

PROCEEDINGS

**1<sup>st</sup>**  
**BiCoShS**

1<sup>st</sup> Biennial Conference on Sharia and Social Studies

“Prophetic Role of Sharia Knowledge  
in Developing Social Justice”



# “Prophetic Role of Sharia Knowledge in Developing Social Justice”

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# KATA PENGANTAR

1<sup>st</sup> Biennial Conference on Sharia and Social Studies; Konferensi Internasional Keilmuan Syari'ah dan Ilmu Sosial merupakan festival akademik dua tahunan Fakultas Syari'ah Universitas Islam Negeri Imam Bonjol Padang. Kegiatan ini ditujukan untuk menggali dan memahami kekayaan dan kearifan nusantara serta menenunkannya kembali menjadi mozaik keilmuan.

Tema Perdana Konferensi ini adalah Peran Profetik Keilmuan Syari'ah dalam Membangun Keadilan Sosial. Tema ini terinspirasi oleh kenyataan bahwa keilmuan syari'ah sepertinya masih belum kunjung keluar dari kungkungan paradigma teologis-normatif yang cenderung abai terhadap fakta-fakta sosial. Oleh karenanya, Keilmuan Syari'ah Teologis sejatinya membuka ruang dan menerima gejala sosial sebagai sebuah fakta kesyari'ahan yang hidup dalam masyarakat. Interaksi dan dialog keilmuan syari'ah dengan ilmu sosial secara intensif dan berkelanjutan menjadi agenda akademik terpenting dan mendesak dilakukan. Dalam kerangka akademik inilah kehadiran Keilmuan Syari'ah Profetik menjadi keniscayaan untuk mbingkai tenunan tatanan sosial yang berkeadilan, berkemanusiaan, dan memiliki etos transendental.

Buku [Prosiding] ini merupakan kumpulan paper yang dipresentasikan oleh para akademisi dan peneliti dari berbagai latar belakang keilmuan dan institusi pada Konferensi Internasional Keilmuan Syari'ah dan Ilmu Sosial yang diselenggarakan Fakultas Syari'ah Universitas Islam Negeri Imam Bonjol Padang, 23 s/d 25 Agustus 2017. Mudah-mudahan pengetahuan yang termaktub dalam prosiding ini dapat memperdalam dan memperluas wawasan keilmuan, sekaligus menjadi etos dalam membangun budaya akademik.

Akhirnya, izinkan kami menghaturkan ucapan terima kasih untuk segala ide, gagasan, konsep, perspektif, partisipasi dan kerja keras akademik semua pihak atas terselenggaranya konferensi pertama tentang Keilmuan Syariah dan Ilmu Sosial di Indonesia; sehingga Keilmuan Syari'ah Profetik dapat dikembangkan, dan misi profetik yang dicita-citakan dapat tersampaikan. Amin.

Padang, 18 Agustus 2017  
Penanggung Jawab

**nurus shalihin**



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# Foreign Walinagari: The Unfinished (Political) Contemplation of Minangkabau's Democracy

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**Abstrak** – Nagari as lowest government institutions in Indonesia was recognized since the principles of regional autonomy applied. Nagari wasn't a recent-known on Minangkabau society in West Sumatra. Nagari has been through a variety of regime and was adapted in accordance with government regulations established before. In the modern era, Nagari was undermined by government efforts in the framework of the universalization of bureaucratic administration. The existence of Undang-Undang Desa with some chapters that were canceled by Mahkamah Konstitusi showed that the state ignores the values of indigenous Minangkabau locality by provides equal opportunities to all Indonesian citizens to run for walinagari in Minangkabau.

