Problems of Implementation of West Sumatra Provincial Regulation Number 7 Of 2018 Concerning Nagari

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ABSTRACT

Nagari, as a unit of customary law community in the West Sumatra province, plays a crucial role in preserving local traditions and maintaining social order. Despite the Provincial Government’s initiative in promulgating Regional Regulation Number 7 of 2018 concerning Nagari, there exists a significant challenge in its implementation. As of now, the regulation, although officially dated, has not been effectively put into practice. The research, conducted across four regencies—Solok, Tanah Datar, Padang Pariaman, and Sijunjung—aimed to shed light on the obstacles hindering the implementation of Provincial Regulation Number 7 of 2018 concerning Nagari. Utilizing data reduction techniques, the analysis focused on research objectives, consolidating insights obtained through in-depth interviews with key informants and relevant documentation. The delayed implementation of the regulation raises questions about the factors impeding its enforcement. Issues such as bureaucratic complexities, community resistance, or a lack of resources might be contributing to this delay. Understanding these constraints is crucial for the Provincial Government of West Sumatra to address and overcome challenges effectively. Furthermore, exploring the reasons behind the slow implementation could provide valuable insights into refining the regulation or devising strategies to garner community support. Effective implementation of such regulations is paramount for the sustainable preservation of Nagari’s cultural heritage and the proper functioning of the customary law community. It is anticipated that this research will serve as a catalyst for informed discussions and actions to facilitate the practical application of Regional Regulation Number 7 of 2018 concerning Nagari, ensuring its intended benefits for the West Sumatra province.

Keywords: Qibla, Jihah, Syathrah, ‘Ainul Kaaba, Masjidil Haram, Mecca.

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INTRODUCTION

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia “Indonesia is a country based on law” (Parta Wijaya dkk., 2023). This shows that Indonesia is not a country based on power (machstaat). As a rule of law, all aspects of life in the field of society, nationality, and statehood including government must be based on laws by the national legal system (Tegnan, 2015).

The rule of law in the development of legal science, especially in the field of legislation, can encourage the function of forming statutory regulations (Aldjanabi dkk., 2021).

The formation of laws and regulations is carried out to realize Indonesia as a legal state (Febrianty dkk., 2023). The consequence is that the state is obliged to carry out the development of national law which is carried out in a planned (Nita dkk., 2023), integrated, and sustainable manner in national law which guarantees the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia (“Educational Research and Evaluation” Yogyakarta State University dkk., 2023). to meet the public’s need for good legislation, it is necessary to make rules regarding good legislation (Zacharewicz dkk., 2019).

Indonesia follows the Continental European legal tradition, which means making statutory regulations one of the main pillars of its national legal system (Alonso De Castro & García-Peñalvo, 2020). On this basis, the development of national law must always be accompanied by the development of a sustainable and integrated legal system (Morales dkk., 2023), this is by the need for the development of a legal structure with a legal culture (Fajrussalam dkk., 2020). Legislation is an important component in a unified national legal system that must be built and formed in an integrated manner to assure that the development of the national legal system can run in an orderly manner (Frananda dkk., 2023).

According to Maria Farida Indrati Soeprapto, theoretically, the term “legislation” (legislation), wetgeving or gesetgebung has two definitions, namely:

1. Legislation is the process of forming or forming state regulations both at the central and regional levels;
2. Legislation is all state regulations that are the result of the formation of regulations both at the central and regional levels.

The results of the process of forming regulations both at the central and regional levels are what are then called statutory regulations (Ullah dkk., 2017). In line with this, Bagir Manan stated that the definition of legislation is as follows:

1. Every written decision issued by an official or authorized position contains rules of conduct that are general or binding in nature.
2. These are rules of conduct that contain provisions regarding rights, obligations, functions, status, or an order.
3. It is a rule that has general and abstract characteristics which means it does not regulate or is not aimed at certain concrete objects/events/symptoms.
4. By taking the understanding in Dutch literature, laws and regulations are commonly referred to as wet in materiele zin (law in the material sense), or often also referred to as algemeen verbindende voorschrift which includes (Kamaluddin dkk., 2023), among others: de supra nationale algemeen verbindende voorschriften, wet, A MvB, de Ministeriele verordening, de
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gemeentelijke raadsverordeningen, de provinciale stater verordebingen (Nur Fitria dkk., 2023).

Meanwhile, Law Number 12 of 2011 as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation (hereinafter referred to as the PPP Law) defines Laws and Regulations - promulgation as a written regulation that is binding in general and is made by an authorized official through the procedures stipulated in the statutory regulations as well (Tomas dkk., 2023).

