

Nagari: Minangkabau in Decentralization Era

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Abstract - This paper examines the relationship of adat and Islamic law in the nagari governance system of Minangkabau's indigenous people based on regional autonomy and decentralization era. The relationship between adat and Islamic law in Minangkabau symbolized as *adat basandi syarak, syarak basandi Kitabullah*. This study uses a qualitative paradigm with grounded theory approach. Theorize about data to Peraturan Nagari (Provincial Regulation) Number 9 of 2000 jo. Number 2 of 2007 on the Principles of Nagari Governing System. This study found that the local wisdom of indigenous peoples in Minangkabau explained the hierarchy in the traditional of the nagari system has modernized and effectively functioned in the regional autonomy and decentralization era. The effectiveness of implementation of nagari government system in the Minangkabau is presented from the increasing of social welfare and revitalization of adat's figure in order to keep the harmony among Minangkabau's indigenous peoples.

Keywords: Nagari; decentralization; local wisdom; Islamic law; public policy.

1. Introduction

Legal reform as one of the important part on the national reform agenda related to efforts rearrangement legal institutions both at national and at lower level. As form of the national reform is enacted government system of regional autonomy in Indonesia. An important aspect in the assessment of regional autonomy is the existence of the community that has been since the days of empire. Indigenous peoples is an integral part in the nation's ethnic diversity binding Indonesia as *bhineka tunggal ika*. Indigenous peoples as a system also unseparated from the devices attached to with him, among them the regulatory system in the community. In a paternalistic culture of Indonesian society, decentralization and regional autonomy policies will not succeed unless there is a conscious effort to build its own regional and independence (Asshiddiqie 2005). As one example is the law of Minangkabau society residing in the administrative area of West Sumatera Province.

Recently emerged phrase which states that everyone must have Muslim Minangkabau (Safitri,

Winarso dan Zulkaidi 2016). It is also seem on the main opinion in Minangkabau society, namely *adat basandi syarak, syarak basandi Kitabullah*. As a Minangkabau society, the philosophy of *adat basandi syarak, syarak basandi Kitabullah* implies that the Minangkabau people only know one ideology, namely Islam and customary used in social interactions in public life (Rahmat 2013 & Ramayulis 2010).

West Sumatera Province who first responded to the regional autonomy and decentralization in Indonesia by restructuring public administration (Benda-Beckmann dan Benda-Beckmann, Recentralization And Decentralization in West Sumatera 2009). This policy has opportunities for indigenous Minangkabau to return to their form of government in the past, although basically the idea of returning to the form of government system villages had been there in 1998, when Muchlis Ibrahim served as governor of West Sumatera (Vel dan Bedner 2015). Changes authority in this case likely will affect property relations and inheritance, and changes in property relations will certainly have implications for the political authority and administrative (Benda-Beckmann dan Benda-Beckmann, Political and Legal Transformations of an Indonesian Policy: The Nagari from Colonisation to Decentralisation 2013).

The decentralization policy has stimulated debates on the relationship between indigenous patterns, Islam and the state. This condition not only affects the village administration, but also on the identity of indigenous Minangkabau society and their position in the Republic of Indonesia (Rahmat 2013). Although tensions between the Islamic and customary been coloring their history of Minangkabau since the beginning of Islam, this relationship has undergone various phases of great tension and relaxation relative.

2. Discussion

2.1 The Recognition of indigenous peoples in Indonesia

Indigenous peoples are structured community has its own power, and has a wealth of tangible and intangible (Muhammad 2003). In addition, no member of the public has a mind to break ties or to escape from their community (Ter Haar 1960). Indigenous peoples are the indigenous people's permanent and regular, and

have traditional rights, power and wealth of the tangible and intangible. In addition, no members of the public who have a desire or thought to dissolve the bonds that have grown or to escape from the bonds of society (Syukur 2013). Indigenous people in Indonesia is growing social unity in line with the development of society. Historically, indigenous and tribal peoples already there, live, grow, and evolve since the kingdom until today (Setiady 2008).

