



## **ANALYSIS OF SIYASAH DUSTURIAH ON THE FORMATION OF NAGARI REGULATIONS: A STUDY IN NAGARI PAGARUYUNG**

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**Abstract:** The main problem in this article is the authority of the *Wali Nagari* in establishing *Nagari* Regulations in Nagari Pagaruyung based on Tanah Datar Regent Regulation Number 10 of 2021 concerning Technical Guidelines for *Nagari* Regulations and the inhibiting factors for the *Wali Nagari* in carrying out the function of establishing *Nagari* Regulations in Nagari Pagaruyung. The aim of this research is to explain, analyze, and determine the authority of the Nagari Wali in establishing Nagari Regulations as well as the factors inhibiting the *Wali Nagari* in carrying out the function of establishing regulations in Nagari Pagaruyung. The type of research that the author uses is empirical juridical research, which was carried out in Nagari Pagaruyung. From the research conducted by the author, it can be concluded that the *Nagari* Pagaruyung Government has not fully implemented the articles explaining the mechanism for forming Nagari Regulations and lacks coordination with the authorized institutions in forming Nagari Regulations. Additionally, the efficiency of the time used and the low level of apparatus resources are also issues. The Nagari Government's understanding of the mechanism for establishing Nagari Regulations, and the absence of experts or researchers who can provide education, is an inhibiting factor for the Nagari Guardians in carrying out their function in establishing regulations in Nagari Pagaruyung.

**Keywords:** Nagari Regulation, mechanism

### **Introduction**

Tanah Datar Regent Regulation Number 10 of 2021 Amendment to Tanah Datar Regent Regulation Number 52 of 2016 concerning Technical Guidelines for Regulations in Nagari (hereinafter referred to as Tanah Datar Regent Regulation Number 10 of 2021) is a legislative regulation issued by the Regent of Tanah Datar as technical guidelines for the formation of regulations in Nagari. The author intends to examine the mechanism of forming Nagari regulations in Nagari Pagaruyung based on Tanah Datar Regent Regulation Number 10 of 2021. One of the tasks of the Wali Nagari (Village Head) is to establish Nagari regulations. There are four types of regulations: Nagari Regulations, Wali Nagari Regulations, joint regulations of the Wali Nagari, and BPRN (Nagari Consultative Body) regulations. The draft Nagari Regulation of Pagaruyung concerning the prevention of societal diseases and immoral acts falls into one of the types of regulations, namely Nagari regulations, as explained in Article 98 of the Tanah Datar Regency Regulation Number 4 of 2008 concerning Nagari. These regulations are made and established by the Wali Nagari in collaboration with the BPRN or the Nagari Deliberation Body (BAMUS), which consists of elements from other institutions such as the Nagari Customary Council (KAN), intellectuals, community elders, youth, and the general public. The mechanism for forming Nagari

regulations in Nagari Pagaruyung is guided by Tanah Datar Regent Regulation Number 10 of 2021 concerning Technical Guidelines for Regulations in Nagari. The author found that the Government of Nagari Pagaruyung has not yet implemented the formation of Nagari regulations in accordance with the prevailing provisions. The Government of Nagari Pagaruyung does not fully understand the mechanism for forming Nagari regulations. In consulting on the draft Nagari regulations, the Government of Nagari Pagaruyung has consulted with institutions that do not follow the guidelines outlined in Tanah Datar Regent Regulation Number 10 of 2021, where the Government of Nagari Pagaruyung coordinates with the Tanah Datar District Attorney's Office. However, in this case, the Wali Nagari of Pagaruyung can consult the Regent through the sub-district head, accompanied by notes on issues, to obtain an evaluation of the draft regulation. The author also found factors that have hindered the establishment of the Nagari Pagaruyung Regulation on the prevention of societal diseases and immoral acts. This has resulted in the draft Nagari Pagaruyung Regulation not yet being established as a generally applicable Nagari regulation.