**Key Words:** *pluralism, locality, democracy, nagari, Minangkabau*

## 1. Introduction

The regional of movement expansion should be seen as a manifestation of a political movement that identity because of the issues of justice and regional development is urgently (Maarif 2012, 1). One of the important issues on the reform era governance is the application of administrative autonomy at the local level. The autonomous government held in conjunction with the decentralization of power. It shows that every region in the diverse structure of the administration has the right to formulate by it self-policy in their respective regions in certain aspects. 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 and Benda-

Beckmann, Political and Legal Transformations of an Indonesian Policy: The Nagari from Colonisation to Decentralization 2013, 26). 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's independence (Asshiddiqie 2005, 278). Therefore, to encourage the development of society era of reform, the existence of regional autonomy regulation was unable to accommodate the need of fostering the independence of governance at the local level.

West Sumatra Province who first responded to the regional autonomy and decentralization of power in Indonesia by restructuring public administration (Benda-Beckmann and Benda-Beckmann, Recentralization And Decentralization in West Sumatera, 2009, 293). This policy opens 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 Sumatra (Vel and Bedner 2015, 495). The regional autonomy policy is not seen as a transfer of authority from the central agenda for the region only, but rather than related to the transfer of authority from the government to the public.

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 (Grace, 2013, 123). The existence of regional autonomy to provide fresh air to the Minangkabau in West Sumatra to reimplement its form of local wisdom. Nagari as governance structures

gets formalistic legality of the state's back is turned as the lowest form of government (Abidin 2016, xiii).

## 2. Discussions

### 2.1. Nagari Minangkabau: Genealogical vs Geographical Administrative

West Sumatra as one of the provincial-level administrative regions in Indonesia that territorial synonymous with a culture that is Minangkabau region (Asnan 2007, 1). Most of the public identifies as the Minangkabau region of West Sumatra. However, when examined further, basically the Minangkabau region is not identical with the province of West Sumatra alone (Graves 2007, 16, Nur 2015), but also partly the mainland Riau, north of Bengkulu, the western part of Jambi, the southern part of North Sumatra, parts of southwest Aceh and parts of Negeri Sembilan in Malaysia. The Mentawai Islands are administrative including West Sumatra, but it wasn't a part of Minangkabau (Loeb 1972, 97-127).

The term of Minangkabau implies culture in addition to the geographical significance. In the life of the nation, Minangkabau is perceived as an ethnic and cultural forms. Meanwhile, the people of this region are not familiar with the term tribe or culture of West Sumatra. Therefore, it is not unusual when most people used to call him with the Minangkabau ethnic and not ethnic Minangkabau of West Sumatra. Customary law community Minangkabau in West Sumatra is a unique ethnic group and well known for salesmanship and their intellectual achievements. 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, 31). Islam was another important aspect in the Minangkabau world. Customary and Islamic relations in the Minangkabau world depicted in the symbol of the completeness of the village.

Villages in West Sumatra became quite interesting to study to be discussed in relation to the empowerment of people to the process of democratization in the grass root level. Nagari in Minangkabau tradition is a cultural identity which became a microcosm symbol of the macrocosmic of a broader arrangement (Shalihin 2014, 4). 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 yourself (Naim 1990).

As an institution, the village is not only understood as a mere territorial quality but also summarizes the quality of genealogy. Nagari is a government agency at the same time is also a major dominant social institution. As an autonomous public entity is a republic mini villages with a clear territorial boundaries for its members. Nagari has self-government and has 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).

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. Not much different from the existing regulation, the regulation focused only related to 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 an adat village 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 becomes 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 the 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.

The village as a unit of the community recognized the right of the origin and/or recognition of traditional rights are firmly of the country (Diamantina 2016). However, the village as specified in this regulation is the redefinition of the village that was formed in the regime of the old order. Recognition of the village's existence and indigenous villages as unification effort form of government resulted in the differentiation form of government at the lowest level in West Sumatra, as follows:

