

**EFFECTIVENESS OF KERAPATAN ADAT NAGARI (KAN) AS THE
INSTITUTION OF MEDIATION ON FAMILY CONFLICT
(Case study in East Malalak District of Agam)**

THESIS

Written by:

Aisyah Rahmaini Fahma

12210051



AL-AHWAL AL-SYAKHSHIYYAH DEPARTMEN

SHARIA FACULTY

THE STATE ISLAMIC UNIVERSITY

MAULANA MALIK IBRAHIM

MALANG

2016

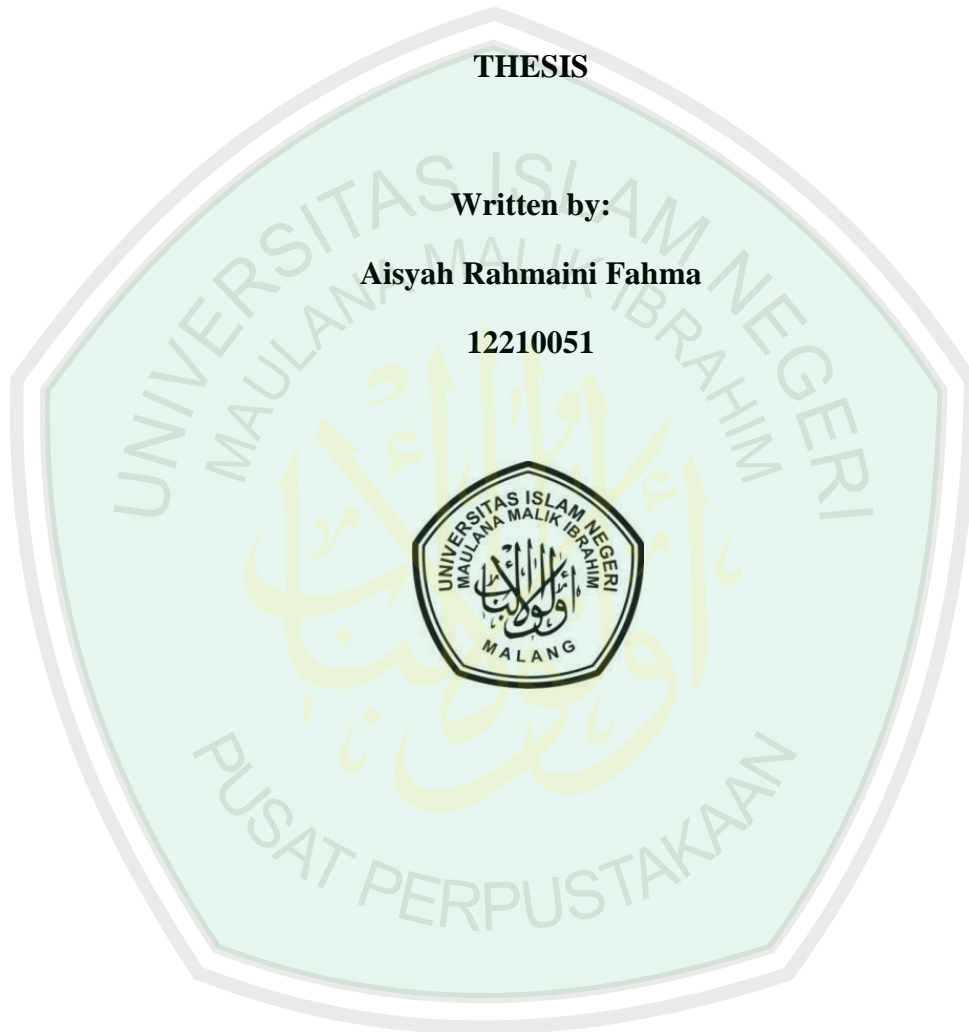
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2016

STATEMENT OF THE AUTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the writer declares that thesis entitled:

EFFECTIVENESS OF KERAPATAN ADAT NAGARI (KAN) AS THE INSTITUTION OF MEDIATION ON FAMILY CONFLICT (Case study in East Malalak District of Agam)

Is truly the writer's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work. Duplication, plagiarism. This thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 29th of June 2016



Aisyah Rahmiani fahma
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APPROVAL SHEET

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**EFFECTIVENESS OF KERAPATAN ADAT NAGARI (KAN) AS THE
INSTITUTION OF MEDIATION ON FAMILY CONFLICT
(Case study in East Malalak District of Agam)**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by Thesis Board of Examiners.

Malang, 29th of June 2016

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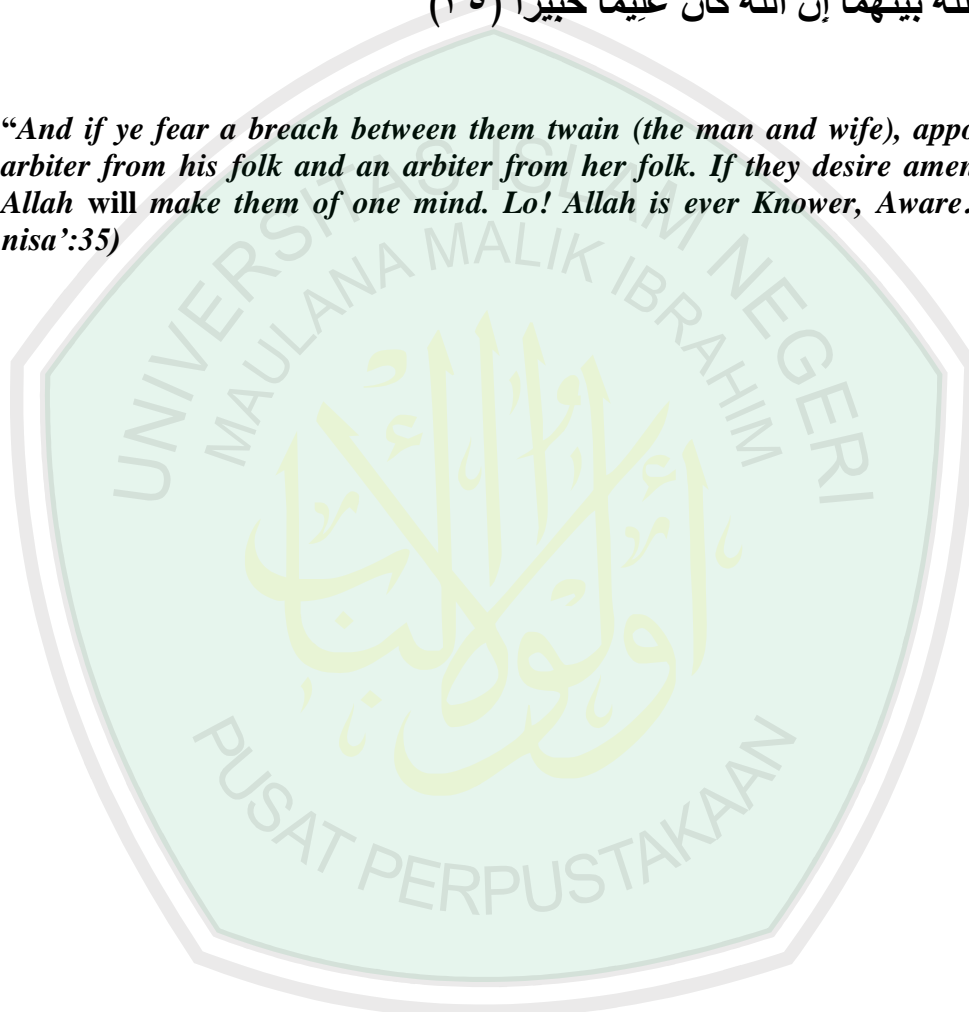
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MOTTO

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا

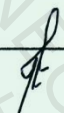
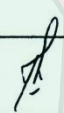
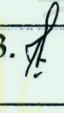

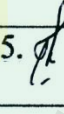

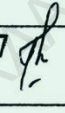
يُوفِّقَ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا (٣٥)

“And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.” (An-nisa’:35)



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 (Case Study on East Malalak District of Agam)

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2	Thursday, 28 th of April 2016	Chapter I and II	2. 
3	Monday, 16 th of May 2016	Review of Chapter II	3. 
4	Monday, 30 th of May 2016	Chapter III	4. 
5	Wednesday, 01 of June 2016	Chapter IV	5. 
6	Friday, 3 of June 2016	Abstract	6. 
7	Thursday, 9 of June 2016	Review of all Chapters	7. 

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The Thesis Board of Examiners states that Aisyah Rahmaini Fahma, Studen ID Number 12210051, Student of Al-Ahwal Al-Syakhshiyyah Department, Sharia Faculty, The State Islamic University of Maulana Malaik Ibrahim Malang, this thesis entitled:

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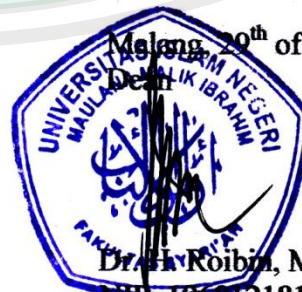

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ACKNOWLEDGEMENT

Alhamdulillahirobbil 'alaminbini'matitattimmushalihat, with all of his grace, mercy and guidance the thesis entitle "Effectiveness of KerapatanAdatNagari (KAN) as The Institution of Mediation in Family Conflict Resolution (case study on East malalak district of Agam) can be done very well. *Wasshalatuwassalam 'alaRasulillah*, for his teaching that thought us to live in the world, led our way from the darkness to the light in this life. May we are become one of those who will has his *syafaat* in yhe judgment day.

With all of the support, effort, help, guidance, briefing and discussion of various parties in this process of writing this thesis, the writer with her great humility expressed her thanks infinitely to:

1. Prof. Dr. H. MudjiaRaharjo, M.Si, as the rector of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Dr. H. Roibin, M.H.I, as the Dean of Sharia Faculty of State Islamic University, an also as lecturer guardian for guiding the writer in any academic process while studying in Sharia Faculty. Many thanks are expressed for everything he has provided to the writer in guidance, advice and motivation.
3. Dr. Sudirman, M.A, as the Head of Al-Ahwal Al-Syakhshiyah Department of Sharia Faculty in State Islamic University of Maulana Malik Ibrahim Malang. As well as a former President of ICP unit, for giving us many advices while studying as ICP student.

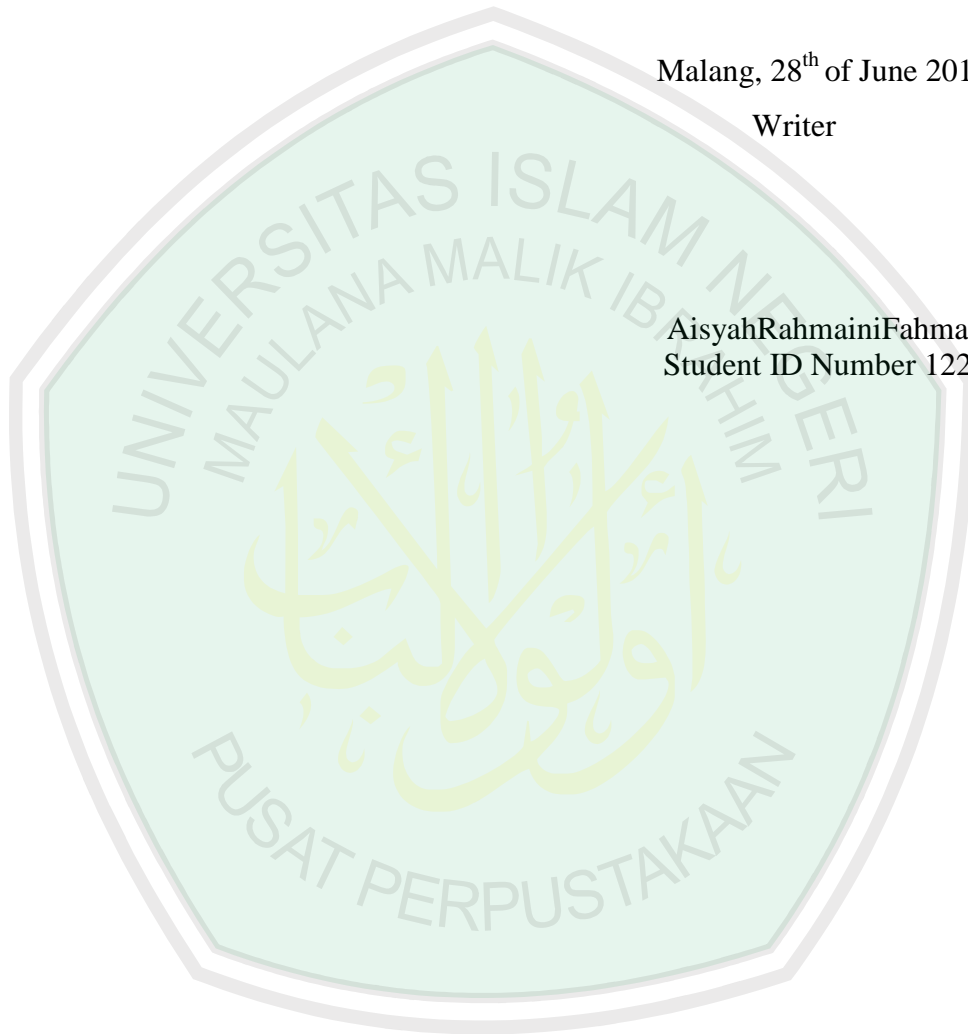
4. Dr, Hj. TutikHamidah, M.Ag, as the supervisor in writing this thesis.
Thaks for all time that she has gave for guidance, briefing and motivatin
in completing this thesis.
5. To all lectures of Sharia Faculty of State Islamic University of Maulana
Malik Ibrahim Malang. Who has gave many teaching, guiding, briefing,
and knowledge to with a great sincerity.
6. Staff and employee of Sharia Faculty of State Islamic University of
Maulana Ibrahim Malan, participating in the completion of this thesis
7. My beloved father “ Fahrizal” who work so hard in order to provide the
cost of an excellent education, My beloved Mother “Ermawati” who
supports father, me and also my Brothers “ Kahiril and Jamil” for never
give up struggling in this study. Thanks to all of you for un measurable
spirit given to me.
8. To my classmate of ICP Students, thanks for being my friends for studying
in the inseparable class in 5 semesters.
9. My roommate in 49 room of Ummusalamah Dormitory, as my new family
in this place who give me spirit, motivation and happiness.

May everything I have gained studying at the Sharia faculty of State Islamic University of Maulana Malik Ibrahim Malang, could be useful for all readers, especially for me personally.

Malang, 28th of June 2016

Writer

AisyahRahmainiFahma
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TRANSLITERATION GUIDENCE

A. Consonant

Transliteration is the changing language from Arabic to Indonesian writing. It is not the translate of Arabic to Indonesian

Arab	Latin	Arab	Latin
ا	A	ش	Sy
ب	B	ص	Sh
ت	T	ض	dl
ث	Ts	ط	Th
ح	H	ظ	Zh
ج	J	ع	‘
خ	Kh	غ	Gh
د	D	ف	F
ذ	Dz	ق	Q
ر	R	ك	K
ز	Z	ل	L
س	S	م	M
ن	N	ء	‘
و	W	ي	Y
ه	H		

Hamzah (ء) which is signed by alif, when it located in the first of word so the transliteration is following the vocal, it does not signed but if it is located in

the middle ar in the last of world so it can signed by *komain* up (’), opposite of *koma* (‘), for changing the symbol “ع”.

B. Vocal, length and diphthong

Every writing in Arabic language in the shape of latin writing, the vocal of *fathah* written by “a”, *kasrah* by “i”, *dlommah* by “u”, and for the length would be written with some ways:

Vocal (a) length	= a	example	قال	becomes	qala
Vocal (i) length	= i	example	قيل	becomes	qila
Vocal (u) length	= u	example	دون	becomes	duna

Specially, for *ya’ nisbat*, it cannot replaced by “i”, but it is written by “iy” for showing *ya’ nisbat* in the *last*. It should be done too for the diphthong *wawu* and *ya’ after fathah* will be written by “aw” and “ay”. Pay attention to the example bellows:

Diftong (aw)	= و	example	قول	becomes	qawlun
Diftong (ay)	= ي	example	خير	becomes	khayrun

C. Ta’marbuthah (ة)

Ta’marbuthah is translated as “t” if it locates in the center of worlds but, if it locates in the last of world so the translate will be “h” example: للمدرسة

الرسالة becomes *alrisalat li al-mudarrisah*, or if it locates in the middle of words and it becomes the arrangement of *mudlaf* and *mudlafilayh*, so it will be

translated by “t” which is related to the next sentence, for example: رَحْمَةُ اللَّهِ

فَيَبْصِرُ becomes *fi rahmatillah*.

D. Sandang words dan Lafadh al-Jalalah

Sandang word as “al” (ال) is written by the small letter, except it located in the beginning of sentence and “al” in *lafahjalalah* which is located in center of sentence (*idhafah*) should be lossed. Pay attention to the examples after:

1. Al-imam al-Bukhary said that.....
2. Al- Bukhariy in the opening of his book explained that....
3. *Ma Sya Allah kana wamalamyasya lam yakun.*
4. *Billa ‘aawajalla.*

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ABSTRACT

Fahma, Aisyah Rahmaini. 2016. *Effectiveness of Kerapatan Adat Nagari (KAN) as Institution of Mediation on Family Conflict (the case study of east Malalak Agam region)*. Thesis. Department of Al-ahwal Al-syakhshiyah. Faculty of Syari'ah. Maulana Malik Ibrahim State University, Malang. Advisor: Dr. Hj. Tutik Hamidah. M. Ag

Key word: Effectiveness, *Kerapatan Adat Nagari*, Mediation, Family's conflicts

Kerapatan Adat Nagari (KAN) is an institution of *kerapatan* from *Ninik Mamak* that has been inheritance hereditary as far as the tradition. It has function for keeping the tradition and solving the disagreement. In this case, this institution has very important role for Malalak people in solving the family's problem such as divorce and inheritance that appropriate with the rule, tradition and religion. "*adaik basandi syarak' syara' basandi Kitabullah*".

This study aims to know what is the role of KAN as a mediation institution in solving family's conflict and know what is the effectiveness KAN as a mediation institution in solving family's conflict.

In this study, the writer used juridical empirical method through juridical sociological approach by collecting a primer data. The writer used qualitative method by observed and investigated based on the fact in society directly in enforcement of mediation that conducted by KAN. Also knowing the condition directly from KAN institution in East Malalak itself.

The process of solving family's conflict conducted by KAN institution in east Malalak through lower level first such as acknowledgment "*Minangkabau*" (*Bajanjang Naik, Batanggo Turun*). It means the first step in solving family's conflict through discussion with the family, then in ethnic, in the last will be conducted by KAN. The function of KAN as a mediation institution in solving family's conflict to finding the best solutions. Also the final result is a reconciliation not just a decision.

According to the number of cases so KAN has many opportunities being an institution of tradition that has a function as Mediation Institution on solving problems in society, especially for east Malalak people. It's been supported through culture in that society who is obeyed with the rule of KAN.

مخالصة البحث

فهما, عائشة رحي. ٢٠١٦. فعالية KerapatanAdatNagari (KAN) كالمؤسسة الوسطة في إصلاح المشاكل الأسرة (دراسة حالة إفرادية في ماللاق Malalak الشرقية ريجنس أغام Agam). أطروحة الشعبة الأحول الشخصية, كلية الشريعة في جامعة مولانامالك إبراهيم الإسلامية الحكومية مالانق. إشراف الدكتور الحاجة توتيك حاميدة الماجستير.

كلمة الرئيسية: فعالية, KerapatanAdatNagari, الواسطة, المشاكل الأسرة

KerapatanAdatNagari (KAN) هي المؤسسة الكثافة من NinikMamak وكانت من وراثة وراثي كل مخصص و الدالتها لحفظ المخصص و لإكمال المشكلات. في هذا الحال KAN الدور الهام للمجتمع مللاق في إكمال المشكلات منهم من المشكلات الأسرة مثل: الطلاق و الفرائض و كذلك من المشكلات غيره الذي و في إصلاحها مناصب بأحكام العادات و كذلك أحكام الإسلام "adaikbasandisyara' syara' basandikitabullah"

في هذا لبحث له السألان و هو: ١. كيف الدور المؤسسة KAN في يصلح المشكلات الأسرة؟ و ٢. كيف حال الفعالية KAN كالمؤسسة الواسطة في إصلاح المشكلات الأسرة؟ هذا البحث من البحوث التجريبية بالنهج اعتباري السوسيولوجية. بإستخدام البيانات من الواقعة بسماع من المقابلة أو نظار عن الحال حياة المجتمع في التجريب الوسطة في المؤسسة KAN و عن الحال من تلك المؤسسة بنفسها.

