

Juridical Analysis Of Protection And Return Autonomous Region Of The Nagari Indigenous Community Of West Sumatra

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Abstract: Customary law is born from the personality of the Indonesian nation and is vital for the Indonesian nation, besides being vital in the formation of national law, customary law is also useful in understanding Indonesian legal culture, so it must be maintained. Indigenous peoples are a group of people who have the same goals and interests in groups, live and settle in one place. The existence of indigenous peoples is constitutionally regulated and protected. In reality, the existence of indigenous peoples in Indonesia still needs more attention, especially in terms of protecting the privileges that are their rights. Protection of privileges, one of which is given the authority to restore government in accordance with the prevailing customary system. One of them is the existence of Nagari in West Sumatra as one of the Traditional Villages whose existence is recognized in the constitutional system in Indonesia. The purpose of this study was to determine the protection of the origin rights of the Nagari customary law community and to determine the mechanism for restoring the authenticity of the Nagari customary law community. The research method used in this research is normative juridical research. The results of the study show that Indonesia is a country with racial, ethnic and cultural diversity, in which there are original rights which are the privilege of a customary law community.

Keywords : Indegenous people Of Nagari, Return, Protection of the privileges of Indegenous peoples.

INTRODUCTION

Indonesia as an archipelagic country with a variety of ethnicities and cultures, also has a diversity of customary laws. Customary law communities are formed from the habit of activities carried out in groups. The term customary law community is usually used to refer to groups that are descendants of the indigenous people living in a particular area. According to Soerjono Soekanto, customary law communities are community units that have the features to be able to stand on their own, namely having a legal unit, a unitary authority, and an environmental unit based on shared rights to land and water for all its members. [1]

The historical position of the village as a pioneer in the formation of political society and government in Indonesia long before this nation state was formed. Social structures such as villages, indigenous peoples and so on have become social institutions that have a very important position. The village as an autonomous institution with its own traditions, customs and laws and is relatively independent. Based on the indications, the high level of diversity makes the village perhaps the most concrete form of village. [2]

Whereas in the Regulation of the Minister of State for Agrarian Affairs Number 55 of 1999 it is explained that the customary law community is a community that is the subject or adherent of customary law that applies to a group of people in certain fields, both concerning property and non-material matters.

Basically, customary law communities are formed based on three basic principles, namely genealogical, territorial, and a combination of genealogical and territorial. The genealogical principle is that customary law communities are formed based on lineages that have been passed down from generation to generation, namely patrilineal, matrilineal, and parental. While the territorial principle is a customary law community that is formed based on similarities because they inhabit a certain area. This customary law community with territorial principles is then hereditary to form a unit called the Traditional Village. [3]

Nagari based on West Sumatra Provincial Regulation Number 9 of 2000 concerning Basic Provisions of Governance Nagari is a unit of customary law community in the area of West Sumatra Province, which consists of a collection of several tribes that have certain territorial boundaries, have their own assets, have the right to regulate and manage his own household, and elect the head of his government.

While the Nagari government is an autonomous government unit based on its origins in Nagari in the province of West Sumatra which is within the government system of the Unitary State of the Republic of Indonesia. Meanwhile, in the West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari, Nagari are genealogical and historical Customary Law Community Units, have boundaries within certain areas, have their own assets, are authorized to choose their leaders by deliberation and regulate and manage the interests of the local community. based on traditional philosophy and code, Adat Basandi Syara' – Syara' Basandi Kitabullah and/or based on local origins and customs within the province of West Sumatra.

The customary value of "Basandi Syara' Syara' Basandi Kitabullah" is a self-governing community that is used in the administration of Nagari Kapau Government as a function. This value is used as a function of the philosophy of life in the Minangkabau indigenous people. The indigenous people of Nagari Kapau adhere to the philosophy of life of the Indigenous Basandi Syarak, Syarak Basandi Kitabullah (ABSSBK) in the context of administering the Nagari Government.

The philosophy of social life in Minangkabau and the philosophy of life of Minangkabau customs Indigenous Basandi Syara' Syara' Basandi Kitabullah which has the meaning of syara' manga-to adat mamakai, in the way of life that has been adopted from generation to generation and always adheres to the teachings of religion and customs that apply in the Nagari. The implementation of the customary values of Basandi Syara' Syara' Basandi Kitabullah has become a culture/custom adopted by the people of Nagari Kapau in their life as a country. [4]

The purpose of the establishment of the Regional Regulation is so that Nagari, as a genetically and historically customary law community unit, have boundaries in certain areas, have their own assets, are authorized to regulate and manage the interests of the local community and elect or appoint their leaders, able to administer government based on their rights. origin and customary law.

