

Position Of Nagari Traditional Kaperia After The Establishment Of Regional Regulation Of West Sumatera Province Number 7 Of 2018 Concerning Nagari

¹Ririd Poerwanta, S.H., M.H., ²Pof. Dr. Yuliandri, S.H., M.H., ³Dr. Suharizal S.H., M.H

¹Master Of Law Student, ²Master Of Law Lecture, ³Master Of Law Lecture

Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia

Email – ¹riridpoer@gmail.com,

Abstract: In Law Number 6 of 2014 concerning Villages, Village and Traditional Village are distinguished. However, basically Villages and Traditional Villages perform almost the same tasks. Whereas the only difference is in the implementation of the rights of origin, especially regarding the preservation of the socio-culture of the Traditional Village, the regulation and management of customary territories, the customary peace session, the maintenance of peace and order for the customary law community, as well as the implementation of governance based on the original composition. In order to restore the implementation of the Nagari Government (another name for the Village) based on the original composition, the Regional Government of West Sumatera Province issued West Sumatera Provincial Regulation Number 7 of 2018 concerning Nagari. The presence of this Regional Regulation has an impact on the change in the status of the Nagari Adat Density Institution, which was previously designated as a Customary institution, into an institution which is the manifestation of the highest representative deliberation in the administration of Nagari Government..

Key Words: Nagari Adat Density, West Sumatera Provincial Regulation Number 7 of 2018 concerning Nagari.

1. INTRODUCTION:

The Nagari Adat density consists of the tribal leader, the clan Penghulu, the tungganai Penghulu which have an important function in making decisions in the Nagari Adat Density. Decision making in Kerapatan Adat Nagari is based on togetherness through deliberation and consensus. In making decisions in Kerapatan Adat Nagari, there is no system voting or counting based on agreeing or disagreeing votes. All decisions prioritize the principles of deliberation and consensus. If you have not reached an agreement in a decision, the decision-making will be postponed first, or a signal until an agreement is reached. [1]

During the Dutch East Indies occupation era, the existence of Nagari was recognized by the enactment of the Dutch Government Regulation on 27 September 1918 which was published in State Gazette No. 667, the content of which is about the new government after Tuanku Laras' government, after changes and additions were made, the Inlandsche Gemeente Ordonantie Buitengewesten (IGOB) was issued in 1938 in State Gazette No. 490. [2]

Enforcement of Law No. 5 of 1979 concerning Village Government during the New Order era made the term Nagari disappear from the life of the Minangkabau people. The lowest uniformity of government in the village government system does not accommodate the status and existence of special regional government units within the Unitary State of the Republic of Indonesia (NKRI).

Since the reform era there has been a change in the paradigm of government from centralized to decentralized. This paradigm shift is based on the amendment to the 1945 Constitution of the Republic of Indonesia. Among the aspects of the paradigm shift in governance is the State's recognition and respect for the unity of indigenous peoples and their traditional rights, as affirmed by Article 18 B paragraph (2) of the 1945 Constitution. [3]

"The state recognizes and respects indigenous peoples and their rights as traditional as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law."

One of the efforts to address various fundamental, structural and institutional design problems of Nagari Government as well as further elaboration of Law Number 6 of 2014 concerning villages, the Regional Government of West Sumatera Province issued Regional Regulation Number 7 of 2018 concerning Nagari as a substitute for the West Sumatera Provincial Regulation Number 2 of 2007 concerning the Principles of Nagari Government. The provisions contained in the West Sumatera Provincial Regulation Number 7 of 2018 concerning Nagari are basically a guideline for districts / cities in carrying out Nagari institutional arrangements, one of which is to strengthen the position of

Nagari Adat Density to become part of government agencies as well as to become representative institutions for all the communities in Nagari are not only limited to indigenous peoples.