Of the three definitions above, according to the author (BANJARI DKK., 2023), legislation is a written regulation issued by an authorized official or position containing rules of conduct that are general or binding in nature through procedures stipulated in statutory regulations (Keshav dkk., 2022).

For the Laws and Regulations produced to reflect good quality as legal products, it is necessary to understand some of the basic foundations for forming Legislation, among others, as follows:

1. Philosophical Foundation

   The philosophical basis of laws and regulations always contains ideal legal norms (ideal norms) by a society towards which the noble ideals of social and state life are to be directed (Gerber dkk., 2018). The sociological foundation is that every legal norm is poured on a sociological basis.

2. Sociological foundation

   The sociological foundation of law which is manifested in laws and regulations contains the ideals or hopes of the nation to create and maintain security and order (rust en orde) in social life, as well as functioning as a means of carrying out social engineering (law as a social tool of engineering). to the desired expectation (Karina dkk., 2023). Thus, statutory regulation is formed by the state with the hope that it can be consciously accepted and obeyed by all people without exception.

3. Juridical Foundation

   The juridical basis illustrates that regulations are formed to resolve legal issues or fill legal voids by taking into account existing regulations, which will be amended, or which will be revoked to guarantee legal certainty and a sense of community justice. Formally, the juridical basis gives authority to institutions to make certain regulations, materially, the juridical basis in terms of content or material as a legal basis to regulate certain matters (Wamsler dkk., 2020). Meanwhile, from a technical point of view, the juridical basis gives authority to institutions to form certain regulations regarding the procedures for forming laws.

   A statutory regulation can be said to have a juridical basis (juridische gronslag, juridische gelding), if it has a legal basis (rechtsgrond) or legality, especially in higher statutory regulations so that statutory regulations are born (Kartel dkk., 2022). Legislation in Indonesia has types and hierarchies of statutory regulations, the hierarchy or order of statutory regulations in Indonesia is stipulated in the provisions of Article 7 paragraph (1) of the PPP Law, confirming: Types and hierarchies of statutory regulations consist of:

   1. The 1945 Constitution of the Republic of Indonesia;
   2. Decree of the People’s Consultative Assembly;
   3. Laws/Government Regulations instead of Legislation;
   4. Government regulations;
   5. Presidential decree;
6. Provincial Regulation; And
7. District/City Regional Regulations.

Types and Hierarchy in Article 7 adopt from Stufenbau’s theory which is the theory of Hans Kelsen that the legal system is a system of steps with tiered rules where the lowest legal norm must adhere to/refer to a higher norm, and the highest legal norm must be followed by the legal norms below (Budiningsih dkk., 2022).

One of the types of Legislation contained in Article 7 is Regional Regulations, both provincial and district/city. Regional Regulations are regulations made by the Provincial and Regency/Municipal Regional Heads together with the Provincial and Regency/City DPRD (DPRD). As an autonomous region, the Province of West Sumatra has the authority to regulate its area including the naming and system of government at the Nagari (village) level through the Regional Regulations of the West Sumatra Province regulating the affairs of the Nagari Government, namely the Regional Regulation of the Province of West Sumatra Number 9 of 2000 concerning Basic Provisions of Nagari Government then revoked by Number 2 of 2007 concerning Principles of Nagari Government (Baiduri dkk., 2019).

It turns out that with the presence of West Sumatra Provincial Regulation Number 2 of 2007 concerning Principles of Nagari Government, not all districts/cities in West Sumatra adhere to the mandate of West Sumatra Provincial Regulation Number 2 of 2007 concerning Principles of Nagari Government (Hakim dkk., 2023). Even though it has returned to implementing the Nagari government system, in its implementation it has not returned to the Nagari government character. The figure who appears in the governance of the Nagari is still the same as the village figure, that is, administrative affairs and customary affairs are separated based on the right of origin. The Nagari government is fully run based on the law, not the adat of Nagari. Especially after the promulgation of Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari which also revoked the Regional Regulations which became the guidelines for Implementing Nagari Government in West Sumatra, which is expected to restore Nagari’s true identity (Amelia dkk., 2022). However, since the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari to this day, there has been no follow-up from the district/city governments in West Sumatra.

RESEARCH METHODOLOGY
This study uses descriptive analysis in nature, this method aims to measure and examine certain social phenomena and provide an overview of the symptoms of the problem (Rofiah & Bungin, 2021). Using this type of empirical legal research to study applicable legal provisions and what happens in people’s live. The method used in this study uses empirical juridical methods to see the law in a real sense and examine how the law works in society. By using a socio-legal research approach, legal studies that live in society are non-doctrinal and empirical studies. This research was conducted in 4 districts, namely Tanah Datar Regency, Padang Pariaman Regency, Solok Regency, and Sijunjung Regency.