**Table 1. Lowest Government Models in West Sumatera**

No	Kabupaten / Kota	Kec.	Lowest Government		
			Desa	Nagari	Kel.
1	Padang	11			104
2	Padang Pariaman	17		60	
3	Pariaman	4			16
4	Pesisir Selatan	15		182	
5	Solok	14		74	
6	Sijunjung	8	1	60	
7	Tanah Datar	14		75	
8	Agam	16		82	
9	Lima Puluh Kota	13		79	
10	Padang Panjang	2			16
11	Bukittinggi	3			24
12	Kota Solok	2			13
13	Payakumbuh	5			76
14	Sawahlunto	4	27		10
15	Dharmasraya	11		52	
16	Pasaman Barat	11		19	
17	Pasaman	12		32	
18	Solok Selatan	7		39	
19	Kepulauan Mentawai	10	43		
Jumlah		179	126	754	259

Source: Reproduced from LKAAM Report, 2016.

## 2.2. Nagari: Between Global Democracy and Multiculturalism

Nagari as a local wisdom lives among Minangkabau communities in West Sumatra. The provisions of article 1 point 1 Regulation of the Minister of Internal Affairs Number 52 The year 2014 on Guidelines for the Recognition and Protection of Indigenous Peoples states that indigenous people are characterized as follows:

- a. Indonesian citizens who have distinctive characteristics;
- b. live harmoniously in groups according to their customary law;
- c. has ties to the ancestral origin and/or similarity of residence;
- d. there is a strong relationship with the land and the environment;
- e. the system determines the value of the economic system, political, social, cultural, and legal;
- f. utilizing one specific area for generations.

The relationship between the state and indigenous and tribal peoples under the provisions of Article 18B paragraph (2) 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 "*Een-Heid Staat*" (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, 100).

In the early 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, 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 as villages in Java and Bali, Nagari in Minangkabau, village, and clan in Palembang and so on. The regions have a natural order and therefore can be considered as a special area. The Republic of Indonesia to respect their position and state regulations about the region they will pursue their historical rights (Antlov 2003, 194). Once amended, 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 Unitary Republic of Indonesia and regulated in the Act. Recognition and respect for the state of the rights of indigenous people do not happen constantly, but by the struggle of systematic, planned and sustainable (Bahar and Suryasaputra 2013).

Customary conception in the Minangkabau society customary law can not be separated from social identity. Minangkabau society interprets the customary law in a different way (Simon 2007, 73). Customary conception focused on the development of social institutions, while the characteristics of the people associated with a trend adopted ways of empowering social institutions themselves. In Minangkabau society, emphasis towards social integration as well as the emphasis towards autonomy realized in individual

experience and a strong cultural representation (Simon 2007, 612-613).

According to Simon, the balance of the ideal dimensions of Minangkabau society is on the application of indigenous Minangkabau system of government, and so the genealogical aspect of figure walinagari also an impact on social stability in the indigenous Minangkabau. Social identity as it should be the starting point in the development of related regulations and in direct contact with indigenous peoples. The trend of globalization that is both centrifugal and centripetal (Irianto 2009, 33) basically will greatly affect the construction of the whole society, as well as with indigenous peoples. Similarly, the democratic currents of multiculturalism (Dallmayr 1996) who later also influenced. The State as the most authoritative, ideally capable of providing protection against Cultural Rights who live in it. Construction regulations set should not only recognize the existence of indigenous peoples' rights normative but also with a set of other things that are bound by these rights.

### 2.3. Walinagari as Headman of Village

The contemplation village government system is strongly influenced by the ruling regime. A series of specific regulations to give effect to the present system of village government. Lastly, Act No. 6 of 2014 on Village Government. Recognition of the existence of the village as the lowest form of government accommodated by this regulation. This recognition is explicitly seen in the provisions of Article 1 paragraph 1 which states that the reference to the village is the village or the traditional village or called by any other name is a legal community unit which has a limit which is authorized to regulate and administer governmental affairs and interests of the local community based initiatives society, the right origin, and/or customary rights recognized and respected within the government system unitary Republic of Indonesia.