The enactment of West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari is basically taking back the form of government that has been implemented based on the customary community organization system, institutions, institutions and customary law based on the original composition. In this regard, when viewed from an ideal level it is appropriate that the Nagari Adat Density be encouraged and strengthened to become a government institution amidst the ineffectiveness of the Nagari Consultative Body as a representative institution in Nagari. In addition, Wali Nagari in making policies to regulate and manage the interests of the people in Nagari tends to coordinate with rather Nagari Adat Density than coordinating with the Nagari Consultative Body. [4]

2. THEORITICAL FRAMEWORK:

a. Institutional Theory

The term "institution" according to the Sociology Encyclopedia is termed "institution" as defined by Macmillan is a set of relationships of norms, beliefs, and real values, which are centered on social needs and a series of important and important actions. repeated. [5]

b. Representative Theory of a representative

person can position himself as a person who can accommodate and of course what is more important is to follow up on the aspirations conveyed by people who give confidence as a representative. [6]

3. LITERATURE REVIEW:

The kanagarian system existed before the independence of Indonesia. The Pagaruyung kingdom is basically a confederation of Nagari-Nagari located in the Minangkabau. Most likely the Nagari system also existed before Adityawarman established the government. There are two major streams in the Nagari system of government The Minangkabau, namely Koto Piliang and Bodi Caniago , both have similarities with the police rule in Greece ancient. [7] In addition to being influenced by traditions customary, the Minangkabau community structure is also colored by the influence of Islam, and at one time there was a conflict due to the conflict of these two influences, which can then be resolved by reconciling the two influences in the concept of Adat basandi Syarak, Syarak basandi Kitabullah.[8]

Traditionally, the Minangkabau people live in groups in a genealogical and territorial bond based on autonomous government and governed by applicable customary law. Nagari in West Sumatra came before the Dutch set foot in Indonesia. Nagari is likened to a "mini republic" ruled democratically by the Nagari people. The system of Indigenous Government has disappeared de jure since the enactment of Law No. 5 of 1979 on the form of small government, namely the village, this policy makes the State divided into village form where structurally and legally formally change the State despite the relevant laws with the village firmly wanting to maintain local values. [9] Based on the brief description of the State Government above, we also need to study the history of the State Government starting from the history of the establishment of the State to the legal products set by the Regional Government of West Sumatra Province that underlie the implementation of State Government.

In the development of history, theories and thoughts about the organization of the country developed rapidly. At the central or national level, in many countries of the world today there is a growing variety of organ or institutional forms of the State or deconcentrated and decentralized government. R. Rhodes, in his book, called these intermediate institutions.

Throughout the implementation of the State Government under the regulation of Regulation No. 13 of 1983 on the State as a Unity of Indigenous Peoples in the Level I Province of West Sumatra, Regional Regulation of the Province of West Sumatra Number 9 of 2000 on the Principles of State Government, to the Regional Regulation of West Sumatra Province No. 2 of 2007 Regarding the State Government, it turns out to raise various issues. The role of Nagari Adat Nagari as a customary institution in Nagari, overlaps with other institutions in Nagari such as Majelis Tungku Tigo Sajaringan, where its members are also indigenous figures. [10] The issue of the quality of human resources in the State Government. [11] The occurrence of leadership dualism in the implementation of the State Government is between the State Government and the customary elite / customary figure called niniak mamak. [12] The ineffective institutional relationship of the Nagari Government between the Nagari Government and the Nagari Deliberative Body as the Representative Body of the Nagari people. The performance of the State Government Public Service needs to be improved through institutional strengthening. [13]

4. METHOD:

The method used in this research is normative, that is, examining legal principles, legal systematics, legal history of legal synchronization level, and comparative law.