The centralization of government power during the New Order era is considered the main cause of the death of indigenous peoples. The new order regime obstructed the expression of traditional identity and neglected the rights of indigenous peoples on a wide scale and caused many victims. The imposition of a single state identity occurs in various dimensions of indigenous peoples' lives, especially in the field of natural resources and indigenous peoples' autonomy [5].

The autonomy of indigenous peoples is built on the implementation of adat (customary law) by indigenous peoples through historical original structures. On the other hand, "Negaraization" is

here to suppress the marker of existence at its lowest point [6]. This happened because through Law Number 5 of 1979 concerning Village Administration, all customary institutions were managed and equated with the form and structure of villages in Java. As a result, until now there are still many areas that have lost the structural roots of their indigenous people. [7]

The centralized new order government has changed the system and form of local Nagari government, this is reinforced through the enactment of Law No. 5 of 1979 which changed the Nagari government into a village government. The change of Nagari to the form of a village is not just a change of name, but also changes the system, orientation, and philosophy of the Nagari. Nagari's traditional institutions were abolished and replaced with state institutions to strengthen the regime's domination. As a result, some existing customary law community units are suspended because they have to adjust to the demands regulated by the law. Socially, the change from Nagari government to village government in West Sumatra has had several consequences.

First, the lowest formal leadership has shifted from the collective leadership of the *tali tigo sapilin* and the *furnace tigo sajarangan* to the village head who is actually not sufficiently legitimized in front of the residents. Second, these developments have undermined *adat* and eliminated the personality of Nagari children and weakened genealogical ties. Since the 1999 reform era, there has been a paradigm shift in government from centralized to decentralized. The paradigm shift is based on the amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945). Among the aspects of changing the government paradigm is the state's recognition and respect for the unity of indigenous peoples and their traditional rights, as emphasized by Article 18 B paragraph (2) of the 1945 Constitution.

“Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat serta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang”.

This provision mandates the government that in the formation of regional governments, it is not allowed to threaten, let alone erase, the existence of indigenous peoples. After the collapse of the New Order regime and the issuance of Law No. 22 of 1999 which regulates decentralization and grants autonomy rights to regions, this has indeed become the beginning of an opportunity for regions in Indonesia to restore the locality of their form of government. However, this actually leaves new problems such as the tendency to depend on the center of government that has remained since before the reform.

Based on this description, researchers are interested in studying how to resolve the lack of recognition and protection of the rights of the autonomous region of the Nagari customary law community, researchers think this really needs more attention from the government considering that Indonesia is a country consisting of various tribes and cultures, constitutionally Indonesia also recognizes that the existence of customary law communities is a form of the Indonesian state which is a unitary state. Restoring the origins of a customary law community is one form of good governance in accordance with the principles of Good Governance. However, the most important thing is not only to restore the authenticity of indigenous peoples but also about how to maintain them.

METHOD

This type of research is normative legal research. The data source used is secondary. The data sources can be divided into three parts, namely: 1). Primary legal materials are legal materials con-

tained in statutory regulations, such as Law Number 6 of 2014 concerning Villages, Regional Regulation of the Province of West Sumatra Number 9 of 2000 concerning Basic Provisions of Nagari Government, Regional Regulation Number 7 of 2018 concerning Nagari. 2). Secondary legal materials are legal materials that provide explanations for primary legal materials, which are sourced from legal books and scientific articles related to this research. 3). Tertiary legal materials are complementary legal materials in the form of a legal dictionary.

RESULTS AND DISCUSSION

The National Laws and Regulations of the Republic of Indonesia provide a set of conditionalities for the recognition of customary law communities, namely 1) as long as they are still alive; 2) in accordance with the development of society; 3) in accordance with the principles of the Unitary State of the Republic of Indonesia. Regarding these conditionalities, Natabaya's opinion explains the 2007 Constitutional Court as follows.

1. The Constitutional Court is of the opinion that a customary law community unit can be said to be in de facto existence, both territorial, genealogical, and at least containing elements of (i) the existence of a society whose citizens have a feeling of group (in-group). group feeling); (ii) the existence of customary government institutions; (iii) the existence of assets and/or customary objects; and (iv) the existence of a set of customary law norms. Especially in the customary law community unit which is territorial, there is also an element (v) of the existence of a certain area.

2. The Constitutional Court is of the opinion that the customary law community unit and its traditional rights are considered in accordance with the development of the community if its existence is recognized as a reflection of the development of values that are considered ideal in today's society, both in general and sectoral laws. Such as in the fields of agrarian, forestry, fishery, and others as well as in regional regulations, and the substance of these traditional rights is recognized by the members of the community concerned and the wider community, and does not conflict with human rights.

