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The Position of Nagari Customary Density as a Customary Institution in the event of a State Administrative Dispute in West Sumatra

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Abstract

Density Adat Nagari as the highest customary deliberative institution can resolve the problem of sako and pusako so that in its resolution Kerapatan Adat Nagari can become a judge or mediator and can issue a decision letter for the dispute submitted to him in a peaceful manner. Therefore, there were 2 (two) cases of the issuance of Decree issued by Kerapatan Adat Nagari Guguk VIII Koto and Kerapatan Adat Nagari Sungai Patai regarding sako, which was then submitted by the aggrieved party to the State Administrative Court against the same case with the result. a different verdict. In the research, the writer used normative juridical approach as the main approach and empirical juridical approach as a supporting approach and was descriptive analytical in nature. From the results of this study it is known that: 1) The authority of Nagari Adat Density in the appointment of the leader is as the Committee for Appointment of Pengulu to validate / legalize the title / sako of the chief who is appointed from the clan so that the title / sako of the chief is recognized by the Nagari 2) Position the Nagari Customary Density which is formed in West Sumatra Regional Regulation No. 13 of 1983 is a State Administration Agency / Officer, whereas today the Nagari Adat is not a State Administration Agency / Officer. 3) Consideration of Administrative Court Judges in examining & adjudicating the Nagari Adat Decree in case No. 327 K / TUN / 1996 considerations to grant the Plaintiff's claim because Kerapatan Adat Nagari is classified as a State Administration Agency / Officer and the Panel of Judges considers the Decree after being issued by Kerapatan Adat Nagari while in Case No. 3 / G / 2017 / PTUN.PDG in the consideration of the Lawsuit is not accepted by considering the process before the Decree is issued by Kerapatan Adat Nagari without further considering the position of Kerapatan Adat Nagari as State Administrative Body / Officer.

Keywords: Legal Certainty, Mortgage, Building Use Rights.

Introduction

In general, customary law has a traditional character, which is hereditary from the days of the ancestors to the present-day children and grandchildren whose existence is still valid and maintained by the indigenous peoples concerned, including for those who have disputes in the customary community, customary law is used to resolve strife.

Position of Nagari Customary Density as a Customary Institution In the event of a State Administrative Dispute in West Sumatra

According to H. Hilman Hadikusuma, in settling customary law disputes, usually prioritizes deliberation and consensus both within the family, kinship, neighborliness, starting a job or ending a job, let alone a judicial nature in completing work between one another, prioritizing a way of settlement harmonious and peaceful by deliberation and consensus, by forgiving each other not only by rushing the dispute directly brought or conveyed to the state court;¹

Deliberation and consensus in dispute resolution is usually preceded by the spirit of good faith, fairness and wisdom from someone who can be trusted as a case broker or enthusiasm for customary deliberation. The mediator is carried out by a customary judge or other names applicable to local customs in the territory of Indonesia. However, the author specializes in researching the existing customs in the Minangkabau community. According to Datoeh Toeah Payakumbuh, a Minangkabau traditional figure, previously the verdicts carried out by Minangkabau traditional judges were carried out without being written down, even customary laws were not written only by word of mouth but in practice today it is called no execution. who forgot to accept it.²

Minangkabau customary habits when a case occurs in the customary field must first be resolved by the ruler of a stomach in the tribes of the two parties according to a customary saying: tangled up is resolved, muddy is overwritten. In a customary case, the settlement that is prioritized by the indigenous community is by way of peace. If peace does not materialize between the two parties, the case is continued to be known by many people by weighing it at the customary hall (where the trial is held) by the Nagari Adat Council which consists of tribal leaders, manti, dubalang as well as elders and cunning smart.³

Density of Nagari Adat can also be referred to as Nagari customary government according to Guyt, customary density means the entire density of a Nagari, from pulmonary density to the highest density. In Yuriprudensi, adat density has another meaning, namely the density of the tribes that govern one Nagari which from a long time ago have organized autonomy according to custom in one Nagari. The customary density has different names in each place, for example, in the Padang area it is called the density of the ninik mamak nan eight tribes, while in Sungajang the name is meeting datuak nan sixteen;⁴

Nagari's customary density in resolving customary disputes that exist in the Minangkabau community before being submitted to the customary density adhering to the Bajaranj Naik Batanggo Turun system, which must be resolved first by the closest, namely the head of inheritance who is in the community, if not resolved, then proceed to the existing Penghulu who is in a new tribe The last one was tried in the adat hall by Kerapatan Adat Nagari. So that the Nagari Adat Density can be said to be the highest settlement of customary disputes in resolving disputes. It can also be said that Kerapatan Adat Nagari is a customary judicial institution because it can prosecute and resolve cases related to adat.

Position of Nagari Customary Density in Indonesian Government according to Musyair Zainuddin as a companion to Wali Nagari (angku palo)⁵. Judging from this definition, it can be said that the Nagari Adat Density is parallel to the Wali Nagari, where Nagari is the lowest element of Government related to Indonesian Government affairs while the Adat Density is a government element related to customary affairs. However, since the enactment of Law of the Republic of

¹Hilman Hadikusuma, Introduction to Indonesian Customary Law, Mondar Maju, Bandung, 1992, p. 38.

²See, Datoek Toeh Payakumbuh, Tambo Alam Minangkabau., CV. Pustaka Indonesia, Bukittinggi, Without the Year of publication, p. 277

³See, Ibid, p. 297

⁴Iskandar Kemal "Nagari Government in Minangkabau & Its Development A Review of Adat Density", second edition, Graha Ilmu, Yogyakarta, 2009, p. 135.

⁵See, Musyair Zainuddin, Rise of Batang Tarandam: Adat Salingka Nagari in Minangkabau, Ombak, Yogyakarta, 2011, p. 122.

Indonesia Number 5 of 1979 concerning Village Government, which states that Nagari is no longer Nagari but replaced by Village, as confirmed in the transitional rules of Article 35 paragraph (1) of Law of the Republic of Indonesia Number 5 of 1979 states:

"Villages or other names that are at the same level as existing Villages at the time this Law comes into force are declared as Villages according to Article 1 letter a".