5. DISCUSSION:

The Minangkabau community [14] has regulated life in religion and social life and government. This system regulates daily life and ensures harmony and safety of the community. This customary system has been maintained to this day. One of the policy systems owned by Minangkabau is "Nagari". For the Minangkabau people, the term "Nagari" cannot be separated between primordialism and national values, between social structures and state administration, between adat and government, between ethnic collectivity and development. The Minangkabau people have used elements of State administration, so that Nagari is an autonomous region (adat salingka nagari). Nagari is an articulation of the Minangkabau indigenous community structure which is formed on the same blood relationship (genealogical) and territorial equality (territorial) as stated in the traditional pantun Nagari Bapaga Hukum, Kampuang Bapaga Buek. [15]

Nagari has features, not the same as the village. Nagari is a customary unit that has its own customary territory, has a people, a nephew, and has a customary government structure. Nagari government had developed long before the Dutch colonized Indonesia. Here also took place a democratic order older than in Europe. Before the Dutch set foot in Indonesia, especially in the Minangkabau region, Nagari was an independent system of government. There is no government over Nagari. Nagari is a "mini republic" which is governed democratically by Anak Nagari. [16] Regarding the origin of the emergence or the existence of Nagari, the only reference is what is hyped up in the tamboos which are believed to be historical records, namely that Nagari in Minangkabau begins with Nagari Pariangan Padang Panjang twins on the slopes of Mount Merapi. [17]

Since the reform era there has been a change in the paradigm of government from centralized to decentralized. This paradigm shift is based on the amendment to the 1945 Constitution of the Republic of Indonesia. Among the aspects of the paradigm shift in governance is the State's recognition and respect for the unity of indigenous peoples and their traditional rights, as affirmed by Article 18 B paragraph (2) of the 1945 Constitution. [18]

"The state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law."

Sako disputes are disputes relating to hereditary titles for people according to the maternal lineage downwards who will be made rulers. Disputes over pusako assets are disputes related to high heirlooms such as tapian, forest pandam pakubur. Other civil disputes are disputes that occur between community members such as marriage, divorce and so on. [19]

Customary courts in Minangkabau can be based on the 1945 Constitution. The second amendment to Article 18 B states that the State also recognizes and respects indigenous peoples and traditional rights as long as they are still alive and in accordance with the development of customary law communities and the principles of a unitary state. Republic of Indonesia as regulated in Law.

Disputes that often arise in the Minangkabau community are in the form of disputes pusako and sako. The dispute Pusako that is often faced by the community is in the form of a dispute regarding assets pusako. The authors conclude from the data with the dominance of the pusako property dispute in Kerapatan Adat Nagari. The issue of property pusako in Minangkabau often creates dualism in its resolution because the community thinks it is better to settle the pusako property case at the District Court than to resolve it through KAN. [20] This is because the decision made by KAN does not have executive rights, therefore the customary law community views the adat court as a stage for resolving disputes over pusako property in the District Court.

Currently, the Minangkabau customary law community finds it difficult to accept the results of the decisions of the customary judiciary in Nagari, so that one party who is dissatisfied with the results of the decision of the customary judiciary institution chooses to continue customary disputes through judicial power in the environment of the general court.

6. ANALYSIS:

A. Establishment of West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari

Regional government in Indonesia has actually undergone many changes from time to time. Starting from the regional government pattern that was decentralized during the old order, then it changed to the centralized pattern during the New Order era which was emphasized by Law Number 5 of 1979. This made regional governments not independent, because they were just waiting for regulations from the central government and the disappearance of original village identity caused by the uniformity of villages in Indonesia.

Like the Regional Government in West Sumatra, which has also experienced changes in the Nagari Government system. This changing government system resulted in Nagari having to follow the village government

system in Java and Bali since the issuance of Law no. 5 of 1979 concerning Regional Government. This of course makes Nagari weak in the freedom to manage its own government.

So far the government as an agent of change (change agent) has planned change using a social engineering approach, namely an approach that uses efforts aimed at mobilizing society to change. This is legitimized through various laws and regulations. For the case of change from village to Nagari, the government has actually set a standard format for the lowest form of government (village or other names) and through various regulations, local institutions that exist in the community are forced to conform to the state format (supra local), through this coercion both is expected to work together. In the future, apart from using a approach social engineering, the government also needs to use a social approach enlightenment, which is an approach that aims to raise awareness to the public through persuasive efforts. Persuasive efforts that aim to raise awareness and inculcate understanding to all parties regarding the current form of Nagari, can be done using various existing platforms in society.