Existence is also reinforced by the provisions of article 4 letter a, b, c, and g stating that the village setting aims to:

- a. Provide recognition and respect for the diversity of existing village before and after the formation of the unitary state of Indonesia;
- b. Providing clarity and legal certainty on the status of the village in the state system of the republic

of Indonesia for justice for all the people of Indonesia;

- c. Preserve and promote the customs, traditions, and culture of rural communities;
- d. Increasing the resilience of rural people's social culture in order to realize the rural communities that are able to maintain social cohesion as part of national security.

Nagari has experienced accommodation and adaptation into a more modern form of the change of regime. The existence of Act Rural still only focusing on village settings as government bureaucracy (Grace, Nagari: Decentralization Era Minangkabau in 2017) and put aside the values genealogically as the main element to form villages. It can be seen from some of the aspects set out in this regulation. One example is the starting point of the formation of the village. Recognition of a new village apart from a series of preparatory processes that must be gone through is based on the number of people in a region. The provisions of article 8, paragraph (3) letter b number 3 of Act Rural states that the minimum requirements for the recognition of a number of residents of the new village on Sumatra are 4.000 peoples or 800 heads of households. In contrast to the basic concepts of villages in Minangkabau, a village in Minangkabau formed with some of the requirements that characterize aspects of genealogical descent, the availability of facilities and infrastructure support for each of the villagers in their activities. The basic concept of the establishment of a village that is based on the concept of domicile administration indirectly a significant effect on the number of residents in the village remember temporal migration culture in the form of wandering for the majority of Minangkabau society. It will also be a significant effect on the municipal elections villages where indigenous populations who migrate lose voting rights to choose and determine their area trustee for the administration is no longer listed as natives in the village. Similarly, the existence of article 9 of this regulation, that a village can be removed by natural disasters and/or strategic interests of national programs. Deletion of a village of regulatory and administrative aspects of the national strategic development goals looks very possible. However, this removal would be a dilemma when interpreted as an effort to eliminate aspects of

local knowledge that became the starting point village government itself, because basically the State to protect the local wisdom.

The existence of villages and devices in almost all areas of West Sumatra has not been able to be a sociological escalator to bring Minangkabau completely. One interesting aspect to be discussed is the existence walinagari. Supposedly, the selection of cultural political contestation walinagari be getting the enthusiasm of the community (Abidin 2016, xiii). Walinagari was not something new in village government. Walinagari recognized the existence of villages as a *raad* (local resort) during the colonial era. Walinagari expressed in Staatsblaad 1903 Number 219, Staatsblaad 1903 No. 329, No. 137 Staatsblaad 1905 and 1905 Staatsblaad No. 181. Basically the presence of some of the regulation weakens the village as a system of self-government with the appointment of the Head of the prince by decree of the Dutch government at that time, Head of Penghulu and Kelarasan existence as a medium of communication between indigenous communities and the Government of the Netherlands at that time on one side of a modified form and acceptances village towards modernization. But on the other hand, the right of ratification and appointment of the Head of Penghulu held by the Dutch government showed that the sovereignty of independent community of indigenous people in villages is in the hands of the Netherlands. The same thing happened to the guided democracy. Enforcement of West Sumatra Governor Regulation No. 32/DESA/GSB/1959 which introduced a leadership figure in the village by giving authority to the role of legislation walinagari and *tigo tungku sajarangan*.

The existence of some of the provisions in the Act Village gives a new direction in contemplation villages continues. Walinagari relating to the elections, there are several requirements that must be met. Among them are provisions in article 33 paragraph (g) stated that the requirement of the village head candidate/walinagari must be registered as a resident or residing in the village (Nagari) local at least one year before the registration of candidates for village chief (walinagari). This provision indicates that the domicile aspect plays an important role as a candidate walinagari requirements. It indicates that a candidate must be registered as a walinagari local population of at least one year prior to the registration of candidates walinagari. Figured