كانت العمليات التي تجري في إكمال المشكلات الأسرة في مؤسسة KAN في مللاق الشرقية يعني ابتداء من المستوى الأدنى الى المستوى الأعلى, كما في إصتلاح عدة "BajangNaikBatnggoTurun"Minangkabau. بمعنى من بيت ثم قبيلة ثم الآخر في KAN مؤسسة KAN في إصلاح المشكلات الأسرة كالوسطة فقط في بحث الحل عن تلك المشكلات و ليس من المحكمة التي تحكم بها. و من البحث عن العدد المشكلات التي قد صلح في مؤسسة KAN فلها الفرص الكبير لإصلاح المشكلات الأسرة في مللاق الشرقية وكذلك التاكيد بحال المجتمع الذين يطيعون بها.

ABSTRAK

Fahma, Aisyah Rahmaini. 2016. Efektifitas Kerapatan Adat Nagari (KAN) sebagai Institusi Mediasi dalam Menyelesaikan Konflik Keluarga (Studi Kasus Malalak Timur Kabupaten Agam). Skripsi Jurusan Al-ahwal Al-syakhshiyah. Universitas Islam Negeri Mulana Malik Ibrahim Malang. Pembimbing Dr. Hj. Tutik Hamidah. M. Ag

Kata Kunci: Efektifitas, Kerapatan Adat Nagari, Mediasi, Permasalahan Keluarga

Kerapatan Adat Nagari (KAN) merupakan lembaga kerapatan dari ninik marnak yang telah ada dan diwarisi secara turun temurun sepanjang ada dan berfungsi memelihara kelestarian adat serta menyelesaikan perselisihan. Dalam hal ini Lembaga KAN memiliki peran penting bagi masyarakat Malalak dalam menyelesaikan permasalahan keluarga baik berupa perceraian maupun masalah waris yang sesuai dengan ketentuan atau aturan adat maupun Agama “adaik basandi syarak’ syarak’ basandi Kitabullah”.

Dalam penelitian ini, rumusan masalah yang ditentukan adalah: 1) bagaimana peranan lembaga KAN dalam menyelesaikan suatu permasalahan keluarga? Dan 2) bagaimana efektifitas KAN sebagai lembaga mediasi dalam menyelesaikan suatu permasalahan keluarga?

Penelitian ini termasuk jenis penelitian yuridis empiris dengan pendekatan yuridis sosiologis, yang mana dalam memperoleh data primer Penulis melihat dan mendengar secara langsung mengenai kenyataan dalam kehidupan masyarakat mengenai upaya penegakan mediasi yang dilaksanakan oleh KAN dan keadaan dari lembaga KAN yang terdapat di Malalak timur itu sendiri.

Adapun proses dalam penyelesaian sengketa keluarga oleh KAN di Malalak Timur diselesaikan oleh tingkat yang bawah dahulu, seperti kata pepatah Minangkabau “*Bajanjang Naik, Batanggo Turun*” yaitu diselesaikan di tahap rumah, sukubaru setelah itu diselesaikan di tingkat nagari yaitu KAN. Dalam menyelesaikan permasalahan keluarga, KAN hanya berfungsi sebagai lembaga mediasi yang membantu dalam mencari jalan tengah dari suatu permasalahan. Dan dengan hasil akhir berupa hasil perdamaian bukan putusan.

Dari hasil penelitian mengenai jumlah kasus yang dapat diselesaikan oleh KAN maka KAN memiliki peluang besar sebagai suatu lembaga mediasi adat yang berfungsi menyelesaikan suatu permasalahan masyarakat terkhusus dalam masyarakat Malalak timur. Dan di diperkuat dengan kebudayaan masyarakat setempat yang masih patuh terhadap aturan KAN, semakin memperkuat lembaga ini dalam menjalankan posisinya sebagai suatu lembaga yang harus dijaga dalam menjalankan kerapannya sebagai lembaga mediasi.



CHAPTER I

INTRODUCTION

A. Background of Study

As a method of resolving disputes peacefully, mediation has a great opportunity to grow in Indonesia. With Eastern customs are still rooted, people prefer the fixed relations between family relationship or a relationship with a business associate rather than momentary profits when the dispute arose.

Resolve the dispute in court may generate huge profits when winning, but the relationship is also being damaged. Save face (saving face) or a person's good name are important things that are sometimes better in the dispute resolution process in the country, including Eastern Indonesia cultured.¹

¹ Fatahillah A. Syukur, *Mediasi Yudisial Di Indonesia* (Bandung: Mandar Maju, 2012), p 4,. As reduct from John S. K. Ng, *The Four Faces of Face : Implication for Medication*, dalam *An Asian Perspective on Mediation* , eds Lee J. And Hwee, T.H., Academy Publishing, Singapore, 2009, p. 158 -169)

Mediation is one of the effective instruments of non-litigation dispute resolution that has many benefits and advantages. The benefits and advantages of using the mediation among others is that disputes can be resolved in a win-win solution, the time used is not prolonged, lighter charges, fixed the rights two relationships between two people that is in dispute and save their issues from publication.²

The mediation was already known In Islam, it was known in Islam with term “*ishlah*”. This determinate same with Allah decree in Al-hujurah verse 9:³

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى
فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا
إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

"And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly". (Al-hujurah. 9)

That if two classes of believers fight and so they let a peace, carried out fairly and properly for God so love the people who do justice.⁴

In Prophet Muhammad era was practice the mediation to solving conflict in laying black stone (*hajar aswad*) into it place, where between members of *qabilah* in order to become mutually scramble that put the black

² Syahrizal Abbas, Mediasi dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional, (Jakarta: Kencana Prenada Media Group, 2011), p . 22.,

³ QS.Al-hujurah verse 9

⁴ Abdul Manan, Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama, (Jakarta: Kencana Prenada Media, 2005), p. 151.

stone. Then to complete this Prophet Muhammad was not the one to judge but a prophet as a mediator to mediate so finding the midpoint in this issue.

And also in Minangkabau has an indigenous institution which is engaged in the field of mediation, which the Agency is named *Kerapatan Adat Nagari* (KAN). Through this custom community can resolve their problems through mediation.

The existence of KAN was regulated in local legislation of West Sumatera Number. 2 year 2007 about *Pokok-Pokok merintahan Nagari* in article 1 the number 13, that. "*KAN berkendudukan sebagai lembaga perwakilan permusyawaratan masyarakat adat tertinggi yang telah ada dan diwarisi secara turun temurun sepanjang adat*". KAN serves as the representative of the indigenous people's consultative institution that has been there and was inherited hereditary all custom long.⁵

The position of KAN in Indonesia is also reinforced by the Constitution year 1945 in article 18B verse 2 "*Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat, dan prinsip Negara Kesatuan Republik Indonesia yang diatur dalam Undang-Undang*". The State recognizes and respects the unity – the unity of Community law and their traditional rights are all still alive and in

⁵Local Legislation of Sumbar Number. 2 year 2007 about Pokok-Pokok merintahan Nagari

accordance with the development community, and the principle of the unitary State of the Republic of Indonesia regulated in legislation.⁶

Besides that, the function of that institution is keeping sustainability customary as well as long and also solved the custom conflict. In local regulations of West Sumatera, Kerapatan Adat Nagari (KAN) is authorized to deal the problems that are: Disputes concerning the title (Sako), property inheritance (Pusako) and other civil Disputes.⁷ The other civil conflict that happen between members of society such as divorce and so on.⁸

More over in local legislation of West Sumatera Number.16 year 2008 article 12 paragraph (1) about *Penyelesaian Sengketa Tanah Ulayat* that:

“Sengketa tanah ulayat di nagari diselesaikan oleh KAN menurut ketentuan sepanjang adat yang berlaku, “bajanjang naiak batanggo turun” dan diusahakan dengan jalan perdamaian melalui musyawarah dan mufakat dalam bentuk keputusan perdamaian”.

Alienated land dispute resolved by KAN *nagari* according to the provisions of all applicable customs, "*bajanjang naiak batanggo turun*" and effort with the path of peace through deliberation and consensus in the form of the decision of peace "⁹. The provisions of this article suggests the proses in this dispute was used a non litigation proses that is mediation. In position of *Kerapatan Adat Nagari* is not as institutions court to justice for but to solve the dispute.

⁶Undang-Undang Dasar Negara Republik Indonesia 1945

⁷ Perda sumatera barat pasal 7 ayat 1 huruf b dan huruf c Perda nomor 13 in 1983

⁸ As Suhaiti Arief, *Eksistensi Peradilan Adat Pada Masyarakat Hukum Adat Minangkabau di Sumatera Barat* (research proposal of competetion hibah, Padang, 2007), p.3

⁹ Perda number 16 year 2008

In Article 12 paragraph (1) of local legislation in West Sumatera No. 16 year 2008 above explain that existence of *Kerapatan Adat Nagari* in resolving over customs conflicts just as mediation process, the intended of that process is to reconcile the parties to their conflict. *Kerapatan Adat Nagari* only as facilitates. Whereas product of that mediation to reached the agreement in two sides, so that the decision of *Kerapatan Adat Nagari* in conflict resolving is reached or no reached the peace for both parties. Then in local regulation in West Sumatera Number. 16 year 2008 on article 12 paragraph (2) outlines that, if peace decision is not accepted by the parties to the dispute referred to in paragraph (1), the parties can give over their conflict to the Court in that District.

Because of that many of the people in Malalak solve their problems in institutions of KAN, in addition to the problems that have discussed in Perda and other problems that have not discussed in local legislation. Most of this society a lot of solving family heirloom treasures or either of the problems surrounding the marriage.

The mediation process is done in this KAN directly handled by *Ninik Mamak* or King as the Chief of the parties. So this mediator knows the ins and outs of the life of the parties concern. And people with a deep knowledge about the Customs and laws of Islam then present potential in resolving the problems of the troubled party.

In addition, there are still many advantages that can be obtained from the local community in resolving disputes on the KAN that is by using a

family systems and particularly for the community of Malalak it gives a great advantage and easily accessible from every walks of life.

From the excellences of KAN and mediator of is decorous head of the custom who knows more something about custom. So that it is a very effective way to get win-win solutions. But now when society is doing about the problem of family mediation in these institutions are often results of the deal produced by KAN in decline by the local court.

So this is very detrimental to the local community which has indeed been accustomed to resolving their problems in these institutions. So the circumstances like these often compel people to resolve their problems through the courts and mediators who already have a certificate for the sake of recognition can be a result of local courts without having to pay attention to which is more effective in resolving their problems.

So therefore mediation is undertaken at the Institute's it faced challenges from outside and from within itself, An example of external factor that there is unconformity between Government and KAN in terms of the handling or problem resolving that have been domain of *Kerapatan Adat Nagari*. The Court accepts cases of *Harato Pusako* from the plaintiff without having processed by KAN first are owners of authority in mediating that disputes. And the court can solve the dispute when KAN has given a letter for result of mediation on it like agreement latter.

So that activity and the condition of KAN not optimality cause of this issues. There are other factors that hamper the effectiveness of KAN in carrying out its duties and functions as an indigenous institution.

Based on explanation above, the authors interested in researching on EFFECTIVENESS OF KERAPATAN ADAT NAGARI (KAN) AS THE INSTITUTION OF MEDIATION ON FAMILY CONFLICT (Case study in Malalak District of Agam).

B. Statement of Problem

1. What is the role of KAN as an institution of mediation in family conflicts resolution in Malalak, District of Agam?
2. What is the effectiveness of KAN as institution of mediation in family conflicts resolution in Malalak, District of Agam?

C. Objective of Research

In this proposal have some clear object that do not apart from main topic in research, there are:

1. To know deeply about role of KAN in solve the family conflict in Malalak, District of Agam.
2. To know how far the effectiveness of KAN as institution of mediation in solve the family conflicts in Malalak, District of Agam.

D. Significance of Research

1. Theories Significance
 - a. To invited people to resolve their conflict in custom institutions mediations that *Kerapatan Adat Nagari* (KAN).

- b. Author expected this research can give science contributions in knowing how positions of custom institutions mediation in solve the problem.

2. Practical Significance

- a. Can be reference of people in Minangkabau especially people in Malalak to solve their problem in custom institutions mediation of KAN.
- b. Give contribution to government in saving custom constitutions especially *Kerapatan Adat Nagari*.
- c. give solutions to make a compromise between court and institutions of custom mediation or KAN in realized and keep the custom of Minangkabau.

E. Operational Definition

1. Effectiveness

Successfully and obediently.¹⁰ Effectiveness is can bring results and successfully in business or can apply in regulation.¹¹

2. Kerapatan Adat Nagari (KAN)

”Kerapatan Adat Nagari merupakan Lembaga Perwakilan Permusyawaratan dan Permufakatan Adat tertinggi nagari yang telah ada dan diwarisi secara turun-temurun sepanjang adat di tengah-tengah masyarakat nagari di Sumatera Barat. Lembaga Kerapatan Adat Nagari merupakan himpunan dari para ninik mamak atau penghulu yang mewakili suku atau kaumnya yang dibentuk berdasarkan atas hukum adat nagari setempat”¹²

¹⁰ John M. Echols dan Hassan Shadily, Kamus Inggris Indonesia, cet.XXIII, (Jakarta: Gramedia Pustaka Utama, 1996), p.

¹¹ 207m.dahlan.y. al.barry , *Kamus Induk Istilah Ilmia Seri Intelektual*(Jakarta, arkola, 2008), p:571

¹² *Peraturan daerah Sumatera Barat*, 2008

3. Institution

Building of organizations (government, civic foundations), organization that describes the stages of progress or social aspects of, religious politics.¹³

4. Mediation

Word of "mediasi" (in Indonesian) is same with "mediation" in English, mean dispute resolution in engage the third-party as mediator or mediating in the dispute, that named mediator or man in the middle.¹⁴

Or mediation is a process proses including of third-party in resolving the problem as an advisory¹⁵

5. Custom

Role or common that have done long time ago.¹⁶

6. Conflict

Dispute, strife and contraction.¹⁷

F. Previous Research

1. *Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat or*

¹³ m.dahlan.y. al.barry , *Kamus Induk Istilah Ilmia Seri Intelektual*(Jakarta: arkola), p .321

¹⁴ ohn Echols dan Hasan Shadily, *Kamus Inggris Indonesia*, Cet. ke xxv (Jakarta: Gramedia Pustaka Utama, 2003), 377. The meaning is same with Prof. Dr. Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: PT. Kencana, 2005), p: 175

¹⁵ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2000), p. 640

¹⁶ *Kamaus umum b.indonesia*, (jakarta: balai putaka, 1982) ,p: 15

¹⁷ *Kamus ilmiah populer edisi lengkap*, (jakarta: gama press,2010), p.517

The Role Of The Leader of custom And The Assembly Of Adat Nagari Is Resolving Any Disputes Regarding The Important Inheritance In Nagari Sungai Tarab, Tanah Datar Regency, West Sumatera Province By: Romi Afadarma.

In Minangkabau traditional society that is familiar with high inheritance received hereditary possessions in the blood of a people who traces according to matrilineal descent or matrilineal. This high inheritance can be: the land, wetland, fields, and large houses. In high inheritance inheritance in the past has not experienced many problems or things that arise, but with the times then in the high inheritance inheritance now many things that appear in connection with the inheritance of these high inheritance.

Based on the above description then the problems will be raised here is: what problem usually occurs in the case of high inheritance dispute in the district Sungai Tarab plains, and how the legacy of high resolution in practice in the village district Sungai Tarab plains. To address this problem, the authors conducted a study using empirical legal research is field research and library research to find premier data and secondary data. Material obtained from the processed data is then compared with the premiere of secondary data and conclusions drawn and portrayed descriptively in the form of qualitative descriptions.

The dispute resolution process in the village treasure of the high plains of the Sungai Tarab settled districts of the lower Tertiary of the most

advance, as the saying goes "*bajanjang naik, batanggo turun*" were completed in advance of the stage house, and village, and then to stage tribe villages. On stage this village high inheritance disputes resolved in the traditional institutions of *Kerapatan Adat Nagari* (KAN), here the dispute is resolved by the chairman of KAN and several princes (progenitor villages as its members, at this stage of KAN are not entitled to decide a dispute but could only provide a peace. If the high inheritance dispute cannot be settled amicably in the density of the indigenous villages (KAN), then the dispute can scroll through the courts, this is because not satisfied either of the parties to the dispute with the outcome peace in the density of the indigenous villages (KAN).¹⁸

2. *Peranan Kerapatan Adat Nagari (Kan) Dalam Proses Penyelesaian Sengketa Tanah Ulayat Di Kecamatan Kuranji Kota Padang* or

The role of *Kerapatan Adat Nagari* (KAN) in process of settlement of the *Tanah Ulayat* in kuranji, by: Defito yuzastra universitas diponegoro

Minangkabau tribe who settled in West Sumatera is known with matrilineal kinship system, where women's rights take precedence over the rights obtained by a man, not the exception *Pusako* management. It is density Nagari in customary land or *Tanah Ulayat* dispute resolution which is also a *Pusako* Minang society.

¹⁸ Romi afadarma, *Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat*, skripsi tidak diterbitkan (SEMARANG :magister program of notariat in university of diponegoro 2010)

The research objective is to determine how the role of KAN in IX Kuranji Pauh in the process of customary land dispute resolution. While the benefits of research can be used as a reference in the field of customary law.

Research methods used by the juridical approach to empirical data based on primary and secondary data, as for the specification of the research done by descriptive analysis. The forms of customary land disputes in customary law community in Minangkabau caused by the division of inheritance, buying and selling process, and a lease. Dispute over land ownership caused by several factors, namely the provision of compensation due to infrastructure development, administrative processes troubled lands, conflicts between the child and *Ninik Mamak* nephew, and the government actors who take advantage of situation by seeking unilateral advantage.¹⁹

3. *Tugas dan Fungsi dari Kerapatan Adat Nagari (KAN) dalam Penyelesaian Konflik tanah Ulayat di Pasaman Sumatera Barat.*

Task and function of Kerapatan Adat Nagari (KAN) in resolving the community land dispute at Pasaman regency (West Sumatera) by Mundarizal.

This thesis was written in empirical judicial method. The problem that discuss in this thesis is about conflict of *tanah ulayat* in Pasaman. In this place some of *tanah ulayat* was taken by government to build custom

¹⁹ defto yuzastra., *peranan kerapatan adat nagari (kan) dalam proses penyelesaian sengketa tanah ulayat di kecamatan kuranji kota padang*, this thesis not for bulished (semarang: magister program of notarez in university of diponegoro 2010).

constitutions. And now days the society asks to KAN to give them some of *tanah ulayat* for make a palm gardens as a livelihoods.²⁰

Table 1

Previous research

Researchers	Titles of research	Similarities	Difference
Romi Afadarma (magister program in university of onegoro 2010)	<i>Peranan ketua adat Dan kerapatan adat nagari Dalam penyelesaian sengketa Harta pusaka tinggi di nagari sungai tarab Kabupaten tanah datar Provinsi sumatera barat</i> or The Role Of The Leader of custom And The Assembly Of Adat Nagari Is Resolving Any Disputes Regarding The Important Inheritance In Nagari Sungai Tarab, Tanah Datar Regency, West Sumatera	Discuss about KAN and use juridical approach to empirical data.	This research focusing his research on how the position of Chairman of the Customs in resolving the conflict especially in <i>Tanah Ulayat</i> conflict
Defito Yuzastra (university of diponegoro)	<i>Peranan kerapatan adat nagari (kan) dalam Proses penyelesaian senngketa tanah ulayat Di kecamatan kuranji kota padang</i> or The role of Kerapatan Adat Nagari (KAN) in process of sattlement of	Discussing about KAN, the civil customs and challenge of KAN in this era.	Focus on <i>Tanah Ulayat</i> that used of government in business on it.

