

## NAGARI REGULATION RECONSTRUCTION BASED ON JUSTICE IN ACCORDANCE WITH THE SPIRIT OF THE UNITARY STATE OF THE REPUBLIC OF INDONESIA

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### ABSTRACT

*The purpose of this research is to study and reconstruct the Nagari Regulation with its right of origin based on the value of justice and at the same time offer an ideal regulation form to KMHA within the framework of Unitary State of Republic of Indonesia and Bhineka Tunggal Ika. This research is a descriptive-analytical research. Descriptive research is a study that intends to make a systematic (factual and accurate) description of the facts. The results of this study were the Government and the House of Representatives (DPR) should review the contribution of custom experts and custom leaders who developed during the discussion process of the Village Law and reconstructed the Nagari model in accordance with the rights of Minangkabau customary origin, so that the democratic political tradition can be well preserved. The theoretical implication of this research is that there has been a theoretical error in formulating the concept of the unity of indigenous and tribal peoples, so that each that has customary value in one community is viewed as a unity of customary law community.*

**Keywords: State Administration, Customary Law, Nagari, Village, Reconstruction**

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### INTRODUCTION

Autonomy and decentralization of government are the choice of a middle ground and compromise on the insistence of regional discontent<sup>1</sup>, which is given by the central government. The doubts about the concept of autonomy and the attitude of ambiguity in understanding autonomy are often a scourge in the development and compliance of the regions to the center. Autonomy which is original, often becomes a central political style that is attached as the jargon of new small kings in the region. Understanding the unity of Indonesia is different from other unitary states that tend to be liberalistic. The unity of Indonesia is integral between the people and their leaders<sup>2</sup>. Integrity is manifested with the position of leaders who protect all the people.<sup>3</sup>

The local government together with community leaders consisting of traditional leaders, religious leaders, and NGOs need to work together in building the region so that it can thrive again and be able to strengthen the character of Indonesian society, in a society that increasingly modern and multicultural<sup>4</sup>

The 1945 Constitution divides the regions into small and large categories. Small areas<sup>5</sup> as understood in the explanation of the 1945 Constitution are in the form of *volkgemeenschappen*, such as *Desa (village)*, *Nagari*, *Wanua*, *Huta*, *Marga* and other

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<sup>1</sup>According to Smith (1983:46-47), ..most national governments apply decentralization as a strategic effort to address the threats of political instability from separatist movements and from the demands of greater regional autonomy from the regions, cited from M. Masud Said, *Birokrasi Di Negara Birokratis*, 2009, Malang, UUM Press, page. 261

<sup>2</sup>Herbert Feith dan Lance Castles (ed), *Pemikiran Politik Indonesia 1945-1965*, 1988, translated, Yubhar, Jakarta, LP3ES, page. 182

<sup>3</sup>Marsillam Simanjuntak, *Pandangan Negara Integralistik*, Sumber, Unsur, dan Riwayat nya dalam Persiapan UUD 1945, 1994, Jakarta, Grafiti, page. 89

<sup>4</sup>I Gusti Ayu Ketut Rachmi Handayani, Lintje Anna Marpaung, Guntur Hamzah, Yuliandri & Anis Mashdurohatun, *Empowerment Community Leaders as to Strengthen the Implementation of Regional Autonomy*, Journal of Politics and Law; Vol. 10, No. 5; 2017 ISSN 1913-9047 E-ISSN 1913-9055. 2017.page.29.

nomenclature as Unity of Customary Law Community<sup>6</sup>. Post-reform, the disbursement of a package of local government laws, such as; 1) Law no. 22 of 1999 on Regional Government, 2) Law no. 32 of 2004 on Regional Government, and 3) Law no. 11 of 2006 on the Government of Aceh, and Law no. 6 Year 2014 on Village and Law no. 23 of 2014 on Regional Government, managed to eliminate the nature of uniformity attached to the Village.

The birth of Law No. 6 of 2014 on Villages was originally expected to reinforce the autonomy and independence of the village and Nagari as well as in accordance with indigenous peoples' rights that have been held in the real life of the local community. However, it cannot be denied that the unclear norms of "recognition and respect"<sup>7</sup> in the constitution have caused confusion in various legislative processes from 1948 until the issuance of Law no. 6 Year 2014.

The rationale in the Academic Manuscript Study of the Village Bill requires the recognition, by giving consideration to the negative impact with the elimination of the term Village. Ardilafiza stated<sup>8</sup>, Article 18B requires the regulation of government based on customs and origins (Village and Nagari), so that the existence of government at the village level gets a firm and concrete legal protection. With the change of village into the lowest administrative area of government, the philosophical content of Article 18B paragraph (2) of the 1945 Constitution, taking into account: 1) village administration based on customs and 2) Village administration based on the origin or combination of both, by itself becomes lost.