Article 1 letter a is the definition of Village:

"A village is an area occupied by a number of residents as a community unit including a legal community unit which has the lowest government organization under the sub-district head and has the right to manage its own household within the ties of the Unitary State of the Republic of Indonesia".

Today Nagari can also be referred to as a traditional village or any other name based on Article 1 paragraph (1) of Law of the Republic of Indonesia Number 6 of 2014 concerning Villages which states:

"Village is a village and customary Village or what is referred to by other names, hereinafter referred to as Desa, is a legal community unit which has territorial boundaries which is authorized to regulate and administer government affairs, the interests of the local community based on community initiative, rights of origin, and / or traditional rights. recognized and respected in the government system of the Unitary State of the Republic of Indonesia".

However, before Nagari was recognized until today, Law of the Republic of Indonesia Number 5 of 1979 concerning Village Administration did not explain the position of Nagari, so seeing the transitional rules, Nagari no longer applies in the territory of the Republic of Indonesia because a Law on Village Government has been made and is a law. positive in writing so that the West Sumatra Regional Government is obliged to implement the regulation of the Law.

With the change of Nagari to Village, the Nagari Density in the West Sumatra region became non-existent because there were not specifically recognized regulations regarding the existence of adat density. In the Village Government Law Article 2 paragraphs (2) and (3) instructs the Minister of Home Affairs to make implementing regulations so that they can be guided by the regions in charge of them, namely the first level regions so that the Minister of Home Affairs issued Regulation of the Minister of Home Affairs Number 4 of 1981 concerning the establishment of , solving, unifying and abolishing Villages, in the closing provisions of Article 8 states "The provisions referred to in this regulation serve as guidelines for the formulation of Level I Regional Regulations concerning the formation, division, unification and abolition of Villages".

So that in the same year the Regional Government of West Sumatra Province issued West Sumatra Provincial Regulation Number 7 of 1981 concerning the Formation, Solving, Unification and Abolition of Villages in West Sumatra Province, in this Perda Nagari which had long existed in the Minangkabau indigenous community was again recognized. but only to the extent that customary law community units cannot run the Government like a Village Government, it can be seen in the Closing provisions of Article 8 paragraph (2) in this Perda which states:

"The position of Nagari in the future as a customary law community unit will continue to be recognized and will be regulated by the Regional Regulation of the West Sumatra Provincial Region".

Then on these instructions the West Sumatra Province issued the West Sumatra Provincial Regulation Number 13 Year 1983 concerning Nagari as a customary law community unit in the West Sumatra province level I or it can be referred to as Nagari Regulation in West Sumatra (Article 17

paragraph 2 Number 13 1983) this can be seen in the Nagari Regulation in West Sumatra (Regional Regulation Number 13 of 1983) Article 2 states:

"With the stipulation of Jorong to become a village and or sub-district based on Law no. 5 of 1979, Nagari no longer has the position of the lowest government unit in the province of West Sumatra, but is merely a unit of indigenous peoples.

Regarding Nagari Regulation in West Sumatra (Perda No. 13 of 1983) this does not make Nagari in the lowest level of Government in Indonesian Government affairs, but merely a customary community unit that exists in district and municipal governments so that in 1983 both districts / municipalities existed inside it is a nagari. In running a customary law community unit, Nagari is given the functions listed in Article 3 of the Nagari Regulations in West Sumatra with the following functions:

- a. Assist the Government in striving for the smooth implementation of development in all fields, especially in the social and cultural fields;
- b. Taking care of customary law and customs affairs in Nagari;
- c. To give a legal position according to customary law on matters relating to the assets of the Nagari community in the interests of customary civil relations as well in the event of a dispute or customary civil case;
- d. Organizing the guidance and development of Minangkabau customary values, in order to enrich, preserve and develop national culture in general and Minangkabau culture in particular.
- e. Maintain, maintain and utilize Nagari wealth for the welfare of the Nagari community;

This function is based on the provisions of Article 3 paragraph (2) in the Nagari Regulation carried out by Nagari Adat Density based on the principles of deliberation and consensus according to the flow and is appropriate as long as it does not conflict with the custom of basandi syarak, syarak basandi Kitabullah for the interests of order, peace and welfare of the Nagari people.⁶

Nagari Adat Density has been made in writing in carrying out traditional functions to help Nagari as a customary law community unit, so we are not surprised that Nagari Adat Density exists in villages and also in kelurahan in helping Nagari carry out these traditional functions. Nagari customary density which was previously parallel to Nagari before being converted into a village, in the Nagari Regulation Kerapatan Adat Nagari is an organization that exists in a Nagari in Article 7 paragraph (1) letters a to g, Kerapatan Adat Nagari has the following duties:

- a. Take care and manage matters related to adat in connection with the sako and pusako;
- b. Resolving customary and customary civil cases;
- c. Strive for peace and give legal force to members of the community who are in dispute and give legal force to something and other proof according to customs;
- d. Developing the culture of the Nagari people in an effort to preserve regional culture in order to enrich the national cultural treasures;
- e. Inventory, maintain, maintain and manage and take advantage of Nagari wealth to improve the welfare of the Nagari community;
- f. Fostering and coordinating customary law communities starting from the people according to the customs that apply to each Nagari, hierarchical up and down, culminating in Nagari customary density and fostering a high sense of kinship among the Nagari indigenous peoples in order to increase social awareness and the spirit of mutual cooperation;
- g. Representing Nagari and acting on behalf of and for Nagari or Nagari customary law communities in all legal actions inside and outside the judiciary for the interests and or matters relating to the rights and assets of Nagari;

⁶See, Article 3 paragraph (2) West Sumatra Provincial Regional Regulation Number 13 Year 1983 concerning Nagari as a customary law community unit in the province level I West Sumatra;

Then this Nagari Regulation has been revoked (including Perda 9 of 2000 concerning the main provisions of Nagari governance and Regional Regulation No.7 of 2007 concerning the Principles of Nagari Government) and the latest West Sumatra Provincial Regulation Number 7 of 2018 concerning Nagari. In this regulation, the existence of Kerapatan Adat Nagari is no longer authorized in matters of customary disputes because Nagari Institutions have been added, namely Nagari Adat Courts. In Article 1 paragraph (8) states:

"Nagari Adat Court or what is referred to by another name is a community dispute resolution institution in Nagari based on the salingka Nagari custom which is mediating in nature".