In the early days of independence, the recognition of the existence of indigenous peoples juridical constitutional stated in the provisions of Article 18 of the Constitution of 1945. Although the reform era there were four amendments, but the recognition of the existence of indigenous people continued to receive special attention. Before you change this setting, the recognition of the existence of the state that the Indonesian government admits approximately 250 units and community organizers themselves. The regions have a natural order and therefore can be considered as a special area. Republic of Indonesia to respect their position and state regulations about the region they will pursue their historical rights (Antlov 2003). The provisions of Article 18B (2) states that the state shall recognize and respect indigenous and tribal peoples and their traditional rights long in fact still exist, according to the development of society and the principles of the Negara Kesatuan Republik Indonesia and regulated in the Act. Recognition and respect for the state of the rights of indigenous people does not happen constantly, but by the struggle of systematic, planned and sustainable (Bahar dan Suryasaputra 2013).

Philosophically, recognition and respect for indigenous and tribal peoples implicit in all fourth paragraph of the Preamble of the Constitution of 1945, that aims to protect the whole Indonesian nation homeland of Indonesia, including the existence of the community in it. This provision is expressed in Article 2 paragraph (9) of Law Number 32 Year 2004 on Regional Government. This assertion shows that the Indonesian state shall recognize and respect the customary law communities that already exist, live, grow, and evolve before and after the state of Indonesia stands (Sulastriyono 2014). Recognition and respect for indigenous and tribal peoples includes three things: the existence of indigenous and tribal peoples, the existence of institutions that exist in an environment of indigenous and tribal peoples, and the existence of rules / norms within the customary community (Simarmata 2006). Philosophy recognition and respect implies that states also recognize and respect the existence of institutions that are built in the indigenous peoples. The agency covers the elements in charge of running and enforcing the norms of customary law so that life in society can take place in a harmonious, orderly, and orderly.

The recognition of customary law means that the state guarantees the legal system in Indonesia should

ensure and enforce the legal values of Pancasila and the Constitution of 1945. The values are a reflection of Pancasila as crystallization values customary law in the spirit of the community (*volkgeist*) Indonesia. Recognition and respect for indigenous and tribal peoples also means that countries recognize and respect the customary law as part of the national legal system to live, grow, and evolve based on the process of social interaction in society customary law.

The relationship between the state and indigenous and tribal peoples under the provisions of Article 18B (2) above are declarative and anticipatory. According to the concept of a unitary state, not known for their state within a state. Indonesian state was established as a state *eenheidstaat* (a unitary state) so that a likelihood of countries (*staat*) within the State (*Staat*). Customary law community can not stand alone outside the territory of the Republic of Indonesia. Customary law community is an integral part of the territory of the Republic of Indonesia, so it can not be ignored by the state (Sulastriyono 2014).

Traditional rights of indigenous and tribal peoples at the same time become the cultural identity of indigenous law and a prerequisite for the existence of customary law community unit is autonomy (Zanibar 2008). The rights of indigenous and tribal peoples autonomy is a right for indigenous people to take care of their own domestic affairs. Related to the above, then after the end of the New Order regime, the paradigm of local autonomy and decentralization of power came into effect in Indonesia. It aims to provide the opportunity and the opportunity for each area to be able to decide for themselves what the needs of their respective regions, so the chances of waiver rights of indigenous people would be minimized considering the unification effort that started running after the independence of the Republic of Indonesia.

2.2 Nagari: Minangkabau as West Sumatera

West Sumatera is one of the provincial-level administrative regions in Indonesia that territorial synonymous with a culture that is Minangkabau region (Asnan 2007). Most of the public identifies as the Minangkabau was West Sumatera region. However, when examined further, basically the Minangkabau region is not identical with the province of West Sumatera only (Graves 2007), but also partly the mainland Riau, north of Bengkulu, the western part of Jambi, the southern part of North Sumatera, Southwest Aceh and parts of Negeri Sembilan in Malaysia. Mentawai Islands are administratively including West Sumatera, is not part of Minangkabau (Loeb 1972). They are characterized by three major characteristics, namely: a strong adherence to Islam, obedience to the matrilineal kinship system and the tendency to wander or migrate strong (Azra 2003). Islam is another important aspect in the Minangkabau world. Customary and Islamic relations in the Minangkabau

world depicted in the symbol of the completeness of Nagari.

2.3 The Contemplation of Nagari: An Administration Regime Experience

Nagari in Minangkabau society tradition a cultural identity which became a symbol of the macrocosmic microcosm of a broader arrangement (Shalihin 2014).