²⁰ Mundarizal, *Task and fungtion of Kerapatan Adat Nagari (KAN) in resolving the community land dispute at pasaman regency (West Sumatera)*, this thesis not for bulished (Program pasca sarjana kenotarian Uneversitas Sumatera Utara)

	the <i>Tanah Ulayat</i> in kurangi		
Muria demuga S.H, University of diponegoro	<i>Tugas dan Fungsi dari Kerapatan Adat Nagari (KAN) dalam Penyelesaian Konflik tanah Ulayat di Pasaman Sumatera Barat.</i> or Task and function of <i>Kerapatan Adat Nagari (KAN)</i> in resolving the community land dispute at Pasaman regency (West Sumatera)	Use juridical approach to empirical data and discuss of challenge of KAN.	Just Focused on <i>Tanah Ulayat</i> conflict that used of government to build the building of KAN and other custom institution.

From the table above that Previous Research have same in some point with this research and but for this Previous Research have different discussions with this research. In thesis of Romi's have focusing his research on how the position of Chairman of the Customs in resolving the conflict especially in *Tanah Ulayat* conflict, in Defito's thesis Focus on *Tanah Ulayat* that used of government in business on it and in Muria's thesis Just Focused on *Tanah Ulayat* conflict that used of government to build the building of KAN and other custom institution. That makes this research deferent with Previous Research.

G. Structure of Discussion

Systematics is the order of discussion of the chronology about the deliberations of this thesis. It is intended to make it easier to manufacture that exist within this thesis.

In order for the preparation of the thesis is a systematic, directional and interconnected one chapter by chapter to another, then the research can generally be described the following sequence. That:

CHAPTER I

Is the preliminary chapter includes background problems that describe about what's behind such titles as he took the background research. Formulation of the problem, which is taken from the title of the research. the purpose of the research, which lays out the goals of researchers against the results of the research are formulated in the formulation of the problem. The benefits of research, namely the benefits that will be provided in such research. Operational definition that describes words those are difficult to digest, so it is easy to understand the title. Previous research, which has to do with the title of the author, and used to compare. the theory framework is used as a tool used to analyze the study's title. The research method is a method used to examine his research researchers. Systematics of writing, where systematic writing allows researchers in compiling the research.

CHAPTER II

Contains a study of the theory consists of 4 sub chapters, namely: overview of Minang, *ninik mamak*, shipwreck where the position in customary Minangkabau and indigenous mediation.

a review of customary law elaborates on the sense and the term customary law, indigenous legal schemes and other forms of Community customs law.

CHAPTER III

which will be discussed about the results of research and discussion in this section which will explain how the research that has been done can give you answers to your problem formulation that has been put forth, so therefore in this chapter the author loads about the phenomenon of *Ninik Mamak* influence in solving the family mediation as is customary with clearly gives an overview about how the mediation process is done and how his influence or the efficiency of the mediation.

CHAPTER IV

Containing about exposure to research results. Containing about exposure data, data analysis, the influence of *Ninik Mamakin* family disputes resolution concern in the customary mediation

CHAPTER V

which will then be drawn a conclusion based on the entire results of the study and ends with advice in order to provide a view against the influence of *Ninik Mamakin* solving family custom in mediation.

List ofthe Literature



CHAPTER II

THEORITICAL FRAMEWORK

A. The Concept of Effectiveness

1. Meaning of effectiveness

In etymologically of effectiveness is come from English and “effektif” in Indonesian language. In Hasan sadili dictionary the meaning of effectiveness is successfully and obediently.²¹ In KBBI, meaning of effectiveness is can bring results and successfully in business or can apply in regulation.²² .

While in Black’s Law Dictionary, effectiveness is adjective if with statue word,order, contract, meaning in operation at given time. And also

²¹ John M. Echols dan Hassan Shadily, Kamus Inggris Indonesia, cet.XXIII, (Jakarta: Gramedia Pustaka Utama, 1996), p.207

²² Tim Penyusun Kamus Pusat Bahasa, Kamus Besar Bahasa Indonesia..., p. 284

can give meaning performing within the range of normal and expected standards or also productive; achieving a result.²³

And the meaning of electiveness in terminology, experts of law and sociology give approach about meaning of electiveness in law is diverse, according to point of view. Soerjono was quoted by Nurul Judge talks about the effectiveness of a law degree determined by the level of compliance among other residents of the law, including the law enforcers. So it is known an assumption, that:²⁴

“Taraf kepatuhan hukum yang tinggi merupakan suatu indikator berfungsinya suatu sistem hukum. Dan berfungsinya hukum merupakan pertanda bahwa hukum tersebut telah mencapai tujuan hukum, yaitu berusaha untuk mempertahankan dan melindungi masyarakat dalam pergaulan hidup”

Effectiveness is the staple elements to achieve objectives or targets have been defined within each organization, activity or program. Called effective if accomplished the goals or objectives such as prescribed. This is in accordance with the opinion of the h. Emerson cited Soewarno Handyaningrat stating that "Effectiveness is a measurement in the sense of accomplishment of predetermined goals."²⁵

Further according to Agung Kurniawan in the book public service Transformation defines effectiveness, as follows: "Effectiveness is the ability to perform the task, function (operating program or activity of

²³ Bryan A. Garner. EdBlack" s Law Dictionary..., p. 554

²⁴ Nurul Hakim, Efektivitas Pelaksanaan Sistem Arbitrase dan Alternatif Penyelesaian Sengketa Dalam Hubungannya Dengan Lembaga Peradilan. Artikel diakses pada tanggal 10 Mei 2011 dari <http://badilag.net/data/ARTIKEL/efektifitas.pdf>

²⁵ Suwarno Handyaningrat. *Administrasi Pemerintahan Dalam Pembangunan Nasional*. (Jakarta: PT. Gunung Agung. 1982). p.16

theMission) rather than an organization or the like that the absence of pressure or tension among its implementation²⁶

From some of the opinions above regarding effectiveness, it can be concluded that effectiveness is a measure that States how far targets (quantity, quality and timing) which has been achieved by the management, which target has been determined in advance. This is in accordance with the opinion expressed by that explains that: "Effectiveness is a measure that States how far targets (quantity, quality and timing) has been reached. Where the greater percentage of targets achieved, the higher its effectiveness ".²⁷

Level of effectiveness can also be measured with the compare between plans that have been determined with tangible results that have already been realized. However, if the business or the results of the work and the actions taken are not exactly causing the objectives not achieved or expected target, then it is said to be ineffective.

According to Duncan cited Richard m. Steers in his book "Efektrivitas organization" said about the size of their effectiveness, as follows: ²⁸

a. goal achievement

Achievement of overall goal achievement of the effort is to be viewed as a process. Therefore, in order for the achievement of the ultimate goal the more assured, the necessary phasing, both in the

²⁶Agung, Kurniawan. *Transformasi Pelayanan Publik*. (Yogyakarta: Pembaharuan. 2005). p.109

²⁷ Hidayat. *Teori Efektifitas Dalam Kinerja Karyawan*. (Gajah Mada University Press. Yogyakarta). 1986

²⁸M. Richard. Steers. *Efektifitas Organisasi*. (Jakarta: Erlangga. 1985).p.53

sense of accomplishment of its parts or phasing the phasing in period features. Achievement of the objectives consisting of several factors: the objectives and which is a concrete target.

b. Integration

Integration of i.e. the measured level of the ability of an organization to hold dissemination, the development consensus and communication with a wide range of other organizations. Integration concerns the process of socialization.

c. Adaptation

Adaptation is the ability of the Organization to adjust to their surroundings.

2. The enactment of the law in the community

In the life of the community there will always be a relationship or social interaction. In the relationship, there is a rule that is observed by the community in order to be achieved order, harmony, and peaceful life. The rules that apply in charge of regulating relationships in a complex society structure. In various respects, the law has effect directly or indirectly against civic institutions. This means that the law has a role in social change in society. Ways to influence society with a system of organized and planned in advance, according to Soerjono Soekanto called social engineering or social planning.²⁹

²⁹ Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum*, cet.V, (Jakarta: RajaGrafindo Persada, 2006), p.122

The rule of law or a regulation is functioning even live in order people's lives, and then the rule of law/regulations must meet the three elements as follows:³⁰

- a. The rule applicable in juridical, When predestination is based on higher degree rules, or when it is formed according to the way specified/specified, or if the relationship of denotes a necessity between a condition and as a result.
- b. The rule applicable in sociologist, If the rule is effective, meaning that the rules can be enforced by force of the ruler (theory of power), or accepted and recognized by the Community (the theory of recognition)
- c. The rule applicable in philosophes, that is to say in accordance with the ideals of the law as the highest positive value. When examined in more depth, then in order to function, then a rule of law must meet these three kinds of the items above.

Satjipto Rahardjo stated unequivocally that the works of the law in the community and may not necessarily be just happens. The law is not the results of the work of the factory, which once out direct can work, but It requires some steps that allow the provisions of the law run or work. At least the steps that must be met to seeking legal or rules/provisions can work and functions (by effective) are:³¹

³⁰ Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, cet.V, (Bandung, Citra Aditya Bakti, 1989), p.56-57

³¹ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Adytia Bakti, 2000), p.70

- a. The existence of officials/law enforcement agencies as specified in the regulations of the law
- b. The existence of a person (individual/society) who did the deed, both comply with the law or break the law
- c. The people are aware of the rules
- d. Such persons as the subject or object of the law are willing to do legal

In this case, Satjipto Rahardjo saw that in law enforcement is seen as a process that involves human beings in it. Then in the observation of reality enforcement, the human factor is very involved in the business of enforcing the law. Law enforcement is carried out by institutions authorized to that, like prosecutors, police, and Government officials. Since the law contains orders and imposition, then from the beginning of the law needs help to realize these commands.³²

3. The Theory of the Effectiveness of the Law

The essence of law enforcement is how the occurrence of a harmony of values contained in the legal norms may be inherent in the soul society so that created by peace, and peace and order. Wayne La Favre as quoted by Soerjono Soekanto rate that law enforcement as a process is in fact decoration.³³

Based on the theory of the effectiveness of the law expressed Soerjono Soekanto, effective or whether a law is determined by five factors. These

³² Satjipto Rahardjo, *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*, cet.II, (Yogyakarta: Genta Publishing, 2010), p.192

³³ B.N. Marbun, *Kamus Hukum Indonesia* p.56

factors had a neutral meaning, so the impact of positive or negative. Find on the content of those factors. Those factors are as the following:³⁴

- a. Factor of law
- b. Factor of law enforcement
- c. Factor of the means and facilities
- d. Factor of society
- e. Factor of cultural

B. Customary Law

1. Nation of Customary Law

Custom is a habit of society. And that have been formed before and after the existence of the community.³⁵ The term of custom in Arabic grammar is “*Adah*” which refers to the variety of acts committed repeatedly. As is customary, the law also from the Arab language term law (*plural ahkam*) command. This legal term affect members of the public is mainly a Muslim.

The term customary law among the general public is very rare. The community tends to use the term "adat" alone. The mention of this leads to a habit that is the Act generally must apply to the structure of the community concerned. The custom is the reflection of the personality of a nation, is one of the incarnations of the souls of the peoples concerned of kea bad. Therefore, every nation in the world has its own customs which with each other are not the same.

³⁴ Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, cet.V, (Bandung, Citra Aditya Bakti, 1989)p.8

³⁵ I Gede A.B.Wirana, *Hukum Adat Indonesia*, (Bandung :P.T. Citra Aditya Bakti, , 2005), p.3

The common law term that refers to the custom rules known already very long in Indonesia.³⁶In the reign of Sultan Iskandar Muda in Aceh Darussalam ordered forward the law implies the Makuta describes the understanding of the provisions of customary law as a recurring habit of rule.

The structure of society in various regions of Indonesia did not provide clear restrictions on does it customs and customary law. In General only declared that when talking about customs and customary law, entirely refer to understanding the concept of prevailing habits and order the raw on the community.

Habit is a habit of the indigenous in the sense of normative and has the rules of conduct, apply as well as maintained in the community.

2. Society of Customary Law

The society is a form of life together for quite a long period of time, resulting in a culture. The society is a social system that becomes the container of the patterns of social interaction or interpersonal relationships or relationships between social groups.³⁷

According to Soepomo, see archetypal arrangement of formation law society, generally can be classified in the form of a connection of the same lineage (genealogical) based upon the area (territory) and which is a mixture of the two (genealogical territorial).

³⁶<http://www.my.opera.com> in 21 March 2008

³⁷ I Gede A.B Wiranata, *Hukum Adat Indonesia* (Bandung: P.T. Citra Aditya Bakti, 2005), p. 20

Territorial Law Society legal community groups who live regularly, orderly and safely based on the principle of similarity. The Group of people who live in the same village, in Java and Bali or a clan in Palembang is a group, having order into the layout and acts as a unity against the outside world. Alliance area is grouped in three (3) types:³⁸

a. Fellowship village

A shared residence in its territory of its own including some makes the people located in the vicinity of the device is subject to the village and settled in the village center. Example: villages in Java and Bali

b. Alliance

A shared residence area consists of several villages and take control of the land rights of the customary joint consists of several hamlets or hometown with one (1) custom governance Centre, each Member of his Alliance has a governance structure independently, but it is a subordinate of the area.

c. United village

Some of the village or clan, located side by side and each stand-alone Treaty of cooperation to set up a common interest, for example in irrigation, settings, indigenous Government, defense, and others.

3. Customary Law of Minangkabau

The custom of Minangkabau is an environment which is approximately located in West Sumatra Province. It said roughly because

³⁸ I Gede A.B Wiranata, *Hukum Adat Indonesia*, , (Bandung P.T. Citra Aditya Bakti, 2005), P. 21

understanding of the policy is not exactly the same as the sense of West Sumatra, Minangkabau because more social cultural meaning, while the West Sumatra said a lot more administrative geographic meaning.³⁹

Too rare source of authentic historical pre which will be able to lead us to be able to know the origin of the Minangkabau ethnic group, even though that is the case, it can also be known through traditional literature called Tambo and of *petatah petitih* who has been nourished hereditary from generation to generation orally.

The story in the Tambo this at least will be able to lead us to identify further development of ancestor of the Minangkabau ethnic group.

The ancestors of the Minangkabau ethnic group come from mixing between the old Malay people that have come in the time of Neolithicum with young Malays catch up later in the Bronze Age; the two nations are allied with the Austronesia.⁴⁰

Minangkabau culture has existed before the advent of Islam, Hinduism and Buddhism before even entering the Malay Archipelago 13⁴¹ before coming to the influence from the outside, the Minangkabau culture has reached its peak and integrated personality. Therefore, beyond the culture this comes not easy entering its influence.

Cultural acceptance of outsiders runs selectively, so that culture that is contrary to the custom of philosophy cannot survive in Minangkabau.

³⁹ Amir Syarifuddin, *Pelaksanaan hukum Kewarisan Islam Dalam lingkungan AdatMinangkabau* (Jakarta:Gunung Agung, 1990), p. 122

⁴⁰ Rasyid Manggis, *Minangkabau, Sejarah Ringkas dan Adatnya*, Sri Darma (Padang, 1971), P. 11

⁴¹ Nasrun, *Dasar Filsafat Adat Minangkabau*, (Jakarta :Bulan Bintang, , 1971), p. 13

Layout of the Minangkabau flanked two seas, namely the Indian Ocean with the South China Sea caused it was subjected to visits from the outside. In addition to its open and easy to adjust to the environment put it in a position that can receive the cultural influences from outside to the extent not incompatible in principle with its culture.⁴²

Government agencies that are in the Minangkabau conform to Islamic teachings. This happens because the religion of Islam in the Minangkabau is very strong. Islam came in Minangkabau replaces Buddhist influence first came, with the sense that the influence of Buddhism can be lost in the Minangkabau and replaced by the influence of Islam. The Minangkabau society recognizes indigenous philosophy which is based on the fact that life and force in nature⁴³. With Islam was thus incorporated into the actual custom groups custom.⁴⁴

The prevailing habits on the basis of the divine nature which is named the actual indigenous customs that made the guidelines in the preparation of regulations *navana caradan* is used as a regulator of human lie in the world.

1) *Adat yang diadatkan*

Adat yang diadatkan that is something designed to be run, as well as forwarded by ancestors who first occupy the Minangkabau to be the rule for the life of the community in the area of Minangkabau.

⁴² Nasrun. *Hukum Waris dan Hukum Tanah*, in MuchtarNaim, *Menggali Hukum Tanah dan Hukum Waris di Minangkabau*, Center For Minangkabau Studies, (Padang: 1968), p: 13

⁴³ Nasrun. *Hukum Waris dan Hukum Tanah*, dalam MuchtarNaim, *Menggali Hukum Tanah dan Hukum Waris di Minangkabau*, (Padang :Center For Minangkabau Studies, 1968), p.13

⁴⁴ Soerjono Soekanto, *Pengantar Sosiologi Hukum*, Bharata,(Jakarta:1977), p. 214

2) *Adat yang teradat*

Adat yang Teradat customs i.e. local habits can add up on a site and may also be missing according to the interests.⁴⁵

3) *Adat istiadat*

Customs in the sense of special means of habit which is already in force in a place associated with behavior and pleasure. In the custom known as Minang contending indigenous.⁴⁶

Minangkabau King is the term to *Ninik Mamak*, a custom title of *Datuk* Regent. Lift oversized custom is said to lift the *datuk penghulu* or lifting. This present term comes from the word "hulu" meaning head. What is meant here is the head leader. So the present understanding is the same as the leader. Thus a King could be said as a leader.⁴⁷

The following the duties and obligations of *penghulu* in customary:⁴⁸

1. Responsible of out and into tribal or hometown in leading older nephew
2. Mediated in conflict resolving
3. Consolidated and coordinated consult anything that will take the decision to the entire tribe or sunken device
4. Authorities to pointing device in performing basic tasks and functions
5. Save heirloom treasures

⁴⁵ Datuk Maruhun Batuah, *Hukum Adat dan Adat Minangkabau*, (Jakarta :PusakaAsli,1990), p. 12

⁴⁶ Datuk Maruhun Batuah, *Hukum Adat dan Adat Minangkabau* (Jakarta: PusakaAsli, 1990), p. 15

⁴⁷ Sumber Internet : [http://www.google/penghulu di minangkabau](http://www.google/penghulu%20di%20minangkabau). in 28-03- 2010

⁴⁸ pucuk pimpinan LKAAM Sumatera Barat, Surat Keputusan No.SK-17/LKAAM-SB/2003 p.26

A *Penglu* can give the customary law of a problem, according to various laws below⁴⁹:

a. *Hukum Ilmu*

When a dispute occurs about civil as well as criminal and the judge about knowing about the actual conflict with certainty, then the judge will be judged in accordance with their knowledge.

b. *Hukum bainah*

Bainah is from Arabic language, in Indonesia is swearing. A judge deciding a dispute by doing the ruling of the oath. Custom vows that is legal while setting limits on property rights.

c. *Hukum kurenah*

A judge deciding a matter the way based on *kurenah* reason or in accordance with the conduct undertaken by the parties.

d. *Hukum perdamaian*

Dispute resolution in accordance with the agreement or finish the case by seeking the agreement of the parties in order to realize peace between the two sides, by the way.

A matter in the field of customs in advance the matter resolved by the ruler of a stomach in a manner that complies with the proverbial “*kusuik ka manyalasaikan karuah ka mampajaniah*”. In a lawsuit settlement with first is the peace.