In Perda Number 7 of 2018 concerning Nagari in each Nagari, Kerapatan Adat Nagari forms a Nagari Adat Court as the highest community dispute resolution institution in Nagari according to Nagari salingka customs. Nagari customary judiciary has the duties listed in Article 15 paragraph (3) Regional Regulation Number 7 of 2018 concerning Nagari which reads:

- a. Resolving the sako and pusako disputes by way of the Bajanjangnaiak Batanggo through the peace process;
- b. Settlement of customary civil cases through deliberation and consensus based on an agreement in the Nagari Adat Kerapatan Council session which is a "kato putuih" to be guided by the judiciary; and
- c. Giving customary sanctions to community members who violate the Customary Law in accordance with the Salingka Nagari Customary provisions.

Regarding the duties of Nagari customary density in Nagari Regulation Article 7 paragraph (1) letter b and also Nagari Traditional Court in Article 15 paragraph (3) letter b Perda Number 7 of 2018 concerning Nagari, Nagari Regulation (Perda Number 13 of 1983) can resolve cases regarding civil customs including in the case of sako whereas in Perda No. 7 of 2018 Kerapatan Adat Nagari must form a Nagari Adat Court which can resolve the problem of sako and pusako. Sako is a title, while Pusako is an object. Every indigenous community in West Sumatra Province who has a case regarding sako and pusako can file a lawsuit / objection to the Nagari Adat Density which has become a written rule.

The author found two cases regarding the first sako dispute that occurred in Tiakar Nagari Village, Guguk VIII Koto, Guguk District, 50 Kota District, West Sumatra Province. This case started between Masfar Johan, who is the Head of the Waris (MKW) in his community who agreed to hold the title of DT. Patih in the Caniago Burai tribe to replace the title of DT. The patih used by the previous Mamak Masfar Johan, namely Luis Hakam, died in 1976 and the title would be confirmed to the Tiakar Village Batagakerjaan committee (Kerapatan Adat Nagari), but the Batagak leader committee did not accept requests from the DT.Patih because there are other members of the clan, namely the DT clan. Caniago tribal stem who did not agree with the title application, so the Chairperson of the Guguk VIII Koto Customary Density made the Nagari Adat Decree No. 90.P / KAN-GG / 1994 dated 13 March 1995 which stated that Masfar Johan could not hold the title of DT. Patih is because of DT.Patih's descendants have broken up and Masfar Johan has not been entitled to carry the title of DT. The Patih.

Then on the decision of the Nagari Guguk VIII Koto No. 90.P / KAN-GG / 1994 dated March 13, 1995 which harmed Masfar Johan and his people, Masfar Johan filed a lawsuit to the Padang State Administrative Court with case register No. 12 / G / 1995 / PTUN-PDG by suing the Chairperson of the Kerapatan Adat Guguk VIII Koto and the Secretary of Kerapatan Adat Nagari Guguk VIII Koto with the Padang State Administrative Court's Decision on 9 November 1995 which in essence mutatis mutandis the Decision of Kerapatan Adat Nagari Guguk VIII Koto No. 90.P / KAN / GG / 1994 dated March 13, 1995, on the decision of the Padang State Administrative Court, Defendants I and II filed an appeal to the Medan State Administrative High Court with Case Register

No. 12 / BDG-G / PD / PT.TUN-MDN / 1996, with the decision of the Medan State Administrative High Court dated August 21, 1996 in essence overturning the Padang Administrative Court decision and judging itself by stating that the Plaintiff / Appeal Masfar Johan's claim was unacceptable, for this decision the Plaintiff (Masfar Johan), filed an appeal to the Supreme Court with Case Register No. 327 K / TUN / 1996, with the Supreme Court Decision dated November 6, 1998 which essentially canceled the Medan State Administrative High Court Decision No. 12 / BDG-G / PD / PT.TUN-MDN / 1996 and took over the consideration and decision of the Padang State Administrative Court No. 12 / G / 1995 / PTUN-PDG to judge itself mutatis mutandis the decision of the adat density of Nagari guak VIII koto dated March 13, 1993 No. 90.P / 90.P / KAN-GG / 1994;⁷

Then the second case was in Nagari Sungai Patai, Sungayang District, Tanah Datar Regency, West Sumatra Province. This case is the same, namely that it also originated from the Nagari Sungayang customary density decree No. 01 / KAN-SP / I-2017 dated January 24, 2017 Concerning the rejection of the determination of the Sako Datuak Rajo Malano Caniago Tribe proposed by the Tan Kalomok Dubalang Tigo is the payuang of Dt. Rajo Malano, then on the decree of KAN Sungayang, a member of the Datuak Rajo Malano tribe of Caniago, namely Alizon Khaidir Cs. filed a lawsuit to the Padang State Administrative Court on April 20, 2017 with Case Number: 3 / G / 2017 / PTUN.PDG,

Research Method

The method used in this research is a normative juridical approach, meaning scientific research procedures that refer to legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society.⁸ In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is deemed appropriate.⁹ In addition, the author also uses a juridical empirical research approach, meaning that normative legal research is the main approach while empirical legal research is a supporting approach. The choice of this normative juridical research approach focuses on secondary data sources. By utilizing secondary data sources, the authors analyze using legal materials so that the authors can draw conclusions to answer the problems that the authors put forward in the formulation of this thesis problem. This research is descriptive analytical, which reveals the prevailing laws and regulations relating to legal theories which are the object of research. Likewise the law in its implementation in society regarding the object of research.¹⁰

Result and Discussion

A. The Authority of Nagari Adat Density After the Return of Nagari Government.

The transfer of the Nagari Government to the Village Government made Nagari only a symbol in the customary law community because Nagari was no longer the lowest government even though Nagari had existed since ancient times this was due to the intervention of the Homeland Government with the creation of the Village Government Law in 1979. So since 1979 it has not There is a name Nagari government, Nagari is only recognized as a unit of customary law community, this lasts until its creation Law No. 25 of 1999 concerning the Financial Balance between the Central Government and the Regional Government then issued Government Regulation Number 25 of 2000 concerning the

⁷See, Supreme Court Decision No. 327 K / TUN / 1996, dated 6 November 1998.