Independence and autonomy are two words that are identical to the village ideals as a unity of indigenous peoples' law. For Jimly Asshiddiqie, the social unit of the so-called 'unity of indigenous and tribal peoples' - as well as 'indigenous peoples' - is like Nagari in West Sumatra (minus the Mentawai Islands), as seen in the illustrations.<sup>9</sup>

Some of the ambiguities and indistinct nature of village and custom villages are read in Article 96 of Law no. 6 Year 2014. It then goes on to Article 100 Paragraphs (1) and (2), where it is explained that the Central, Provincial and Local Governments can implement the customary village arrangement, and the arrangement must be established in the form of local regulations. The arrangement is changing, village to village, village become custom village, custom village become village, village become *kelurahan* and up to change custom village become *kelurahan* (urban village). It is difficult to understand the intent and content intended by Article 100 of Law no. 6 Year 2014 about this village.

## Research Methods

This type of research is normative, and it is descriptive-analytical. Sources of legal materials used in this study consisted of primary, secondary and tertiary materials. Legal materials obtained were then conducted juridical analysis, where the existing legal materials are collected and collected<sup>10</sup>.

## Discussion

### Nagari as a Customary Law Society within the Core Circle of the State Pursuant to Article 18B Paragraph (2) of the 1945 Constitution

If it refers to the philosophical paradigm contained in Article 18B paragraph (2) of the 1945 Constitution and the Elucidation of Article 18 of the 1945 Constitution before the amendment, the nature of the Nagari government is not under the organs of one of the regional governments. Nagari as a unit of law society, it is in a position side by side with a decentralized legal organ, so that in its governance the nature of Nagari is in a horizontal position, not vertical with local government.

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<sup>5</sup>Article 18 of the Constitution before amendment: "The division of the Indonesian territory over large and small districts with their administrative structures shall be established by law, with regard to and reminiscent of the basis of deliberations in the States system, and the rights of origins in regions of a special nature."

<sup>6</sup>Next is written KMHA

<sup>7</sup>The term "Recognition and Respect" which is used by the 1945 Constitution, is clearly not a juridical language, because, in addition to its standard of measurement, this term also has no legal implications which can be seen as unconstitutional acts when the state's non-compliance and recognition legislation.

<sup>8</sup>*Ibid*, page, 132

<sup>9</sup>R. Yando Zakaria, "Makna Amendemen Pasal 18 UUD 1945 bagi Pengakuan dan Perlindungan Masyarakat Adat di Indonesia", *Makalah*, Jakarta, 9-10-2012, Page. 31

<sup>10</sup>Satjipto Rahardjo, *Ilmu Hukum*, 1991, Bandung, PT. Citra Aditya Bakti, page. 95

The Local Government with Nagari simultaneously "has a social responsibility to exercise control over one of the social life"<sup>11</sup>. Despite the "simple nature is inherent in the administration of Nagari government, but simplicity it has cultural qualities that cannot be ignored by organizational systems that tend to be structural and have no" spirit ". According to Radjab<sup>12</sup>, the Community Fellowship has been organized in a certain pattern by using customary law as both its basic law and its implementing rules."

The Government necessitates Nagari's position as a variant in local governance that positions Nagari as a privileged area and folk law (the people's law) with an original arrangement whose arrangements must consider the rights of indigenous peoples. The privilege lays in the ownership of an already rooted norm and at the same time the nature of the norm's attachment to the custom of society, so it is impossible to make Nagari a governmental organ whose actions and authority divert its social function into mere administrative function.

KMHA as a form of social life that is governed and organized is the initial form of the original order of life of Indonesian society. Article 18 of the 1945 Constitution before the amendment and Article 18B paragraph (2) of the 1945 Constitution after the Amendment both affirm the position of KMHA as a social system which must be recognized and respected due to the attachment of the original nature to the unity.

The norm of recognition<sup>13</sup> and respect for *zelfbesturendelandschappen* and *volksgemeenschappen* even though it has experienced three periods of the Indonesian constitution, its position remains and has never changed. As evidenced by the amendment process of the 1945 Constitution from 1999-2000, the norm of recognition and respect for the unity of indigenous and tribal peoples has not shifted. Let alone the shift of words, the essential meaning is maintained and unchanged. Article 18B Paragraph (2) of the 1945 Constitution Amendment result: "The State recognizes and respects the unity of indigenous and tribal peoples as well as their traditional rights as long as they are alive and in accordance with the development of the people and the principles of the Unitary State of the Republic of Indonesia, regulated in the Law".<sup>14</sup>

In the construction of NKRI, Nagari is one of Indonesia's sub-systems related to the living law. The form of multiculturalism contained in the diversity of indigenous and tribal peoples who still exist implies their original values in regulating the social system and power relations between the people and their leaders. KMHA village is as one form of construction on other customary law communities, then Nagari as a product of society on the side of Minangkabau society.