Regional Regulation Number 7 of 2018 concerning Nagari is a legal basis and umbrella as well as a reference for Regency / City Governments to form and run a Nagari Government system as a leading government unit that applies in accordance with local customary and cultural conditions. Nagari as a customary law community unit has the philosophy of the Adat Basandi Syarak, Syarak Basandi Kitabullah, in this philosophy there are social, cultural, religious and customary values, so that these values need to be preserved and live in the community as the value of life. For this reason, the people of West Sumatra are highly expected to regulate with customary and religious values and authority. With this philosophy of life in a Nagari, the ideals of living in a Nagari can be realized in West Sumatra.

An issue that is no less important than the provisions of West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari is related to the tenure of Kerapatan Adat Nagari. Article 8 paragraph (1) West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari states that the tenure of Nagari Adat Density is determined based on the Salingka Nagari Custom. The term of office as stipulated in Article 8 Paragraph (1) is followed up through the provisions of Article 8 Paragraph (2) which states that in the case of the Salingka Nagari Adat as referred to in paragraph (1) does not determine the tenure of the Kerapatan Adat Nagari, then the term of office of Kerapatan Adat Nagari. determined for 6 (six) years and can be re-appointed for 2 (two) terms of office. This is certainly not in accordance with the membership philosophy of the Kerapatan Adat Nagari itself, where the Kerapatan Adat Nagari consists of Niniak Mamak members who can only be dismissed from their positions when they have made a mistake according to customs and religion.

Restrictions are made to avoid unlimited tenure. The longer the term of office, the greater the chance of abuse and fraud, as Lord Acton reminded him that power tends to be corrupt. In accordance with the theory promoted by Lord Acton, the tenure of Kerapatan Adat Nagari needs to be regulated so that it does not make the Kerapatan Adat Nagari institution authoritarian and has the potential to abuse authority. Regarding the provisions regarding the term of office, this is a content material that will be elaborated in a Regency / City Regional Regulation later.

B. Implications of Changing the Position of Nagari Adat Density on Institutional Density of Nagari Adat

The definition of implication according to the expert, no one can explain it clearly, this is because the scope of the meaning of the implications is wide. According to experts, the notion of implication is a consequence or a direct result of the findings of scientific research. Another definition of implication according to experts is a conclusion or the end result of the findings of a study. [21]

In connection with that, with the enactment of Regional Regulation Number 7 of 2018 concerning Nagari, there are several normative implications that lead to adjustments to regulations at the Regency / City level in determining the implementation of Nagari based on the Traditional Village government system, such as membership of the Nagari Adat Kapatan and the duties and authorities of Nagari Adat Density in carrying out Government at the Nagari level.

As the highest consultative institution in the administration of Nagari Government, Kerapatan Adat Nagari certainly cannot carry out its institutional duties and functions as carried out as customary institutions in previous practices. The implementation of duties and functions of Kerapatan Adat Nagari is tied to the provisions of government administration. Article 5 letter a Law Number 30 of 2014 concerning Government Administration states that the implementation of government administration is based on the principle of legality. Whereas what is meant by the legality principle in Article 5 letter a is that the administration of Government prioritizes the legal basis of a Decree and / or Action made by Government Agencies and / or Officials. With the meaning of the word, the implementation of the duties and functions of Kerapatan Adat Nagari as the highest consultative body in the administration of Nagari Government is not only based on the customary law of the Nagari salingka but must also be based on positive law in the form of statutory regulations.