Research on the mechanism for forming Nagari regulations has previously been conducted by Fitri Yani from Andalas University Padang. However, the earlier research focused more on the mechanism and implementation of the formation of Nagari Regulation Number 3 of 2021 in Taluk concerning the Prevention and Eradication of Societal Diseases and Immoral Acts based on the Minister of Home Affairs Regulation Number 111 of 2014 on Technical Guidelines for Regulations in Villages. Furthermore, previous research by Roni Efendi, Hebby Rahmatul Utamy, and Afdi Bima titled "Techniques for Formation of Nagari Rules in Nagari Tuo Pariangan" focused more on the process of forming Nagari Regulations in Pariangan which must be based on the provisions and principles of forming laws and regulations. The Pariangan Nagari Regulations refer to Tanah Datar Regent Regulation Number 10 of 2021 on Technical Guidelines for Regulations in Nagari.

What is interesting for the author to research in this writing is to fill the gap in the study of how the mechanism for forming Nagari Regulations in Nagari Pagaruyung is based on Tanah Datar Regent Regulation Number 10 of 2021 on Technical Guidelines for Regulations in Nagari. Whether it is in accordance with the applicable guidelines and the inhibiting factors for the Wali Nagari in carrying out the function of establishing Nagari Regulations in Nagari Pagaruyung, as well as the inhibiting factors for the Wali Nagari in establishing regulations in Nagari Pagaruyung.

The Nagari Pagaruyung Government, in forming Nagari regulations, has not yet fully implemented the applicable provisions. This study is important to conduct considering that the Nagari Pagaruyung Government has not fully understood the mechanism for forming Nagari regulations. In consulting on the draft Nagari regulation, the Nagari Pagaruyung Government conducted consultations with institutions that did not follow the instructions outlined in Tanah Datar Regent Regulation Number 10 of 2021 on Technical Guidelines for Regulations in Nagari, where the Nagari Pagaruyung government coordinated with the Tanah Datar District Attorney's Office. However, in this case, the Wali Nagari of Pagaruyung can consult the Regent through the sub-district head with notes on issues to get an evaluation of the draft Nagari regulation. There are factors that have become obstacles to the enactment of the Nagari Pagaruyung Regulation on the prevention of societal diseases and immoral acts. This has resulted in the draft Nagari regulation of Pagaruyung not yet being established as a generally applicable Nagari regulation

## Method

This research is categorized as empirical juridical research, a method involving the review of real conditions, namely identifying facts related to the issue and identifying existing laws that influence its success (Kornelius Benuf, 2022, p. 28). These facts are obtained from relevant sources, such as Tanah Datar Regent Regulation Number 10 of 2021 on Technical Guidelines for Regulations in Nagari. The study was conducted on the Wali Nagari of Pagaruyung, BPRN Pagaruyung, and the Chairperson of the Community Empowerment Institution (LPM) of Pagaruyung Nagari. Data collection techniques included interviews, documentation, and observation to uncover these facts. The author will then explain the research findings using an empirical and normative qualitative approach with a method that ensures data triangulation validity.

## Results and Discussion

### The View on Nagari

As a foundation for the strength of the problem to be examined, it is necessary to review literature data by searching for theories that will be used as a basis in the study: First, legal theory. Law (*gezets*) is the basis and limit for government activities that guarantee that state demands are based on law that can be predicted based on rules and legal certainty. According to Peter Badura's opinion, in constitutional law, laws are products made by the President and the House of Representatives in order to govern the state (Syamsuddin, 2013, p. 18). Legislation is part of the legal system and encompasses all laws in a broad sense made by authorized officials and written (Moh. Mahfud MD, 2009, p. 255).

Second, Nagari Regulations in legislation. Nagari regulations are legal instruments for the administration of the nagari, thus nagari regulations function to administer governance in terms of the nagari's authority to regulate, implement, and administer village autonomy. Local regulations are legal instruments of nagari governance used by the nagari administration to administer nagari governance. Local regulations are used to regulate village autonomy. As long as the regulations established or made by higher legislation. The stages of establishing nagari regulations begin with planning, discussion, determination, promulgation, dissemination, and evaluation.