⁴⁹ H.Idrus Hakim. DT. Rajo Penghulu. *Rangkaian Mustika Adat Basandi Syarak Di Minagkabau*, Bandung:PT. Remaja Rosdakarya, 2001 p.139

If between the two parties don't want peace then the parties brought and faced trial in a verdict against such cases in customary courts. In this case the ruler has the right to drop the case against ruling⁵⁰

The following steps can be done in dispute resolution in the custom Minang that is contained in a rhyme.⁵¹

Kusuik disalasaikan

Karuah dijanahi

Usua dipamainkan

Cabua dibuang

Hukum adia kato bana

Indak buliah bapihak pihak

Indak buliah bakatian kiri

Lurui bana dipegang sungguh

Dimato jan dipiciangkan

Di dado jan dibusungkan

Di paruik nan usah dikampihkan

Sifat adia dipakaikan

Bak maelo rambuik di dalam tapuang

Bak mamalu ula dalam baniah

Baniah tak leco tanah indak lambang

Panokok indak patah nan ula mati juo

Salah cotok malantiangkan

Salah ambiak mangumbalikan

Salah ka manusia minta maaf

Salah ka tuhan minta tobat

Kusuik bulu parua manyalasaikan

Kusuik banang dicari ujuang jo pangka

Kusuik rambuik dicari sikek jo minyak

Kusuik sarang tampuo api mahabisi

⁵⁰ H. Datoek Toeah. *TAMBO Alam Minangkabau*. (Bukittinggi: Pustaka Indonesia) cetakan XIII, p.279- 280

⁵¹ H.Idrus Hakim. DT. Rajo Penghulu. *rangkaian mustika adat basandi syarak di minagkabau*, (Bandung:PT. Remaja Rosdakarya) 2001 p.136

The meaning of the saying above is solving problems is done by the way of peace and family in advance between the parties, and what if such manner cannot be solved then the parties brought to the presence of the contending powers, as the judges will break things. For the authorities to handle the issue must have a fair and impartial nature to his family and not looking at anyone.

Then travel customs within the community in accordance with the following proverb⁵².

*Bajanjang naik batanggo turun
Naik dari janjang nan di bawah
Turun dari tangga nan di ateh
Babimbiang dari aso
Manguji dari alieh
Kamanakan barajo mamak
Mamak barajo ka pangulu
Panghulu barajo ka mufakat
Mufakat barajo ka nan bana
Mana berdiri sendirinyo
Nan manuruik aluah dengan patuik.*

From the above peatah it turns out that the path that must be taken to arrive at an objective of the community is by the way, the path of consensus discussion, or it could be referred to by way of negotiating the deal.

⁵² H.Idrus Hakim. DT. Rajo Penghulu. *rangkaian mustika adat basandi syarak di minagkabau*, Bandung:PT. Remaja Rosdakarya, 2001 p.145

C. KAN (Kerapatan Adat Nagari)

1. The Meaning of KAN

KAN is a highest representative and Consultative Institution. That have existed and inherited hereditary all indigenous communities amidst *Nagari* in West Sumatra.⁵³

As evidence that the density of it already existed before the formation of KAN, the evidence of that are *Rumah Gadang* of *Pasukuan* and Custom Hall or *Balaiurang* property of the *Nagari*.

The interlocking issues of dispute between the clans, customs offences discussed by contending in *Balai Adat*. For the implementation of *Kerapatan Adat Nagari*. The local Government set up with local regulations level I West Sumatera No. 2 year 2007 at Chapter VII, article 19 paragraph (1 and 2) which reads: "subsection (1): the customary Institutions *Nagari* function resolve disputes under the terms of the latest episode of the *sako* and all the custom prevailing in *Nagari*, in the form of the verdict of peace.

Subsection (2): When not reached completion as in subsection (1) of this article, then the parties concerned can forward the matter to the District Court. Whereas in article 19 paragraph (1) local legislation (PERDA) number. 2 of 2007 which reads are: resolution of disputes regarding the *sako* and *Pusako* discussion and consensus has to be according to the provisions applicable to all the customs.

⁵³ Hakimi, D. Dt. Penghulu, *Pedoman Ninik Mamak Pemangku Adat* (LKAAM Provinsi Sumatera Barat :Penerbit Biro Pembinaan Adat dan Syarak), p.. 90

The dispute resolution efforts carried out in both the musical tiered down starting from the level of the House, tribal and Indigenous Institutions at the level of final *Nagari*.⁵⁴

Based on the aforesaid Perda known duties and the role of the KAN is:

- a. Managing the matters that related to customs with respect to *sako* and *pusako*
- b. Solving the custom conflicts
- c. Keeping of peace and gives legal force against members of the community to the dispute and give the force of law against something it and other proof according to all custom.
- d. Building community culture in Nagari and effort to preserve the culture in order to enrich the treasures of national culture.
- e. Protecting, preserving, saving and making use of a wealth of Features to enhance the welfare of society *Nagari*.
- f. Fostering and coordinating the community's customary law starting from the applicable customs according to all on each tiered Nagari, musical ride down the pointed to the density of Indigenous as well as nurturing a sense of Family Friendly high society *Nagari* in order to raise awareness of social.
- g. Representing the *Nagari* and act on behalf of and for the community's customary law or *Nagari Nagari* in the deeds of the law inside and

⁵⁴Peraturan Daerah Provinsi Sumatera Barat Tahun 2007 about Pokok-Pokok Pemerintahan *Nagari*

outside the judiciary for the benefit and or things that concern with the rights and property belonging to the *Nagari*.

Thus that the existence of custom Density *Nagari* amongst the people is very coveted, either in maintaining sustainability of indigenous, "*indak lakang dek paneh indak lapuak di hujan*", or support the continuation and sustainability of development.

Kerapatan Adat Nagari (KAN) is an institution of the highest within the *Minangkabau* customary *Nagari* in every filed or not filed by society or *nagarinya* which was present as the leader in the family.⁵⁵

Density of *Kerapatan Adat Nagari* (KAN) this is a great set of *Niniak* at present or which represents Mamak tribe or his family, which was formed based on the customary law of the local *Nagari*. Where the density of *Kerapatan Adat Nagari* (KAN) it is the highest institution in terms of indigenous affairs as well as customary law in a *Nagari*. *Ninik mamak* are piled up in the present or in the Institute have the position and authority and have the same rights to determine the life development of customary law. All the results of the consensus obtained through Custom Density *Nagari* are presented to a member of his tribe.

In a *Nagari* in *Minangkabau*, West Sumatra in particular, advanced custom development included the withdrawal of customary law, it all

⁵⁵ Idrus Hakimi, Pegangan Penghulu, Bundo Kandung dan Pidato Alua Pasambahan Adat di Minangkabau, Remaja Karya, Bandung, 1988, p. 59

depends on the role of *Ninik Mamak* or powers to manage and determine the development of customary law applicable in *Nagari*.⁵⁶

2. The Authority of KAN

As an organization, contending in a *Nagari Adat*, KAN has the authority as follows:⁵⁷

- a. Assisting the Governments in pursuit of fluency in the execution of development in all fields, especially the civic and cultural.
- b. managing of the Affairs of the indigenous law and custom in the Penal position Giving law against a things related to society wealth interests relationship custom also in terms of the existence of a dispute or matters of custom.
- c. organizing the construction and development of the custom in *Minangkabau* values, in order to enrich, preserving and developing the national culture in General and in particular *Minangkabau* culture
- d. Maintaining the wealth of *Nagari- Nagari* for prosperity.

Before the establishment of customary Density *Nagari*, nobles have the authority more relationships into. For example: problem child nephew between clans, dispute the inheritance of high (ground), improve the economy and so forth.

⁵⁶ As. Suhaiti Arif, Tesis Program S2 Pasca Sarjana Bidang Ilmu Hukum UGM Yogyakarta, 1996, p. 34

⁵⁷ *peraturan Daerah Provinsi Sumatera Barat No. 2 Tahun 2007 about Pokok-Pokok Pemerintahan Nagari*

3. Structure of Institutions of KAN

In the KAN have regulated in regulation about management:⁵⁸

- a. Management KAN in *Nagari* is led by a Chairman, assisted by three Vice Chairman, 2 persons the Secretary, Treasurer, 12 2 person Chair affair. Members Affairs tailored to order *adat salingka nagari*.
- b. The matters are:
 - (a) the Affairs of the organizations
 - (b) the Affairs of the conflict of sako and pusako
 - (c) the Affairs of the tanah ulayat
 - (d) the Affairs of the youth
- c. Management KAN are equipped with custom Advisory Council
- d. Advisory Council is a Council that serves to give consideration and advice-advice to the Chairman, whether solicited or unsolicited.
- e. The Board of manners is an organ's functioning, access and provides a way of thinking towards the acquisition of funding organizations
- f. The legislation is the guardian shoots *Nagari* parallel partners that serve as Chairman of the institutional function of KAN and Government *Nagari*.⁵⁹

⁵⁸ Anggaran Dasar da Anggaran Rumah Tangga Lembaga Kerapatan Adat Alam Minangkabau, 6 juni 2005, pasal 17 tentang struktur kelambagaan KAN dalam Nagari.

⁵⁹ Anggaran Dasar da Anggaran Rumah Tangga Lembaga Kerapatan Adat Alam Minangkabau, 6 juni 2005, pasal 17 tentang struktur kelambagaan KAN dalam Nagari.

Membership will cancel itself if there are things, bellow:⁶⁰

- a) Member died
- b) Member States resigned
- c) The members declared by the Court join the forbidden organization in accordance with the applicable legislation
- d) The costume title of member will be leaved by own community cause infection of costume in *salingka nagari*.⁶¹
- e) Members of the criminal conduct were laid off from a member of the Executive Board after the plenary session by the Advisory Council provides recommendation.

D. Mediation

1. Meaning of Mediation

Mediation is a problem-solving negotiation processes, where the parties to an impartial working with parties to the dispute to find a mutual agreement. Those outside parties referred to by a mediator, who is not authorized to break the dispute, but merely assist the parties to resolve the issue.⁶²

The experts elaborated the meaning of mediation in etymology n da terminology. Etymologically, the term mediation comes from the Latin "mediare" which means to be in the middle.

⁶⁰ Anggaran Dasar da Anggaran Rumah Tangga Lembaga Kerapatan Adat Alam Minangkabau, 6 juni 2005, pasal 5 tentang berhenti menjadi anggota

⁶¹ around the area or Nagari

⁶² Khotibul umam, *penyelesaian sengketa di luar pengadilan* (Yogyakarta: penerbit pustaka yustisia, 2010), p.10

This meaning refers to the role that third party is displayed as a mediator in the exercise of his duties, arbitration and resolving disputes between the parties. "In the Middle" also means the mediator must be on a neutral and impartial position in resolving the dispute. He should be able to safeguard the interests of the parties to the dispute in a fair and equal, so as to foster the trust of the parties to the dispute.⁶³

In a large Dictionary of Indonesian Language mediation as a process of follows an accompaniment of a third party in settlement of a dispute as an advisor. Understanding these elements contain three important, that:⁶⁴

- a. Mediation is a process of settlement of disputes or disputes that occur between two or more parties.
- b. the parties involved in the dispute are parties of parties from outside the party dispute
- c. The parties involved in the dispute resolution act as advisers and did not have the authority nothing in decision making. Explanation mediation Etymologically it emphasizes the existence of third parties who served as an intermediary between the two parties to the dispute and just explain the nature of how the mediation that, without any mediation explained in depth. This third-party bridging the parties to complete the conflict.

⁶³ Syahrizal Abbas, *mediasi dalam perspektif hukum syariah, hukum adat, & hukum nasional* (Jakarta:kencana prenada media group, 2009), p.2

⁶⁴ Syahrizal Abbas, *mediasi dalam perspektif hukum syariah, hukum adat, & hukum nasional* (Jakarta,kencana prenada media group, 2009), p.3

Further, Jhony Emirzon gives a sense of the mediation of several legal experts, among others:⁶⁵

a) Moore

Mediation is the intervention of a dispute or negotiation by third parties acceptable, no favors and neutral does not have the authority to take decisions in helping the parties clashed in an effort to reach an agreement on a voluntary basis in the settlement of problems of the disputed claims.

b) Folberg and Taylor

Mediation is a process in which the parties with the assistance of someone or some people to systematically solve problems that disputed claims to look for alternatives and reached agreement of settlement that can accommodate their goals.

From the above sense then it seems that the notion expressed by Moore mediation more precise and it stuck to the meaning of mediation itself so that it is the mediation of dispute resolution is an effort of the parties, by mutual agreement, through the mediator be neutral and not make decisions or conclusions to the parties but the support facilitator for the implementation of the dialogue between the parties with an order, honesty. Openness and exchange opinions for the achievement of a consensus or in other words the process of problem-solving negotiation is the process by which an impartial

⁶⁵ Joni Emirzon, *Alternatif Penyelesaian Sengketa di Luar Pengadilan*, (Jakarta : Gramedia h:67-68

outside party to the dispute to help them obtain the agreement of the Covenant satisfactorily.⁶⁶

From definition can be determined the elements of mediation are as follows:

- 1) Resolving disputes voluntarily
- 2) Intervention and help
- 3) Mediator have not siding
- 4) Decision-making by parties in consensus.
- 5) Active in participation

It also gives the difference between the mediation with other alternative dispute resolution. It had a third-party neutral nature between the parties to the dispute and gives or finds agreement that can satisfy the parties.

Explanation mediation terminology that is based on the notion of mediation according to the parties, namely: Gary h. Barnes stated "mediation is a process for resolving the dispute with the help of a neutral party.

The role of the neutral parties is involved to help the parties, either individually or collectively, to identify the disputed issues and to develop proposals to resolve the dispute. Unlike arbitrator, a mediator does not have the authority to disconnect every dispute, but mediators can attend

⁶⁶ Joni Emirzon, *Alternatif Penyelesaian Sengketa di Luar Pengadilan*, (Jakarta : Gramedia h:69

secret meetings and the deliberations of the special along with the parties concerned.⁶⁷

Act No. 30 of 1999 regarding arbitration and alternative dispute resolution does not give a formula of definition or understanding of mediation clearly and firmly. Therefore, some legal experts are trying to interpret and provide restrictions on the conditions of the mediation which is one of the ways of alternative dispute resolution which is regulated in Act No. 30 of 1999 regarding arbitration and alternative dispute resolution.

2. Stages in The Process of Mediation

In conducting the mediation process, have to go through several stages that are generally explained by primary activity or focus of activities at any stage by Gary Goodposter in negotiation and mediation.

A guideline for negotiation and dispute resolution through the negotiations expressed as follows:⁶⁸

- a. bargaining Forum
- b. Collection and sharing of information
- c. Lenten resolution
- d. creation of decision-making

At the beginning of the mediation, the mediator informing the parties about the nature and processes. Set the ground rules, develop good relationships with the parties and gain confidence as a neutral party and

⁶⁷ Rachmadi Usman, *Pilihan Penyelesaian Sengketa diluar Pengadilan*, (Bandung :Citra Aditya Bakti, , 2003), p.240

⁶⁸ Rachmadi Usman, *Pilihan Penyelesaian Sengketa Diluar Pengadilan*, (Bandung h :Penerbit PT. Cipta Aditya2003),p 104-106

negotiate with authorities of the parties. This is because the parties in dispute each have different points of view with others. If the parties ask for a mediator to help them, then they must have some level of recognition that they were unable to resolve in their own way and that the intervention of a third party may be useful.

The mediator here only as an active listener with the goal of obtaining a clear understanding of the perspective and position of the parties at the stage of taking a settlement, the mediator works with the parties to help them choose the resolution that was approved and received. A mediator can help the parties to obtain a fair base and satisfying them and help assure that they are the best deal, the mediator makes the terms of the agreement, in order to be efficient as possible the parties none of which feel aggrieved.

3. The Advantages of Mediation

Some dispute resolution efforts made through the courts and as a result many are disappointing, in addition to often create unsatisfactory results, the cost is great also takes a very long time, the slowness of dispute resolution through the courts led to the promulgation of a policy, MA in 1992 stating that the present matter every district court and Court of appeal shall be completed within no more than 6 months. It is based on reality that many cases that pile up in court and never finished. With such a situation, then the choice towards mediation is a good choice in dispute resolution, because it is considered more effective. Consideration where

people tend to utilize the dispute resolution through mediation, among others:

- a. a quick Settlement
- b. cheap cost
- c. confidential
- d. win-win solution
- e. no emotional

How to approach directed at mutually beneficial cooperation to achieve a compromise. In addition to excellence-excellence of the election dispute option in the form of mediation, then the mediation process there are also weaknesses that is:⁶⁹

- a. require much time
- b. difficult in mechanism
- c. Highly depends on the good faith of the parties to complete the conflict until it is finished
- d. Mediation will not bring good results, especially if the information and authority given to him is not enough
- e. If the lawyer not involved in the mediation process, the possibility of legal facts that are important are not communicated to the mediator, so that his decision be not clear.

⁶⁹ Munir Fuadi, *Arbitrase Nasional: Alternatif Penyelesaian Sengketa Bisnis*, (Bandung: PT.Citra Aditya Bakti, 2000), p.50-51

4. Mediation in Indigenous

It is a process in conflict solving of peace. Presents the best third-party in mediation for conflict solving. Witch as a mediator is the leader or Chief of the customs.

Problems dealt with by the customary mediation agencies is a problem that is the realm of the customs agency authority, for example indigenous mediation institution in *Minangkabau* namely *Kerapatan Adat Nagari*. Within this right has the authority in dealing with the problems of Perda customs described in the change in accordance with the following:⁷⁰

- a. *Sako*⁷¹
- b. *Pusako*⁷²
- c. And other civil disputes.

5. Mediations In Islam

In concept of mediation in Islam know in term “*Shulhu/Ishlah*”. *Sulh* is a process conflict resolution witches every side have compromised with making peace. The term of *Islah* is a word in Arabic الإصلاح, infinitive from word أصلح-يصلح-إصلاحاً, that take from base component ص-ل-ح and mean by Ibnu Mandzur in *Lisan Al-Arabnya* as antonym from word فساد (damage).⁷³

Meanwhile, Ibrahim Madkour in *Al-Mu'jam Al-Wajiz* says that word الإصلاح contains two meanings: the benefits and the harmony and spared

⁷⁰Perda of West Sumatera number 3 year 1983

⁷¹ Titke of custom

⁷² Inheritage

⁷³Shalih Bin Abdullah dan Khathib Al-Haram, *Nadhratu An-Na'iim Fi Makaarim Akhlaak ArRasul*,p.36

from damage. If the word is shaped by it means eliminating all the trait hostility and infighting between the two sides.⁷⁴

This word if it is coupled with certain words will have a special meaning: if coupled with الشيء (something) It means fixing; If coupled with إليه (for him) meaning do/be nice; If coupled with pronouns هـ (her) meaning justify it, correct them, embellish, or make it more beautiful.⁷⁵

If added with بينهم (between them) meaning eliminate disputes and animosity between the two, If added with في عمله (in the job) or في أمره (in affair) meaning come up with something good and useful.⁷⁶

In the terminology *islah* is defined by observers or author into some sense:

- a. An agreement to resolve the dispute
- b. An effort between humankind with a view of improvement.
- c. An attempt to resolve disputes and reach agreement between the parties of human
- d. An attempt and mediation to resolve disputes and differences between the warring parties through consensus and reconciliation as the prevention of the onset of hostilities and the growing sense of envy

In the Encyclopedia of Islamic law on conciliation is more stress on the relationship between fellow human beings in order to fulfillment of obligations to God Almighty.⁷⁷

⁷⁴ Ibrahim Madkour, Al-Mu'jam Al-Wajiz, p.518

⁷⁵ Ali Akbar, Lima Do'a Reformasi dan Berbenah Diri, <http://www.hidayatullah.com>

⁷⁶ Sa'adi Abu Jiib, Al-Qaamus Al-Fiqhi Lughatan Wa Istilaahan, p.215

In other meaning in Islam term can be equated with *hakam* and operational form is *tahkim*. Prophet Muhammad SAW has mediated some of conflict in that era either in *jahiliyyah* era or Islam era or before becoming an apostle or after becoming an apostle.