RESULTS AND DISCUSSION
Implementation of Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari.

Law Number 23 of 2014 concerning Regional Government defines GovernanceRegions as the implementation of government affairs by regional
governments and regional people’s representative councils according to the principle of autonomy and co-administration with the principle of broadest autonomy within the system and principles of the Unitary State of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia. in managing the village there is a separate regulation regarding villages, namely Law Number 6 of 2014 concerning Villages.

Based on Law Number 6 of 2014 concerning Villages, the purpose of village regulation is to provide recognition and respect for existing traditional villages and villages with their diversity before and after the formation of the Unitary State of the Republic of Indonesia, as well as preserving and promoting customs, traditions, and culture. villagers.

Nagari in West Sumatra is a form of customary community unit which is still recognized by the Unitary State of the Republic of Indonesia, Nagari in its history has been more in the form of small Nagari republics which have their autonomy and govern themselves (Indra, 2020). This spirit of autonomy with the right to self-regulate needs to be preserved and reapplied in Nagari governance and society. Thus the Nagari government does not only carry out provisions and regulations from above, from a higher level of government, but also actively thinks about and creates any activities, and in any field, to improve the welfare and prosperity of the Nagari people (Ekawati dkk., 2019). Regency and sub-district level administration, in turn, is more facilitative, accommodative, coordinating, and persuasive, as well as opening up opportunities, rather than taking over tasks that can be carried out by the Nagari. Regional Regulation of the province of West Sumatra Number 7 of 2018 concerning Nagari exists as a Prerequisite and guideline for the formation of Nagari based on customary origin rights in all districts/cities in West Sumatra, except for the Mentawai Islands Regency. Once again, because the authority to form a village government rests with the district/city, the district/city in West Sumatra Province also replaced the Perda on Nagari Government with a new Perda thus revoking the Regional Regulation of West Sumatra Province Number 2 of 2007 concerning Principles of Nagari Government, because it was considered this regional regulation, have not been able to return the Nagari in West Sumatra except the Mentawai Islands to their original Nagari identity based on the Adat Salingka Nagari. Because, Law Number 6 of 2014 concerning Villages provides an opportunity for regions to form villages (government) based on customs according to the origin rights of the local customary law community unit, in addition to ordinary (administrative) villages. In this law,

In other words, the regional government in West Sumatra can establish a customary law community unit as the leading administrative unit based on West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari. The leading administration of the Nagari is carried out based on local customs, if there is an administration of government affairs that is not regulated in customary law then the provisions of the Law apply.

Implementation as stated by Donald S. Van Meter and Carl E. Van Horn are actions taken by individuals or groups, the government or the private sector that are directed to achieve the goals set in previous decisions/policies. These actions or efforts include efforts to change decisions/policies into operational actions within a certain period as well as to continue efforts to achieve changes, both large-scale changes and small-scale changes, which have been established through decisions/policies.
The relation in this study means that the implementation is interpreted as: Follow-up actions that must be carried out by the Regional Government of West Sumatra Province and 19 (nineteen) districts/cities in West Sumatra, to operationalize West Sumatra Province Regional Regulation Number 7 Year 2018 concerning Nagari, to make changes as stipulated therein. The changes referred to are as described in Article 2 and the general explanation of the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, which is a guideline for regencies/cities in establishing regional regulations regarding Nagari to restore Nagari identity as administrators based on origin rights and the customary laws of each other.

Thus the formation or renewal of district/city regional regulations regarding Nagari which is guided by the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari is the goal to be achieved. Seeing the concept of Nagari government that is carried out by the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, it is indeed different from the Regional Regulation of West Sumatra Province Number 2 of 2007 concerning Principles of Nagari Government, The concept of Nagari government which is carried by Regional Regulation of West Sumatra Province Number 2 of 2007 concerning Principles of Nagari Government is more administrative in nature. Based on this Perda, Nagari institutions only consist of the Wali Nagari and his apparatus, the Nagari Consultative Body,

Whereas in the Regional Regulation of West Sumatra Province, Number 7 of 2018 concerning Nagari, the concept of Nagari that is carried is Nagari which integrates the country village (administrative Nagari) with “adat” (Nagari in the real sense). The Nagari institutions in this Perda consist of the Nagari Adat Density, the Nagari Government, and the Nagari Customary Court.