Nagari in Minangkabau is compliant embryonal in a state system. Nagari is a country in terms of miniatures, and a small republic is self-contained, autonomous, and fix by it-self (Naim 1990).

As an institution, Nagari as known as a mere territorial quality only, but also summarizes the quality of genealogy. Nagari is a government agency at the same time is also a major dominant social institutions. As an autonomous public entity, is a mini-republic villages with a clear territorial boundaries for its members. Nagari has its own government and have their own customs that govern the lives of its members (Manan 1995). Nagari is a confederation of regions within the Minangkabau government and is entitled to take care of himself (Kato 1982).

Nagari as a system of government that is alive and used in customary law Minangkabau society has undergone various modifications in accordance with the ruling regime in Indonesia. The long history beginning on July 23rd, 1903, regulations on decentralization in the Dutch East Indies named as *de Wet Houdende Decentralisatie van Het Berstuur in Netherlands Indie* successfully received the session and enacted in *Het Koninkrijk Staatsblaad van der Nederlanden* 1903 No. 219. The law then also enacted in the Dutch East Indies via Indies Staatsblaad No. 329 and is known as *Wet Desentralisatie* 1903. Regulation is then amplified by the determination Staatsblaad No. 137 1905 (*desentralisatiebesluit*) and Staatsblaad No. 181 1905 (*locale radenordantie*).

This regulation then initiated the formation of local resorts and local *raad*. Nevertheless, the regional administration in this period does not have adequate authority, this is because most of the membership *raad* removed from government officials. *Locale raad* (Regional Council) has the right to form *verordeningen locale* (local regulations) regarding the various things that have not been regulated specifically by the colonial government. On 1922, The colonial government set Staatsblaad Number 216 1922 (*Wet op de Bestuurshervormin*). During the Japanese occupation of the Dutch East Indies, the Japanese military (*gunsireikan*) passed Law No. 27 of 1942, sometimes referred to osamu sierei related to the regional administration.

A series of these policies affect the traditional authority in Minangkabau. Some changes Minangkabau traditional governance structures at this time among which are; First, the loss of power of the royal institution and the shift in position of the king as acting regent; second, the establishment of *kelarasan*

institutions used as a communication medium between traditional Minangkabau community with the Dutch government. At this time, nagari remain in leadership at the Penghulu. Nevertheless, the Penghulu remained under the supervision of the Head of Penghulu appointed by the Netherlands. At this time already existed interaction between traditional authority in modern bureaucracies.

On November 23rd, 1945 set Law No. 1 of 1945 on the Rules Concerning the National Committee of the Regions. Governor is simply an extension of the central Government. Autonomy given to the regions of the Republic of Indonesia wider than the autonomy of the Dutch East Indies era. Based on this regulation can also be deduced that the local legislative body is also concurrently be part of the local executive bodies. The Village government system as the lowest administrative regions in West Sumatera set with West Sumatera Resident Notice No. 20 and 21 dated May 21st, 1946. The resident edict states that form the system of government. It is affects the representation of social and political power of traditional institutions and also started their shifted basis of government that is no longer a customary, but the laws and rules of the state.

On January 15th, 1954, the President issued a Presidential Decree that abolished the system of regional autonomy and reuse system that is autonomous villages. This decision refers to IGOB 1938 adjusted to the spirit of democracy that began to grow in a free society. The existence of this assessment is even more traditional values shift in Nagari. This is evidenced by the start of the influence of political parties in the election that shifted power Wali Nagari, *ninik mamak*, *alim ulama* and *cadiak pandai*.

Shifting dynamics of local wisdom values in the village became so in the era of guided democracy (1958-1968). At this time, Nagari density established by Regulation No. 32/DESA/GSB/1959, which confirms that; The first consists of the elements of Nagari as *ninik mamak*, *cadiak pandai*, and *alim ulama* who are determined by the leading figures in the village, both reaffirm the position of *tungku tigo sajarangan* in village government system. Nonetheless, the regulation also gives sole authority to Wali Nagari so that the basic values of democracy, true districts that began to disappear.

Government at the beginning of the New Order is that the village during the guided democracy inconsistent with the spirit, culture, and interests of Minangkabau society that needs to be restructured. It was followed by the enactment of Decree No. 015/GSB/1968, which was followed by Governor Instruction No. 10 of 1969 on May 17th, 1969 to establish a pilot project for one village in each district. The existence of this regulation making authority of the *tungku tigo sajarangan* was lost power in policy making. A series of evaluation efforts, changes, and

improvements to village regulations remain to be implemented.

