of action the couple takes. In general, it can be said that it is the will of people whose marriages are to last continuously and will only be terminated if one of the husbands or wives dies. However, in reality, many married couples are forced to end their marriage ties midway.<sup>11</sup>

Below is an example of a table comparing divorce between Islamic marriage law, the Compilation of Islamic Law and Customs of Handholding:

#### 1. What is compared in the Definition of Talak:

- Islamic law: Termination of marriage ties through pronouncement of talaq or similar which is carried out by the husband to the wife.
- Compilation of Islamic Law: The husband's vow before the Religious Court is the cause of the dissolution of the marriage.
- The custom of Holding Use: The cessation of male marriage which is the cause of *sarak*.

#### 2. Types of Talaq:

- Islamic law: Sunni Talak, Bad'i Talak, Ba'in Sugra Talak, Kubra Talak Ba'in, Raj'i Talak, Sharih Talak, Sindirin Talak.
- Compilation of Islamic Law: Talak Raj'i, Talak Ba'in Sugra, Talak Ba'in Kubra, Talak Sunni, Talak Bid'i.
- Customs of Holding Use: Sunni Talak, Bad'I Talak, Sharih Talak, Raj'i Talak, Sugra Talak Ba'in, Kubra Ba'in Talak.

#### 3. Other things that cause marriage to break up:

- Islamic law: Khuluk, Illa', Zhihar, Li'an, Fasakh, Syiqaq.
- Compilation of Islamic Law: Khuluk, Li'an, Fasakh.
- Hand holding customs: Khuluk, Illa, Li'an, Fasakh, Syiqaq.

#### 4. The talaq:

- Islamic Law: Husband.
- Compilation of Islamic Law: Husband after a decision from the Religious Court.

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<sup>11</sup> Anisa Bahari et al., "Aturan Perceraian Dalam Masyarakat Hukum Adat Baduy Skripsi" (2022).

- Hand holding customs: Husband.
5. Falling Divorce:
- Islamic law: Since pronouncing talaq from the husband, whether serious or joking.
  - Compilation of Islamic Law: Since the Religious Court's decision was issued regarding divorce cases (vow of divorce) and has permanent legal force.
  - Customs of Holding Use: Since pronouncing talak from the husband, be it serious or playful.
6. Legal remedies:
- Islamic Law: None.
  - Compilation of Islamic Law: Can appeal, cassation, judicial review.
  - Usage Customs: None.
7. Iddah period:
- Islamic law: There is an iddah period.
  - Compilation of Islamic Law: There is an iddah period.
  - Customs of Holding and Use: There is an iddah period.
8. The validity of the iddah period:
- Islamic Law: Since divorce is imposed on the wife.
  - Compilation of Islamic Law: Since the Religious Court decision was issued which has permanent legal force.
  - Customs of Holding Use: Since divorce was imposed on the wife.

*Sarak* between husband and wife in the process of *sarak* experienced by the children of the Rajo Aman people is very diverse, there are those whose husbands say directly to their wives that they want to *sarak* them, there are also those who leave their wives and small families to wander and do not return and then send messages online containing *sighat* words. *divorce*. *Sarak*, apart from being a family method, which in this case only involves the parents of the husband and wife along with local traditional leaders, then the husband makes a divorce letter to impose divorce on the wife.

However, other trigger factors that underlie a household relationship deciding to divorce are also increasingly diverse. Divorce factors do not only come from one



sector. However, there are many sectors that ultimately worsen the situation in the household, until they finally decide to end the marital relationship by divorcing. Social and cultural factors are also increasingly present in life today, thus having an impact on the high divorce rate.

*Sarak* (divorce) is not a prohibition in Islam, but rather is the last door to a household when there is no other way out. In the Kaum Rajo Aman, where all the children of their clan adhere to Islam, of course the settlement of *sarak* is in line with Islamic religious law. This is in accordance with the ABS-SBK maxim (*adat bersendi syarak, syarak bersendi kitabullah*).

The process of completing *sarak* in Kaum Rajo Aman, Ipuh District, Mukomuko Regency adheres to the teachings of Islam, as a religion that has been taught and passed down by their ancestors for generations.

## CONCLUSION

In the *sarak* which is carried out through customary settlement, of course this is what is used by the Kaum Rajo Aman, where this settlement is carried out by the Head of the Clan and the High Priest. In the settlement process, holding and use arrangements have been made, where married couples who wish to divorce must report to Mamak Rumah. It is the Mamak Rumah who will convey to the Head of the Clan and the High Priest that there are children of the clan who want to retire.

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