

## ABSTRAK

*Warih nan bajawek* merupakan pesan turun-temurun yang disampaikan oleh *mamak* kepada kemenakan berdasarkan garis keturunan ibu dalam masyarakat Minangkabau. *Mamak* akan menyampaikan pesan tentang semua perbuatan hukum, ranji atau silsilah keluarga, serta batas-batas kepemilikan harta pusaka kaum. Sehingga, apabila suatu ketika terjadi sengketa, penerima *warih nan bajawek* yang mewakili kaumnya terhadap pihak luar, dan mengadakan tuntutan apabila harta pusakanya terganggu. Selain itu, saksi penerima *warih nan bajawek* selalu digunakan sebagai pembuktian bagi masyarakat hukum adat di Minangkabau, karena setiap perbuatan hukum di masa lampau tidak diikuti dengan bukti surat, tapi hanya disaksikan oleh para pihak yang tanahnya saling berbatasan. Selain penilaian dari hukum perdata, hakim dapat mempertimbangkan ketentuan hukum adat yang berlaku dalam lingkungan masyarakat adat Minangkabau. Meskipun berada di luar kategori keterangan saksi, namun *warih nan bajawek* dapat dijadikan sebagai pertimbangan hakim karena fungsi dan peran *warih nan bajawek* sebagai perantara yang mengantarkan alat bukti dan pembuktian ke arah yang lebih konkrit mendekati kepastian. Permasalahan penelitian ini adalah: (a) Bagaimanakah kedudukan *warih nan bajawek* sebagai alat bukti dalam penyelesaian perkara tanah adat menurut hukum adat di Sumatera Barat? (b) Bagaimanakah kedudukan *warih nan bajawek* sebagai alat bukti dalam penyelesaian perkara tanah adat menurut peradilan Negara (hukum acara perdata) di Sumatera Barat? Metode penelitian yang digunakan melalui pendekatan *normative legal research*, dengan melihat cara penyelesaian sengketa melalui peradilan negara maupun peradilan adat, berdasarkan putusan-putusan hakim adat dan hakim negara. Hasil penelitian menunjukkan bahwa kedudukan *warih nan bajawek* sebagai alat bukti dalam penyelesaian perkara tanah adat menurut hukum adat di Sumatera adalah alat bukti yang kuat, hal ini dikarenakan, setiap kejadian masa lalu di ruang lingkup masyarakat adat Minangkabau tidak diikuti dengan bukti tertulis atau surat, sehingga penerima *warih nan bajawek* lah yang diharapkan sebagai bukti apabila terjadi sengketa nantinya. Kedudukan *warih nan bajawek* sebagai alat bukti dalam penyelesaian perkara tanah adat menurut peradilan negara (hukum acara perdata) di Sumatera Barat, dibenarkan yurisprudensi peradilan Indonesia. *Warih nan bajawek* dibenarkan sebagai alat bukti secara eksepsional, yaitu alat bukti yang memenuhi syarat materiil apabila saksi memberikan keterangan dengan sumpah. Selain itu, saksi penerima *warih nan bajawek* dapat dikonstruksikan sebagai persangkaan apabila dibantu dari sumber akta atau bantahan yang diajukan dalam persidangan.

Kata Kunci: kedudukan, *warih nan bajawek*, dan perkara tanah adat.

## ABSTRACT

*Warih nan bajawek* is hereditary message delivered by the *mamak* to nephew on the mother lineage in Minangkabau society. *Mamak* will deliver a message about all this legal act, Ranji or family tree, and limits the ownership of real estate. So, when a conflict occurs when the receiver *warih nan bajawek* representing his people on the outside, and hold a claim on his estate disturbed. Moreover, witnesses receiver *warih nan bajawek* always used as proof of customary law in Minangkabau society, because every act of the law in the past and was not

accompanied by evidence of the letter, but only witnessed by the parties mutually adjacent land. In addition to assessment of civil law, the judge may consider the provisions of customary law occurring within the indigenous Minangkabau. Although outside the category of witnesses, but *warih nan bajawek* will serve as judges for consideration of the function and role of an intermediary *warih nan bajawek* who deliver evidence and proof tool towards a more concrete approach certainty. The problems of this research are: (a) How notch *warih nan bajawek* as evidence in settlement land dispute according to customary law in West Sumatra Barat? (B) How notch *warih nan bajawek* as evidence in settlement land dispute according to state courts (civil procedure law) in West Sumatra Barat? Research methods used by Normative approach legal research, by looking at ways to resolve disputes through the judicial or judicial custom, based on the rulings of judges customs and justice. The results showed that the *warih nan bajawek* as evidence in settlement land dispute according to customary law in west Sumatera Barat is a tool hard evidence, most likely, every past incident in the scope of indigenous Minangkabau not accompanied by written evidence or correspondence, so the receiver *warih nan bajawek* was expected as evidence in case of dispute later. Position *warih nan bajawek* as evidence in settlement land dispute to the state courts (civil procedure law) in West Sumatra Barat, Indonesia allowed the judicial jurisprudence. *Warih nan bajawek* allowed as evidence in eksepsional tool, a tool that meets the requirements of material evidence as a witness to give evidence on oath. Moreover, witnesses receiver *warih nan bajawek* constructed as a guess when assisted from sources act or objections raised at the conference.

Keywords: position, *warih nan bajawek*, and land dispute.