walinagari candidates in this provision is a native of the genealogical aspect waiver. This provision was later canceled and does not have binding legal force by the Mahkamah Konstitusi's Decision No. 128/PUU-XIII/2015 dated August 23<sup>th</sup>, 2016. The cancellation of the provision of Article 33 letter (g) it provides equal opportunity for all Indonesian citizens to propose to be candidates walinagari in West Sumatra. The Constitutional Court decision is also confirmed by the presence of the regent of Solok Regional Regulation No. 1 Year 2017 on Procedures for the Election, and Dismissal walinagari in Solok. The provisions of article 3, paragraph (4) and Article 32 paragraph (1) in substance states that the chances of candidates walinagari broad opened for all Indonesian citizens who are willing to live in the Nagari if elected later. Provisions requiring candidates derived from locals walinagari eliminated after the Constitutional Court decision mentioned above.

The basic requirements change raises a dilemma for the integrity of the village itself. On the one hand, changes to these terms provide equal opportunities for all Native village, both located in the village or for immigrants to become candidates walinagari. On the other hand, other residents who are not descendants of the original Minangkabau also has an equal chance to bid to candidates walinagari. This condition is of course potentially shake-up in the social integrity of the village. Abandonment genealogical aspect in terms walinagari candidate has injured the protection of local wisdom in the Republic of Indonesia.

Consideration of the Constitutional Court related to the cancellation of the article is that the status of the village in Act No. 6 of 2014 is an elaboration of the provisions of Article 18 paragraph (7) and Article 18B (2) of the Constitution of 1945, which gives tribute and recognition to the Countryside framework of the Unitary Republic of Indonesia, providing clarity and certainty of legal status for the village in the state system in order to realize social justice, and to preserve and promote the customs, traditions and culture of the village. The village is an integral part of the organization structure of which run the functions of state government officially so for the election of village heads (walinagari) need not be limited to the provisions to be registered as a resident and reside in the village (village) local at least one year before registration. Constitutional Court to

equate the principle of village elections (walinagari) with the regional head and deputy regional head who does not provide restrictions and requirements related to the domicile of candidates.

Another argument put forward is that to push and move towards the development of the village become advanced and modern civilized society, organizing villagers require institutionalization process better. Institution-village institutions should function effectively to promote development in the direction of progress. Village life requires a space of freedom to move and to compete in a healthy manner as well cooperate in an orderly and peaceful atmosphere. The Constitutional Court considered that it is in line with the provisions of Article 28C paragraph (2) of the Act of 1945 which states that everyone has the right to advance himself in the fight for their rights collectively to build a society, nation, and country. Some of the considerations in the decision of the Mahkamah Konstitusi indicates that the village is a village structured society in the context of the legal regime of the regional administration.

The existence of the Act village with all its provisions and also a Constitutional Court decision gives a new face in democracy at the lowest level. The provision of equal opportunities for all citizens to become candidates volunteered walinagari should be limited. The principle of social justice mandated by the Act of 1945 should be elaborated in a more dynamic and accommodating. Fairness in this context is not only meant the provision of opportunities at large but also must be limited with respect to some abstract values locality that lives in the community. The local wisdom that lives in the community is part of the Cultural Rights recognized and recognized by the state. The influence of the trend of globalization and localization in trans-nationalization law should be accommodated by the state to provide certainty and systemic protection against local wisdom itself. Because if this is not addressed, it will potentially interfere with the stability of the local also become an integral part of national stability.

### 3. Conclusion

Nagari as the lowest in the constitutional form of government has been around a long time. Nagari with the complexity it faces on various government regimes

have been modernized and modified so that it integrates as acting government in the lowest order. A series of regulations on the recognition of the village and/or indigenous villages or the name specified lumped still focused on the structuring of the government bureaucracy alone. Is an ambiguity when the Mahkamah Konstitusi equates walinagari elective principle to the concept of the regional head and deputy regional head. Nagari in Minangkabau built from genealogical values can not be separated. Thus, the settings related to the village itself also should pay attention to aspects of support in order to regulations become effective in order to provide social justice without having to harm the values of local wisdom that to this day is still held by the Minangkabau people in West Sumatra.

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