7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- With the enactment of Law Number 6 of 2014 concerning Villages, there are several delegations that need to be carried out by the Provincial Government in carrying out village general institutional arrangements consisting of the Village Government, Village Consultative Body, Village Community Institutions, and traditional institutions. So there is a main institution that runs the government whose nomenclature can be determined by the region or the village itself. Indonesia has many laws and regulations governing child protection, however, children's rights cannot be protected. Of course, Indonesia as a country that has ratified the CRC must comply with the principles and provisions in establishing policies in the context of protecting children's rights. Indonesia's involvement as one of the countries that has ratified the CRC is a form of Indonesia's serious concern for children, for this every regulation and policy made by Regulations on controlling tobacco use / smoking in Indonesia is in the form of Government Regulations, Regional Regulations, and Governor Regulations.
- Indonesia In order to follow up on the delegation regulated in Article 109 of Law Number 6 of 2014, the Regional Government of West Sumatra Province stipulated Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari as a substitute for Perda No. 2 of 2007 concerning the Principles of Nagari Government to re-function the Nagari government system according to the Nagari salingka custom based on the philosophy traditional of Basandi Sara ', Sara' Basandi Kitabullah, Sara 'Mangato, Customary Use and to make arrangements for Nagari institutions based on the rights of origin.
- The good goals of the West Sumatra Provincial government are to re-function the Nagari government system according to the Nagari salingka custom based on the philosophy traditional of basandi sara ', sara' basandi Kitabullah, sara 'mangato, adat mamakai and to make arrangements for Nagari institutions based on the right of origin by determining The Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari does not seem to have had a place in Nagari West Sumatra.

8. SUGGESTIONS:

The suggestions given by researchers are as follows:

- With the stipulation of Nagari Adat Density as an institution which is the embodiment of the highest representative deliberation in the implementation of Nagari Government based on Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, it is recommended that the Provincial Government or Regency / City Regional Government in accordance with their authority compile a regulation related to Customary institutions . This was motivated by the possibility that the Nagari Adat Density would carry out two institutional duties and functions at the same time, namely as a Government institution at the Nagari level and also at the same time acting as a Customary institution. When that possibility occurs, it is certainly not good in the implementation of the bureaucracy in Nagari.
- In addition to research on Nagari Adat Density institutions based on Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, it is also hoped that there will be research on 2 (two) other institutions regulated in the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, namely the Nagari Government and Customary Courts Nagari. So that it can be a reference for the Regional Government of West Sumatra Province in evaluating the enforcement of West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari.

REFERENCES:

1. Latief, Dt. Bandaro, 2004, Minangkabau yang Gelisah : Mencari Strategi Sosialisasi Pewarisan Adat dan Budaya Minangkabau Untuk Generasi Muda, CV Lubuk Agung, Bandung, page 30.
2. Soewarta Arifin, Bustanul Dt Bandaro Kayo, 2008, Manajemen Suku, CV Lubuk Agung Bandung, page 23.
3. Kurnia warman, 2016, Naskah Akademik Rancangan Peraturan Daerah Provinsi Sumatera Barat Tentang Nagari. Biro Pemerintahan Sekretariat Daerah Provinsi Sumatera Barat, page 1.
4. Zulmasyhur. 2012, Hubungan Kelembagaan Dalam penyelenggaraan Pemerintahan Nagari di Era Otonomi Daerah; Studi Pada Kabupaten Solok Provinsi Sumatera Barat, Bandung: Universitas Padjajaran.
5. Ase Satria, lembaga/institusi, Organisasi Dan Pelembagaan, [https:// www. materibelajar.id/2016/02/ lembaga-sosial-dan-lembaga-negara.html](https://www.materibelajar.id/2016/02/ lembaga-sosial-dan-lembaga-negara.html), accessed 16 October 2019.

