

## Dispute Resolution in Marriage Customs: Cultural and Sharia Approaches in the *Malakok* Tradition in Minangkabau

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**Abstract:** *The main issue in this thesis is to explain the resolution of marital conflicts among non-malakok couples in Nagari Bungo Tanjung. This field research aims to understand and describe the process of conflict resolution and the impacts of such resolutions in marital conflicts among non-malakok couples in Nagari Bungo Tanjung. The findings of this research indicate that the forms of marital conflicts among non-malakok couples in Nagari Bungo Tanjung include visible conflicts such as economic factors, differences in opinions, lack of mutual respect, interference from in-laws, and domestic violence. The reason they do not engage in malakok is due to the high adat costs, amounting to 3,000,000 IDR, which only covers the adat money; further costs will follow for the malakok process. The resolution method employed is non-litigation, using family-based and customary approaches. The impact of this resolution, however, is the dissatisfaction among the conflicting parties, as no peaceful resolution was achieved as expected, which further worsens the relationship, leading to separation, either through living apart or an informal divorce. This situation negatively affects the obligations between husband and wife as well as the children. Despite the application of several resolution models in the marital conflicts, the conflicts did not result in a satisfactory solution, thus not ensuring the resilience of the marriage.*

**Keywords:** *Marriage Custom, Family Conflict, Islamic Family Law*

## Introduction

A harmonious, loving, and compassionate family is certainly the goal desired by every couple in their marital life, but it is also a natural reality that conflicts will arise in marriage. One of the challenges in a marital relationship is conflict, which can be triggered by various issues and circumstances. The purpose of marriage is to achieve *sakinah*, *mawaddah*, and *warahmah*, and to avoid conflicts (Putri et al., 2024). However, if a conflict arises, it should be resolved promptly using the methods outlined in the Quran, particularly in Surah An-Nisa' verse 35, which encourages the appointment of arbitrators from both parties (Faisal, 2022).

In Minangkabau culture, the responsibility of appointing an arbitrator (*hakam*) lies with the *mamak*. However, in practice, many *mamaks* do not follow the established procedures, which include fairness and proper decision-making, and as a result, make incorrect decisions that can ultimately lead to the dissolution of the marriage. The role of the *mamak* is significant in leading and managing the family inheritance for the welfare of the community (Hayati et al., 2021). The *mamak's* role is highly respected within the community if they possess noble character and knowledge, making them akin to the large and sturdy banyan tree in their community. In the Marriage Law, the principle of making divorce difficult is regulated in Article 31 of Government Regulation No. 9 of 1975. This principle requires couples to provide valid reasons for divorce and go through a judicial process, aiming to minimize the occurrence of divorce between spouses.

This principle encourages wise decision-making, prioritizes mutual interests, and ensures compatibility with Islamic legal norms.

The study of conflict resolution in marriage has been researched from several aspects. *First*, the resolution with local wisdom involves the use of traditional methods and practices that have been passed down through generations within a specific cultural context (Nuwa & Wahyuningsih, 2024), (G. Rahman, 2016) and (Nurul Aina Tarigan & Sri Listiana Izar, 2022). *Second*, the resolution through legal frameworks examines the role of formal laws and regulations in managing marital conflicts. This approach focuses on the importance of legal procedures and the application of laws such as Islamic family law and national regulations (Marwa, 2021), (Siadio & Yenti, 2023), (M. Kasim & Nurdin, 2020), (M. A. Rahman et al., 2023) and (Warman et al., 2023b).

However, in Nagari Bungo Tanjung, the conflict resolution process conducted by the *mamaks* does not align with Sharia law, and in fact, the *mamaks* facilitate the couples' separation rather than encourage reconciliation. This issue can be explained as follows: First, there are couples who, during the process of resolving their marital conflicts, were advised by the *mamak* not to reconcile but instead to divorce (R-G, R-L). Second, some *mamaks*, in resolving these conflicts, prevent their relatives from accepting reconciliation from their husbands, thus hindering the opportunity for the couple to repair their relationship (I-M). Third, some *mamaks* do not provide any solutions, leaving the couple's marriage in limbo for an extended period of time. They do not recommend reconciliation nor openly suggest divorce, but instead encourage separation, resulting in prolonged uncertainty in the relationship.