Through this Perda, the differences that characterize the uniqueness of the Nagari government are visible, namely:

a. The Nagari Consultative Body (BAMUS) was abolished as the Nagari organizing body, which was later replaced by the Nagari Customary Density (KAN).

b. Placing the Nagari Adat Density as an Institution (legislature) tasked with supervising the administration of the Nagari government, drafting Nagari Regulations with Kapalo Nagari, and discussing and agreeing on the Draft Nagari Regulations concerning the Nagari Revenue and Expenditure Budget.

c. Changing the form of direct democracy to representative democracy. This change can be seen from the authority of KAN to elect and appoint the Nagari Chief in a deliberative and consensual manner, channeling the aspirations of the Nagari people, supervising the implementation of Nagari customs and culture, holding the Nagari administration accountable to the Nagari chief, and preserving customary and cultural values. according to Salingka Nagari custom.

d. The formation of a new institution, namely the Nagari Customary Court.

e. The granting of special village autonomy for the Mentawai Islands Regency to regulate and manage its household affairs through the Mentawai Islands Regency Regional Regulation.

When viewed from the organizational structure of the Nagari regulated in the Regional Regulation of West Sumatra Province Number 7 of 2018 Nagari, it can be seen that the Regional Government of West Sumatra is trying to build a Nagari government system that integrates government administration and the preservation of Minangkabau customs. The conception of 3 (three) Institutions in the Nagari
government according to the author’s view is the most minimalist form of the application of the trias politica initiated by Montesquieu, then modified by placing adat (traditional institutions) as the organizing element.

Based on the concept of trias politica put forward by Montesquieu, power in state government is not left to the same person, this is to prevent abuse of power. In the concept of trias politica, the state government is run by 3 (three) institutions, namely: legislative, executive, and judicial. In Indonesia, the application of the trial political concept, the legislative body is run by the DPR, the executive is run by the President, and the Judiciary is held by the Supreme Court. If it is drawn into the institutions stipulated in the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari, then the legislative is run by the Kerapatan Adat Nagari, the executive is run by the Kapalo Nagari, and the Judiciary is run by the Nagari Adat Court.

Based on research conducted in 4 (four) regencies in West Sumatra (Padang Pariaman Regency, Tanah Datar Regency, Sijunjung Regency, and Solok Regency), it was found that not one of the 4 (four) districts had made changes and adjustments to the district regulations regarding Nagari with West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari.

The regulations regarding Nagari in Tanah Datar Regency still refer to the old Regency Regional Regulation, namely the Tanah Datar Regency Regional Regulation Number 4 of 2018 concerning Nagari. Then, in the case of the election of a Nagari guardian since the Regional Regulation of the Province of West Sumatra Number 2 of 2007 concerning Principles of Nagari Government was repealed, the mechanism for selecting a Wali Nagari refers to Law No. 6 of 2014 concerning Villages.

Until now, the government of Padang Pariaman Regency has not made changes and adjustments to West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. Nagari Government Arrangements in Padang Pariaman Regency are still in the Regional Regulation of Padang Pariaman Regency No. 5 of 2009 concerning the Nagari Government. After the West Sumatra Provincial Government issued a new Nagari Regional Regulation and revoked West Sumatra Regional Regulation No. 2 of 2007 concerning the Principles of Nagari Government, the arrangement for the administration of Nagari Government in Padang Pariaman Regency still refers to Regional Regulation No. 5 of 2009. And if there are things that have not been regulated in the Regional Regulation No. 5 of 2009, the Padang Pariaman Regency Government refers to Law No. 6 of 2014 concerning Villages.

The Solok District Government has yet to follow up on West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. The current administration of the Nagari Government still refers to Regional Regulation 11 of 2016 concerning the Nagari Government. Likewise, Sijunjung Regency has not followed up on West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. According to Febrizaldi, the regulatory substance in Perda No. 7 of 2018 concerning Nagari tends to regulate traditional villages, not state (administrative) villages so that it will make it difficult for the Sijunjung Regency government in future government administration. Therefore, the implementation of the Nagari Government in Sijunjung Regency still refers to the Sijunjung Regency Regional Regulation Number 15 of 2013 Amendments to Sijunjung Regional Regulation No. 5 of 2007 concerning the Nagari Government.

Based on the results of this study, it can be said that West Sumatra Regional Regulation No. 7 concerning Nagari has not been implemented by districts/cities in
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West Sumatra, which is proven by the fact that the district/municipality regulations have not been formed or amended regarding Nagari in West Sumatra and have not been adjusted to the West Sumatra regional regulations no. 7 of 2018 concerning Nagari.