3. The Court is also of the opinion that a customary law community unit and its traditional rights are in accordance with the principles of the Unitary State of the Republic of Indonesia if the customary law community unit does not interfere with the existence of the Unitary State of the Republic of Indonesia as a political and legal entity, that is, its existence does not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia. Indonesia and the substance of its customary law norms are in accordance with and do not conflict with statutory regulations. [8]

In West Sumatra, Nagari is a small republic' which has its own autonomous and community-based government (self-governing community). As a small republic, Nagari has a democratic government apparatus, namely the legislative, executive, and judicial elements. Nagari, anthropologically, is a holistic unit for various socio-cultural structures. Nagari ties in Minangkabau were not only primordial-consanguinal in nature, but were also structurally functional in terms of effective territorial governance [9].

Therefore, Nagari has an upward link; to Luhak and to Alam, and the sideways links between Nagari are, above all, emotional. Such an autonomous system is the hallmark of a tribal society for the sake of self-defense and the preservation of the values of each Nagari, whose focus is diversity. The Luhak and Alam bond is a totemic and cosmological bond that brings together these Nagari and binds them into a spiritual emotional unity. Therefore, the Minang people consciously

distinguish between territorial-consanguinal units in the form of the Nagari-Nagari republic and totemic cosmological units. [10] Nagari is a customary law community unit that has an original structure based on special origin rights.

Whereas Nagari is a form of government based on Minangkabau custom with the original structure and structure, namely Minangkabau custom, in addition to carrying out general government (general government) within the Unitary State of the Republic of Indonesia. In the Nagari government, there is an institution that functions to give consideration to the Nagari government in order to consistently maintain and maintain the implementation of the Basandi Syarak custom, the Kitabullah Basandi syarak in Nagari.

Minangkabau adat has a matrilineal kinship system, namely lineage drawn from the maternal (female) line and is structured by a tribal government system with family members and assets, both physical and non-physical, and is systemized in a democratic form of government, which is symbolized by customary words: Nagari Bakaampek Suku, Babuah Paruik Tribe (Nagari with four tribes, tribes have descendants from the mother's line).

A collection of these tribes that form a Nagari which in terms of adat: Nagari Bakaampek Suku (Nagari with four tribes) means that a Nagari consists of at least four tribes. This means that the original arrangement based on special origins shows that a Nagari will have clear genealogical characteristics (lineage) and a clear territory/territory that is special and has its own government, so that the Nagari people are completely divided into different tribes. There is At first, the Nagari government in Minangkabau could be said to be purely customary government which started from tribal government, tribal government which accumulated to become Nagari government. As previously explained, during the New Order regime, the very diverse customary law community units in Indonesia were reduced and uniformed through Law Number 5 of 1979 concerning Village Administration.

As a result, most of the existing customary law community units are suspended because they have to adapt to the demands regulated in the law. To maintain the sustainability of Nagari, the West Sumatra Provincial Regulation No. 13/1983 on Nagari was passed as a Customary Law Community Unit in West Sumatra Province. At its peak, when the New Order regime came to an end in 1998, West Sumatra found new momentum while responding quickly to decentralization, with the theme "Baliak ka Nagari" or Back to Nagari". To strengthen the determination to 'return to Nagari', the West Sumatra Provincial Regulation No. 9/2000 on the Basic Provisions of Nagari Government was passed.

There are several positive assessments of the success of the Province of West Sumatra in returning to Nagari". First, Nagari is the main identity and basis of the life of the Minangkabau people. The Minang people are always proud to call themselves the children of Nagari". Second, returning to Nagari" was supported by a combination of social movements and policies.

Third, the "Back to Nagari" movement is supported and made dynamic because of strong social capital. Fourth, the success story of returning to Nagari" cannot be separated from the response of the local government [11].

The government is obliged to organize the customary law community unit and establish it as a Traditional Village. The determination of the Traditional Village must meet three requirements that have been regulated in the law. First, the customary law community units and their traditional rights are actually still alive, whether they are territorial, genealogical, or functional. The customary

law community unit and its surviving traditional rights must have territory and at least fulfill one or a combination of the following elements:

- a) a society whose citizens share a common feeling in the group;
- b) customary government institutions;
- c) assets and/or customary objects; and/or
- d) the set of customary law norms.

Second, the customary law community unit and its traditional rights are considered in accordance with the development of the community. The customary law community unit and its traditional rights are considered in accordance with the development of the community if:

- a). its existence has been recognized based on the applicable law as a reflection of the development of values that are considered ideal in today's society, both general and sectoral laws;
- b). The substance of these traditional rights is recognized and respected by the members of the community unit concerned and the wider community and does not conflict with human rights.