## Literature Review

### Conflict Resolution

According to Husin Sutanto et al., the term "conflict" refers to problems that involve fighting, war, or struggle. Additionally, conflict arises due to sharp disagreements or opposition to various interests that one aims to achieve. This is supported by Pruitt and Rubin's statement that conflict occurs because of differences in perceptions of beliefs and interests that are to be achieved. Furthermore, Killman and Thomas (as cited in Handayani et al., 2008:90) assert that conflict emerges from incompatibilities between values or goals that need to be achieved, either internally or externally. Generally, conflicts consist of a variety of motives and causes. One common motive for conflict is marital conflict.

Several factors can lead to marital conflict, including individual personality, excessive egoism, prioritizing pride, miscommunication, personal preferences, financial issues, biological relations between partners, cultural doctrines, lack of attention to the partner, differences in communication styles, third-party interference (such as parents, in-laws, friends, neighbors), comparisons with other people's lives, lineage, and inappropriate language use. Erikson emphasizes that marital conflict arises from several factors, including demands from both parents, beliefs, and the inability of the partners to adapt either to each other or to others. Conflicts can be classified into external and internal conflicts. Internal conflict originates within the marital relationship. Examples of internal conflict include issues like economics, maintenance, nusyus (disobedience), and differences in opinion between husband and wife. External conflict, on the other hand, comes from outside the marriage, such as interference from a third party.

The consequences of marital conflict include strained relationships between husband and wife, a weakened bond between parents and children, and disputes over shared property. In Surah An-Nisa' verse 35, the Quran explains that when a conflict occurs in a marriage, a mediator (*hakam*) should be sent from both the husband's and wife's side. The role of the *hakam* is to reconcile the spouses and resolve the conflict as best as possible. Other literature suggests that there are several ways spouses can resolve conflict. These include improving marital harmony by establishing good communication, avoiding arguments by controlling emotions, respecting each other's differences, and preventing financial conflicts by managing family finances properly.

### The Role of Mamak in Resolving Conflict in Non-Malakok Couples

In Minangkabau tradition, there are several legal theories in customary law, including *receptio A contrario* and *receptio de complexu*. *Receptio A contrario* refers to the alignment between customary law and Islamic law (*syara'*), meaning that there should be no conflict between them. Meanwhile, *receptio de complexu* is an exception to the existing law when it conflicts with customary law. Some argue, however, that no legal exceptions should be made, as not all customary laws are based on Islamic law. *Malakok* refers to the process in which a newcomer wishes to settle in Nagari Bungo Tanjung by adopting and embracing a local ethnic group recognized in the region, with the aim of avoiding social inequality. This process involves meeting certain requirements, including paying customary fees.

In Minangkabau culture, when conflicts arise in marital relationships, the responsibility for resolving them falls on the *mamak*. The *mamak* plays an important role in addressing the issue by calling both parties and helping them resolve the conflict in the best possible way. In Minangkabau customs, there are two types of *mamak*: the *mamak suku* and *mamak kandung*. The *mamak suku* is an adult male who is entrusted with the leadership of a clan, while the *mamak kandung* is the mother's brother. Both types of *mamak* are responsible for maintaining peace within the clan and assisting in resolving conflicts within the community, including marital disputes.

### Method

The type of research conducted by the researcher is a sociological juridical study, which examines a common practice in society related to individuals who do not undergo the *malakok* process and how this influences the resolution of conflicts. This study aims to address the issues related to ongoing conflicts and to describe the problems that occur. The research was carried out in Nagari Bungo Tanjung. Data collection techniques used in this study include interviews and observations. The data presentation involves organizing the data into groups and drawing conclusions from each data set.