6. Mohammad Ali Andrias, Teori Perwakilan, <http://king-andrias.blogspot.co.id/2012/04/materi-kuliah-teori-perwakilan.html>, accessed 22 October 2019.
7. Bonner, Robert Johnson 1933. Aspects of Athenian democracy Vol 11. University of California Press. page 25–86.
8. Haris, Syamsuddin, 2005, Pemilu langsung di tengah oligarki partai: proses nominasi dan seleksi calon legislatif Pemilu 2004, Gramedia Pustaka Utama.
9. Yayan Hidayat, 2017, Transformasi dan Dualisme Kelembagaan dalam Pemerintah Adat Minang: Studi terhadap Nagari Pariangan, Sumatera Barat, Politik Indonesia: Indonesian Political Science Review 2 (2) (2017) 227-245, page 228.
10. Astuti, N. B., Lala, M. K., & Nirmala, K. P. 2009, Dilema dalam Transformasi Desa ke Nagari; Studi Kasus di Nagari Palembang Provinsi Sumatera Barat. Institute Pertanian Bogor.
11. Effendi, S. 2013, Profil Sumber daya Manusia pada Lembaga Eksekutif Nagari di Provinsi Sumatera Barat. Jurnal Demokrasi, 2013, Vol II No 1: 79-92. Undang-Undang Dasar Republik Indonesia 1945, Pembukaan Alinea Ke Empat.
12. Melinda Noor, Pembangunan Berbasis Kelembagaan Adat: Sebuah pembelajaran dan Kasus Kinerja Kelembagaan Nagari dalam Perencanaan Wilayah di Sumatera Barat. Jurnal Mimbar, 2006, Vol. XXII, No. 2:234-257. Framework Convention on Tobacco Control (FCTC), TCSC-IAKMI. Fact Sheet. article 4, 5 and 9.
13. Asmawi, 2006, Kajian Tentang Revitalisasi Pemerintahan Nagari Kearif Peningkatan Mutu Pelayanan Kepada Masyarakat di Provinsi Sumatera Barat. Disertasi Institute Pertanian Bogor.
14. Navis, A.A. 1984, *Alam Berkembang Jadi Guru: Adat dan Kebudayaan Minangkabau*. Jakarta: Grafiti Pers. Memberikan penjelasan bahwa Minangkabau lebih merujuk kepada kultur etnis dari suatu rumpun Melayu yang tumbuh dan besar karena sistem monarki serta menganut sistem adat yang dicirikan dengan sistem kekeluargaan melalui jalur perempuan atau matrilineal, walaupun budayanya sangat kuat diwarnai ajaran agama Islam.
15. Latief, Dt. Bandaro, 2004, Minangkabau yang Gelisah : Mencari Strategi Sosialisasi Pewarisan Adat dan Budaya Minangkabau Untuk Generasi Muda, CV Lubuk Agung, Bandung, page 148.
16. Riki Rahmad, 2015, Mengembalikan Keistimewaan Nagari Di Minangkabau Pasca Pemberlakuan Otonomi Daerah, <https://www.researchgate.net/publication/272092448> accessed 9 July 2020.
17. Afwadi, penyelenggaraan Pemerintahan Nagari: Antara Format Adat Atau Format Negara, JURIS, Volume 9 No 1 June 2010. Page 48.
18. Kurnia warman, 2016, Naskah Akademik Rancangan Peraturan Daerah Provinsi Sumatera Barat Tentang Nagari. Biro Pemerintahan Sekretariat Daerah Provinsi Sumatera Barat, page 1.
19. As Suhaiti arirf, 2007, eksistensi peraditan adat pada masyarkat hukum adat minangkabau di sumatera barat, usulan penelitian program hibah kompetisi A-2, Universitas Andalas Padang, page 3-6.
20. H.N Dt Perpatih Nan Tuo, 2000, Peranan Ninik Mamak Dalam Melestarikan Tanah Ulayat, disampaikan pada pelatihan pementapan administrasi manajemen kelembagaan adat alam minangkabau bagi pengurus KAN, penghulu suku, LKKAM dan Bundo Kandung se kota padang tanggal 21-31 August 2000, dikutip dari makalah H.N Dt. Perpatih Nan Tuo, page 7-8.
21. Alek, Pengertian Implikasi, <http://ciputrauceo.net/blog/2016/1/18/arti-kata-implikasi>, accessed 1 May 2020.