When examined based on the variables that affect implementation as stated by Van Meter and Van Horn, it can be described as follows:

a. Policy standards and objectives

   The policy standards and targets set out in Perda no. 7 of 2018 regarding Nagari are a prerequisite and guideline for regencies/cities in establishing local regulations regarding Nagari as customary villages to restore the identity of Nagari as government administrators based on origin rights and customary law, which integrates a country village (Nagari which is administrative in nature) with “adat” (Nagari in the truest sense of the word).

   However, the standards and targets set out in West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari in the view cannot be applied. This can be seen from the institutional composition which places KAN as a legislative body. KAN is a customary institution that has the main task and function to resolve Sako and Pusako disputes in Minangkabau. KAN is not a government administrative institution (State) so KAN does not have a source of authority from statutory regulations. On the one hand, Law No. 6 of 2014 concerning Villages and Permendagri No. 110 of 2016 concerning the Village Consultative Body (BPD) has given authority to the BPD as a legislative body at the village level (Nagari), which has the functions of Discussing and agreeing on the Draft Regional Regulations with the village head.

   The results of research with 4 regencies, namely Tanah Datar, Padang Pariaman, Sijunjung, and Solok Regency through the Head of the Legal Section of the regional secretariat, stated the same thing that the current Nagari is by the provisions of the Legislation above it which makes the Nagari People’s Consultative Body as the legislature, the Nagari Government and the Nagari Adat Density are by their function to resolve Indigenous Civil disputes. Meanwhile, the arrangement for transferring authority to KAN to become a legislative body at the Nagari level is through Regional Regulation No. 7 of 2018 concerning Nagari, which contradicts higher laws and regulations (Village Law and Permendagri No. 110 of 2016 concerning BPD).

   Thus, based on the results of the analysis, the authors state that West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is actually by statutory regulations, but several articles are inconsistent with Law Number 6 of 2014 concerning Villages which places KAN as a legislative body that can elect and appoint heads of Nagari. So the policy standards and targets set out in the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari, contradicts higher laws and regulations, thus causing its implementation to not be carried out.

b. Resource

   Resources in policy implementation have an important role because it is these resources that will implement the policy, both human resources and other resources. The West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari, due to the lack or absence of resources capable of carrying out the Regional Regulation Policy on Nagari if it is issued by the Regency/City, specifically in the adat nagar court.
Nagari Adat Court is one of the concepts of problem-solving outside the state court, which carries the concept of restorative justice. However, it should be remembered that the formation of a Nagari customary court must of course be accompanied by adequate facilities and infrastructure, such as the judiciary building, the competency of the assembly that will hear it, which must also have adequate knowledge of customary law and state law. Of course, to make it happen it takes time and a process that is not short.

c. Relationships between organizations

Implementation of a policy requires coordination and cooperation between agencies. In this context, the author sees that the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is implemented by the Regency/City, it is necessary to coordinate with various other institutions, such as the police, prosecutors, and courts.

It is not certain that this coordination can be carried out properly, especially for customary court institutions. The existence of the Adat Courts in Nagari, according to the writer’s opinion, will create new problems in the governance of the Nagari, namely between the Adat Nagari courts and the Density of Adat Nagari who have authority based on customary law to hear and resolve sako and pusako problems.

d. Social conditions

The development of human civilization has brought rapid developments in the field of information technology, which in turn has influenced the biculture in Indonesia, including the culture in West Sumatra. As social beings who stand in orbit, we are dragged along. Even if you don’t want to be dragged along, then tips will be left behind by themselves, that is the most suitable expression to describe the current situation and condition of society’s change towards modernization. Patterns of thinking, lifestyles, and social systems, have gradually shifted and will always shift according to their processes.

Likewise, the current developments that occur in the people of West Sumatra. The very heterogeneous social conditions of the people, the importance of administration in good governance, and the demand for democratic and transparent governance of the Nagari have led to the policy concept proposed by Perda No. 7 of 2018 concerning Nagari being very difficult to implement.

e. Implementer disposition

Based on the results of research that has been conducted in 4 (four) districts in West Sumatra, it appears that the implementers (district/city governments) do not have a good response to the policy concepts stipulated by West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. There was no good response from the district/city government because several provisions in the regional regulation were not appropriate or even contradicted laws and regulations and also did not comply with the needs of social development in society.

Obstacles to District Governments in West Sumatra in Following Up West Sumatra Province Regional Regulation No. 7 of 2018 concerning Nagari

The existence of law in society has the aim of providing legal certainty, justice, and benefits, which in turn will maintain the orderliness of life in society. To achieve these three goals, the law that is applied must be effective in controlling people’s behavior. Legal effectiveness in action or legal reality can be known if someone states that a rule of law succeeds or fails to achieve its goals, then it is usually known whether
its influence succeeds in regulating certain attitudes or behaviors so that they are by their goals or not. Legal effectiveness means that legal effectiveness will be highlighted from the destination.