This study is classified as field research, employing a qualitative method. The sources of data for this research include conflict-ridden couples who married without undergoing the *malakok* tradition, parents, *mamak*, and religious leaders in Nagari Bungo Tanjung, Batipuh Subdistrict. Data collection techniques involve interviews and documentation. The data processing techniques consist of collecting, processing, and presenting the data. The data analysis technique includes data collection, data reduction, data presentation, as well as drawing conclusions and verification. The validity of the data is ensured through source triangulation.

### Results and Discussion

#### *Malakok* in Minangkabau Customary Law

In sociological studies, the term *malakok* has not been explicitly defined. Etymologically, *malakok* is a term specific to the Minangkabau people, which means "to attach or firmly stick together," and in English, it is akin to the term "cleave," symbolizing the cementing of social bonds. From a sociological perspective, this term contains seven key elements. *Malakok* is not only performed by Minangkabau migrants; even a Minangkabau person wishing to become a member of another ethnic group must also undergo the *malakok* process. This practice is also conducted by Minangkabau ethnic groups who move to other Nagari areas in Minangkabau. For instance, a person from outside the region wishing to settle in Batipuh must undergo *malakok* with the *penghulu* (tribal leader) of that Nagari. If they belong to the Caniago tribe, they must perform *malakok* with the *penghulu* of the Caniago tribe.

The *malakok* process is carried out through a customary ceremony (Dewi et al., 2022), where the person seeking to undergo *malakok* must meet certain conditions set by the local custom. These conditions vary depending on the customary practices of each Nagari, as determined by the *penghulu* of the area. For example, one Nagari may require a person undergoing *malakok* to pay a customary fee of up to 5,000,000

rupiah. The implementation of the customary terms for *malakokis* based on a principle in Minangkabau adat: "cupak diisi, limbago dituang." During this ceremony, an individual swears loyalty and kinship with the members of the tribe they are joining.

The tradition of *malakok* serves several purposes (Dewi et al., 2024). First, it allows newcomers to become part of Minangkabau society. Second, it helps maintain harmony and unity within the community, and third, it assists in preserving Minangkabau's traditions and culture. For a newcomer to undergo *malakok*, they must meet the customary legal requirements based on Islamic teachings (Helfi et al., 2021). This means the individual must be a Muslim and must observe the local customs that are aligned with Islamic law in their daily life (Wimra et al., 2023). If a newcomer does not follow Islam, they cannot be accepted as a member of a Minangkabau tribe because it contradicts Islamic principles. Although such a person may be allowed to stay in Minangkabau through the *manaruko* process, they are not considered to have undergone *malakok* and are seen as outsiders within the Minangkabau tradition. *Malakok* is a tradition and customary practice, especially in marriage customs. For example, in the Paninjauan Nagari of Koto Tengah, when a woman from that village marries a man from another Nagari, the man must undergo *malakok* before the marriage ceremony (*ijab kabul*). The man's family must first pay the customary fee as a sign of *malakok* and hand over the daughter to a *mamak* (uncle) who resides in the Paninjauan area.

In Minangkabau society, conflict is closely associated with *kusuik* (tangled or confused). *Kusuik* refers to a situation that is not as it should be, similar to an untangled thread. It describes anything that does not meet the ideal or expected standards. Although Minangkabau society does not specifically use the term "mediation," in practice, the community has long used a similar process of conflict resolution passed down through generations. This is particularly evident when resolving conflicts within or between communities in the Nagari. The term used for resolving conflicts involving multiple parties is *deliberation* (Anggita & Hatori, 2020). *Deliberation* does not merely refer to a meeting to reach an agreement, as it is often understood; it also signifies the process of resolving conflicts with the assistance of a mediator who facilitates communication between the conflicting parties. The *malakok* process enables a newcomer to be accepted into the social structure of Minangkabau. It is a traditional institution that helps newcomers adapt to the existing systems in the area they reside, forming and strengthening relationships with the local community. This aligns with Cohen's theory, which suggests that migrants need to adjust to the demands of the system in their new environment, whether due to necessity, circumstance, or choice. They adopt new memberships, loyalty, language, and social norms, and establish new unions to defend their interests.