Third, the concept of nagari government. Nagari comes from the Sanskrit word "Nagara" brought by the Hindu people who settled in the midst of the Minangkabau community in central West Sumatra during the Hindu era. This is perhaps because the Hindu people (foreign people) made divisions of the nagari and formed small tribes that functioned as self-governing states (Dt. Sanggono Diradjo, Ibrahim, 2009, p. 89). In addition, nagari is a larger unit of family than tribe, usually consisting of more than four tribes, namely a large family line of descent from several paruik (Soeroto, 2005, p. 52). Fourth, *Siyasah Dusturiyah* is part of *siyasah fiqh* that discusses state legislation. *Siyasah Dusturiyah* also examines, among other things, the concept of constitution (state basic law and the history of the birth of state legislation), legislation (how to formulate laws), democratic institutions and consultation which are important pillars in the said law. In this case, it also discusses the concept of a legal state in *siyasah* and the reciprocal relationship between government and community and the rights of the community that must be protected (Iqbal, M., 2014, p. 177).

It is concluded that the term *dusturiyah* is a norm of legislative regulations that become the basis so that it is used as the main reference in all rules regarding governance to be in line with the values of sharia. Thus, all legislation should refer to its constitution in each country reflected in the values of Islam and Sharia laws which have been explained by the Qur'an and the Sunnah of the Prophet, both in terms of creed, morals, worship, transactions, and others. Thus, *Siyasah Dusturiyah* is part of *siyasah fiqh* that discusses state legislation to be in line with the

## **The mechanism for forming Nagari Regulations in Nagari Pagaruyung is based on Regent Regulation of Tanah Datar Number 10 of 2021 concerning Technical Guidelines for Regulations in Nagari**

Nagari Pagaruyung is a nagari located in Tanjung Emas District, Tanah Datar Regency. Nagari Pagaruyung has an institution called the Nagari Government to organize and execute its authorities in accordance with the Indonesian governance system. In administering the government system, nagari is led by a Wali Nagari and assisted by nagari officials along with the BPRN. The Government of Nagari Pagaruyung is responsible for carrying out all governmental affairs and community interests in Nagari Pagaruyung. In 2020, the Government of Nagari Pagaruyung, together with the BPRN, drafted Nagari Regulations on the Prevention of Social Diseases and Immoral Acts; however, to date, this draft of Nagari Regulations has not been enacted.

From the interview conducted on January 10, 2024, at the Office of Wali Nagari Pagaruyung, where I met with Mr. Irmaidinal Dt. Mogeek as the Wali Nagari of Pagaruyung Nagari, along with several other informants such as BPRN Pagaruyung and the Chairman of the Community Empowerment Institution (LPM) of Pagaruyung Nagari, I obtained information regarding the mechanism for forming Nagari Regulations in Pagaruyung Nagari based on Tanah Datar Regent Regulation Number 10 of 2021 concerning the Technical Guidelines for Regulations in Nagari, as well as the inhibiting factors faced by the Wali Nagari in fulfilling his role of establishing Nagari Regulations in Pagaruyung Nagari.

In the formation of Nagari regulations, the discussion stages outlined in Tanah Datar Regent Regulation Number 10 of 2021 concerning the Technical Guidelines for Regulations in Nagari, Article 25, explain that the draft Nagari regulation as referred to in paragraph (1) can be submitted by the Wali Nagari to the Regent through the District Head, accompanied by notes on unresolved issues no later than 7 (seven) days after the last discussion forum to obtain evaluation and guidance. The follow-up evaluation and guidance as mentioned in paragraph (2) may involve either discontinuing the discussion or providing guidance for further discussion and agreement on the draft Nagari Regulation.

The draft Nagari Regulation on prevention of moral misconduct prepared by the Wali Nagari together with BPRN is the only draft created by the Pagaruyung Nagari Government aimed at regulating community life. This initiative represents a change undertaken by the Nagari Government to pay attention to the community or anak nagari (citizens) in organizing a safer, more peaceful, and harmonious communal life. This governmental attention must be formalized in the form of a regulation. Therefore, the Pagaruyung Nagari Government has drafted Nagari regulations concerning prevention of moral misconduct.

