

ELUCIDATION
OF
REGULATION OF THE PROVINCE OF WEST SUMATERA
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ON
NAGARI

I. GENERAL

Before Villages and Urban Villages are enforced as the most prominent Government Unit, the most prominent Government Unit in West Sumatera Province was *Nagari* that was led by *Kapalo Nagari* or other names. One level lower was *Jorong/Korong/Kampung* led by a *Kepala Jorong/Kampung* as the Nagari Government work region.

Under mandate of Law Number 5 of 1979 on Village Government, resulting uniformity policy of the most prominent Government Unit in the entire region of the Unitary State of the Republic of Indonesia, Villages in a Regency and Urban Villages in a Municipality. As of 1 August 1983, the Government of the Province of West Sumatera enforced Law Number 5 of 1979 within West Sumatera Province, so the functions and duties of the most prominent Government implemented by Head of Village was transferred to *Kapalo Nagari*. Under Law Number 5 of 1979 on Villages, the Village Government only regulates its Government Implementation while fostering of socio-culture and customs do not belong to its duties and functions. The *Nagari* position as Customary Law Community Unit is still acknowledged by the issuance of Regulation Level 1 of the Province of West Sumatera Number 13 of 1983 on *Nagari* as a Customary Law Community Unit in Region Level 1 of the West Sumatera Province, along with its Institution named *Kerapatan Adat Nagari* (KAN) led by a leader called *Ketua Kerapatan Adat Nagari*. Since the issuance of Regional Regulation Number 13 of 1983, dualism of Nagari Leadership named

Leader of KAN as a Customary Leader and Head of Village as a Government leader arises.

Since the reform era of 1999 there is a government paradigm change from centralize to decentralize. The change is based on the amendment to the 1945 Constitution of the Republic of Indonesia. Among the paradigm change aspects, there are acknowledgment and respect of the state to customary law community unit and its traditional rights as confirmed by Article 18 B of the 1945 Constitution.

“The state recognizes and respects entities of the *adat* (indigenous) law communities along with their traditional rights as long as these remain in existence and are in accordance with the development of community and the principles of the Unitary State of the Republic of Indonesia, are regulated by law”.

This provision mandates the government, that the establishment of government in regions must not threaten let alone exterminate the existence of customary law communities. Article 18 B of the 1945 Constitution is second amendment to the 1945 Constitution was stipulated on 18 August 2000, however the spirit to acknowledge and respect the customary law community unity in village government establishment had been born before that. Law Number 22 of 1999 on Local Governments issued in 7 May 1999 has already preceeded the constitutional spirit in acknowledging and respecting customary law communities. Historically, Law Number 22 of 1999 repeal two Laws on government in region at once namely Law Number 5 of 1974 on Principles of Government in Region and Law Number 5 of 1979 on Village Government.

Relating to village government establishment, Law Number 22 of 1999 firmly states that uniformity approach to the forms of village government under Law Number 5 of 1979 is a misled policy. It results in the customary law community lives' integrity/unity, development, welfare, and harmony are hampered. The provision of considering point e of Law Number 22 of 1999 states:

“Law Number 5 of 1979 on Village Government (State Gazette of 1979 Number 56; Supplement to the State Gazette Number 3153) to synchronize name, form, structure and position of the village governance, not in accordance with the spirit of the 1945 Constitution

and the needs to acknowledge and respect rights of origins of special Regions so it is necessary to be replaced.”

Thus, Law Number 22 of 1999 gives opportunity for regions to establish the most prominent governance to not have the same name as village government anymore; it can be called with other names aside from village in accordance with local customs origin. This opportunity is authentically included in village definition as referred to in Article 1 point o of Law Number 22 of 1999 as follows:

“Village or so called other names, hereinafter referred to as village, means a law community unit having authority to regulate and manage local community interest in accordance with local origin and customs that are acknowledged in National Government system and located in a regency”.

At regional level, the spirit has existed for a long time in West Sumatra, even before Law Number 22 of 1999 was enacted. The urge to go back to use *Nagari* government system after 20 years as the community mutual wish “forces” them to use village system. However, before the enactment of Law Number 22 of 1999, the urge cannot be realized yet since in juridical, it cannot be detached from “village” under Law Number 5 of 1979. Therefore, Law Number 22 of 1999 becomes the moment for West Sumatra to realize its wish to go back to *Nagari*.

Immediately, the Government of the Province of West Sumatra together with Regional House of Representatives approves the establishment of a Regional Regulation to regulate *Nagari* government as the replacement for village government, namely Regulation of the Province of West Sumatra Number 9 of 2000 on Principles of *Nagari* Government. This Regional Regulation has successfully declared West Sumatra to go back to *Nagari* government system. However, since the authority of establishment of village government is in regency/municipality so there are respective Regional Regulation to establish *Nagari* government in each regencies of West Sumatra.