Here the meaning of the symbol of the Garuda bird flanking the sacred words of Indonesia Bhineka Tunggal Ika as a virtue that must be realized as a handle in confirming NKRI. ErmanRajaguguk stated<sup>15</sup>, "as the motto of *Bhineka Tunggal Ika*" varies but remains one "the legal system in Indonesia contains pluralism along with the development of Indonesian nation and society".

KMHA Nagari if used philosophical, sociological and juridical approach, philosophical conception, custom rules of mutual Nagari (custom apply around the local Nagari) legitimize customary law as the rules of customs prevailing from ancient times until now.<sup>16</sup>

KMHA and MHA Nagari can be seen in the picture below:

Figure 1: Form of KMHA and MHA (Indigenous People's Community) Nagari that still exist

<sup>11</sup>I Nnyoman Nurjaya, Perkembangan Pemikiran Konsep Pluralisme Hukum, "Makalah", Hotel Santika Jakarta, 11-13 Oktober 2004, page. 10

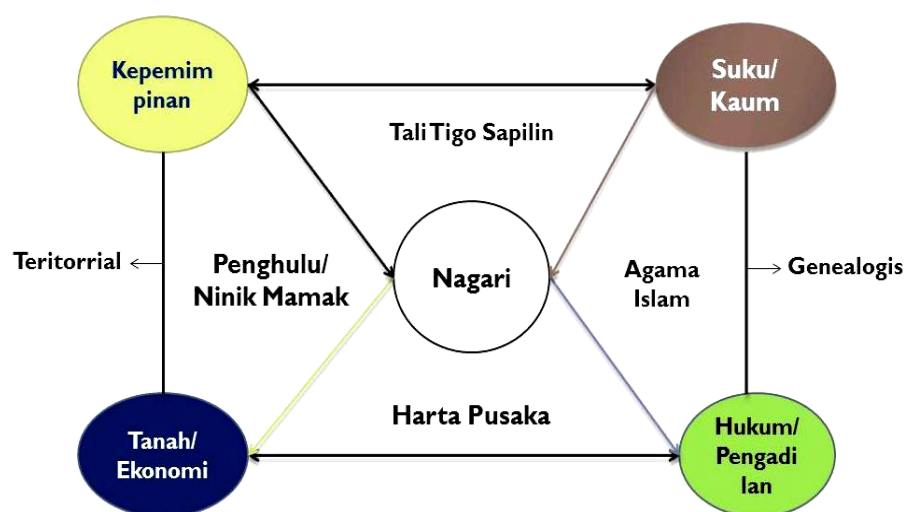
<sup>12</sup>Dasril Radjab, *Hukum Tata Negara Indonesia*, 2005, cet, ke-2, Jakarta, PT. Rineka Cipta, page. 143.

<sup>13</sup>That the recognition of the treaty as the law makes both parties bind themselves, which then creates rights and obligations for each party that needs to be realized, this is what is called achievement. Anis Mashdurohatun, Zaenal Arifin, *The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia*, International Journal of Applied Business and Economic Research. Volume 15 • Number.20 • 2017. ISSN : 0972-7302.2017.page.268.

<sup>14</sup>Article 18B paragraph (2) UUD 1945

<sup>15</sup>ErmanRajaguguk, *Ilmu Hukum Indonesia : Pluralisme*, paper yang disampaikan pada Diskusi Panel dalam rangka Dies natalis ke-37 IAIN sunan Gunung Djati, Bandung, 2 April 2005. page. 2

<sup>16</sup>Tolib Setiady, *Intisari Hukum Adat Indonesia, Dalam Kajian Kepustakaan*, 2013, Cet, ke-3, Bandung, Alfabeta, page. 7



Based on the picture above, the combination of customary values is then the characteristic of Minangkabau indigenous people's unity. In every custom, there must be a container, and every customary law community, then in a vertical outline of the unity is called Luhak while horizontally horizontal unity is called Nagari. Nagari according to MochtarNaim<sup>17</sup> is the political microcosm of the wider Minangkabau customary governance, in harmony with the fundamental fundamentalist principles.