However, in the mechanism of forming Nagari regulations regarding public health and prevention of moral misconduct, it has not been optimally implemented. In Tanah Datar Regent Regulation Number 10 of 2021 concerning the Technical Guidelines for Regulations in Nagari, the detailed stages of Nagari regulation formation have been explained, which serve as guidelines for the Nagari government in creating Nagari Regulations as follows:

No	Steps	Implementation
1.	Planning	In the formation of the Nagari Regulation, it is first done based on a proposal from BPRN which considers that the issue must be addressed immediately by forming a binding rule for the community. Based on this thought, BPRN created a draft of a Nagari Regulation which was approved by the Nagari Government to be followed up. The planning for the preparation of the draft Nagari Pagaruyung regulation on social diseases and the prevention of immoral acts was carried out in 2018. (implemented)

2.	Drafting	The Nagari Government and BPRN collaborated to create a draft Nagari Regulation and formed a Drafting Team appointed by the decision of the Wali Nagari to regulate the behavior of the Nagari community. This draft was prepared in the form of an academic manuscript in 2020. (implemented)
3.	Discussion	The Nagari Government and BPRN discussed the formation of the Nagari Regulation to further discuss the material to be regulated to make it more perfect, after being discussed with the community and receiving input or suggestions to be used as Nagari Regulations. However, during the discussion process, the Nagari Pagaruyung government has not yet coordinated with the institution that has the authority in the guidelines for the formation of Nagari regulations. (not implemented)
4.	Enactment	The enactment of the Nagari Regulation is carried out by the Nagari Secretary to be immediately promulgated and become a Nagari regulation that applies in the Nagari. The purpose of this enactment is to create orderly living in the community. (not implemented)
5.	Promulgation	The Nagari Secretary also conducts the promulgation of the Nagari Regulation by including the draft regulation into the Nagari Gazette. After being promulgated, it becomes valid and has binding legal force. (not implemented)
6.	Dissemination	The dissemination of the Nagari Regulation carried out by the Nagari Government together with BPRN is to inform the community that the Nagari regulation is in effect and must be obeyed and will receive sanctions for those who violate it. (not implemented)
7.	Evaluation	The evaluation stage in the formation of the Nagari Regulation is given to the Regent. The evaluation is carried out to ensure that the draft Nagari Regulation that has been formed complies with the procedures for establishing Nagari Regulations according to the needs of the Nagari. (not implemented)
8.	Clarification	The clarification stage in the formation of the Nagari Regulation to the Regent is already in accordance with the public interest and does not conflict with higher legislation. (not implemented)

The Nagari government has made efforts to create order within the community and has involved various institutions and elements to gather input for a draft Nagari Regulation. This draft is based on the mechanism for forming Nagari Regulations as outlined in the Tanah Datar Regent Regulation No. 10 of 2021 concerning Technical Guidelines for Regulations in Nagari, Article 14, paragraph (2), which explains that community institutions, customary institutions, and other elements in Nagari can provide input to the Nagari Government and/or BPRN for the preparation of the Nagari Regulation draft. The planning stage for the formation of the Nagari regulation has proceeded well. The next stage is the drafting of the Nagari Regulation. The Nagari Government and BPRN worked together to create a draft Nagari Regulation and formed a Drafting Team

appointed by the decision of the Wali Nagari to regulate the behavior of the Nagari community. This draft was prepared in the form of an academic manuscript.

In the mechanism for the formation of the Pagaruyung Nagari regulations, the Nagari Government has formed a Drafting Team consisting of the Wali Nagari, the Nagari Secretary, Nagari officials, and relevant elements. The draft Nagari regulation can then be consulted with the community to obtain input on the substance of the regulation. However, not all community institutions were involved in the formation of the Nagari Regulation. In this regard, community aspirations are crucial to avoid misuse of power by officials.