⁸ Zainuddin Ali, legal research methods, Sinar Grafika, Jakarta, 2009, p. 105.

⁹ Amiruddin and Zainal Asikin, Op.Cit, p. 118.

¹⁰ZainuddinAli, Op.Cit, p. 107.

Authority of the Government and the Authority of Provinces as Autonomous Regions, in which it provides opportunities for regions to regulate and manage their own households including adjusting the form and structure of the Government.

As is known, the West Sumatra Province which has adopted the Lowest Government is the Village as with other Provinces throughout the Republic of Indonesia, in the hearts of the people of West Sumatra, they still want the Lowest Government to belong to Nagari again, against this great opportunity, West Sumatra Province does not stay silent and take advantage by referring to Laws and Government Regulations re-issued Regional Regulation No. 9 of 2000 concerning Basic Provisions for Nagari Government which made the existence of Nagari Government the lowest element of Government with the revocation of Regional Regulation No. 13 of 1983 (specifically the Mentawai Islands Regency is exempted from this policy because the Mentawai ethnic groups who live in these islands have different cultures and customs from the Minangkabau).

More clearly in the Regional Regulation Number 9 of 2000 concerning Basic Provisions for Nagari Government, Nagari remains as a customary law community unit that has its own territory, assets, has the right to determine and manage its own household and has its own lowest government, namely Nagari Government which is in the government system. The Unitary State of the Republic of Indonesia. In the 2000 Perda it is also stipulated in the organizational structure and work procedures of Nagari governance, Nagari Children's Representative Body and Indigenous Deliberative Body and Syarak Nagari are regulated through District Regional Regulations so that with the issuance of this Perda the management of Nagari is left to local Regency regulations,

"Nagari Adat Institution (LAN) or another name is the density institution of the Ninik Mamak which has existed and been inherited from generation to generation throughout the customs and functions to maintain the preservation of customs and resolve sako and pusako disputes in Nagari."

Nagari Adat density which is recognized in this Perda still resolves the problem of sako and pusako as more specifically regulated in Perda No. 9/2000 in Article 19 paragraphs (1) and (2) which reads:

- 1) The Nagari Customary Institution has the function of resolving the sako and pusako sangketa according to the provisions as long as the prevailing customs in Nagari are in the form of Peace Decisions.
- 2) If the settlement as referred to in paragraph (1) of this Article is not reached, the parties concerned can forward their case to the District Court.

Based on the 2000 Perda, Article 19 paragraph (1) states that LAN or Kerapatan Adat Nagari can try sako and pusako disputes with a peace decision so that it can be said that Kerapatan Adat Nagari is a non-litigation institution that hears a peaceful decision because Kerapatan Adat Nagari is not a judiciary. Law on judicial power as a State court. In the settlement by deliberation and consensus, KAN is demanded that the disputing parties have their problems resolved first from the lowest as explained by Perda 9 of 2000 Article 19 paragraph (1) the explanation:

"Settlement of disputes concerning sako and pusako is sought by deliberation and consensus according to the prevailing provisions throughout the customs. The dispute resolution efforts are carried out in stages up and down steps starting at the level of the clan, ethnicity and finally at the level of Nagari Traditional Institutions".

Whereas in Article 19 paragraph (2) if no agreement is reached, it can be forwarded to the District Court, but it is not explained in detail whether the product of the KAN decision submitted to the District Court or the problem of sako and pusako, but what is clear is that the problem of the decision letter is already in the problem being raised and is considered to have become jurisprudence because it has been decided and inkraht by the yudex juris can be submitted to the State

Administrative Court, while for customary problems if there is an act against the law against the Sako and Pusako disputes it can be submitted to the General Court, namely the District Court.

Regarding the KAN's authority over the appointment of the ruler in this Perda, it is not explained that it is only limited to being able to resolve sako and pusako disputes, referring to the previous customary law, it can be said that KAN has the authority as a legal institution for the appointment of sako that has been determined by the people to whom the right to hold the title of the people from generation to generation .

After the Regional Regulation Number 9 of 2000 concerning Basic Provisions for Nagari Government was carried out by the Nagari Government gradually and the transformation of the Village community into Nagari society was almost evenly carried out. Then this Regional Regulation was revoked and declared no longer in effect after the issuance of Regional Regulation of West Sumatra Province Number 2 of 2007 concerning the Principles of Nagari Government where the existence of Nagari Adat Density could not be equated with other names, it could only be called Kerapatan Adat Nagari, this can be seen in the Regulation This area in Article 1 paragraph 13 states:

"Kerapatan Adat Nagari, hereinafter referred to as KAN, is the institution of density from Ninik Mamak which has existed and been inherited from generation to generation throughout custom and functions to maintain adat preservation and resolve disputes over sako and pusako".

Similar to the previous regional regulations, KAN has the function of maintaining traditional preservation and resolving the problem of sako and pusako, plus the 2007 regional regulation KAN as a consultative institution because every regulation made by the Nagari Government and Nagari Consultative Body (BAMUS Nagari) is first consulted with KAN. Furthermore, KAN based on the 2007 Regional Regulation was given a position as the highest adat community consultative body as stipulated in Article 28 as follows:

"KAN is the highest representative institution for indigenous peoples that has existed and has been inherited from generation to generation throughout adat."

And regarding the appointment of the chief who is given authority to KAN is not clearly regulated. Referring to the previous customary laws and regulations, it can be said that KAN is a sako legalizing institution that has been appointed by the people as a title holder.