At the time Prophet Muhammad solve the conflict between his community to put black stone (hajar aswad) at the *Kaaba* and also on treaty *udaibiyah*. For this conflicts prophet Muhammad have a conflict resolution strategy especially mediation and negotiations. So that both these events have the same perspective that is Prophet Muhammad times embodying peaceful ways of conflict it has also been interpreted by the Prophet in put *Hajar Aswad* on the sides of the *Kaaba* and at *udaibiyah* engagement has a conflict resolution strategy especially mediation and negotiation so that the two These events have a same perspective i.e. embody peace.⁷⁸

The mediation was written in al-Quran, surah An-Nisa' verse 114 and 128:⁷⁹

لَا خَيْرَ فِي كَثِيرٍ مِّنْ نُّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ وَمَن يَفْعَلْ ذَلِكَ

ابْتِغَاءَ مَرْضَاتِ اللَّهِ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا ﴿١١٤﴾

⁷⁷ Shalih Bin Abdullah dan Khathib Al-Haram, Nadhratu An-Na'im Fi Makaarim Akhlaak Ar-Rasul, p.364

⁷⁸ Syahrizal abbas, *mediasi dalam hukum syariah, hukum adat dan hukum internasional*, (jakarta; kencana, 2011) , p.166

⁷⁹ Qs. an-nisa verse 114 and 128

“There is no good in much of their secret conferences save (in) him who enjoined almsgiving and kindness and peace-making among the people. Whoso doeth that, seeking the good pleasure of Allah, We shall bestow on him a vast reward.”

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ

خَيْرٌ وَأُخْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

“If a woman feared ill treatment from her husband, or desertion, it is no sin for them twain if they make terms of peace between themselves. Peace is better. But greed hath been made present in the minds (of men). If ye do well and keep from evil, lo! Allah is ever informed of what ye do.”

In resolving a family conflict in mediation proses was regulated in al-Quran an-nisa verse 35:⁸⁰

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ

بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴿٣٥﴾

“And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.”

عن عمرو بن عوف المزني رضي الله عنه أن رسول الله صلى الله عليه وسلم قال: الصلح جائز بين

المسلمون إلا صلحا حرم حلالا أو حلّا حراما (رواه ترمذ وصححه)

⁸⁰ Qs. surah an-nisa verse 35

Meaning: from Amar bin Auf Al Muzanni r.a. that Rasulullah S.A.W. say: "Among fellow Muslims could hold peace except the peace of which proscribe halal or haraam, and justifies every Muslim above the requirement of each except the terms suggest that halal or haraam justifies". (H.R Turmuzi and this hadits was justified).⁸¹

E. Family Conflicts

In east of Malalak there are family's conflicts, follows:

1. Divorce

In Islam, the Qur'an requires the existence of a judicial process or non-litigation in a family dispute resolution, as in *syiqaq* or *nusyuz*. *Syiqaq* conflict is quarrel or fracas that in climax between husband / wife spouse that resolved by mediator or judge⁸². *Nusyuz* is measure of wife that don't obedient her husband or do not give right of her husband in household life, in external or internal aspect⁸³. Al-Quran give kind of mediation in conflict resolution especially in family conflict.

Syiqaq is conflict that starts and held from two sides (wife and husband) in same time⁸⁴. So that between *syiqaq* and *nusyuz* is different, that *nusyuz* just from one side. For cope this condition, Islam has some solution to find the mediator to mediated this problem. Mediator is one to get some solution from problem in family proses to get win-win solution that building on al-Quran.

⁸¹ Imam Turmuzi. *Kitab Hadits Jami'turmuzi*

⁸² Dr.H.M.A. Tihami. *Fiqh Munakahat Kajian fiqh lengkap*. (Jakarta: rajawali pers, 2009) p. 188

⁸³ Dr.H.M.A. Tihami. *Fiqh Munakahat Kajian fiqh lengkap*. (Jakarta: rajawali pers, 2009) p. 187

⁸⁴ Dr.H.M.A. Tihami. *Fiqh Munakahat Kajian fiqh lengkap*. (Jakarta: rajawali pers, 2009) p. 188

To get resolution of family conflict can use some way of mediation, the conflict of family as divorce. These solutions to resolve the family conflict in mediation as in al-Quran, in surah an-Nisa verse 35:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ

بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴿٣٥﴾

“And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.”⁸⁵

2. Pusako

In the custom *Minangkabau* property inheritance or inheritance was divided into two kinds of treasures:⁸⁶

a. Harta pusaka tinggi

Heirloom treasures heirloom treasure high is already owned by the family, the rights of hereditary legacy of previous generations who have been blurred or cannot be known until the origin for the recipient of the treasure called old treasure by because it was so old age. The haze treasure high inheritance origin was caused by a few things i.e. is already so much distance between the existence of the treasure with the parties who are working on that, and could no

⁸⁵ Qs. an-nisa verse 35

⁸⁶ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau*, (Jakarta :Gunung Agung,, 1984), p. 84

longer be taken into account by the year, because it is mixed with other sources of diffuse comes later.⁸⁷

b. harta pusaka rendah

Harta pusaka rendah is a property that inherited of a person or a group which can be known with certainty the origin of the treasure. It is occurs when the treasure he received from a force on like a father or *Mamak*, as well as from two levels and beyond can still be familiar.

Disputes concerning property inheritance (*pusako*) are a dispute relating to property inheritance is high as rice fields, artificial, *banda labuah*, *rumah tanggo*, i, forest lands that are not yet in the sport. The other is a civil dispute regarding a dispute that took place between members of society such as marriage, divorce and so on.⁸⁸

3. Indigenous Land

Understanding customary indigenous land or land previously set forth in Regulation No. 13 West Sumatra Region in 1983 (PERDA No. 13/1983) about the *Nagari* as the unity of Community Law in the Area of West Sumatra Province in article 1 letter e stated:

“Tanah ulayat adalah tanah yang berada di nagari yang dikuasai dan diatur oleh Hukum Adat”.

Local regulations No. 13 in 1983 was revoked by regulation Areas of West Sumatra No. 9 of 2000 on the provisions of the Government's

⁸⁷ Soerojo Wignjodipoero, *Pengantar dan Asas-asas Hukum Adat, Haji Masagung*, (Jakarta: 1967), p. 168

⁸⁸ As Suhaiti Arief, *Eksistensi Peradilan Adat Pada Masyarakat Hukum Adat Minangkabau di Sumatera Barat* (research proposal of hibah kopetition programi A-2, Padang, 2007), p. 3

Principal Regional regulations *Nagari* No. 9 of 2000 article 1 letter O just mention Customary sense *Nagari* is possessions and wealth *Nagari* outside the House of a tribal and utilized for the benefit of children of *Nagari*.

Another notion advanced by Hadikusum Hilman experts that: indigenous land/relatives belong together (relatives-relatives) have the right to wear in a sense can be wearing, can dress, can enjoy the results but should not personally belong to the individual.⁸⁹

4. Gelar *Sako*

The dispute about the title (*Sako*) is a dispute relating to the degree received down a House of which its function is as the head of the House of the heads of Customs (King) and *Sako* hereditary nature of this since long time ago till now, according to the mother's lineage is straight down.

Disputes concerning property inheritance (*sako*) are a dispute is like property inheritance is high as rice fields, *pandam pakuburan*, forest lands that are not yet in the sport. While the other is a civil litigation dispute regarding a dispute that took place between members of the society like marriage, divorce, and so on.

⁸⁹ Nurullah, *Tanah Ulayat Menurut Ajaran Adat Minangkabau* (Padang :PT. Singgalang Press, , 1999), p. 7



CHAPTER III

RESEARCH METHOD

A. Kind of Research

The research method is a way to find the answer will be something. How the discovery of the answer already arrayed in particular measures which systematically. Research is a principal means in the development of science.⁹⁰

Because the research aimed at revealing the truth in a systematic, consistent with the methodological analysis and construction.⁹¹ Thus each research leave from ignorance and ends on the next stage of the doubt and leave from doubt and ends on a hypothesis. The answer can be considered to be proven otherwise.⁹²

⁹⁰ Lexy J moleong, *Metodologi Penelitian kualitatif* (Bandung; PT Remaja Rosdakarya, 2005), p.131

⁹¹ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif* (Suatu Tinjauan Singkat), Rajawali Press, Jakarta. 2003, p. 1

⁹² Amiruddin dan Zaenal Asikin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2004, p. 19

In conducting research activities need to be supported by the methods that is good and right, so that the proper result is obtained and can be responsible the truth. Thus it can be said that the method is an absolute elements that must exist in the implementation of research activities. Legal research is a scientific activity, based on a method in the form of a way of thinking and doing for the preparation of the study. Systematics and certain thoughts who study one or more of the symptoms of a particular law, by way of analyzing it.

The selection of the appropriate methodologies will be very helpful to get the answers to all the questions. Therefore the methodology of legal research also has certain traits is his identity, because of the legal science can be distinguished from other sciences.⁹³

Legal research can be differentiated into normative legal research and empirical sociological research. The difference between the two is simply a matter of heavy point his attention only. Normative legal research done by perusing the library material is secondary data, therefore the normative legal research can also refer to legal research library. While empirical legal research or sociological focuses more on the research of primary data through interviews.

Legal research can be differentiated into normative legal research and empirical sociological research. The difference between the two is simply a matter of heavy point his attention only. Normative legal research done by

⁹³ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif* (Suatu Tinjauan Singkat), Rajawali Press, Jakarta. 2003, p 3

perusing the library material is secondary data, therefore the normative legal research can also refer to legal research library. While empirical legal research or sociological focuses more on the research of primary data through interviews.⁹⁴

Writer use the methods in this thesis is the of empirical research that mean the research directly towards the object being examined in order to obtain data pertaining to the matters that are discussed.

B. Research approach

The method of approach to the problem that was used in this research is a method of empirical juridical nature. Research with juridical approach to empirical research regarding the enactment of the law is the law provisions are normative in action on any particular legal events that occur in the community. The enforcement action is in fact empirical and is useful for achieving the objectives that have been determined by the State, the implementation in action is expected to be take place wholly in the normative provisions of law clear and definite as well as complete.⁹⁵

The research is qualitative, descriptive, i.e. It describes existing approaches to reality are then analyzed using words. This means that the data collected is not the form of the figures but rather that data based on field notes, interview scripts, memos, and personal documents.

By using this approach, then the author examined directly on the area of Malalak. So knowable phenomena from the evectivitess of KAN in family

⁹⁴ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif* (Suatu Tinjauan Singkat), Rajawali Press, Jakarta. 2003, p.13

⁹⁵ Emi Emilia, *Menulis tesis dan Disertasi*, (Bandung:CV.Alfabeta, 2008) p.12

conflict resolution. This makes the use of qualitative approach researchers easily in "data.

In order to research the more directional and the more accurate the results of his research then in this case the researchers took samples from either the customary as well as figures from the Agency existing in Malalak.

Malalak district which lays the four institutions who played in parts of Malalak East, West, South and North.

This research is qualitative descriptive that mean it describes about reality in area research then analyzed it using words. This means that the data collected is not form of the figures but rather that data based on, interview scripts, memos, and personal documents.

In using this approach the writer examined directly on the area of Malalak. So knowable phenomena from that area about effectiveness of KAN in family conflict resolution this qualitative approach makes researchers easily to get data.

C. Data Sources

a. Primary data

Primary data is obtained directly from the first source.⁹⁶In the primary data using directly interviews to the informant. So in this research the writer will interview the custom figures in Malalak about problem resolution in KAN or customary mediation then who give argument or information that writer need in process research.

⁹⁶ Lexi J moelong, *Metodologi Penelitian kualitatif* (Bandung; PT Remaja Rosdakarya, 2005)p.131

b. Secondary data

The data was taken as supporting without having to plunge the spaciousness, including official documents, books, and results of research that like reports and so on.⁹⁷

D. DataCollection

To collect the data that need by this writer both the secondary as well as primary data, the necessary data collection, they are:

a. Interview

The interview is a way to obtain information by inquiring directly on the object to be interviewed. Interviews were used in this research is directed, namely free interview conducted with is not limited by time and list the order of the questions, but stick to the important principal problems according to the purpose of the interview. This interview was intended to acquire straight answers and a broader picture of the problems examined.⁹⁸

In this case the author submits a question or non-guided interviews, that is where the questions that have been prepared and can be tailored to the situation and the existing conditions, but did not come out of existing problems. Interview (interview) in this study were used to express like that custom mediation phenomenon where in the area as well as the

⁹⁷ Amiruddin dan zainal Asikin, *Pengantar Metode Penelitian Hukum*(jakarta;PT Raja Grafindo Persada), p 30

⁹⁸ Ronny Hanitijo, Soemitro, *Metodelogi Penelitian Hukum*, Ghalia Indonesia, Jakarta,1985, p. 57

actual Malalak knowing how the opportunities and challenges faced by KAN in the conflict resolving.

These data are obtained from the results of interviews with informants and direct resource i.e.

- a) Dt. Lelo Basa nan Labiah as the chief of KAN on east Malalak
- b) Dt. Mangkhudum as vice chief 1 of KAN on East Malalak
- c) Dt. Kiwi as vice chief 2 of KAN on East Malalak
- d) Dt. Marajo as vice chief 3 of KAN on east Malalak
- e) Dt. Paraptiah as vice chief of KAN on Malalak
- f) Andi yendra as Wali Nagari on East Malalak
- g) Rita zahara as secretary of KAN on east Malalak
- h) Nur Hasanah as Bundo kanduang of KAN on east Malalak

b. Observation

Observation Method is the collection of data through observation and recording of the phenomena systematically investigated. In this case the writer observes and investigates four offices KAN contained in Malalak.

Expected from some of the above methods, it can be retrieved with relevant research data, regarding the customs agency objective conditions or the place of research. In this research writer observer on KAN of east Malalak.

c. Document study

The study documents the data collection technique is used in the research library that is by studying the materials library of legislation and

the literature that deals with issues that are examined, as well as reports or data that are on KAN's Office.

E. Data analysis

Data analysis is a necessary way to analyze the data, Learn about, and analyze specific data so that it can be taken a concrete conclusions about the issues that are being discussed and examined.

In analyzing the data, the authors use a qualitative descriptive method that manage data and report what has been obtained during research carefully and researched as well as providing interpretation to the data into a roundness that is intact with the use of words, so that it can describe objects when done this research. To avoid a lot of errors and simplify the understanding so that in theses later did some efforts which are.

1. Data Reduction and Editing Data

Reduction of data means to encapsulate, choosing things, focus on the things that are important, with in the focus search on customary mediation in Malalak. On reduction this data the researcher can process data to be able to get the findings of this research and development significantly. After held summary data researchers will be editing from all of the data collected, starting the primary data secondary data or which are then processed at later stage.

2. Classification

In arranging this research, will be arrange according to category and classification. Category is efforts choice every unit into parts that

have similarity.⁹⁹ And after that give each label until have relation with title.

3. Verification

Check back with the meticulous about data that have categorized above. So that does not ambiguous in the study in stage verify this to be a requirement in research. At this stage, researchers will look at the data that comes directly from original source.

4. Analysis

The analysis phase is the phase of the research gives an overview and analysis of the influence of effectiveness of KAN concerned in solving the family custom in mediation.

5. Conclusion

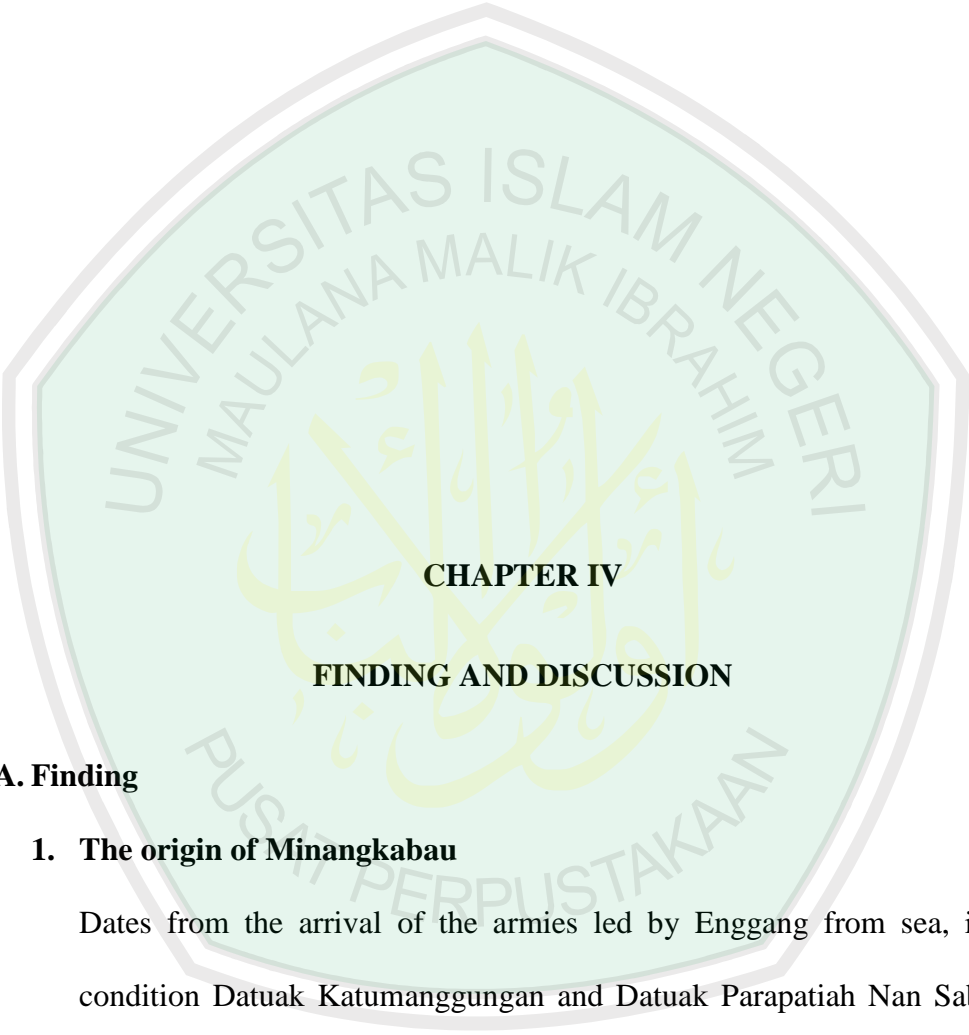
In the final stages is conclusion. After collected and completed processed the data is and, the next step is to analyze the data (analysing) is data Analyzer in order for raw data that has been retrieved can be more understood easily. As for the analysis of the data used in this study is the analysis describing the State or status of a phenomenon with words and sentences then split by category to derive the conclusion.

Thus, it is in the research data obtained through interviews or methods of documentation will be illustrated in the form of words or sentences. And then connect it with effectiveness of KAN as institution of mediation in family conflict resolution.

⁹⁹ Lexy J moleong, *Metodologi Penelitian kualitatif* (Bandung:PT Remaja Rosdakarya, 2005), p. 288

Thus, it is in the research data obtained through interviews or methods of documentation will be illustrated in the form of words or sentences. And then connect it with the concept of *Ninik Mamak* position influence Division in solving family custom in mediation.





CHAPTER IV

FINDING AND DISCUSSION

A. Finding

1. The origin of Minangkabau

Dates from the arrival of the armies led by Enggang from sea, in this condition Datuak Katumanggungan and Datuak Parapatiah Nan Sabatang conciliated to find an idea for prevent of arrival those armies. Finally obtained an agreement that as to resist forces hornbills from the sea shall by cunning. By means of pitted buffalo. Buffalo who wins in that battle is won that battle. The armies of Enggang accept that idea.

The armies of Enggang from sea brought a very big buffalo to join the competition. Know this condition so Cati Bilang Pandai provides

suggestion that the very big buffalo from Enggang will be contest with baby of buffalo that has a few days left on its mother's milk. And on the nose of Buffalo tied a piece of iron, that iron called Minang.

When the baby of buffalo was released soon he pursues great buffalo and thought that is his parent. That baby buffalo butting the great buffalo so the stomach of great buffalo implanted by iron in the nose of baby buffalo.