The position of Nagari in the city has changed its shape to KAN (*Kerapatan Adat Nagari*), as regulated in Article 23 regarding Closing Regulation (2) of Regulation no. 9 of 2000 "Nagari residing in the City shall be governed by a separate Regional Regulation". Until the issuance of Perda no. 2 of 2007, "KAN is domiciled as the highest indigenous people's representative institution that has existed and inherited from generation to generation through adat"<sup>18</sup>. That is, Nagariwhis is located in the city with the clause of Article 28 is lost, converted to KAN.

With the adherence of the value system (custom) in the Nagari power structure, by its inseparable nature, the customary relations with Nagari are in a "unity" construction. The customary unity and governmental power are then formulated in the form of Nagari. The philosophical, sociological and juridical foundation of customary law enforcement in MinangkabauNagari further reinforces Nagari's legal status as territorial and customary power.

In the Dutch period, the government of *zelfbesturendelandchappen* was acknowledged the admissibility of its customary government would be recognized as long as it did not contradict Dutch law. Lukman Hakim concluded that "self-governing is an autonomous region within the fabric of the Dutch East Indies Government"<sup>19</sup>. Compared to the law of the Dutch East Indies was as an applied norm of governance, which is foreign, with the existence of custom as a law in addition to the Dutch East Indies government law which became the reference for self-government. The nature of its Indonesian remains inherent and the reason that customary law, solely purely civil, moreover, customary law as well as become the norm and governance of self-governing government in managing its governance.

Nagaricannot be treated in a subordinate constellation of superiors and subordinate powers that position Nagari in the interest of national development caught up in binding formal regulations. Rather, with recognition and respect affirmed by the Constitution, the Unity of indigenous and tribal peoples, living within the wisdom territory of wisdom and other social norms that are not readily accepted in the state legal positivistic norms.

Although decentralization is as a form of delegation of some authorities due to the nature of autonomy possessed by the Nagari, however, it should still be disassembled diametric relations autonomy and decentralization with the recognition and respect given by the constitution against the unity of customary law community and special areas. This distinction is at the same time

<sup>17</sup>Dikutip dalam, Henk Schulte, *Politik Lokal Indonesia*, 2014, Jakarta, Obor dan KITLV-Jakarta, page. 549

<sup>18</sup>Artilce28 Perda Propinsi Sumatera Barat No. 2 year 2007 about the principles of Nagari Government

<sup>19</sup>Lukman Hakim, 2012, *Filosofi Kewenangan Organ dan Lembaga Daerah, Perspektif Otonomi dan Desentralisasi dalam Penyelenggaraan Pemerintahan Negara Hukum dan Kesatuan*, Malang, Setara Pres, page. 134

the core of the concept of a unitary state that respects the diversity of Indonesia. Through TAP MPR No. IV / MPR / 1999, Chapter IV mandates the structuring of the national legal system in a comprehensive and integrated manner by recognizing and respecting customary law and Islamic law.<sup>20</sup>

The core construction of the state is to position it as a capable legal subject in acting and autonomously in organizing its legal rights. Nagari therefore cannot be seen in the model of power relations between organs of government and nor in the positive juridical model, but rather placed "independently" in concentric containers of power relations as the core of the Unitary State of the Republic of Indonesia.

### **The weakness of the Legal System of Regulation of Indigenous Peoples of Nagari Customary Law**

1. Local Government Law
  - a. UU no. 1 of 1945 on the Position of the National Committee of the Region

This law was born three months after the proclamation of independence was read out. With only six articles, Law no. 1 governs for the implementation of local governance by the National Committee of the Region together with the Regional Head to carry out the work of managing the regional households.<sup>21</sup>

Weakness of Law no. 1 of 1945 in managing local government, as concluded from E. Koeswara<sup>22</sup>, there are at least five forms of weakness contained in this law, namely:

- a) The Act embraces the formal household system, but it is difficult to implement because it is not explained by *wekkring* (working environment) of these bodies.
- b) The existence of dualism in the government in areas that have KND and that there is no KND
- c) Governments run by the BPRD in the form of autonomous regional government and the Executive Board with the Head of Region running a de-concentrated government.
- d) Implementation of regional government territory that is Java-Madura and outside Java-Madura.
- e) Position of Head of Region as central and local officials so that he has a position and a very dominant role.

As for the provisions on KMHA, the law containing a little of that article, does not regulate at all not talk about KMHA Desa and Nagari<sup>23</sup>. The emergence of this weakness when considered from the political situation of 1945, with the newly proclaimed independence, the arrangement of KMHA Adat and Nagari still refers to its applicability to IGO and IGOB.