After West Sumatra Provincial Regulation Number 2 of 2007 concerning the Principles of Nagari Government is revoked and declared invalid. Recently the West Sumatra Government issued a Regional Regulation of West Sumatra Province Number 7 of 2018 concerning Nagari even though this regulation in 2020 through interviews with the Secretary of KAN Guguak VIII Koto and the Chairman of KAN Solok it is said that they have not implemented this Perda because the things contained in this Perda have not been able to, for example, the Nagari Adat Court from which the two KAN are has human resources capable of it and the budget for the establishment of Nagari Traditional Courts so that this regional regulation has not been implemented.¹¹

The 2018 Perda states that the definition of Nagari customary density is quite broad by including elements of its membership that have not been written by the previous Regional Regulation in Article 1 paragraph (6) states:

¹¹Interview with Mr. H. Yunaldi Dt, Patih Secretary of Kerapatan Adat Nagari VIII Koto, on September 1, 2020, at 14.00 WIB and Interview with Mr. Edi Warwan Angku Imam Dt. Maharajo Lelo Chairperson of Nagari Solok Adat Density, September 7, 2020, at 19.00 WIB.

"Kerapatan Adat Nagari, hereinafter referred to as KAN or referred to by other names, is an institution which is the manifestation of the highest representative deliberation in the administration of Nagari Government whose membership consists of representatives of ninik mamak and elements of religious scholars of Nagari, clever cadiaak elements, elements of Bundo Kandung, and elements of parik paga. in the Nagari concerned in accordance with the Nagari salingka customs ".

The position of the Nagari Inner Density Regional Regulations of West Sumatra Province Number 7 of 2018 concerning Nagari not only has duties and authorities in elements of customary issues but can also implement elements in government as well, as stated in Article 7 paragraph (1) and paragraph (2):

1. Nagari Adat density has the following duties:
 - a. Overseeing the governance of Nagari by Kapalo Nagari;
 - b. Compiling Nagari regulations with Kapalo Nagari; and
 - c. discuss and agree on the Draft Nagari Regulations concerning Nagari Revenue and Expenditure Budget.
2. Kerapatan Adat Nagari has the following powers:
 - a. Choosing and lifting Kapalo Nagari by deliberation and consensus;
 - b. channel the aspirations of the Nagari community;
 - c. supervise the implementation of Nagari customs and culture;
 - d. asking for the accountability of the implementation of Nagari Government to Kapalo Nagari; and
 - e. preserving customary and cultural values according to the Salingka Nagari Custom.

In Regional Regulations of West Sumatra Province Number 7 of 2018 concerning Nagari, Kerapatan adat Nagari does not have the duty and authority in terms of resolving disputes both sako and pusako, Nagari's customary density is only given the authority to form a Nagari Adat Court consisting of the chief element and assisted by Manti and several other Adat Court Judges but deep Local regulation This is not clearly stated the chairman and judges of the customary court from whose element, it can be seen in Articles 15 and 16 which read:

Article 15:

1. In each Nagari, Kerapatan Adat Nagari forms the Nagari Adat Court as the highest community dispute resolution institution in Nagari according to the Salingka Nagari custom.
2. (2) Before the dispute as referred to in paragraph (1) is resolved by the Nagari Adat Court, it must be resolved first at the family, lung, clan and / or tribal level by means of the Bajanjang naiak batanggo.
3. Nagari Adat Court as referred to in paragraph (1) has the following tasks:
 - a. Resolving the sako and pusako disputes by means of the bajanjang naiak batanggo through the peace process;
 - b. Settlement of customary civil cases through deliberation and
 - c. Consensus based on an agreement in the assembly session Kerapatan Adat Nagari which is a "kato putuih" to be guided by the judiciary; and
 - d. Giving customary sanctions to community members who violate the Customary Law in accordance with the Salingka Nagari Customary provisions.

Article 16:

- 1) The Nagari Traditional Court as referred to in Article 15 paragraph (1) is led by a chairman and assisted by a manti, and several Nagari Adat court judges.
- 2) Guidelines, composition, appointment and dismissal, tenure of Nagari Adat Court Judges and financing of Nagari Traditional Courts are regulated in a Regency / City Regulation.

In carrying out duties and authorities as a customary institution from Local regulation At present the position of the Nagari Adat Kapatan as an institution can also function as an institution in the field of government.

Prior to the existence of the Nagari Adat Court in Regional Regulations of West Sumatra Province Number 7 of 2018 concerning Nagari actually previously in Kerapatan Adat Nagari has become a customary court or customary institution, if there is a dispute between one of the parties regarding sako or pusako, one of the previous parties submits / submits objections to the chairman of Kerapatan Adat Nagari there are parties disputing and based on delegation / delivery of cases in writing.

The Nagari Adat Court, which is currently more established because it is strengthened in Perda No. 7 of 2018 concerning Nagari, even before the presence of the Nagari customary court as a guideline by the previous judicial institutions, there have been various discourses for customary justice to be included in national justice, as Yance Arizona argued in his paper entitled Position Adat Courts In the National Law System, which states "there is a growing discourse on strengthening customary courts has 2 (two) major concepts about how the position of customary courts should be in relation to the established national justice system. The first choice is to integrate customary courts as an institution to enter. become part of the national justice system, This proposal was put forward to provide stronger binding strength to the decisions made by the customary court. The second option is a substantial strengthening of the customary court without the need for institutional integration as the first option, the target to be achieved is deconcentration of the burden of cases accumulating in the State courts so that what is needed is the availability of various options for dispute resolution in the community".¹²

Various constitutional and statutory regulations affirm that customary law as unwritten law which is reflected in the values of justice and norms that live and grow in society is a source of law that must be explored, considered and respected, especially in law enforcement practices, in practice. customary law does have a place in the administration of justice at least this has been reflected in some jurisprudence produced by the Supreme Court, customary law which has become a guideline by judges in making a decision requires the judge to know in advance the laws that live in the midst of society, let alone emerge Regional Regulations of West Sumatra Province Number 7 of 2018 concerning Nagari regarding the existence of a customary court whose decision can also be a guide for judges in making a decision.