West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari can be said to be effective if the aims and objectives as formulated in Article 2 and Article 3 have been achieved, namely: as a guideline for regencies/cities in forming Nagari as government administrators based on Customary Law by statutory regulations, while The purpose of enacting this Regional Regulation is that Nagari, as a Genealogical and Historical Customary Law Community Unit, has boundaries within a certain area, has its assets, has the authority to regulate and manage the interests of the local community and elect or appoint its leaders, can organize government based on rights. Origin and Customary Law.

However, in reality, based on the results of research conducted in 4 (four) districts/cities, not one regency/city government has yet implemented the West Sumatra Regional Regulation on Nagari. In the absence of follow-up from the district/city, then West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is not effective in achieving its goals.

The ineffectiveness of the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari in terms of legal effectiveness theory due to the following factors:

a. The Perda factor itself

Based on the provisions of Article 5 d of Law Number 12 of 2011 concerning the Formation of Legislation as amended several times, most recently by Law no. 13 of 2022 concerning the Second Amendment to Law no. 12 of 2011 concerning Formation of Legislation, letter c states that the formation of Legislation must comply with the principle of conformity between types, hierarchies, and content material, which means “that in the Formation of Legislation, it is necessary to pay attention to the proper content material by the type and hierarchy of Legislative Regulations”.

Then in letter d it is stated: the formation of laws and regulations, including regional regulations must comply with the principle of “enforceability”. This principle emphasizes that any formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically. Thus, to fulfill the principle of “can be implemented”, then these three foundations must be fulfilled in the formation of laws and regulations.

Looking at the formulation of legal principles contained in the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari, the authors consider that the formation of the regional regulation is not in line with the provisions of higher legislation, namely Law no. 6 of 2014 concerning Villages and Permendagri No. 110 of 2016. This can be seen from the institutional composition which places KAN as a legislative body,(Aderibigbe, 2018) and the village head election system (head of the Nagari/wali Nagari).

KAN is a customary institution that has the main task and function to resolve Sako and Pusako disputes in Minangkabau. KAN is not a government administrative institution (State) so KAN does not have a source of authority from statutory regulations. On the one hand, Law No. 6 of 2014 concerning Villages and Permendagri No. 110 of 2016 concerning the Village Consultative Body
(BPD) has given authority to the BPD as a legislative body at the village level (Nagari), which has the following functions:

1) discuss and agree on the Draft Regional Regulation with the village head,
2) accommodate and channel the aspirations of the village community, and
3) supervise the performance of the village head.

Furthermore, related to the concept of democracy (election for the head of the Nagari) which is formulated in Article 7 paragraph (2) letter a West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari, which implements representative democracy (head of Nagari elected and appointed by KAN by deliberation for consensus) is contrary to Article 34 paragraph (1) of Law No. 6 of 2014 concerning Villages which states: the village head is elected by the villagers; paragraph (2) states: the election of village heads is direct, public, free, confidential, honest and fair.

Based on the formulation of this article, the Village Law has stipulated that the democracy held in the village/Na gari government is direct democracy. The choice of direct democracy at the village government level is the most suitable choice at this time, this is because the village/Nagari is the lowest area for the community to be able to directly participate in political contestation.

Apart from that, the grant to choose and appoint the Nagari Chief by way of deliberation and consensus to KAN will also lead to a conflict of authority between the BPD and KAN. The provisions of Article 32 of the Village Law stipulate that holding elections to the Village, starting from notification of the end of the village head’s term of office, and forming a village head election committee, is the authority granted by the Village Law to the BPD.

At the district/city level, this obstacle related to the substance of the law arose when there were no implementing regulations for West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. Febi said that the technical instructions from the province were not clear or did not yet exist, so we don’t know how we want to form an adat Nagari. There was socialization, only limited to describing the contents of regional regulations in general, the framework and technical guidelines for forming an adat Nagari were not socialized. we are still using Law 6 of 2014, in the field of the Nagari government it has not yet accommodated Regional Regulation No. 7 of 2018 said. In terms of technical guidelines, we don’t know, in terms of the rules, we don’t know what Perda 7 of 2018 means. No one here uses customary Nagari, so we don’t have derivative regulations, local wisdom doesn’t support follow-up.