- b. UU no. 22 of 1948 on Regional Government

Law no. 22 Year 1948 was born after more or less 3 years of Indonesia's independence. The main weakness of the Act No.22 of 1948 is the merger efforts made by viewing the Village and Nagari not yet enough to be formed into the village and Nagari region which are entitled to regulate and take care of his own household. As mentioned Elucidation number 31 Chapter XII on Village Areas:

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<sup>20</sup>Cited in Teuku Mohd. Djuned, *Adat adalah Kearifan, Pemaknaan dan Penerapan Hukum Adat di Aceh*, 2011, Banda Aceh, Rumpun Bambu, Page. 13

<sup>21</sup>Article 2 of Law no. 1 of 1945 on the position of the National Committee of the Regional Committee "The Regional National Committee shall be the Regional People's Legislative Assembly, together with and chaired by the Regional Head to carry out the work of regulating his regional household, provided that it is not contradictory to the Central Government Regulation and the wider Regional Government".

<sup>22</sup>E. Koeswara, *Otonomi Daerah, Untuk Demokrasi dan Kemandirian Rakyat*, 2001, Jakarta, Yayasan Pariba, page. 13-15

<sup>23</sup>This can be concluded from the writings Ni'matul Huda who began to discuss about in the era of Indonesian government, since the issuance of Law no. 22 In 1948, while in the 1945 period, concluded by Ni'matul Huda, the government has not done much to regulate the village administration, Ni'matul Huda, 2015, *Hukum Pemerintahan Desa Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi*, Setara Press, Malang, Page. 122. The same thing was done by Hanif Nasution, where in 1945 the pure village government re-applied by each KMHA after Japan no longer in power over Indonesia, pasca changes in some aspects of the Village government.

In fact the present Village Area is not yet large enough to be formed into a Village Area which is entitled to regulate and manage its own household according to this Basic Law. It is therefore necessary to combine it first. But the merging work is very difficult and time consuming. It is therefore still in the investigation whether it is possible to achieve results as we expect by not combining them first, but the present Village is formed as an autonomy area (which is entitled to regulate and manage its own household) under this Basic Law and subsequently guided to work together (article 27), so that because working together it can cause feelings need to join.

The explanation given by the law, merely looking at the Village and Nagari, or because theoretically the Village is indeed a territorial unity of the territorial community, in contrast to the genealogical and territorial Nagari, needs to be merged so as to form a larger area than originally. The provisions of incorporation are particularly applicable to the Village, however, not to Nagari, since the area of Nagari compared to the Village is much different. According to Soepomo<sup>24</sup>: the purpose of the main law, as explained in the official Elucidation, is to combine villages with other villages, because the present village is not yet sufficiently large enough to be formed into an autonomous village area as required by this fundamental law .

Pancasila is the basic relationship of the basic values which are the crystallization of various values that live in a society which is the soul of the nation (volksgeist) in the Indonesian people is the guiding star (leidstar) in the life of society, nation and state of Indonesia.<sup>25</sup>

c. UU no. 1 of 1957 on the Principles of Regional Government

Law no. 1 of 1957 does not explicitly mention and regulate the Village in the trunk of his body. The village mentioned in the explanation of this law, as a follow-up of affirming the position of the Village in its position as a level III region.

The status of the Village as an autonomous level III region, which HanifNasution concluded not as a state-acclaimed KMHA, even though the social base of the third-level community is based on the living KMHA, but the spirit of government is more prominent than its KMHA.

**Nagari Regulation Reconstruction as a Law Community Unity Based Justice**

Within the philosophical framework, the presence of village laws is not merely a normative interest in legislation, but rather to realize the life of KMHA village and Nagari and the customary law community in general with a solid foundation of life on constitutional building which necessitates fundamental values Indonesian nation.

The following table shows how the reconstruction of several articles in Law no. 6. Year 2014 on the Village.

Reconstruction of Indigenous Community Unit (KMHA) Nagari in Article 4 paragraph (1), Article 6 paragraph (1), Article 11 paragraph (1), Article 97 paragraph (1), Article 103 letter e, Law no. 6 Year 2014 on the Village