Seeing that KAN in this Perda is no longer authorized in the matter of disputes between sako and pusako so that the appointment of the chief is not explained whether KAN is still a legalizing institution or not, but referring to the previous customary law, it is clear that KAN has the authority as an institution for ratification of the appointment of a leader appointed by the clan because most people customary law does not want to change the rules that have been in effect since the past that have been implemented by the ancestors.

B. The Position of Nagari Customary Density in Decision No. 327 K / TUN / 1996;

In the verdict Court great with the Case Register No. 327 K / TUN / 1996, dated 6 November 1998 in conjunction with the Medan State Administrative High Court with Case Register No. 12 / BDG-G / PD / PT.TUN-MDN / 1996, dated 21 August 1996 in conjunction with the Padang State Administrative Court with case register No. 12 / G / 1995 / PTUN-PDG, dated 9 November 1995,

¹² Website; http://www.academia.edu/3723907/Kedempat_Peradilan_Adat_dalam_Hukum_Hukum_Nasiona.id.Pdf, (last visited 21 August 2020 21:00).

which had a permanent legal force which in turn canceled the Nagari VIII Koto Kerapatan Adat Decree, Guguk District, 50th District, West Sumatra City, where KAN is a State Administration Agency / Officer In this case, the Supreme Court of the Republic of Indonesia takes over the decision by judging itself and takes over the considerations and decisions of the Padang State Administrative Court.

Because the Supreme Court of the Republic of Indonesia took over the considerations and decisions Court Padang State Administration, in this case, discusses the basis for the consideration of the Panel of Judges at the Padang State Administrative Court No. 12 / G / 1995 / PTUN-PDG, dated 9 November 1995 with the following considerations:

Regarding Defendant's Quality.

Considering that the KAN administrators who issue the letter (theoretical object) are State Administration Officials / Entities fulfilling the elements of Article 1 paragraph 2 of Law No.5 of 1986? Whereas in examining who is classified as a State Administrative Officer / Entity as referred to in Article 1 paragraph (2) of Law No.5 of 1986, the Law itself, from its explanation, does not explain what criteria / what is considered an official. / State administrative body only mentions that the state administration agency / official is the one who carries out government affairs based on the prevailing laws and regulations, but the Indonesian State Administration law expert named INDROHARTO, S. H in his book "Efforts to Understand the Law on State Administrative Courts" book I, the revised edition of 1993, describes "that what is the criterion / criteria to be called / classified as an official / State Administration Agency according to Law No. 5 of 1986, if this function is carried out based on the prevailing laws and regulations, both written law and unwritten law which is the implementation of government affairs / public interest (public service), then those who do so are deemed to be Officials / Entities. State Administration".

Considering that if the above considerations are related to the West Sumatra Regional Regulation 13/1983 along with the operational guidelines, the Governor of West Sumatra No.183-104-1991 which describes Nagari as a customary law community unit that has the territory and assets of the Nagari which also regulates the structure of the tasks KAN, as the executor of Nagari functions in the West Sumatra region, when linked again to the West Sumatra Governor Instruction No.04 / Inst-GSB / 1994 regarding the Role of KAN in the success of Nagari in the development area for the benefit of many people, namely the community / Nagari people.

Considering whereas because of KAN according to PERDA No. 13 of 1983 is the highest customary institution that has existed / been formed based on customary law which is Indonesian positive law that is not written but still applies following the development of human life in West Sumatra specifically regulating the lives of Nagari children / local communities, where adat is a need that is not can be separated from the life of the people of West Sumatra which must be addressed and managed, in this case based on PERDA No. 13/1983 is the authority of KAN to carry it out.

Considering that the West Sumatra PERDA also explains that Nagari, which is a customary law community unit that has its own property area, means that here the Nagari area is also an area within the province of West Sumatra, this is also an area that cannot be separated and is part of the territory of the Republic of Indonesia. this (remember the occurrence of the origin of the State in State science).

Considering that based on the above descriptions it is clear that KAN in this case the management is based on public legal authority as contained in the West Sumatra Regional Regulation No.13 of 1983, West Sumatra Governor Instruction No. 04 / inst / GSB / 1994 clearly belongs to what is called the official / State Administrative Bodies that comply with the elements of Article 1

paragraph (2) of Law No.5 of 1986 have the authority to issue decrees, especially the SK regarding the settlement of sako and pusako disputes as long as adat occurs among the Nagari community (Vide SK. Governor of Sumatra Barat No. 08 of 1994 regarding Procedures for Customary Dispute Resolution Procedures That Must Be Implemented by KAN Management).

Considering that because the KAN management is a State Administration Officer who fulfills the elements of Article 1 paragraph (2) of Law No. 5 of 1986 then can be sued by a civil person / legal entity before the PERATUN.

Regarding KAN Decree (object of dispute).

Considering KAN Guguk Koto Decree No. 90.P / KAN-GG / 1994 dated March 13, 1995, which was published and signed by the KAN management which contained a decision that Masfar Johan (the Plaintiff) was not entitled to hold the title Dt.Patih Caniago Burai Tribe because of Dt. Patih extinct is an SK. who is the object of this dispute.

Considering that Ad. 2 above that the defendants (KAN Management) have been proven to be State Administrative Officials who meet the elements of Article 1 paragraph (2) of Law No. 5 of 1986 so that the a quo SK (object of dispute) is a State Administration Decree signed by the board of KAN Guguk VIII Koto dated March 13, 1995 No. 90.P / KAN-GG / 1994 which is concrete means clearly a decree, Individual means that in this decree the name Masfar Johan to which the SK in litis is referred to, final means that it is definitive and does not require approval from other parties, therefore it can be implemented and already has legal consequences, namely that it has been stated by the legal decree that Masfar Johan is not entitled to the title Dt. Patih because it has been extinct so that this SK in litis fulfills Element Article 1 paragraph (3) of Law No. 5 in 1986 and can be sued before the state administrative office.