In the formation of Nagari regulations, the discussion stage as stated in the Tanah Datar Regulation No. 10 of 2021 concerning Technical Guidelines for Regulations in Nagari, Article 25, explains that the draft Nagari regulation referred to in paragraph (1) can be submitted by the Wali Nagari to the Regent through the Sub-district Head, accompanied by notes on unresolved issues no later than 7 (seven) days from the last discussion meeting for evaluation and guidance. Follow-up evaluation and guidance, as referred to in paragraph (2), can take the form of termination of discussion or guidance for further discussion and agreement on the draft Nagari Regulation.

The draft Nagari Regulation can be proposed by the Wali Nagari to the Regent through the Sub-district Head, accompanied by notes on unresolved issues for evaluation. The draft Nagari Regulation on social diseases and immoral acts, prepared by the Wali Nagari together with BPRN, is the only draft created by the Pagaruyung Nagari Government to regulate community life. This initiative by the Pagaruyung Nagari Government represents a change to focus on community well-being, aiming to create a safer, more peaceful, and harmonious life. This attention from the Nagari Government needs to be formalized in the form of a regulation. Therefore, the Pagaruyung Nagari Government has created a draft Nagari regulation on social diseases and the prevention of immoral acts.

However, the mechanism for forming the Nagari regulation on social diseases and the prevention of immoral acts has not been optimally implemented. The Tanah Datar Regulation No. 10 of 2021 concerning Technical Guidelines for Regulations in Nagari has clearly explained the stages of forming Nagari regulations, serving as a guideline for the Nagari government in making Nagari Regulations. The coordination undertaken by the Nagari government has not been aligned with the guidelines for forming Nagari regulations used by the Pagaruyung Nagari government, namely the Tanah Datar Regent Regulation No. 10 of 2021 concerning Technical Guidelines for Regulations in Nagari. The Nagari government consulted parties whose authority in the formation of Nagari Regulations was not clearly defined, leading to delays in establishing the Nagari regulation. The Pagaruyung Nagari community urgently needs the Nagari regulation on social diseases and the prevention of immoral acts because the Wali Nagari, as the lowest government authority at the regional level, has the power to make Nagari regulations.

### **The Inhibiting Factors for the Wali Nagari in Carrying Out the Function of Establishing Nagari Regulations in Nagari Pagaruyung**

Therefore, the trust placed by the community in the Wali Nagari and his team becomes the determining factor for the quality of the governance system. Hence, there is a need for competent personnel within the Nagari government. The low quality of human resources among Nagari Government officials in the mechanism of forming Nagari Regulations has been a hindering factor for the establishment of the Pagaruyung Nagari Regulation concerning societal diseases. The Pagaruyung Nagari government should coordinate this draft regulation with the institutions that have the authority according to the guidelines used in the formation of Nagari regulations. The human resources required in the formation of Nagari regulations significantly impact the process of creating these regulations. There are several obstacles in the formation of Nagari Regulations in Nagari Pagaruyung, including:

**Time Efficiency Used:** In exercising the authority of the Nagari Government, the Wali Nagari together with the BPRN (Nagari Representative Body) have been working on the draft Nagari Regulation concerning the prevention of societal diseases and immoral acts since 2018, with the

drafting phase extending to 2020. The long duration indicates that the formation of the Nagari Regulation on the prevention of societal diseases and immoral acts has not been a priority for the Nagari Government, as other matters took precedence. Additionally, the COVID-19 pandemic created conditions that made it impossible to continue to the drafting stage of the Nagari Regulation on the prevention of societal diseases and immoral acts, leading to the continuation of the drafting phase in 2020. Subsequently, during an interview with a member of the BPRN Pagaruyung, it was mentioned that the draft Nagari Regulation on the prevention of societal diseases and immoral acts had been discussed in an internal meeting in 2018 but was halted due to the Nagari Government's busy schedule with other governmental affairs. This delayed the planning of the Nagari Regulation to the drafting phase in 2020. The time efficiency in forming the Nagari Regulation on the prevention of societal diseases and immoral acts has not been effectively utilized, with the COVID-19 pandemic being an additional hindrance in the process.