In 2004, the government amends Law Number 22 of 1999 on Local Governments with Law Number 32 of 2004. Even though there are differences in material substances in regulating from both Laws, they have the equal spirit to acknowledge and respect the customary law community

in establishing government in regions to village level. The Government of the Province of West Sumatera adjusts the regulation of *Nagari* government with Law Number 32 of 2004 by replacing Regional Regulation Number 9 of 2000 with Regulation of the Province of West Sumatera Number 2 of 2007 on Principles of *Nagari* Government. This Regional Regulation mandates the establishment of *Nagari* government in all regencies and municipalities in West Sumatera except for Mentawai Islands Regency. Once more, since the authority to establish village government is in regency/municipality so the regency/municipality in the Province of West Sumatera also replaces Regional Regulation on *Nagari* Government with a new Regional Regulation in accordance with Law Number 32 of 2004.

In reality, not all regencies/municipalities in the Province of West Sumatera obey the mandates in Provincial Regulation Number 2 of 2007. All municipalities in West Sumatera keep urban villages as the most prominent government. Even for two Cities namely Kota Sawahlunto and Kota Pariaman still apply two government systems for their *Nagari* community; half using urban villages and another half using villages. The municipalities' disobedience against Regulation of the Province of West Sumatera Number 2 of 2007 obviously becomes the key point for West Sumatera community in *Nagari* government development history.

Even though it already uses *Nagari* government system, in practice, it has not used *Nagari* government character. The figure in *Nagari* government implementation is the same as village figure; separated between government administrations affairs and customs affairs based on origins rights. This is proven by the separation of *ninik mamak* or customary holders of *Nagari* government implementation. The *Nagari* government is implemented fully in accordance with Law and not *adat salingka Nagari*. *Ninik mamak* is still confined in customary institution namely *kerapatan adat Nagari* (KAN), it resulted in customary holders are marginalized even the most prominent government has become *Nagari* government.

In other words, the implementation of *Nagari* government is just a name; cannot go back to the real *Nagari* government system; cannot restore customary holder to become *Nagari* government implementation, since Law Number 32 of 2004 does not give opportunity for regions to do them. Even there is an opportunity to not synchronize the government

names to become village, the type of the most prominent government is still village government administratively (administrative village). So, even though the most prominent government is called *Nagari* government, in juridical it is an administrative village. In juridical, Law Number 32 of 2004 does not provide other choice for regions to determine type of village, so it becomes juridical obstacle to go back to *Nagari* based on *adat salingka Nagari*.

This juridical obstacle is answered by Law Number 6 of 2014 on Village. This Law is a replacement for a part of Law Number 32 of 2004 regulating village, especially Article 2000 to Article 2016. Different from Law Number 32 of 2004, Law Number 6 of 2014 gives opportunity for regions to establish village (government) in accordance with customs based on origins rights from local customary law community unit, aside from common village (administrative). In this Law, village established based on origins rights of customary law community is a “customary village”. In other words, the local government may determine customary law community as the most prominent government implementing unit. The most prominent government implementation for customary village is carried out based on local customs. If there is any government affairs implementation that is not regulated in the new customary law, the provisions of Law are in effect.

This opportunity needs to apply immediately by the Province of West Sumatera to re-function *Nagari* government system based on *adat salingka Nagari* under customary philosophy of *basandi sara’, sara’ basandi kitabullah, sara’ mangato, adat mamakai*. In juridical, those wishes may only be realized by establishing a Regional Regulation on *Nagari* as a replacement of Regulation of the Province of West Sumatera Number 2 of 2007 on Principles of *Nagari* Government. In this new Regional Regulation, *Nagari* as a customary law community unit is restored to its true identity as the most prominent government implementer under customary law. In line, the customary holders of each *Nagari* are restored to their positions as *Nagari* government administrators, not being customary institutions marginalized from government affairs anymore.

However, Law Number 6 of 2014 only gives period of one year for government of reGENCY/municipality to determine customary law community unit as a customary village implementing the most prominent government under customs. Article 116 section (2) and section (3) of Law Number 6 of 2014 state:

- (1) The Regency/Municipal Governments issue Regional Regulations on establishment of Villages and Customary Villages in their regions.
- (2) The establishment of Villages and Customary Villages as referred to in section (2) is not later than 1 (one) year as of the date of promulgation of this Law.

Law Number 6 of 2014 is promulgated on 15 January 2014, so at this time 2017 it is already expired, the regency/municipal governments in West Sumatera cannot determine *Nagari* as customary village directly. The determination *Nagari* as a customary law community unit must first through mapping. Article 96 of Law Number 6 of 2014 states the Government, Provincial Governments, and Regency/Municipal Governments plan customary law community units and determined as Customary Villages.