Because of that, the great buffalo feel ill and run around until the inside of his stomach out (*taburai/ tersimpuruik*) and now that place named simpuruik. But that buffalo still run a way until he dies in the other place. And the people in that place take the skin (*jangek*) of buffalo, so that place named *sijangek*. Since that victory named Minangkabau, the mean Minang is winning and kabau is buffalo.¹⁰⁰

2. General Description of the Area of Malalak

Agam have a long history and complete both in the field of Governance as well as in the field of customs. Beginning of the Minangkabau Kingdom in the mid-17th century, in which the people of Minangkabau have been shouldering arms to rebel against the occupation of Netherlands.¹⁰¹

In history the Government of Minangkabau called Ranah Minag, where the area of its authority including: west Sumatera, Limo Koto Kampar area (Bangkinang) and nowadays include in province of Riau, Kerinci area (sungai penuh) nowadays include in province of Jambi and partly of

¹⁰⁰ M. Rasjid Manggis, *Minangkabau Sejarah Ringkas dan Adatnya*, Mutiara, Jakarta, 1982, p 94-95

¹⁰¹ H. Datoek Toeah, *Tambo Alam Minang Kabau* (Bukittinggi: pustaka Indonesia), p: 56

tapanuli area (Koto Napan) and nowadays in administration include into north Sumatera.¹⁰²

The government of custom including *Luhak* and *Rantau*. Where the Government in *luhak* area consists from *Luhak Tanah Datar*, *Luhak Limo puluah koto* and *Luhak Agam*.

Commissioner for the Government of the Republic of Indonesia in Sumatra based on Bukittinggi issued a regulation on the establishment of the autonomous county in central Sumatra which consists of 11 Counties that one District of Singgalang Pasaman and capital in Bukittinggi that including kawedanan Agam Tuo, Padang Panjang, Maninjau, Lubuak Sikapiang and kawedanan Talu (except Nagari Tikur, Sasak and Katiagan).¹⁰³

In occupation of Netherlands, Luhak Agam was changed the status to be Afdeling Agam that consists from, Onder Afdeling Distrik Agam Tuo, Onder Afdeling Distrik Maninjau and Onder Afdeling Distrik Talu.¹⁰⁴

At the beginning of the independence of Indonesia in 1945 the former of the region Afdeling Agam change to be Agam District or Kabupaten Agam that consists from three Kewendanan that are: kewendanan Agam Tuo, Kewendanan Maninjau, Kewendanan Talu.¹⁰⁵

With the Decree of military Governor of West Sumatra No. 171 in 1949, Kabupaten Agam or Agam District area scaled down where Kewendanan

¹⁰² H. Datoek Toeah, *Tambo Alam Minang Kabau* (Bukittinggi: pustaka Indonesia), p: 58

¹⁰³ H. Datoek Toeah, *Tambo Alam Minang Kabau* (Bukittinggi: Pustaka Indonesia), h: 56

¹⁰⁴ <http://www.kemendagri.go.id/pages/profil-daerah/kabupaten/id/13/name/sumatera-barat/detail/1306/agam>

¹⁰⁵ H. Datoek Toeah, *Tambo Alam Minang Kabau* (Bukittinggi: Pustaka Indonesia), p: 57

Talu including into Pasaman District, but some of Nagari in Kota Madya Bukittinggi redirected into area administration of Kota Madya Bukittinggi.¹⁰⁶

The decision of the military Governor of West Sumatra that was confirmed by statute Number 12 year 1956 about establishment of the regional Level 2 in area of west Sumatera. So this place to be regional level 2 in district Agam.

The de facto in 19 June year 1993. Capital of kabupaten Agam is in Lubuak Basung has been on a strengthened with the promulgation of government regulation of the Republic of Indonesia number 8 years 1998 about *Pemindahan Ibu kota Kabupaten Daerah Tingkat II Agam Dari Wilayah Kotamadya Daerah Tingkat II Bukittinggi Ke Kota Lubuk Basung Di Wilayah Kecamatan Lubuk Basung Kabupaten Daerah Tingkat II Agam* or the transfer of the capital of the District of regencies Of Agam Municipality Regencies Bukittinggi to City Bottom Basung In Kecamatan Lubuk Basung Regencies (Kabupaten) Agam.¹⁰⁷ Agam consists of several subs that are:

- a) Kecamatan Ampek Angkek/ sub district of Ampek Angkek
- b) Kecamatan Banuhampu / sub district of Banuhampu
- c) Kecamatan Baso / sub district Baso
- d) Kecamatan Candung / sub district Candung

¹⁰⁶ M. Rasjid Manggis, *Minangkabau Sejarah Ringkas dan Adatnya*, , (Jakarta :Mutiara, 1982), p 100

¹⁰⁷ <http://www.kemendagri.go.id/pages/profil-daerah/kabupaten/id/13/name/sumatera-barat/detail/1306/agam>

- e) Kecamatan IV Angkek/ sub district IV Angkek
- f) Kecamatan IV koto / sub district IV koto
- g) Kecamatan Kamang Magek / sub district Kamang Magek
- h) Kecamatan Lubuk Basung / sub district Lubuk Basung
- i) Kecamatan Malalak / sub district Malalak
- j) Kecamatan Matur / sub district Matur
- k) Kecamatan Palembayan / sub district Palembayan
- l) Kecamatan Palupuah / sub district of Palupuah
- m) Kecamatan Sungai puar / sub district Sungai puar
- n) Kecamatan Tanjuang Mutiara / sub district Tanjuang Mutiara
- o) Kecamatan Tanjuang Raya / sub district Tanjuang Raya
- p) Kecamatan Tilatang Kamang / sub district Tilatang Kamang

With respect to this research in this thesis that focus area of research is in Sub district of Malalak which this area is younger sub district than 16 sub-district in Agam district.

Malalak directly adjacent to IV Koto sub district in north various, district of Tanah Datar (Singgalang) in east various, Tanjuang Raya (Maninjau) Sub district in the west various and Padang Pariaman district in south various.¹⁰⁸

Extensive this sub district 103.21 km² and with population in 9.265 (2010) with a density of between 96 inhabitants/km². Malalak consists of four Nagari i.e. Nagari North Malalak, South, East and West Malalak.¹⁰⁹

¹⁰⁸ Profile kecamatan Malalak, tahun 2012

¹⁰⁹ Profile kecamatan Malalak, tahun 2012

Nagari of Nouth Malalak located in valley between Singgalang Mountain and hill of Sikaba Jawi (east Hill flanked around Like Maninjau). ith an altitude of 920 – 950 meters above sea level with average temperatures ranging from 27 ° c during the day and at night reached 16 °C. Nagari Malalak North has an area of 640 Ha with the limits as follows.¹¹⁰

- a) North with Nagari Sungai Landia
- b) South with Nagari Malalak southern and most Western Malalak
- c) East with Nagari Malalak East
- d) West with Maninjau

In Nagari of North Malalak administration consists of four *jorong*:

- a) *Jorong Sigiran*
- b) *Jorong Salimpauang*
- c) *Jorong Campago*
- d) *Jorong Koto Andaleh*

Residents who have settled it is composed on the basis of the tribes and clans, led by the ruler of the tribe called Datuak . North Malalak is divided into six tribes' i.e.¹¹¹Sikumbang, Koto, Piliang, Chaniago, Pibada, Pisang West Malalak is one of the features contained in the subdistrict of Malalak, Agam, West Sumatra, Indonesia.

¹¹⁰ Profile kecamatan Malalak, tahun 2012

¹¹¹ Profile kecamatan Malalak, tahun 2012

South Malalak is one of the features contained in the subdistrict of Malalak,

Agam, West Sumatra, Indonesia. Consists of 5 *jorong*¹¹² i.e.:

- a) Jorong Dama Bancah
- b) Jorong talango
- c) Jorong Balai satu
- d) Jorong sini Aia
- e) Jorong nyiua

And in the east Malalak have 5 *jorong*, i.e.¹¹³

- a) Jorong Toboh Tengah
- b) Jorong Bukik malanca
- c) Jorong Subarang Gaung
- d) Jorong Limo Badak
- e) Jorong Saskan

In west Malalak have 4 Jorong:

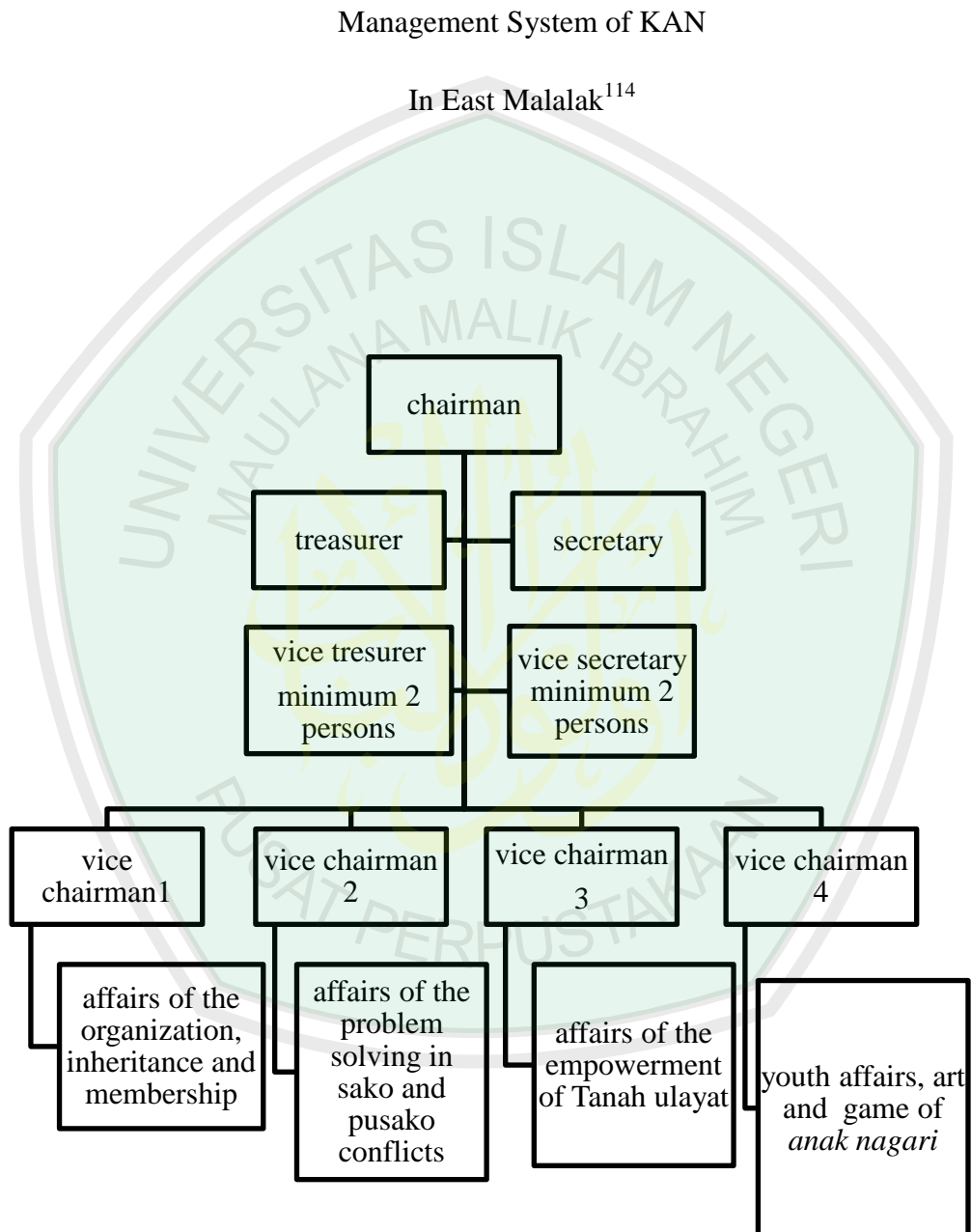
- a) Jorong north Jalan Banting
- b) Jorong central jalan Banting
- c) Jorong south Jalan Banting
- d) Jorong Hulu Banda

¹¹² Hillbilly of part of nagari

¹¹³ <http://disdukcapilagam.blogspot.co.id>

3. Overview of Kerapatan Adat Nagari (KAN)

a. Management System of KAN in East Malalak



¹¹⁴ Pucuk pimpinan LKAAM Sumbar, Surat Keputusan, No.SK-17/PP/LKAAM-SB/2003 p,21

In Nagari the Management of KAN led by a head of assisted by 3 peoples as vices of chairman, 2 peoples as secretaries, 2 peoples as treasurers, 12 peoples as chairman of affairs, a member of affairs adapted to order customary of *Salingka Nagari*.¹¹⁵

The term of management KAN in five years since deliberation of *Ninik Mamak/penghulu* of custom Minang vote and decided the accuracy about management of KAN.

The head of KAN to be elected by members of KAN in one meeting of KAN with the requirement that:¹¹⁶

- a. Took Office *Ninik Mamak/ Penghulu* in Minangkabau customary as *Penghulu Andiko*.¹¹⁷
- b. Have leadership with Perspectives and a wide view.
- c. Get the most of votes in an election of head at a meeting of KAN
- d. Reside in that Nagari
- e. Have sufficient time to lead KAN
- f. Stated willingness to upon taking office in KAN

The following is the duty of management of KAN:¹¹⁸

- a) Chairman or head

Chairman or head must responsible from outside and into organization of KAN also coordinate, consolidate, communicate of

¹¹⁵ Dt. Makhudum as vice chairman 1 of KAN in east Malalak ,interview (Malalak:05 January 2016)

¹¹⁶ Anggaramn Dasar dan anggaran Rumah tangga LKAAM Sumatera Barat, 6 juni 2005 p 38

¹¹⁷ the person who is leading, or the leader of the citizens of his community

¹¹⁸ Pucuk Pimpinan LKAAM SUMBAR Surat Putusan No.SK-17/pp/LKAAM-SB/003 p.22

a good one and administrate of organization effectively and efficiently. Divide the duties or devolving authority existing to the vice chairman.

b) Vice of chairman 1

The responsible of vice of chairman 1 are to help head in order main task and function in organization inherent and membership effectively and efficiently.

c) Vice of chairman 2

The responsible of vice chairman 2 are to help head in order main task and function in resolved the *sako* and *pusako* conflict in *adat basandi syara' syara' bsandi kitabullah* solution effectively and efficiently.

d) Vice of chairman 3

The responsible of vice chairman 3 are to help head in order main task and have function in empowerment of Tanah Ulayat and State assets effectively and efficiently.

e) Vice of chairman 4

The responsible of vice chairman 4 are to help head in order main task and have functions to young affairs, art and game *anak nagari* effectively and efficiently.

Job Affairs of organization, inheritance and membership:¹¹⁹

- a) Responsible to help head of in main task and function in arranging organizations and membership.
- b) Make lists of *anak kemenakan*'s economy, social, cultural, health, and education based of information from head of tribes.
- c) Recapitulate of *anak kemenakan* from boys and girls, old, young, smart, bovine, in that area or in the shoreline that got from head of tribes.
- d) Special job that got from organization for with deliberation and consensus.

Job Affairs of resolved *sako* and *pusako* conflicts:

- a) Collected data of *pusako*, degree of *sako*, degree of member custom and *gelar mudo*¹²⁰ that given by head of tribe.
- b) Archived the pedigree or relationship between the descendents of member custom according to matrilineal system.
- c) And Special job that got from organization for with Deliberation and consensus

¹¹⁹ Pucuk Pimpinan LKAAM SUMBAR Surat Putusan No.SK-17/pp/LKAAM-SB/003 p.24

¹²⁰ The young title of custom

Job Affairs in empowerment of *tanah ualayat* customary land and State assets.¹²¹

- a) Empowerment of customary land and take care of the assets of the Nagari.
- b) Help plan the progress of the Nagari together tribal leaders for the attainment of child welfare by utilizing customary land Nagari and assets Nagari.
- c) investing all the treasures and the Nagari, to note in indigenous density Nagari
- d) Cooperate with government in implementing the rights and obligations of anak kemenakan to pay taxes of Earth and building (PBB) and the payment of zakat in *bajanjang naik batanggo turun* ,from tribal leaders to the leaders of the Nagari.

Job Affairs of young affair, art and game of *anak Nagari*:

- a. Affair the young people, art and game
- b. Lead the Anak Kemenakan together with tribal leader who are in Nagari.
- c. submit the aspirations of anak kemenakan that delivered of tribal leader
- d. eventuated all types, shapes and various art of anak Nagari
- e. Created order, security peace in the Nagari.

¹²¹ Pucuk Pimpinan LKAAM SUMBAR Surat Putusan No.SK-17/pp/LKAAM-SB/003 p.24

b. Overview of KAN Office in Malalak

In this thesis writer will describe condition of KAN office in east Malalak and also the office of KAN in Malalak generally:

a) KAN in East Malalak

Kerrapatan Adat Nagari (KAN) in east malalak has not have own office, but still use Office of the Wali Nagari.¹²² With condition of the one-floor building and in that place just have tree room, one room for Wali nagari, a room for do the deliberation by the Wali Nagari or by KAN in solving a dispute or discussing and other room used by employees of the local Guardian Nagari to work. So from this condition that KAN does not have an office for its members.¹²³

b) KAN in North Malalak

The conditions of KAN office in this area is almost same with condition of KAN office in east Malalak,¹²⁴ just that in conducting deliberations and conflict resolution will be done by the KAN is not always in the office of the Wali Nagari in this place but sometimes performed at the home of one of the Trustees of KAN. This happened three years later due to quarrels between the sysop KAN with Wali Nagari.

c) KAN in South Malalak

The state of KAN in this area better than KAN officer in other area, in this southern Malalak has his own office, but the office in question

¹²² Observation into KAN office in east Malalak, 05 January 2016

¹²³ Andi Yendra as wali nagari in east Malalak, Interview (Malalak:05 January 2016)

¹²⁴ Observation into KAN office in North Malalak, 06 January 2016

here is not the office that there is indeed room for the its administrator but the office building only a single space that can only be used for the deliberations conducted by KAN. But for the sysop KAN still doesn't have an office.¹²⁵

d) KAN in west Malalak

Before the turn of the Chairman of KAN who served in this office from KAN now remains with the office of the Wali Nagari. But two years later the office's already split by the Chairman on the KAN that leads to a Community House which has indeed not used anymore.¹²⁶

c. **Types of Conflict in Hendle by KAN in East Malalak**

Based on the provisions of the local regulation number 13 in 1983 about “*fungsi dan kewenangan Kerapatan Adat Nagari*” functions and authorities of KAN. That dispute of *tanah ulayat* (customary Land), sako, pusako, are responsibility or authored by Kerapatan Adat Nagari (KAN) in that place. Therefore its appropriate authority given through local legislation No. 13-1983 is obligated to carry out various efforts to resolve the dispute peacefully customs. Of the four existing KAN in Malalak still there are additional cases that dealt with the other in above including the divorced and debts receivable.¹²⁷

And even many of the community which is indeed often resolve their conflict in KAN especially on family conflict that about household

¹²⁵ Observation into KAN office in south Malalak, on 06 January 2016

¹²⁶ Observation into KAN office in west Malalak, on January 2016

¹²⁷ Dt. Lelo Basa Nan Labiah as head of KAN east Malalak, Interview (Malalak: 10 January 2016)

feud, divorce and inheritance of property issues, with the following table.¹²⁸

Table 2

The Type and the Number of Cases Handled by KAN

No	Type of cases	Number of cases						
		2009	2010	2011	2012	2013	2014	2015
1	Pusako	1	3	3	2	1	1	2
3	Divorce or family conflicts	2	5	4	7	5	2	2
5	Heritage	1	1	2	3	3	2	4
Total		4	9	9	12	9	5	8

From the data above it is known that the number and types of cases that hold in 2009/2015 incoming cases range:

- a. *Pusako*: 13 cases
- b. Heritage 16 cases
- c. Divorce and family conflict : 27 cases
- d. Tanah ulayat or customary land: 1 case

The definition of family issues in the table are indeed problems posed by both family members who come from the husband and wife

¹²⁸ Data of cases incoming in KAN of east Malalak.

own or that come from other family members such as the problems between the in-laws with a son-in-law or problems between laws.¹²⁹

d. The Challenges of institution of KAN

Nowadays the institution of KAN receives various obstacles in the exercise of its position as a settlement of the problem. This factor by many factors both internal factors and external factors, the following internal factors:¹³⁰

a. the quality of human resources

The Knowledge and understanding public of indigenous is low even though the education of members KAN like the chairman of that institution who had attended the high school is quite good.