No	Construction	Weakness	Ideal Construction
1	Article 4 reads: Village setting aims: a. provide recognition and respect for existing Villages with their diversity before and after the establishment of the Unitary State of the Republic of Indonesia; b. provides clarity on the status and legal certainty of the Village in the constitutional system of the Republic of Indonesia in order to bring about justice for all	<ul style="list-style-type: none"> <li>Village Arrangement is not based on Article 18BB paragraph (2) of the 1945 Constitution, but Article 18 Paragraph (7) which guides the arrangement and procedures of the local government as a result of the tendency to encourage KMHA Desa and Nagari in the structure and responsibilities of regional</li> </ul>	<p>Article 4</p> <p>Customary village setting aims</p> <p>a. recognizing and ensuring the sustainability of existing indigenous and tribal peoples with diversity before and after the establishment of the Unitary State of the Republic of Indonesia</p> <p>b. Providing legal certainty on the unity of indigenous and tribal peoples in the system of the Republic of Indonesia in order to realize justice for all Indonesian people</p> <p>c. preserve and promote the customs, traditions and culture of the village community;</p>

<sup>24</sup>Soepomo, 2013, *Bab-Bab tentang Hukum Adat*, cet,ke-18, Balai Pustaka, Jakarta,page. 81

<sup>25</sup>Anis Mashdurohatun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4(Aug.) ISSN 2289-1560.2015. page.88.

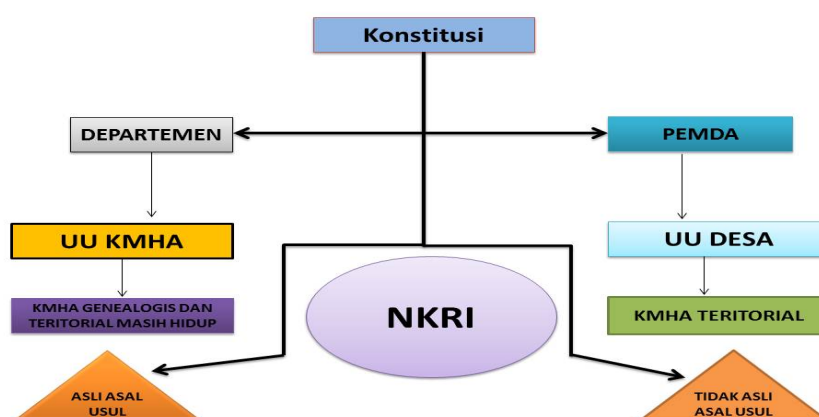
	<p>Indonesian people;</p> <p>c. preserve and promote the customs, traditions and culture of the village community;</p> <p>d. encourage initiatives, movements, and participation of village communities for the development of village potentials and assets for mutual prosperity;</p> <p>e. establishing a professional, efficient and effective, open, and accountable Village Government;</p> <p>f. improving public services for villagers to accelerate the realization of general welfare;</p> <p>g. improve socio-cultural resilience of village communities in order to realize village communities that are able to maintain social unity as part of national security;</p> <p>h. promote the economy of rural communities and overcome the national development gap; and</p> <p>i. strengthen the village community as the subject of development.</p>	<p>government</p> <ul style="list-style-type: none"> <li>• This article even confuses the KMHA based on its genealogical and territorial nature with the territorial KMHA</li> <li>• KMHA Nagari status because it meets the criteria of KMHA, then what is needed is not a certainty and legal status</li> <li>• The initiative and participation of KMHA Nagari will grow and develop if their customary system becomes a guideline in the regulation of community life, with the presence of an administrative village pattern and government then social conflicts and interests become open due to the strong political influence to shake.</li> </ul>	<p><i>d. unchanged</i></p> <p><i>e. unchanged</i></p> <p><i>f. unchanged</i></p> <p><i>g. unchanged</i></p> <p><i>h. unchanged</i></p> <p><i>i. unchanged</i></p>
2	<p>Article 6 paragraph (1), reads:</p> <p>(1) The village consists of village and custom village</p> <p>(2) The mention of village and custom village referred to in paragraph (1) shall be in accordance with the applicable mention in the local area.</p>	<ul style="list-style-type: none"> <li>• Dividing the Village into two forms has the potential to create philosophical, conceptual and constitutional ambiguities, because the interpretation of this division is heretical and out of the norm of Article 18B paragraph (2) of the 1945 Constitution, because the Village and Desa Adat can not be united</li> <li>• If a village with an Adat Village is in the same position (since there is only different mention of it), then the Law should consistently equate the Village with Desa Adat, and all the arrangements are equal and equal.</li> <li>• KMHA Nagari is not Adat Village and not an administrative village, KMHA Nagari is unique and like itself is not the same as Desa and Desa Adat</li> </ul>	<p><i>Article 6 paragraph (1), reads:</i></p> <p><i>"Village consists of Village and / or Desa Adat"</i></p> <p><i>Article 6 paragraph (2), reads:</i></p> <p><i>The mention of Desa and / or Desa Adat as referred to in paragraph (1) shall be in accordance with the applicable mention in the local area.</i></p>
3	<p>Article 11 paragraph (1) reads:</p> <p>Villages may change status to kelurahan (urban village) based on the initiative of Village Government and Village</p>	<p>Transforming Villages into Villages, even on the initiative of the community, is tantamount to eliminating the nomenclature of customary law community unity.</p>	<p><i>Article 11 paragraph (1), reads:</i></p> <p><i>Verse 1 unchanged</i></p> <p><i>SECTION 2 unchanged</i></p>