Regional regulations entrust customary villages with regulations regarding traditional villages because the problem is that in these rules the leader is the Nagari ship and here the Nagari ship is synonymous with the chieftain, and in our opinion, the election of the shipping Nagari removes the element of democracy because it was chosen by KAN and appointed by KAN even though in terms of government we as Indonesian citizens have the right to run for village head. Financial sources and how to manage them if an adat Nagari is formed, what is certain is that we have already socialized it to the 74 Nagari in Solok district but have not been able to accommodate them. Returning to the adat Nagari is a bit of a hassle because the elements of democracy are limited, rather bound because those who sit in government are limited to adat stakeholders. We can follow up if the provincial government forms a pilot adat Nagari as a reference for districts to
form an adat Nagari. One of the obstacles was the creation of the Nagari customary court, what are the regulations? dare not all Nagari to write down what customary regulations are like to write down existing regulations in Minangkabau, if applying this regional regulation which customary regulations are to be used because the Nagari customary court was created, while in the Nagari there are different customs. In addition, there are no technical instructions from this regional regulation on how to form an adat Nagari, and what kind of framework is not explained in the regional regulation. One of the obstacles was the creation of the Nagari customary court, what are the regulations? dare not all Nagari to write down what customary regulations are like to write down existing regulations in Minangkabau, if applying this regional regulation which customary regulations are to be used because the Nagari customary court was created, while in the Nagari there are different customs. In addition, there are no technical instructions from this regional regulation on how to form an adat Nagari, and what kind of framework is not explained in the regional regulation.

In the science of Legislation, a rule has implementing rules, especially if the regulation only regulates in general. Although in practice not all Regional Regulations have implementing regulations, in the context of the Nagari Government contained in the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari, contains a policy directing Nagari that integrates administrative Nagari and Nagari in the customary context, so further or derivative regulations are needed as implementing provisions on how to technically integrate administrative Nagari and Nagari in the customary context. In the absence of implementing regulations, coupled with the lack of knowledge of regional officials about the Nagari in the adat context, the Perda Nagari is ineffective.

Based on the description above, it can be concluded that West Sumatra Regional Regulation No. 7 of 2018 concerns Nagari from a legal perspective, because the legal principles contained in the regional regulation are not in line with and conflict with higher laws and regulations.

b. Law enforcement factor

The factor of law enforcement in this context is not law enforcement in the (criminal) justice system, but what is meant by law enforcement here is the regency/city regional government as the implementer of West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari.

Disagreement with the policy concept promoted by the Government of West Sumatra through Regional Regulation No. 7 of 2018 concerning Nagari with Regency/City Governments, making law enforcement (implementation of law/Perda No. 7/2018) not implemented as expected. Based on the results of the research as described in the previous description, it appears that the district/city governments are reluctant to follow up with this by issuing Regency/City Perda
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The author sees that this factor has a close relationship with legal factors. As described above, that due to the legal principles contained in the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is inconsistent with and contrary to higher laws and regulations, so the district/city governments in West Sumatra consider that there is no obligation for them to establish a Nagari Perda which is adjusted to the provisions of West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari.

c. Facility Factor or Legal Facility

Supporting facilities and facilities are urgent matters that need to be procured by the Regency/City Government if the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is about to be implemented. In the theory of policy implementation, these facilities or facilities are also called resources. These facilities or facilities include skilled and competent human resources, good organization, finance, and so on.

The ineffectiveness of the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari to achieve its aims and objectives, due to the currently available legal facilities or facilities to support the implementation of this policy are not yet available. Among them:

First, not all Nagari in West Sumatra have KAN institutions. Since the concept of “babaliak ka Nagari” was promoted after the reform, the existence of KAN as the highest customary institution in the Nagari can be said to be far behind the development of the Nagari government, both in terms of institutions, facilities, and other resources. The current existence of KAN institutions in all villages in West Sumatra is uneven, meaning that not all Nagari have KAN institutions. This is due to village/Nagari structuring which continues to be carried out by the district/city government in the context of improving public services for the Nagari community.

In practice, there are still several Nagari in West Sumatra that have the same 1 (one) KAN institution, meaning that the KAN does not only have authority over 1 (one) Nagari but includes 2 Nagari or even more. If the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari is implemented, of course, it will have an impact on KAN’s authority to carry out legislative functions in several Nagari.

Second, there is no or no customary justice institution and its complete resources to carry out judicial functions. Referring to the understanding of the Nagari Customary Court which is formulated in Article 1 number 8 of the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari which states that the Nagari Customary Court or what is called by another name is a community dispute resolution institution in Nagari based on the palinka Nagari custom. In the elucidation section, the scope of the dispute referred to in this regulation is not explained. This means that the dispute in question is not only limited to Sako and pusako disputes but can also be interpreted as a dispute that occurs between the community and the government.