**Lack of Understanding of the Procedures for Forming Nagari Regulations:** The Nagari Government of Pagaruyung needs to understand the procedures for forming Nagari Regulations. The Wali Nagari Pagaruyung, along with the BPRN and the drafting team, must know the procedures and which institutions to coordinate with in forming Nagari Regulations. If they do not understand these procedures, the regulation cannot be established and will not be applicable. During interviews with the Wali Nagari Pagaruyung and the BPRN, it was mentioned that the draft Nagari Regulation on the prevention of societal diseases and immoral acts had been coordinated with the Tanah Datar District Attorney's Office for evaluation. This indicates that the Nagari Government of Pagaruyung did not understand the procedures for forming Nagari Regulations. According to the Tanah Datar Regent Regulation No. 10 of 2021 on Technical Guidelines for Nagari Regulations, Article 25, paragraph (2), it is explained that the draft Nagari Regulation can be submitted by the Wali Nagari to the Regent through the Camat. Due to the limited knowledge of the Wali Nagari, the BPRN, and the drafting team in understanding the mechanism of forming Nagari Regulations, the draft Nagari Regulation was incorrectly coordinated with an institution that does not have the authority in forming Nagari regulations. This should have been discussed with the Regent, and thus, to date, the draft Nagari Regulation on the prevention of societal diseases and immoral acts has not been established.

**Absence of Experts or Researchers:** The drafting phase of Nagari regulations in Pagaruyung Nagari can invite researchers and/or experts as needed from universities or legal consultants. However, in the formation of Nagari regulations in Pagaruyung Nagari, experts or researchers in the field of Nagari regulation formation have not yet been involved. The presence of experts and researchers has not been facilitated by the Pagaruyung Nagari Government due to budget constraints. Inviting experts or researchers could provide education or technical guidance to the Wali Nagari, the BPRN, and the drafting team about the formation mechanism and the procedures to be followed, as well as with which institutions they can coordinate. The presence of experts and researchers could help the Wali Nagari, the BPRN, and the drafting team understand the essential content that must be included in a regulation and the mechanism of forming Nagari regulations. However, in the formation of the Nagari regulation on the prevention of societal diseases and immoral acts, the Pagaruyung Nagari Government has not yet involved experts or researchers.

## Conclusion

Based on the above discussion, the conclusions that can be drawn from this research are as follows:

1. **The Role of the Wali Nagari in Governance and Regulation:** The Wali Nagari has the duty to administer governmental affairs. In performing their duties and exercising their authority in establishing nagari regulations, the Wali Nagari, together with the BPRN (Nagari Representative Body), proposes and establishes nagari regulations. Therefore, the mechanism for forming nagari regulations also falls under the category of legislative regulations, meaning that their formation must comply with the applicable provisions, one

of which refers to the Tanah Datar Regent Regulation No. 10 of 2021 on Technical Guidelines for Regulations in Nagari. The stages involved in forming nagari regulations include planning, drafting, discussion, enactment, promulgation, dissemination, and evaluation. The Pagaruyung Nagari Government only issues legal products in the form of nagari regulations related to the Nagari Budget Revenue and Expenditure Regulation, the Nagari Accountability Report, the Nagari Government Work Plan, and Amendments to the Nagari Budget Revenue and Expenditure Regulation.

2. **Factors Hindering the Wali Nagari in Establishing Nagari Regulations:** The factors that hinder the Wali Nagari in performing their function of establishing Nagari Regulations in Nagari Pagaruyung include:
  - o **Time Efficiency:** The time used for forming the Nagari Regulations has not been utilized effectively.
  - o **Lack of Understanding of the Procedures:** There is a lack of understanding of the procedures for forming Nagari Regulations.
  - o **Absence of Experts and Researchers:** The Nagari Government has not employed experts or researchers in the mechanism for forming Nagari Regulations.

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