Considering that SK in litis after starting the first process was issued on November 9, 1994 No. 184.P / KAN / GG / 1994 received by the Plaintiff on January 5, 1995 (vide evidence P.1) then this SK was protested by the Plaintiff by filing an objection with its letter dated January 23, 1995 (vide evidence P.2), so the SK was issued. The second KAN dated March 13, 1995 No. 90.P / KAN-GG / 1994 (vide evidence P.3) received by the Plaintiff on March 24, 1995 which contained a loss to the Plaintiff, so that the Plaintiff filed a lawsuit in which the legal decree was used as the object of this lawsuit. When connected with the date of March 24, 1995 when the Plaintiff received the initial SK (object of the dispute) with the time of registering the lawsuit at the Padang Administrative Court on May 2, 1995, it appears that 40 days have passed. thus the Plaintiff's Lawsuit is filed within the grace period determined by Law No. 5 of 1986, fulfilling the elements of Article 55 of Law No. 5 of 1986.

Considering whereas based on the considerations of Ad.1, 2 and 3, the Panel of Judges is of the opinion that the State Administrative Court has the authority to examine and adjudicate this dispute. In the discussion regarding the position of Kerapatan Nagari against Decision No. 327 K / TUN / 1996 who tried himself and took over the Padang State Administrative Court Decision where the position of KAN as the Defendant issued the decision letter which became the object of the case including to State Administrative Officials / Entities as referred to in Article 1 paragraph (2) of the Law Law No.5 of 1986mention:

"State Administrative Bodies or Officials are Entities or Officials carrying out government affairs based on the prevailing laws and regulations";

Then Indraharto, SH's Opinion in his book entitled Efforts to Understand the Law on State Administrative Courts mention:

In this Law, standardize his name as a State Administration Agency or Officer so whoever is based on the prevailing laws and regulations at one time carries out a

government affair, according to this Law he / she can be deemed to have the position of a State Administration Agency or Official.¹³

In the PERATUN Law (No.5 of 1986) and Indraharto's Opinion, SH mentions who is based on the applicable law. Regarding the applicable law, it is known that the source of the TUN Law comes from written law and unwritten law which consists of material and formal sources of law. The source of material law is known as the source of all sources of law, namely Pancasila which is the view of life, awareness and ideals of law and the moral, psychological and character ideals of the people of the State concerned. Meanwhile, the source of formal law is in the MPR Decree No. III / MPR / 2000 are the 1945 Constitution, the MPR RI Decrees, Laws, Perppu, Government Regulations, Presidential Decrees and Regional Regulations.¹⁴

It can be seen that KAN is a source of written law, which is based on Perda No. 13 of 1983 and unwritten law which has developed and become a habit by customary law communities and has also become a source of formal law, namely KAN is recognized based on Regional Regulation No. 13 of 1983, so it can be said that KAN is classified as deepCurrent regulation.

Furthermore, it was said that KAN could have a position as a State Administration Agency / Official, which was carrying out an affair as known to the function of Nagari in Perda 13 of 1983 assisting the government in the smooth implementation of development in all fields, especially in the social and cultural fields so that Nagari was included by the government in development where this function was carried out by KAN so that the category of government functions according to the Administrative Law and the opinion of Indroharto, SH is rightly considered by KAN as a State Administrative Body / Officer.

Even in Perda 13 of 1983 it is also stated that every KAN decision becomes a guideline for the Village Head in running the Village government and must be observed by all Nagari people even though the relationship between the Village head and KAN is consultative, but in each decision it can serve as a guide in government affairs.

To reinforce the belief that KAN is an official. State Administrative Bodies in the explanation of PERATUN referred to as government affairs in Article 1 point (1) are activities of an executive nature even though Indroharto's opinion in his book Efforts to Understand the Law on State Administrative Courts states that in reality government affairs activities become the arena of activities of the Agency or Position TUN, almost all aspects of human life in society, cannot be separated from participation in State Administration Bodies or Positions which interfere in such circumstances which concern the public interest, so there is also running the implementation of government affairs, just look at the General Secretary agencies of State High Institutions outside the executive power line are the organizers. government affairs and also does not rule out what and anyone outside the official State apparatus (private parties) based on certain laws and regulations are assigned the task of carrying out government affairs.¹⁵

Apart from that, all government affairs are about executive activities where the position of KAN is in Perda No. 13 of 1983 apart from the main tasks, KAN has the task of carrying out the Nagari functions mentioned above with the main task of implementing development in all fields so that it can assist the executive (Village Head) in running the government.

¹³Indroharto, Efforts to Understand the Law on State Administrative Courts, Pustaka Sinar Harapan, Jakarta, 1993, p. 64.

¹⁴I Gede Yusa, et al., Post-Amendment of the 1945 Constitution, Setara Press, Malang, East Java, 2016, p. 30-33.

¹⁵Look, Indraharto, Op. Cit. hlm. 67

C. **The Position of Nagari Customary Density in Decision No. 3 / G / 2017 / PTUN.PDG;**

Position Oftenatan Adat Nagari based on Decision Register No. 3 / G / 2017 / PTUN.PDG dated 26 September 2017 which has permanent legal force (inkracht van gewijsde) basically states that the Plaintiff's Lawsuit is unacceptable (Niet Ontvankelijke Verklaard / NO) but it is not explained whether KAN's position as Defendant is accepted in the the Judges' consideration has not yet discussed the position of KAN with the following considerations:

Considering, that the Defendant's Decision which the Plaintiff requested to be declared null and void and revoked in this case is the Decree of the Head of Nagari Sungai Patai Adat Number: 01 / KAN-SP / I-2017, dated January 24, 2017, concerning the Stipulation of Sako Datuak Rajo Malano, Caniago Nagari Tribe, Patai River, Sungayang District. Hereinafter referred to as the Decision on the object of the dispute;

Considering, that before the Panel of Judges considers the exceptions and subject matter of the case, it is first necessary to consider the formal aspects related to the authority of the Padang State Administrative Court in examining and resolving this case, as follows:

Considering, that based on the Shrimp Law Number 5 of 1986, the Law has been amended twice, most recently by Law Number 51 of 2009 (hereinafter referred to as the Law on State Administrative Court) in Article 4 regulates that Administrative Courts The state is one of the executors of judicial power for the people who seek justice for State Administrative Disputes;