	Consultative Board through Village Deliberation by taking into account the suggestion and opinion of the village community.	Unless it is meant by a GOVERNMENT VILLAGE. This article is contradictory to the principle of recognition and honor established by the 1945 Constitution of the Republic of Indonesia.	<i>Article 3: Adat Village can not change into Village or Village</i>
4	Article 97 paragraph (1) reads: (1) Determination of Indigenous Villages as referred to in Article 96 shall be eligible: a. the unity of indigenous and tribal peoples and their traditional rights are still alive, whether they are territorial, genealogical or functional; b. the unity of indigenous and tribal peoples and their traditional rights is seen in accordance with the development of society; and c. the unity of indigenous and tribal peoples together with their traditional rights in accordance with the principle of the Unitary State of the Republic of Indonesia.	If this article is used as a regulation of Indigenous Peoples' Legal Unity by Law, then with the requirement; in accordance with the development of the community and in accordance with the principle of NKRI, the Act has made restrictions on recognition and respect for the Village and Nagari as KMHA. Thus, the making of the law is still trapped in SARA thinking patterns that have been developed by the New Order regime.	<i>Article 97 paragraph (1), reads:  Stipulation of Indigenous Villages as referred to in Article 96 is a unitary community of indigenous and living law and has a right of origin within its territorial and genealogical territory which binds all the interests of indigenous and tribal peoples "</i>
5	Article 103 letters e. the implementation of an indigenous village peace trial in accordance with the provisions of legislation;	The provisions of this article provide opportunities for further conflicts in indigenous and tribal peoples, as customary court rulings are not final and binding, as there is an opportunity for parties to continue the decision of customary courts to the level of state justice.	<i>Article 103 letter e, reads:  The decision of the customary court is final and binding.</i>

Data Source: Data processed by itself from Law no. 6 Year 2014 on the Village

Based on the above table, the KMHA Nagari reconstruction of the ideal structure of KMHA Nagari forward as shown in the following figure:

Figure 2: KMHA Nagari Construction Model in the Constitution and the difference with the Village

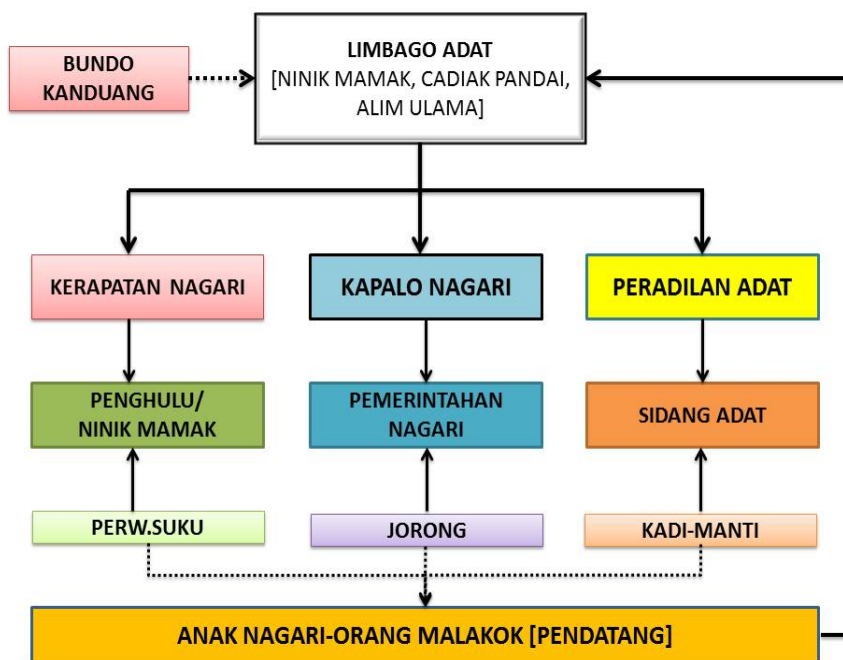




The KMHA Nagari model expected in the constitution is to regulate it in a separate law so that KMHA can safeguard the rights of its origin as a guardian of the democratic values in the midst of society and nation. By staying within the framework of the Unitary State of the Republic of Indonesia, KMHA Nagari and other nomenclatures that still have the right of origin will become the native cultural symbol of the Indonesian nation that must be sustainable.