With an education in accordance with the present circumstances they are dealing with outside parties and also the Government. They are often utilized by parties who want to seek a profit. Outsiders looking for cracks of weaknesses and ignorance as well as the strength of *Ninik Mamak*. For example, the Division had promised would be held evenly against what is used or sold but in the letter of the Covenant is not mentioned and when it will be realized. In other words, the power of the party that demanded by the party being sued is not balanced and the Government which is not neutral

¹²⁹ Dt. Lelo Basa Nan Labiah as head of KAN east Malalak, Interview (Malalak: 10 January 2016)

¹³⁰ Dt. Marajo as vice chairman 3 of KAN in east Malalak, Interview (Malalak, 09 January 2016)

b. The rule of Ninik Mamak

The meaning of challenge the role of *Ninik Mamak* in this context is that role was split or is not a focus in solving mediated because they prefer to spend a little time for the resolution of disputes than leaving their work in their family live. So with this condition can be a hindrance to get a good solution in mediation in this institution.

c. Lack of knowledge of legal procedures

The less insight about how the correct legal procedures that they should be reached of *Ninik Mamak* or society. This condition can be berries to reached a good solution which coherent with legal regulation, custom and religious regulation.¹³¹

d. Low participation of Islamic scholars

The lack of collaboration between Islamic scholar with KAN during this pious scholars never included in solving conflict of *anak kemenakan* because Islamic scholars considered a deterrent for a good solution.

Whereas most of the scholars are the ones that affect the community as *ninik mamak* leave the role of religion in resolving of *anak kemenakan* conflict. And the religious was left far away in behind.

¹³¹ Fahrizal Dt.makhudum as vice of chairman in KAN east Malalak , Interview (Malalak:05 January 2016)

The various parties aware of these deficiencies assume that decisions are issued KAN ought to be tested again by the judiciary. And for external factors, are: ¹³²

- a. The takeover of authority by a local court. The existence of customary Institutions that exist in areas of Sumatra and in particular the area of Malalak increasingly years instead of getting better even more and make the customary institutions increasingly does not have sufficient strength and little by little started to remove far by the times.
- b. lack of a positive response from the Government to the existence of this institution, with State agencies that do not have Office space In this case the Kerapatan Adat Nagari (KAN) including to institution that accept the challenges in maintaining of existence in carrying out its duties and functions as it should be.

In general challenges of institution of KAN in this era are:

- 1) The existence of a street se between the local government in the presence of the institution
- 2) The takeover of authority by local court
- 3) lack of human resources in the institution of KAN

¹³²Datauk Tuah as costum figures in east Malalak, Interview (Malalak: 05 January 2016)

4. The Role of KAN in Resolving Conflict

In local regulation of west Sumatera number 2 year 2007 in article 1 verse 13 about “*Pokok-pokok pemerintahan Nagari*” essential of Nagari explain that Kerapatan Adat Nagari (KAN) is an institution of custom density of *Ninik Mamak* who has been there and was inherited hereditary all customs and customs as well as sustainability-keeping functions resolve disputes *pusako* and *sako* episode in Nagari.¹³³

Explain that Kerapatan adat Nagari (KAN) is institutions that be trusted by society to settle the affair of the *sako* and *pusako* that accured in community in that place. The reality in the life of the community many of them already offer the case outside of the problem i.e. *pusako* ,*Sako* and divorce issue and legacy.¹³⁴

Kerapatan Adat Nagari (KAN) does not directly receive the disputes to be resolved in the density of the customs, but first asked to resolve in deliberations at the level of families, clans and in tribes. As in the proverbial of custom Minangkabau that “*kusuik manyalasaikan karuah mampajaniah*” (*kusut menyelesaikan, keruh mempejernih*) it means if kinked will be solve. But when some one of the parties do not fell less satisfied to the result or decision is received in that process, then rises to a higher level i.e. Kerapatan Adat Nagari (KAN) to help resolve the dispute at the Kerapatan Adat Nagari or referred also to the KAN.¹³⁵

¹³³ Local legislation of west Sumatera, number.2 year 2007 about *Pokok-pokok peerinthan Nagari*

¹³⁴ Rita Zahara as a secretary of KAN in east Malalak , Interview (Malalak:10 January 2016)

¹³⁵ Datuk kiwi as vice chairman 2 of KAN in east Malalak, Interview (Malalak: 09 January 2016)

In system of KAN have term that “batanggo *naik bajanjang turun*”. The “batanggo *turun*” mean the results of deliberations or outcomes of dispute resolution by *Ninik Mamak* are elderly someone in the indigenous are expected to be followed by the parties to the dispute.¹³⁶

As has been described previously, heirloom treasures dispute resolution should be high on the finish from the lowest level first. Starting from the level of the House, village, tribe, and then it was only to last level of Nagari. In this case the first completed by *Mamak* or brother of sides. If not resolved, then proceeded to *pangulu paruik* in tribe, if still not resolved the dispute and then also submitted to a Kerapatan Adat Nagari (KAN) and submit an application in advance. Before applying for the registration or the issue of Kerapatan Adat Nagari (KAN), the KAN asked the two sides to get together. Then ask the parties.¹³⁷

A legal term called “*penggugat*” or “plaintiff” to submit an object commonly referred as “tando”¹³⁸. *Tando* in this case distinguished into two, namely:¹³⁹

- 1) In *pusako tinggi* (sako) or ommonly known title of greatness the “tando” like or presented “keris” which is a symbol of the greatness of a grandfather.

¹³⁶ H. Idrus Hakimy Dt. Rajo Penghulu, Rangkaian Mustika Adat Basandi Syarak di Minang Kababu, (Bandung: PT. Remaja Rosdakarya, 2001) p. 145

¹³⁷ Nur Hasanah As Bundo Kandung In KAN east Malalak , Interview (Malalak: 15 January 2016)

¹³⁸ Symbol

¹³⁹ Nur Hasanah As Bundo Kandung In KAN east Malalak , Interview (Malalak: 15 January 2016)

2) In Pusako tinggi property is like “Pusako” or property such as land, house and other property, for third condition the “Tando” like bracelet.

In the resolution of a dispute that goes in Institute of KAN going through some process, that before the matter is resolved by officials of KAN or by *Ninik Mamak* then it must be the case already known in advance by the *Mamak* (uncle) from parties.¹⁴⁰

If a dispute has been submitted the settlement through existing customs chief in the Agency of KAN. Then it becomes the power that will be handled by the Agency of KAN. As for way to the definite resolution of disputes by family system, not with the way judge the parties, with the following stages:

*“Ketika lembaga KAN menerima kasus yang akan di bahas maka pengurus KAN memanggil para pihak untuk hadir dalam persidangan dengan tujuan untuk mendengar permasalahan-permasalahan yang terjadi. Selanjutnya Ninik Mamak berusaha mencari data-data dari pihak manapun untuk memperjelas kebenaran, sehingga bisa memberikan titik terang terhadap permasalahan tersebut dengan hasil akhir yang akan dikeluarkan oleh lembaga KAN terhadap para pihak adalah dengan bentuk persetujuan damai atau sebaliknya”*¹⁴¹

From the interview above can explain the steps that done when resolved the conflict in KAN with mediation:

1) Calling the parties to the dispute

Calling on the parties to the dispute are requested for mutual argued about what issues, problems and requested direct proof of such

¹⁴⁰Dt.lelo basa as chairman of KAN in east Malalak, Interview (Malalak: 10 January 2016)

¹⁴¹Paramato Dt. Parapatiah as vice of chairman 4 of KAN in east Malalak , Interview (Malalak: 10 January 2016)

dispute. In resolving such disputes if the parties are not forced to follow the ruling of *Ninik mamak* but just looking for a middle ground for both parties which will not bring harm to any party. Because there only looking for a middle ground of any incoming issue.

2) Calling of the witnesses

Calling a witness to hear testimony to strengthen against the description of the parties. Witnesses here other people better understand, see and hear his knowledge of sitting things, so the *Ninik mamak* can offer the right solution to make the midpoint in resolving a problem.

3) The process of deliberation or process of agreement

In the last if *Ninik Mamak* have midpoint hat can be offered to the parties. Good offer could be accepted by the parties with the agreement of those, both rejected by the parties or by any of the parties concerned. So therefore so as for the outcome of this mediation will be report to local court bodies. And what if these problems have dotted the end results in peace it will be dealt with by the courts to prosecute or in trial.

B. Discussion

1. Kind of Conflicts that Dealt by KAN on East Malalak

By utilizing the existence of Kerapatan Adat Nagari (KAN) in doing a settlement out of court issues could lead to right the more walking and rewarding as it should be. And from the KAN that the position of *Ninik Mamak* can be enabled with either.

In a State of actual East Malalak community problems occurred among the people is not declining each year but will continue to increase, both civil cases such as indigenous issues the latest *pusako* as well as ordinary civil cases such as divorce and inheritance. But locals are already increasingly being completed their problems outside the institution KAN either through Mediators outside the court who already have a certificate or of a mediator who is in the body of the court.¹⁴²

In General in Malalak not getting at least a case that happened but at least the local community that solved their conflicts in this constitution. so they prefer the directly submit their cases to the courts even though it was the custom of the civil case has indeed should be completed in advance by the KAN on the grounds that the Court out there continue to receive these things and more in the Court have the power of law that remain.¹⁴³

At institution of KAN in east Malalak more handle the civil litigation issues relating to family issues, either in the form of a divorce or

¹⁴² Dt.marajoas vice of chairman 3 of KAN in east Malalak, Interview (Malalak: 09 January 2016)

¹⁴³ Andri yendra as Wali Nagari of east Malalak , Interview (Malalak: january 2016)

inheritance. Diagram of the cases that many handle by Kerapatan Adat Nagari (KAN).

2. The Role of KAN in Resolving Conflicts

In the course of history KAN in the area of Malalak, that KAN is an institution that has had a broad discretion in dealing with any resolved problems by local people to be completed, either prosecute or simply mediating, either civil or criminal problems.¹⁴⁴

In the course of history KAN in the area of Malalak, that KAN is an institution that has possess a broad discretion in dealing with any problems that are submitted by local people for the KAN institutions has held the role of means for the people of Minang that time could serve as a judiciary that can adjudicate and resolve their problems. But starting from the colonial era then started narrowing the authority, with the provisions KAN could only run the authority in dealing with matters that are not regulated in the regulations of the Government, either prosecute or simply mediating, either civil or criminal problems.¹⁴⁵

Then after independent of Indonesia the existence of custom or customary institution back recognized by the government. Though it does not restore the broad authority the institution in dealing with the problems as they are. So the authority of KAN last regulated in local regulation of

¹⁴⁴ Dt.lelo basa Nan Labiah as chairman of KAN in east Malalak, interview (Malalak: 10 January 2016)

¹⁴⁵ H. Datoek Toeah, Tambo Alam Miangkabau, (Bukittinggi: Pustaka Indonesia), P.248

west Sumatera number 2 year 2007 that KAN have authority in resolved the *sako*, *pusako* and *tanah ulayat* conflicts.

Ironically from that narrow of authority of KAN was still interfered by court in that place, for them the existence of KAN is not important to be saved and functioned it, because there is court to get solution for the conflict of society and court strong in regulation so taking over everything¹⁴⁶

The problems signing in to the Kerapatan Adat Nagari ineast Malalak this assortment, including problems: *sako*, *pusako*, *tanah ulayat*, even including other civil problem like divorce.

In the dispute resolution that have been mentioned above that institution of Kerapatan dat Nagari (KAN) only as an intermediary. This is in accordance with “*Kusuik ka manyalasaikan Karuah ka mampajaniah*”¹⁴⁷ and the meaning of this proverbial is KAN just as institution of Mediation not as a justice.

a. The problem of divorce

The Qur'an requires the existence of a judicial process or non-litigation in a family dispute resolution, as in *syiqaq* or *nusyuz*. *Syiqaq* conflict is quarrel or fracas that in climax between husband / wife

¹⁴⁷ H.Idrus Hakimy Dt. Rajo Penghulu. Rangkaian Mustika Adat Basandi Syarak, (Bandung: PT Remaja Rosydakarya,2001) p 139

spouse that resolved by mediator or judge¹⁴⁸. *Nusyuz* is measure of wife that don't obedient her husband or do not give right of her husband in household life, in external or internal aspect¹⁴⁹. Al-Quran gives kind of mediation in conflict resolution especially in family conflict.

If the conflict in the family cannot be solve, so this condition motivated the sides will take the divorce way to end their conflict. God have explain that the divorce is something halal but it is abhorred by Allah.¹⁵⁰ For society of Malalak if have some conflict with their family members, and cannot resolve by own family, they will come to KAN get resolution for their conflict in mediation way or going to court.

if in divorce conflict, the parties come to the *Penghulu* and say what they want, like the dialog belong:¹⁵¹

*“antara kami laki bini
Tidak habis menghabiskan
Tidak buruk memburukan
Habis umur duania tinggal
Habis kasih bercerai diam”
Penghulu answer:*

*“mengapa sampai begitu?
Apa buruk tidak baik lagi?
Keruh tidak akan jernih?
Kusut tidak akan selesai lagi?”*

They answer that that conflict has discussed by their family and they know about positive and negative sides of this condition. After this dialog the *Penghulu* do not allowed them to take the divorce way. But

¹⁴⁸ Dr.H.M.A. Tihami. *Fiqih Munakahat Kajian fiqih lengkap*. (Jakarta: rajawali pers,2009) p. 188

¹⁴⁹ Dr.H.M.A. Tihami. *Fiqih Munakahat Kajian fiqih lengkap*. (Jakarta: rajawali pers,2009) p. 187

¹⁵⁰ Al-quran karim

¹⁵¹ Dt. Lelo Basa Nan labia As chairman of KAN in east Malalak , Interview with, (Malalak:10 January 2016)

Penghulu give some advices about this conflict although in religion side or in custom side and *penghulu* also explain of legislation that arrange the divorce, in marriage laws Number.09 year 1974, about certainty for divorce:¹⁵²

1. The wife cannot doing her obligatory
2. The wife have physical defect and illness that incurable
3. The wife barren

So if form the side is not like what the regulation above so *Penghulu* will be mediated of sides and try to find the mid solutions for them in win-win solution.

After *Penghulu* try to find the solution for this conflict but if do not find that solution for sides, so their conflict continuous to court. But if the conflicts have resolved in institution of KAN so their conflict just stop in KAN and do not engage the court in that place.¹⁵³

The mediation in KAN is same with mediation that held in court. But have a differential between KAN and court is, in institution of KAN considered as most important is give solution in custom and religious way in conflict resolution. And also in mediation process will be engage *Mamak* (uncle of the sides).

And sometime KAN will be engaging the other side to help KAN in get resolution of that conflict, like *Bundo Kanduang* in make emotional approach to women side to guide her in close and lose in

¹⁵² Undang-undang of marriage Number 9 year 1974

¹⁵³ Dt. Lelo Basa Nan labiah as Chairman in KAN in east Malalak , Interview (10 January 2016)

telling about her problem and also about her desirability. so the position of *bundo kanduang* so helpful to get the conflict resolutions.

Actually in the process of mediation on KAN is same with Islam want, like in in surah an-Nisa verse 35:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴿٣٥﴾

“And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.”¹⁵⁴

b. The problem of *pusako* and inheritance

In local legislation number 2. Year 2007 about *Pokok-pokok pemerintahan Nagari* explain that institution of KAN is is the density of indigenous institutions *Ninik Mamak*¹⁵⁵ who has been there and was inherited hereditary all customs and customs as well as sustainability-keeping functions resolve disputes of *sako* and *Pusako*.¹⁵⁶

But in fact in the process of dispute resolution, Kerapatan Adat Nagari (KAN) do not directly accept the dispute to be settled in that institutions or KAN, But first asked to resolved in deliberations at the

¹⁵⁴ Qs. An-nisa verse 35

¹⁵⁵ The chief of ethnic

¹⁵⁶ Local legislation of west Sumatera Number 2 year 2007

level of families, clans and tribes then handed by KAN with mediation process.¹⁵⁷

In indigenous dispute resolution occurring in indigenous communities settled by the term proverb Minang “*Bajanjang Naiak batnggo turun*” This means that every dispute needs to be resolved through the process of the lowest level first. Like solved the conflict of *Mamak*.

If in the level of house is not obtaining an argument, then the dispute resolution will be forwarded to the level of the village. So on to higher in tribe and Nagari level. In level of Nagari is completed or finished.

The local regulation west sumatera number 2 year 2007 about *pokok-pokok pemerintahan Nagari* in institution of Kerapatan adat Nagari (KAN). The meaning of *Batanggo turun* is result of deliberation or mediation of the conflict by *Ninik Mamak* is expected to be followed by the parties to the dispute.

As has been described previously, heirloom treasures dispute resolution should be high on the finish from the lowest level first. Starting from the level of the House, village, tribe, and then it was only to last level of Nagari. In this case the first completed by the Mamak in House level of both parties. If in that way is not get the resolution, then

¹⁵⁷ Dt.kiwi as vice chief of KAN in east Malalak , Interview (Malalak: 09 January 2016)

proceeded to *Pangulu saparuik*¹⁵⁸ in the tribe. if still not resolved then the dispute has also continued to Kerapatan Adat nagari institution. by applying in advance. Before applying for the registration or problems to Kerapatan adat Nagari (KAN), from KAN will ask from sides for gather. And then Then ask the parties in legal terms is called “pengikat” to submit an object commonly referred to as “tando”. *Tando* decided into two:¹⁵⁹

- 1) In *pusako tinggi* (sako) or ommonly known title of greatness the “tando” like or presented “keris” which is a symbol of the greatness of a grandfather.
- 2) In *Pusako tinggi* property is like “Pusako” or property such as land, house and other property, for thid condition the “Tando” like bracelet

In other words, the guarantee of *tando* is parties to the dispute, that the dispute is expected to be completed by the truth. After tando submitted, then the Chairman of Kerapatan Adat Nagari (KAN) held throughout the meeting with members of the Kerapatan Aadat Nagari (KAN) to determine the day and the date such dispute deliberation.

In the overall process of dispute resolution of property inheritance of high Kerapatan Adat Nagari (KAN) has been reached, then the tando in the beginning are submitted by the plaintiff. Will be returned by the Chairman of Kerapatan Adat Nagari (KAN), and then by the losing side

¹⁵⁸ Penghulu in the same maternal lineage

¹⁵⁹ H.dateok Toeah. Tambo alam minang Kabau, (Bukittinggi: Pustaka Indonesia) p.147

will be replaced with an amount of money determined by the Chairman of Kerapatan Adat Nagari (KAN) as the cost of things on the KAN.

After registered at Kerapatan adat nagari (KAN), then the next process in KAN, are:¹⁶⁰

1. Kerapatan Adat Nagari (KAN) will call *mamak* or the second *penghulu* to asked for a description of the extent and what the result of the settlement.
2. Kerapatan Adat Nagari call the plaintiff to give a description of the dispute going on, and from the description of KAN take points as deemed necessary.
3. Kerapatan Adadat Nagari (KAN) also calls the defendant who also asked for description, for this description will up the points by KANas deemed necessary.
4. Description of the points of the two sides of this Kerapatan Adadt Nagari (KAN) can take a conclusion.
5. Then the KAN is also listening to the description of the witnesses proposed by the parties to the dispute.
6. Then the Kerapatan Adat Nagari (KAN) calls the two sides on the same day, but at different hours to prevent the uproar that occurred when the two sides face to face.
7. End of its gave a solutions of that disputes.¹⁶¹

¹⁶⁰ Dt. Makhudum as vice chief 1of KAN in east Malalak, Interview (Malalak: 05 January 2016)

¹⁶¹ Pucuk Pimpinan LKAAM Sumbar Surat Putusan No.SK-17/PP/ LKAAM-SB/2003

In the conflict between *Anak kemenakan* or fellow members of the tribe, then completion is done with the following settings:¹⁶²

1. Resolved that conflict by Mamak of sides, if don't have any solution so continuous to:
2. *Dunsanak* or their brothers

Kerapatan Adat Nagari (KAN) in to complete a further advance by Affairs/indigenous peace elements on KAN with the following terms:

- a. egister things with the application letter signed by *ninik mamak* are concerned
- b. bring final conclusions the written and signed
- c. Decision of KAN set out in the special session upon consideration of the whole section/items/peace elements bringing final conclusions the written and signed

For the implementation of the outcome of the decisions issued by the density of the KAN also defined as follows:¹⁶³

1. All decisions that have been agreed upon, implemented by the mandatory of all items
2. The implementation of the decision on a matter of custom, both dispute/*sako* and episode of civil/customary, presented to both sides in a special meeting and if it does not or has not been accepted by the respective unilateral or both appeals authorized or responsible for 15 (fifteen) days from delivered or decided.