As known and experienced by West Sumatera people, that until this day the existence of *Nagari* as a customary law community unit. Since 2000, *Nagari* has been established as the most prominent government implementer until this day. Since *Nagari* as a customary law community unit still exists, so *Nagari* meets the requirement to be determined as a customary village. Thus, *Nagari* government may be implemented based on origins rights and *adat salingka Nagari* law. It is in accordance with Article 107 of Law Number 6 of 2014 states:

“Regulation and implementation of Customary Village Government are carried out in accordance with origins rights and customary law applied in existing Customary Village as well as in accordance with community development and not contrary to principle of Customary Village Government implementation in Principle of the Unitary State of the Republic of Indonesia”.

Even though the determination of *Nagari* to become a customary village is the authority of regency/municipal governments, Law Number 6 of 2014 has already special authority to the provinces in planning of customary villages. Based on this authority, the government of West Sumatera Province needs to establish a Regional Regulation on *Nagari* of which regulating scope only for the authority concerned. This provision is stated in Article 109 of Law Number 6 of 2014 that states “organizational structure, position filling, and term of office of Head of Customary Village under customary law are determined in Provincial regulation”.

Thus, sociologically the position of this Regional Regulation is very strategic in West Sumatera community efforts in restoring *Nagari* as government implementer based on origins rights and *adat salingka Nagari* law. Next, in juridical, this Regional Regulation is a prerequisite for regency/municipal governments to establish Regional Regulation on *Nagari* establishment as a customary village. Without this Regional Regulation, the regency/municipal governments in West Sumatera cannot establish Regional Regulation on *Nagari* as a customary village as referred to in Law Number 6 of 2014. In addition, this Regional Regulation also becomes guidance for regency/municipal governments in drafting Regional Regulation on *Nagari* especially for three materials namely organizational structure, position filling, and term of office of *kapalo Nagari*.

Thus, this Regional Regulation is a legal base and protection as well as a reference for Regency/Municipal Governments to establish and implement *Nagari* Government system as the most prominent government unit applied in accordance with local custom and culture.

Nagari as a customary law community unit has philosophy of *Adat Basandi Syarak, Syarak Basandi Kitabullah*. In the philosophy, there are social, cultural, religion and custom values, so those values need to preserve and exist among communities as a life value. Therefore, regulation with custom and religion values as well as its authority are well-expected by the West Sumatera people. With *Nagari* life philosophy, the ideal life of *Nagari* will be realized in West Sumatera.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Sufficiently clear.

Article 3

Sufficiently clear.

Article 4

Sufficiently clear.

Article 5

Sufficiently clear.

Article 6

Section (1)

The term “KAN” means *Kerapatan Adat Nagari* that already existed before this Regional Regulation on *Nagari* was issued and still functions as an institution that preserves customs in accordance with accepted customary in *salingka Nagari*.

Section (2)

The term “*Niniak Mamak*” means a customary institution consisting of several *penghulu* from various groups in Minangkabau tribes, and filled with heads from big kinships or groups or clans called *penghulu*, of which the leadership is inherited for generations in accordance with Minangkabau matrilineal customs. The position of *penghulu* is hold by a Minangkabau man as an elder and is assumed able to lead wisely;

The term “*Alim Ulama*” means a Minangkabau community leader having broad knowledge in Islam religion, is experienced and may be a role model for *Nagari* community in the field of Islam religion;

The term “*cadiak panda*” means an intellectual, thinker, or scholar, that be able to apply those knowledge for the interests of *Nagari* community and must give view and opinion/consideration in drawing policies and decision in *Nagari*.

The term “*Bundo Kanduang*” means a female leader in Minangkabau portraying a wise female figure that preserves Minangkabau Customary for generations.

Parik Paga Nagari is functioned to maintain order and safety as well as enforce and supervise *Nagari* regulation.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 7

Sufficiently clear.

Article 8

Sufficiently clear.

Article 9

Sufficiently clear.

Article 10

Sufficiently clear.

Article 11

Sufficiently clear.

Article 12

Sufficiently clear.

Article 13

Section (1)

Sufficiently clear.

Section (2)

Kapalo Nagari may serve for not more than 3 (three) terms of office continuously or not continuously.

Article 14

Sufficiently clear.

Article 15

Sufficiently clear.

Article 16

Sufficiently clear.

Article 17

Sufficiently clear.

Article 18

Sufficiently clear.

Article 19

Sufficiently clear.

Article 20

Sufficiently clear.

Article 21

Sufficiently clear.

Article 22

Sufficiently clear.

Article 23

Sufficiently clear.

Article 24

Sufficiently clear.

Article 25

Sufficiently clear.

Article 26

Sufficiently clear.

Article 27

Sufficiently clear.