### **Dispute Resolution in Marriage Customs: Cultural and Sharia Approaches in the *Malakok* Tradition in Minangkabau**

There are several important duties held by the *mamak* in Minangkabau customs, including the duties of the *mamak* to children and nephews, the *mamak's* duties to the customs, and the *mamak's* duties to the nagari (village). Based on the research conducted by the author through interviews with several *mamak*, it was found that the resolution of conflicts in couples who did not perform the *malakok* tradition was carried out by only one *hakam*. This method of conflict resolution led to negative consequences for the couple's marital relationship, namely divorce. This shows that an approach involving only one *hakam* without a collective role in resolving issues can potentially worsen the situation and fail to provide an optimal solution in resolving marital conflicts.

The role of the *mamak* in resolving conflicts for couples who have not performed the *malakok* tradition in Nagari Bungo Tanjung uses a non-litigation resolution mechanism. Non-litigation resolution refers to conflict resolution outside of legal channels, often carried out in a family-oriented manner, with the goal of achieving peace. Mediation is an effective method often employed by the community (Warman et al., 2023a). In practice, non-litigation conflict resolution can take the form of family-oriented solutions, which are ideal for resolving issues in community life. This approach can restore trust, ensure protection, and ensure that the conflict will not recur. Islam also provides guidance for couples experiencing marital conflict (Nasrudin et al., 2024), as stated in Allah's words in Q.S. An-Nisa : 35. Based on the verse, if peaceful efforts do not resolve the conflict, the guidance from An-Nisa:35 is to appoint mediators (*hakam*) from both

the husband's and wife's sides. The mediators should be wise and respected peacemakers. In Nagari Bungo Tanjung, the *hakam* is the *mamak*, but in the case of couples who do not perform the *malakok* tradition, they do not have a *mamak*. As a result, there is only one *hakam* to resolve the conflict within the marriage.

The *hakam* is appointed to restore the relationship between husband and wife, and the *hakam* has the authority to divorce, as their position is similar to that of a judge who makes decisions (Hasan, 2006:266). What happens in Nagari Bungo Tanjung is that divorce becomes easier for those who did not perform the *malakok* tradition. In contrast, divorce should be minimized according to the principle of marriage, which is to make divorce more difficult. The main function of the *hakam* is to reconcile the conflicting parties and work toward peace. However, what happened in Nagari Bungo Tanjung, as experienced by some couples, is that there is only one *mamak* to resolve the conflict. This *mamak* does not act fairly in making decisions, as they only side with one party. In the resolution process, there is no peace effort as expected by the couple, and instead, the *mamak* advises the couple to separate, leading to many informal divorces.

## Conclusion

The research findings show that the *mamak* in Nagari Bungo Tanjung plays a very important role in resolving marital conflicts for couples who have not performed the *malakok* tradition. However, this resolution is carried out by only one *mamak*, which distinguishes between couples who have and have not performed the *malakok*. Several types of conflicts experienced by couples who have not performed *malakok* include economic factors, differences in opinions, lack of mutual respect, interference from in-laws, and domestic violence. The results from the *mamak's* involvement in conflict resolution show that the couples involved are not satisfied with the outcome. There is no peace achieved as expected, and the situation worsens, leading to separation, either by living apart or through informal divorce. This also affects the obligations between the husband, wife, and children.

In accordance with Quranic verse An-Nisa 35, it is explained that peace efforts should be made, but no such efforts are carried out by the *mamak* in Nagari Bungo Tanjung. In this case, the *mamak* simply advises the couple to divorce, while the Marriage Law regulates the principle of making divorce more difficult. What occurs in Nagari Bungo Tanjung is that the conflict resolution does not offer a good solution, and as a result, the stability of the marriage is not guaranteed.

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