The structure of KMHA Nagari still maintains its authenticity as in the following figure:

figure 3: KMHA Nagari Ideal Structure



KMHA The ideal Nagari is depicted in the power structure distributed to three elements consisting of nagari density, *kapalonnagari*, and customary court. Although the power is distributed on three elements, the highest sovereignty still lies in the indigenous *limbago* (department) consisting of *NinikMamak*, *CadiakPandai*, and *AlimUlama* as the supreme of the people. Their position as *limbagoadat* is as the manifestation of the nagari's generation and the people who come and declare themselves subject to the law in the circle of KMHA Nagari. On the other hand, the position of *BundoKanduang* relation with *limbagoadat* is consultative in relation to *pusako* power in their hands.

## CONCLUSION

The Government and the House of Representatives (DPR) must review the contribution of custom experts and indigenous leaders who developed during the discussion process of the Village Law related to the concept of KMHA which is still in accordance with KMHA requirements and which is not, so there is no uniform view of KMHA genealogical territorial with only territorial. Therefore, it is necessary to differentiate the jurisdiction so that each KMHA can implement its KMHA system in a constitutional manner.

The research and study on the unity of indigenous and tribal peoples should be intensified and intensified by academics and NGO institutions so that legal products that are born related to customary law are more targeted and qualified and constitutional.

## REFERENCES

- Anis Mashdurohatun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4(Aug.) ISSN 2289-1560.2015.
- BPS, *Sumatera Barat Dalam Angka; Sumatera Barat in Figures 2015*, BPS Provinsi Sumatera Barat, Padang,2015.
- Dasril Radjab, *Hukum Tata Negara Indonesia*, cet, ke-2, PT. Rineka Cipta, Jakarta,2005.
- E. Koeswara, *Otonomi Daerah, Untuk Demokrasi dan Kemandirian Rakyat*, Yayasan Pariba, Jakarta, 2001.
- Erman Rajaguguk, *Ilmu Hukum Indonesia : Pluralisme*, paper yang disampaikan pada Diskusi Panel dalam rangka Dies natalis ke-37 IAIN sunan Gunung djati, Bandung, 2 April 2005.
- Henk Schulte, *Politik Lokal Indonesia*, Obor dan KITLV-Jakarta, Jakarta, 2014.
- I Gusti Ayu Ketut Rachmi Handayani, Lintje Anna Marpaung, Guntur Hamzah, Yuliandri & Anis Mashdurohatun, *Empowerment Community Leaders as to Strengthen the Implementation of Regional Autonomy*, Journal of Politics and Law; Vol. 10, No. 5; 2017 ISSN 1913-9047 E-ISSN 1913-9055. 201
- I Nyoman Nurjaya, *Perkembangan Pemikiran Konsep Pluralisme Hukum*, "Makalah", Hotel Santika Jakarta, 2004.
- Herbert Feith dan Lance Castles (ed), *Pemikiran Politik Indonesia 1945-1965*, terjemahan, Yubhar, LP3ES, Jakarta,1988.
- Lukman Hakim, *Filosofi Kewenangan Organ dan Lembaga Daerah, Perspektif Otonomi dan Desentralisasi dalam Penyelenggaraan Pemerintahan Negara Hukum dan Kesatuan*,Setara Pres,Malang,2012.
- M. Masud Said, *Birokrasi Di Negara Birokratis*, UUM Press, Malang, 2009.
- Marsillam Simanjuntak, *Pandangan Negara Integralistik, Sumber, Unsur, dan Riwayat nya dalam Persiapan UUD 1945*, Grafiti,Jakarta,1994.
- Ni'matul Huda, *Hukum Pemerintahan Desa Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi*, Setara Press,Malang,2015.
- R. YandoZakaria, "MaknaAmandemenPasal 18 UUD 1945 bagiPengakuan dan PerlindunganMasyarakatAdat di Indonesia", *Makalah*, Jakarta, 2012.
- Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 1991.
- Soepomo, *Bab-Bab tentang Hukum Adat*, cet,ke-18, Balai Pustaka, Jakarta, 2013.
- Teuku Mohd. Djuned, *Adat adalah Kearifan, Pemaknaan dan Penerapan Hukum Adat di Aceh*, Rumpun Bambu, Banda Aceh, 2011.
- Tolib Setiady, *Intisari Hukum Adat Indonesia, Dalam Kajian Kepustakaan*, Cet, ke-3, Alfabeta, Bandung, 2013.

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