¹⁶² Dt.Kiwi as vice chief 2 of KAN in East Malalak , Interview (Malalak, 09 january 2016)

¹⁶³ Dt.Parapatiah as vice chief of KAN in east Malalak ,Interview (Malalak:10 January 2016)

3. If there is a consensus agreement through Congress, both parties are obliged to sign and implement the results together, and provide a copy of such agreement results to all members of KAN as guidelines for the next period
4. In case of violation of a decision which had been agreed upon, then it violates the imposed fines in accordance with the decision that has been discussed is specific to that before a decision was taken.
5. The highest Decision about *sako* and property inheritance taken in a special meeting of the leadership of KAN and elements of peace customs in advance based upon the earlier verdict.¹⁶⁴

But in the end, the result of a decision or the peace process that has been achieved in KAN did not close the possibility for either party to transfer to the District Court, this is due to not except of the result any of the parties to the results of the peace or a decision issued by the Kerapatan Adat Nagari (KAN).

It is because the ruling KAN the only "complete", not "decide" in nature. Within the meaning of the word should be said, that the decision issued by the KAN is not binding.

c. The *Tanah ulayat* conflict

In the local legislation of west sumatera number 13 year 1983 about function of KAN, explain that the dispute of *Tanah ulayat* is the authorized of Kerapatan Adat Nagari (KAN) which is a custom density

¹⁶⁴ Pucuk Pimpinan LKAAM Sumbar Surat keputusan. No.SK-17/pp/LKAAM-SB/2003

of *ninik mamak* institution who has been there and was inherited hereditary all customs and customs as well as sustainability-keeping functions resolve disputes and *sako* and *Pusako* in Nagari. This explains, that believed to settle the Affairs of the *Sako* and *Pusako* that occurred in the community.¹⁶⁵

Hilman Hadikusum experts that: indigenous land/relatives belong together (relatives-relatives) have the right to wear in a sense can be wearing, can dress, can enjoy the results but should not personally belong to the individual.¹⁶⁶

The State as an institution that BPN is in charge of arranging the layout of the land allotment in Indonesia, significantly recognize the existence KAN as part of the dispute resolution instrument customs still hold fast to the Minangkabau society, by publishing Agency Head Rules the land question number 5 of 1999 on guidelines for the community's Customary KAN Workaround customary law. Article 2 implementation of customary rights mentioned throughout in the fact there are still done by the people of the concerned customary law according to the provisions of the law of local customs.

Further in West Sumatra Area Regulations No. 2 of 2007 about the trees, the Nagari served as help of Government, provincial government,

¹⁶⁵ Local legislation of West Sumatera Number 13 year 1983

¹⁶⁶ Nurullah, Tanah Ulayat Menurut Ajaran Adat Minangkabau (Padang :PT. Singgalang Press, , 1999), p. 7

and the Government District of the city. For that the existence of the internationally-recognised the existence of the real in West Sumatra.¹⁶⁷

KAN in dispute resolution, it does not immediately accept the dispute, however, but first asked to resolved in deliberations at the level of families, clans and tribes, as the saying goes *kusuik disalasaikan karuah in pajaniah*. However, if the parties to the dispute are not satisfied or less then rises to a higher level, namely KAN to help resolve the dispute.

Disputes presented above, based on local legislation number 13 in 1983 can be brought to the KAN. While based on authority given appropriate local legislation No. 13 in 1983 then dispute-dispute can be solved by KAN despite the decision issued may be ignored by the parties to the dispute

However, given the customary law in the community recognize indigenous institutions with specific roles, one of which set up relations of kinship. For it in the event of a dispute related kinship so KAN could act. This is the basis for KAN Malalak East to resolve the dispute involving *Pusako* relatives so that strikes the custom of Minangkabau law communities.

The process of family conflict in this institution run as well as possible I mediation process like concept mediation in In the Encyclopedia of Islamic law on conciliation is more stress on the relationship between

¹⁶⁷ Local legislation of west Sumatera Number 2 year 2007

fellow human beings in order to fulfillment of obligations to God Almighty¹⁶⁸

3. Effectiveness of KAN in Resolving Family Conflict

a. Analysis of Effectiveness Mediation in KAN

Effectiveness is the staple elements to achieve objectives or targets have been defined within each organization, activity or program. Called effective if accomplished the goals or objectives such as prescribed. This is in accordance with the opinion of the h. Emerson cited Soewarno Handyaningrat stating that "Effectiveness is a measurement in the sense of accomplishment of predetermined goals¹⁶⁹

The rule of law or a regulation is functioning even live in order people's lives, and then the rule of law/regulations must meet the three elements as follows:¹⁷⁰

- a. The rule applicable in juridical, When predestination is based on higher degree rules, or when it is formed according to the way specified/specified, or if the relationship of denotes a necessity between a condition and as a result.
- b. The rule applicable in sociologist, If the rule is effective, meaning that the rules can be enforced by force of the ruler (theory of

¹⁶⁸ Shalih Bin Abdullah dan Khathib Al-Haram, Nadhratu An-Na'iim Fi Makaarim Akhlaak Ar-Rasul, p.364

¹⁶⁹ Suwarno Handyaningrat. *Administrasi Pemerintahan Dalam Pembangunan Nasional*. (Jakarta: PT. Gunung Agung. 1982). p.16

¹⁷⁰ Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, cet.V, (Bandung, Citra Aditya Bakti, 1989), p.56-57

power), or accepted and recognized by the Community (the theory of recognition)

- c. The rule applicable in philosophes, that is to say in accordance with the ideals of the law as the highest positive value. When examined in more depth, then in order to function, then a rule of law must meet these three kinds of the items above.

Soerjono Soekanto, effective or whether a law is determined by five factors. These factors had a neutral meaning, so the impact of positive or negative. Find on the content of those factors. Those factors are as the following:¹⁷¹

a) Factor of law

The Existence of KAN was regulated in local legislation of West Sumatra Number. 2 year 2007 about Pokok-Pokok merintahan Nagari in article 1 the number 13, that. "KAN berkendudukan sebagai lembaga perwakilan permusyawaratan masyarakat adat tertinggi yang telah ada dan diwarisi secara turun temurun sepanjang adat". KAN serves as the representative of the indigenous people's consultative institution that has been there and was inherited hereditary all custom long.¹⁷²

The position of KAN in Indonesia is also reinforced by the Constitution year 1945 in article 18B verse 2 "Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat

¹⁷¹ Soerjono Soekanto, Kegunaan Sosiologi Hukum Bagi Kalangan Hukum, cet.V, (Bandung, Citra Aditya Bakti, 1989)p.8

¹⁷² Local Legislation of Sumbar Number. 2 year 2007 about Pokok-Pokok merintahan Nagari

beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat, dan prinsip Negara Kesatuan Republik Indonesia yang diatur dalam Undang-Undang. The State recognizes and respects the unity – the unity of Community law and their traditional rights are all still alive and in accordance with the development community, and the principle of the unitary State of the Republic of Indonesia regulated in legislation.¹⁷³

In the local legislation of west sumatera number 13 year 1983 about function of KAN, explain that the dispute of *Tanah ulayat* is the authorized of Kerapatan Adat Nagari (KAN) which is a custom density of *ninik mamak* institution who has been there and was inherited hereditary all customs and customs as well as sustainability-keeping functions resolve disputes and *sako* and *Pusako* in Nagari. This explains, that believed to settle the Affairs of the *Sako* and *Pusako* that occurred in the community.

So that the Institution of KAN is not regulated in Undang-undang of Indonesia specifically but just regulated in detail in local regulation of west Sumatera.

b) FactorQualificationof mediator

In the settlement of a case in institution of KAN the mediator is *Ninik Mamak* or *Penghulu* that has been appointed representative of the existing tribes in the area east of Malalak.

¹⁷³ Undang-Undang Dasar Negara Republik Indonesia 1945

The position of *Penghulu* as mediator in conflict resolving in institution of KAN gives the big opportunities, because:

- 1) *Penghulu* is who has been chosen by the indigenous peoples themselves¹⁷⁴
- 2) *Penghulu* very understand and get to know the life of the clan members who will be solved the problem, so the King will easily provide the solution that solute in these problems.¹⁷⁵
- 3) *Penghulu* is who know a lot about religious customs and rules making it possible to deliver solutions that fit the Customary motto Adat Basandi Syara' Syara' Basandi Kitabullah.

There are characteristics that must have in *Penghulu*:¹⁷⁶

1. have the right principle
2. have the power to prevent of wickedness
3. have the character of save the cultural
4. productive in life of society
5. know about right and wrong in life
6. can resolve the conflicts

In addition the big attention for us should be made that the sysop of KAN is not the one that gets the special salary management of local government, however, they will get salary if KAN had a supply of funds that can be of customary land.

¹⁷⁴ H.Datoek Toeah. Tmabo alam Minangkabau, (Bulittinggi: Pustaka Indonesia) P.59

¹⁷⁵ H.Datoek Toeah. Tmabo alam Minangkabau, (Bulittinggi: Pustaka Indonesia) P.65

¹⁷⁶ H.Datoek Toeah. Tmabo alam Minangkabau, (Bulittinggi: Pustaka Indonesia) P62

To become a sysop or the leadership of the institutions KAN is very heavy on the side was time-consuming in conducting its deliberations and this position also has a heavy responsibility because he's a King (Datuk) it is a leader in the highly respected in his people, then he should exhibit attitudes, behaviors and actions as a leader. A *penghulu* (Datuk) must show good behavior, can protect his community, has the nature of wise and should be able to also safeguard and protect the treasure that exists within his own family heirlooms, to treasure the inheritance does not run out.

So it's not uncommon from leaders or administrators of this KAN which left their jobs mostly as farmers to devote themselves in the institution of KAN intention to take care of his *Anak Kemenakan*.

"*Baban barek singguluang batu*"¹⁷⁷ This proverb is very suitable to their stewards KAN find its sacrifice those very heavy but not getting the rewards.¹⁷⁸

Nowadays often avoid the office to serve as a caretaker or the leadership of KAN was to be for anyone who wants to, without having to pay attention to the quality of the nobles, so it is not uncommon to sysop KAN not knowing for certain Indigenous

¹⁷⁷ Heavy load head of stone plinth is accompanied the mean is Living in a State of difficulty is still encumbered with a variety of dependents.

¹⁷⁸ Interview with Nurhasanah as Bundo Kandang on east Malalak, 15 January 2016

issues or problems how to do problem solving by means of mediation.¹⁷⁹

On the other hand the Government never did training or guidance to improve the quality of the officials of the customs agencies in carrying out tasks to achieve the right results and maximum.

Because of the resolution to a problem is not in the maximum result so it will bring the celebration of local communities in submitting its entanglement in the realm of KAN.

c) Factor of Facilities

The existence of not in line between the local Government and of the existence of these institutions, because of that makes the lack of cooperation with the customs agencies with this one. It is will have an impact to the various aspects.

Which has been described as a previously above that in Malalak could be said that the KAN does not have special offices, this is because there are no funds and financing from the each Government specifically to perform office development of KAN.

This condition is very influential on the performance or activity of the institution of kerapatan Adat Nagari in resolve conflicts specifically, because often it happens mutually conflicting

¹⁷⁹Dt. Lelo Basa Nan labih as Head of KAN in East Malalak, Interview (Malalak: 10 January 2016)

schedules between the Council deliberations or meeting schedule trustee of *wali nagari* and KAN.

The State of the room or place in the customs, the mediation was still less than ideal, the following factors which cause is not ideally the mediation room, are:¹⁸⁰

- 1) Do not have the entrances to resolve disputes in mediation process. This condition can be berries in get maximum solution of conflict.
- 2) The narrow room make uncomfortable on the parties and the mediator himself in conflict resolving.
- 3) Lack of supporting facilities such as projectors and drinking water.

d) Factor of Compliance of society

To know of compliance of society in that places so have known of many cases that has finished by KAN, and from that how many society that compliance over verdict of KAN on East Malalak.¹⁸¹

¹⁸⁰ Observed office of KAN in East Malalak, 05 January 2016

¹⁸¹ Data of cases in KAN

Table 4

The Level of Compliance of Society over Verdict of KAN in East Malalak
2009 until 2015

NO	Type of cases	Number of cases	Obedied	Do Not obeyed	description
1	<i>Pusako</i>	13	9	4	
3	Divorce	27	21	6	
4	Inheriten	16	13	3	
Total		56	43	13	

From the table above it is clear that the results of the mediation Conducted in the institution of kerapatan Adat Nagari (KAN) in resolving of family dispute the community in east Malalak. It gave great opportunities in making the KAN as the institution of mediation in resolving the problems of local families.

e) Factor of Cultural in East Malalak

The culture of society in east Malalak which does have a tendency to settle their problems at the Agency. Well in addition to the circumstances of the areas that indeed are far away from the city center and also far from the Court as well as an earlier culture forward, then the KAN is indeed be a solution that is very popular in the local community of Malalak.

Of the cases that dealt by KAN especially in problems of divorce and inheritance, that are much going on in this society.

There are many factors that cause problems in divorce:¹⁸²

- 1) Moral
- 2) Marriage under the age
- 3) Wife of husband that do not their obligation
- 4) Always have problem
- 5) Intervention of laws
- 6) The violent in family or domestic violent

There are factor of inherited conflict, that:

- 1) Not clearly in limitation of the land
- 2) Greed by side

b. The Rate of Success in Mediation

To know the success rate of mediation in the institution of KAN East, then Malalak writer use data results handling cases from 2009 to 2015. This data is the monthly reports which are then summarized in the annual report. That he was attaching how many cases that went to the KAN every year and how many numbers of cases that can be resolved and how many cases that cannot be resolved.

Here the writer attaches of the summary report of the number of cases that in trust into institution of KAN since year 2009 up to 2015.¹⁸³

¹⁸²Dt.marajo, as vice chief 3 of KAN in east Malalak, Interview (Malalak: 09 January 2016)

Table 3

**REPORT IN EMPOWERING INSTITUTIONS OF KAN IN RESOLVING
CASES**

No	Cases	The number of cases that success or not success in KAN													
		2009		2010		2011		2012		2013		2014		2015	
		S	F	S	F	S	F	S	F	S	F	S	F	S	F
1	<i>Pusako</i>	1	0	2	1	1	2	2	0	1	0	1	0	1	1
2	Divorce	2	0	5	0	4	1	4	3	4	1	2	0	0	2
3	Inherited	1	0	1	0	2	0	3	0	2	1	1	1	3	1
Total		4	0	8	1	7	3	9	3	7	2	4	1	4	4

Description: S: successful and F: failed

Based on the above formula known percentage of successful divorce matters in mediation since the years 2009 to 2015, that more cases can be completed in the case of the unsolved.

There are many things that affect to the end of result of the resolution of the problems in the institutions of KAN, looking at the opportunities and challenges faced by the institution of the KAN; these are opportunities KAN in resolving the problem.¹⁸⁴

¹⁸³ The Data of Data of cases in KAN

¹⁸⁴ Dt kiwi as vice chief 2 of KAN in wast Malalak , Interview (Malalak: 09 January 2016)

a. The Berries and Success Factors in Mediation

The success or failure of mediation influence factor endowments and hindered during the mediation process. The following constituents:

a) the ability of mediators

Capabilities and circumstances of mediators is absolutely a great influence towards the success of mediation, in this case that became a mediator in KAN in solving family is King.

Penghulu is who was chosen of society to head a clan society. And he is who have influence in society and also being place for “*ka pai tampek batanyo ka pulang tampek babarito*” the mean that penghulu is a place to ask device or *petuah* and place to report if something happen.¹⁸⁵ So therefore this very position gives great opportunities in solving particularly through mediation

b) the sociologist factor

The social condition of the parties will determine the success of the mediation. For example, a woman who sued her husband for divorce will be thinking how with a living son. For women who do not have a job or have an income but are concerned about the shortage will think for suing her husband for divorce. But women

¹⁸⁵ Dt.Parapatiah As Vice of Chief 4 of KAN in East Malalak, Interview (Malalak:10 January 2016)

who already have a steady job and sufficient income, even a tendency to split up with her husband's more powerful.¹⁸⁶

So the psychological conditions of the parties can affect the success of the mediation. Someone who wants to split up with his partner certainly has found internal factors of disobedience. The parties especially psychiatric factors can support the success of mediation.

c) moral and behavior

The behavior of the parties also gave a great influence towards the success of a mediation, because of good behavior can make a mediator in seeking peace. But bad behavior can make one party did not want to return the pillars

d) Good attitude of side

When the mediation process, the mediator acts as an intermediary that attempted to reconcile the parties. But as good as any work done mediator in reconciling the will not work when it is not supported by the ethics of both the sides to finish as well as awareness of each party to be reconciled as well as awareness of each party will be the drawback so can pardon and through tenets of life again. Especially in good faith of the parties the

¹⁸⁶ Nur hasanah , as Budo Kandang in East Malalak, interview (Malalak:15 January 2016)

applicants/plaintiffs to make peace and accept the respondent/defendant to live together.¹⁸⁷

In generally the opportunities in solving on the KAN are as follows:

- 1) Give the conflict solution in *Adaik Basandi Syara' syara' basandi Kitabullah*
- 2) *Panghulu* More knowing the ins and outs of the parties because it comes from an environment of *Ninik Mamak* itself.
- 3) due to the third party that became customary in mediation is a *Mamak* who became a role model and respected by the local people
- 4) look at the State of the region are indeed Malalak are far away from the local courts and pricey to pay the mediator for the community that its economy is still below the standard then it is preferably the existence of such institutions in mediating their problems

As for the factors that can impede success in mediating family problems are as follows:¹⁸⁸

- 1) the presence of a strong desire of the parties to a divorce
- 2) the conflict that was already rooted
- 3) the influence of psychology and the soul
- 4) bad Faith of the parti

¹⁸⁷ Dt. Lelobasa nan labiah, as Chief of KAN in East Malalak , interview (Malalak: 10 January 2016)

¹⁸⁸ Dt. Lelobasa nan labiah, as Chief of KAN in East Malalak ,(Malalak: 10 January 2016)



CHAPTER V

CONCLUSIONS AND SUGGESTIONS

A. CONCLUSIONS

Based on the results of analysis about the role and effectiveness of institution of Kerapatan Adat nagari (KAN) on east Malalak in family conflict resolution, so writer make the conclusions bellow:

1. The resolution of family conflict on east Malalak use the process of *Bajanjang naik ba tango Turun* that mean that a problem will be solved from a lower level, in the past that is resolved in a family usually involves *Mamak* or uncle of the parties, only then if it does not find the midpoint of these problems will be resolved in the KAN. *Penghulu* in these institutions just as mediator who will mediate the conflict to find

solution on it. And if the conflict has not got any solutions in KAN in mediation process so the conflict will be resolved by court in each place.

2. KAN in East Malalak is very effective to resolve the family conflicts because some of cases from year 2009 until 20015 that resolved in these institutions were success to get the peace between parties. The number of conflicts that success in the year 2009 until 2015 are 43 and unsuccessful conflicts are 13 cases.

B. SUGGESTIONS

In this section the writer provide the suggestion to parties bellows:

- a. to court in that place allow or save the function of the institution of KAN in family conflict resolution, by way of receiving the certificate of peace or not peace generated by these institutions in resolving a matter
- b. To the Government in district of Agam in order to pay more attention to indigenous institutions both in terms of the development and of existence as well as in terms of their funding. Next to supply training to nobles in balancing their knowledge about State rules or statutes in addition to religious and indigenous knowledge in solving a problem.
- c. To institution of KAN in order to do the maximal process in solving the conflict to rich the best result and accordance with *adat basandi syara' sara' basandi kitabullah* and accordance with regulation in Indonesia.

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ATTACHMENT

A. CONDITION OF KAN OFFICE IN EAST MALALAK



B. INTERVIEW

Interview with chief of KAN in east Malalak



Interview with Wali Nagari in East Malalak



Interview with secretary of KAN in East Malalak



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