Finally, the customary law community unit and its traditional rights are in accordance with the principles of the Unitary State of the Republic of Indonesia. A customary law community unit and its traditional rights are in accordance with the principles of the Unitary State of the Republic of Indonesia if the customary law community unit does not interfere with the existence of the Unitary State of the Republic of Indonesia as a political and legal entity which: a) does not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia; and b) the substance of the customary law norms is in accordance with and does not conflict with the provisions of the legislation [12].

Customary law has specific characteristics that distinguish it from other laws, namely: a) Magical/Religious Religion. The Indonesian nation is a religious nation, and it animates the law it created, namely customary law. In legal actions such as land clearing, marriage, it is clear that there is a religious nature, b) Togetherness. In contrast to western law which is centered on the individual, customary law is centered on the community. Common interests are prioritized, while individual interests are covered by common interests (public interest) [13].

There are several principles that form the basis for the importance of special arrangements regarding Traditional Villages. These principles are:

1. The principle of recognition, namely the acknowledgment of the origin rights of the Traditional Village.
2. Subsidiarity principle, namely the determination of local scale authority and local decision-making for the benefit of the community.
3. The principle of diversity, namely the recognition and respect for the value system that applies in society, but while still heeding the shared value system in the life of the nation and state.
4. The principle of togetherness, namely the spirit to play an active role and cooperate with the principle of mutual respect between institutions at the Traditional Village level and elements of the community in building the Traditional Village.
5. The principle of mutual cooperation, namely the habit of helping each other to build a traditional village.
6. The principle of kinship, namely the habits of community members as part of a large family unit.

7. The principle of deliberation, namely the process of making decisions concerning the interests of the community through discussions with various interested parties.

8. The principle of democracy, namely the system of organizing society in a government system carried out by the community or with the approval of the community, and the nobility of human dignity as creatures of God Almighty is recognized, organized, and guaranteed.

9. The principle of independence, which is a process carried out by the Traditional Village government and its community to carry out an activity in order to meet their needs with their own abilities.

10. The principle of participation, namely taking an active role in an activity.

11. The principle of equality, namely equality in position and role.

12. Empowerment principle, namely efforts to improve the standard of living and welfare of the community through the establishment of policies, programs and activities that are in accordance with the essence of the problem and the priority needs of the community.

13. Sustainability principle, which is a process that is carried out in a coordinated, integrated, and sustainable manner in planning and implementing the Traditional Village development program.[14]

In line with the mandate in Article 18B UUDN RI 1945, namely, the state recognizes and respects special and special regional government units and besides that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development. and the principles of the Republic of Indonesia.

In the end, the re-recognition of the Nagari as the lowest government through regional autonomy actually puts the nagari in a dilemmatic condition. Nagari accept government intervention that places the nagari as part of the state bureaucracy. On the other hand, this process reduces the autonomy of the nagari because it makes the Nagari substantially village, and reduces the main feature of the old form of nagari governance, or the Minang tradition of "collective leadership". In addition, the government's desire to synergize local institutions with modern organizations actually creates various potential conflicts. If this is not managed properly, it will become an obstacle in realizing an autonomous nagari because conflict can weaken the Nagari government [15]. The state always monopolizes and negates the rights of the people. Even though the constitution recognizes the rights of indigenous peoples, at the same time, they are in conflict with national interests whose boundaries are not clear.

The concept of national interest in customary law is reduced to the public interest whose boundaries are also unclear. So far, the government as a change agent has planned change using a social engineering approach, which is an approach that uses efforts aimed at mobilizing people to change. This is legitimized through various laws and regulations [16]. Regarding the case of the 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. expected to work together. [17]

CONCLUSION

Indonesia as a country with diverse ethnic and cultural backgrounds, is an archipelagic country that has its own customs/customs in each region. The existence of customary law communities has been recognized constitutionally, recognition related to the recognition of traditional rights, the

privileges of each customary law community. The concept of Baliak Ka Nagari is thought to be a form of initial step to restore the authenticity of the Nagari customary law community, where its implementation has encountered various kinds of obstacles. There are many differences of opinion among the parties who argue with each other about the return from the village form to the Nagari. The government is obliged to act as a mediator as well as a solution provider for the obstacles that occur. Baliak Ka Nagari can be used as a reference for the government to strengthen the return of the authenticity of the Nagari customary law community. Return can also be interpreted as acknowledging and protecting the overall authenticity of the customary law community. Directing the government system to run according to independence so as to eliminate the feeling of always depending on the regional government bureaucracy. Restoring origins and acknowledging indigenous peoples is a form of good governance, and the vital thing is not only to restore authenticity and acknowledge the existence of indigenous peoples but also to maintain the rights they already have.

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