In the context of resolving disputes as referred to above, the Nagari government does not yet have facilities and infrastructure, and competent human resources who can resolve disputes that occur within the Nagari community. In
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addition, the formation of the Nagari customary court will also lead to a conflict of authority between the Nagari Adat Court and KAN and the state judiciary.

This is in line with what was conveyed by Andri, who said that the Tanah Datar village empowerment service had held discussions with Kerapatan Adat Nagari about the results of the meeting that many Nagari was not ready to have the implementation of the Adat Nagari government system. Because the implementing components that support the implementation of the Adat Nagari government are not in their proper state. For example, there is the incompleteness of the head of each clan.

d. Community Factors

The development of people’s civilization, especially in West Sumatra, has caused the community in Indonesia to no longer be homogeneous, but heterogeneous. The people of West Sumatra no longer only consist of the Minangkabau people but have mixed with people from various regions in Indonesia such as Java, North Sumatra, and so on.

Even in several Nagari (transmigration areas) in West Sumatra, the people are more dominated by people who are not native to Minangkabau. Under such social conditions, it is certainly possible to implement the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari because people who are not from the Minangkabau community do not have knowledge of Minangkabau customs and also cannot act as stakeholders in Minangkabau customs.

e. Cultural Factors

Culture is a plural development of cultivation, which means the power of the mind. However, in the study of Anthropology, culture is considered an abbreviation of culture, there is no difference from the definition.

Minangkabau Cultural Values are values that are agreed upon and embedded in Minangkabau society, organizational scope, and Minangkabau community environment, which are rooted in habits, beliefs, and symbols with certain characteristics that can be distinguished from one another as a reference for behavior and an assessment of what is will happen or is happening.

Indeed, philosophically the Minangkabau people make Islam the basis/foundation for carrying out customary rules in their daily lives. After going through assimilation, the syara’ laws were placed in the most honorable place as a reference to customary law, that is the acknowledgment stating the customary using syara’ mangato, then outlined in the declaration of the alim ulama and link mamak in the early 18th century which is known as the Bukik Marapalam Charter, namely: adat based share, share-based Kitabullah.

Along with the movement of change, Minangkabau culture has also experienced development and modernization. The development of the culture of the Minangkabau people is directly proportional to human civilization, from time to time it always changes. This change occurs because of the community factor that wants cultural change, or because of the entry of elements of globalization into culture. Indeed, it is the nature of nature that a value will change, it will always move from one point to another, sometimes moving far from its origin, rotating around the starting point, and not infrequently returning to its origin. Such is the law that applies to cultural values.

In terms of governance, the culture of administering the Nagari government has undergone very rapid changes and developments compared to the
administration of governance based on customary law. Along with the demands of a rule of law, legal certainty, transparency, and accountability in the administration of the Nagari government, the administration of the Nagari government has developed into an administrative government that provides more legal certainty for all relevant stakeholders.

The author realizes that the West Sumatra government’s efforts to integrate traditional institutions and the Nagari government (administrative) as organizers of the Nagari government have been constitutionally protected and guaranteed, but it should also be underlined that Minangkabau culture is not inanimate, it always develops with the times. This development and change itself is justified in the Minangkabau culture itself. This can be seen from the Minang proverb which says “once aia gadang, once tapiah barubah”. This proverb gives us an understanding that cultural change in the administration of the Nagari is something that is permitted by Minangkabau culture.

CONCLUSION
Implementers (district/city government) do not have a good response to the policy concept stipulated by West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari. The constraints of the District Government in West Sumatra in following up on the Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari are due to the following factors: because the legal principles contained in the Perda are not in harmony and conflict with higher laws and regulations. Disagreement with the policy concept promoted by the Government of West Sumatra through Regional Regulation No. 7 of 2018 concerning Nagari with Regency/City Governments, making law enforcement (implementation of law/Perda No. 7/2018) not implemented, Legal means or facilities currently available to support the implementation of this policy are not yet available. Among them: not all Nagari have KAN institutions and there is no or no customary justice institution along with the completeness of its resources to carry out judicial functions. The development of people’s civilization, especially in West Sumatra, has caused the community in Indonesia to no longer be homogeneous, but heterogeneous. Under such social conditions, it is certainly not possible to implement the West Sumatra Regional Regulation No. 7 of 2018 concerning Nagari because people who are not from the Minangkabau community do not have knowledge of Minangkabau customs and also cannot act as stakeholders in Minangkabau customs, In governance.

REFERENCES


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