The dynamics of village government throughout colonial times up to 1978 illustrate that the villages in its traditional form still exists the basis of socio-political unit village government system in Minangkabau. However, significant changes occurred after the enactment of Law No. 5 of 1979 Village Government. Efforts revival Nagari governance as a system of government neglected during the New Order regime (Tegnan 2015). Unification efforts form of government based regulatory system failed to the form of village government in West Sumatera. The impact caused by this regulation among was jorong adapted as village; and both confirmed the village as customary government. Faced with this, the Government of West Sumatera establish Regional Regulation No. 13 of 1983 on the Nagari voted the unity of Indigenous People in West Sumatera province. This regulation does not restore the power of village as it was before the enactment of Law No. 5 of 1979. At this time, villages no longer be part of a government organization, but only became an institution in charge of organizing all the indigenous communities.

Ever since the implementation of West Sumatera Regional Regulation No. 9 of 2000 on Basic Provisions Nagari administration, officially the division of administrative regions in West Sumatera province put Nagari as the lowest administrative unit under the sub-district, but not the same as the system of village administration. Nagari is a traditional law community unit, as set out in Article 1 (g) on the regulation. This regulation explains that the purpose of the organization of village government is to realize the people of West Sumatera progress based on the concept of ABS-SBK. This is achieved by creating a religious and cultural resistance based on socio-cultural traditions of West Sumatera democratic society and aspirations for the achievement of independence, participation and creativity of the people of West Sumatera.

Determination Act No. 32 of 2004 on Regional Government provide greater opportunities to apply the system of village government in West Sumatera. Determination of this regulatory reform in tandem with the system of government in an attempt synchronization and phase to government more effective and efficient. This is evidenced by the enactment of the West Sumatera Regional Regulation No. 2 of 2007 on the Principles of Nagari administration. These changes are accompanied by a shift in the purpose of the establishment of village government. Objective of the village government to create a society that is prosperous villages with the principles of democracy, equality, justice, customs privileges around village, through increased efficiency and effectiveness of its implementation (Aris, Soeaidy dan Haryono 2015). The shift value that is brought in this renewal significantly. Some things are often used

as indicators are; requirements of establishing a village, village governance structure, involvement the figures of *ninik mamak*, *cadiak pandai*, *alim ulama*, and *bundo kanduang* in public institutions at village level, funding, up to equalization of the quality of the rural villages.

The latest regulation that is shaped and determined to be related affairs of local autonomy is Law No. 6 of 2014 on the village and Law No. 23 of 2014 on Regional Government. It has same as existing regulation, the regulation focused only related with the order of arrangement of public administration at the local level as a form of assistance.

This regulation states that the lowest form of government to be recognized is the Village and the Village People. Basically, between the village with a traditional village (*desa adat*) are two vastly different things. Although the arrangement is still equated. General Explanation of Law No. 6 of 2014 on the village claimed that by combining construction self-governing local community with self-government, is expected to customary law community unit that become part of the village, so arranged into the Village and the Village People. Village and Village People basically perform similar tasks. While the difference is only in the exercise of origin, especially concerning social preservation of the Village People, regulation and management of indigenous territories, indigenous peace hearing, maintenance and order for indigenous and tribal peoples, as well as the implementation of government regulation based on the original order.

3. Summary

Nagari as one form of local wisdom Society Minangkabau in West Sumatera is recognized as one of the lower-level governance system. This recognition is further clarified by the West Sumatera Provincial Regulation No. 9 of 2000 and No. 2 Year 2007 concerning the Principles of Nagari administration system. On the one hand, this is a form of recognition at the same time the effort to preserve local wisdom. Formalization of the concept of village government in the traditional Minangkabau accompanied with some modernization and accommodations that can be integrated with the national administration system has led to the formation of a new village government system more moderate when compared with the shape of village government system that already exists. This can be seen with the recognition of the role of traditional institutions occupied by traditional leaders and the duty to preserve the culture and resolving disputes in the community. National recognition of the position and functions of traditional leaders, religious leaders, *alim ulama* and women's leaders provide greater opportunity for these figures to participate in the development.

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