Considering, whereas then Article 47 stipulates that the Court has the duty and authority to examine, decide and resolve State Administrative Disputes;

Considering, that in order to provide an understanding of what is meant by a State Administrative Dispute, it is necessary to refer to Article 1 Number 10, what is meant by a State Administrative Dispute is a dispute arising in the field of state administration between a person or civil legal entity and an entity or official. State Administration, both at the central and regional levels, as a result of the issuance of state administrative decisions, including employment disputes based on the prevailing laws and regulations;

Considering, whereas based on the provisions of Article 1 Number 10 above, if the elements are further identified, in order to be referred to as a State Administration dispute, at least it must meet the following criteria;

1. The dispute arises in the field of State Administration (nature of the dispute);
2. The dispute arises between a person or civil legal entity with the State Administration Agency or Officer (the legal subject in dispute);
3. The dispute arises as a result of the issuance of a State Administrative Decree (object of the dispute);

Considering, whereas in this case the Panel of Judges will consider whether in this case it has met the criteria as described above in sequence starting from the nature of the dispute, does the dispute in this case arise in the field of State Administration? as follows;

so that later it can also be determined who is right and entitled to the title Sako Datuak Rajo Malano Caniago Nagari Tribe Sungai Patai? therefore, to test such matters the Panel of Judges will consider it as follows:

Considering, whereas to test whether the dispute arises in the field of State Administration, the Panel of Judges has read the case file, which at least obtained the following legal facts;

- Whereas previously it was known that the Nagari Sungai Patai Customary Decree Number: 17 / KAN / SP-2016, dated 19 December 2016, was issued regarding the Stipulation of the Sako Datuak Rajo Malano Tribe for the Caniago Nagari Tribe, Sungai Patai, Sungayang District as evidenced by P-9;
- That the Decree of the Nagari Sungai Patai Customary Density as evidenced by the P-9 has decided:

First: To determine that the Alizon Khaidir family has the right to replace the title of Soko Dt. Rajo Malano;

Second: Alizon Khaidir's family became the warih nasab of the late Intan Rajo Dilawik who had the title Dt. Rajo Malano because he has evidence of the following indicators:

- a. Sarumah Satanggo;
- b. So Soko Sapusako;
- c. Sa Figure Sa Jarami;
- d. Spondam Sapakubur;

Third: According to the traditional lamo pusako obsolete Dubalang, there is no one house with the Penghulu (Datuak);

Fourth: This decree comes into force from the date of stipulation.

- That it was later discovered that the Decree of the Head of Nagari Sungai Patai Indigenous Peoples' Decree Number: 01 / KAN-SP / I-2017, dated January 24, 2017, concerning the Stipulation of the Sako Datuak Rajo Malano Tribe of the Caniago Nagari River Patai, Sungayang District as evident T-11 = Exhibit P 10;
- That the Decision on Nagari Sungai Patai Customary Density as evidenced by evidence T-11 = evidence P-10 has decided:

One: The two parties (Wendri Cs and Alizon Cs) in dispute were one clan (Salotak Satayiak, Sahino Samalu, ashamed not to be divided) had the same indicator evidence as Dt. Rajo Malano, namely:

- a. Saruma Satanggo;
- b. Sasosok Sajarami;
- c. Sasoko Sapusako;
- d. Spondam Sapakubur;

Both parties acknowledge that the Singguluang Ale Rice Fields Dt. Rajo Malano is now being processed in tum

Second: If there is no agreement from both parties to appoint a replacement for Dt. Rajo Malano then KAN malipek the title;

Third: With the issuance of this decree, the existing KAN's decision regarding the title of Dt. Rajo Malano was revoked and is no longer valid;

Fourth: This decree comes into force as from the date of stipulation;

- It is known that the issuance of the Decree of the Head of Nagari Sungai Patai Indigenous Peoples' Decree Number: 01 / KAN-SP / I-2017, dated January 24, 2017, concerning the Stipulation of the Sako Datuak Rajo Malano Tribe of Caniago Nagari

Sungai Patai, Sungayang District as evident T-11 = Exhibit P-10 for the main reason that there has been a lawsuit from a person named WENDRI on behalf of the Tan Kalomok Family dated December 22, 2016 on the Decree of Nagari Sungai Patai Customary Decree Number: 17 / KAN / SP-2016, dated December 19, 2016, concerning the Stipulation of a Sako Title Replacement Datuak Rajo Malano, Caniago Nagari Tribe, Sungai Patai, Sungayang District, as evidenced by P-9, this is stated in the preamble to read the decree. WENDRI's claim letter as referred to in Exhibit T-7;

- Whereas for this action, the Plaintiffs then sued the Chairperson of the Nagari Sungai Patai Adat Customs to the Padang State Administrative Court by submitting the Decree of the Chairperson of the Nagari Sungai Patai Adat Number: 01 / KAN-SP / I-2017, dated January 24, 2017, regarding the Stipulation Sako Datuak Rajo Malano Tribe of Caniago Nagari Sungai Patai District, Sungayang District as evidenced by evidence T-11 = evidence P-10 as the object of the dispute;

Considering, that from the legal facts above, it appears that the Plaintiffs object to the issuance of the decision on the object of the dispute, the objection is based on the Decree of Kerapatan Adat Nagari Sungai Patai Number: 17 / KAN / SP-2016, dated 19 December 2016, concerning the Stipulation Substitute Title Sako Datuak Rajo Malano Tribe of Caniago Nagari Sungai Patai District, Sungayang District as evidenced by P-9 which in essence has decided that the Alizon Khaidir family (in this case Plaintiff 2) has the right to replace the title of Soko Dt. Rajo Malano and Alizon Khaidir's family became warih nasab of the late. Intan Rajo Dilawik with the title Dt. Rajo Malano;

Considering, on the other hand, it also appears that the one named WENDRI on behalf of the Tan Kalomok Family, which was known on 22 December 2016 had submitted a letter addressed to the Chairman of KAN which basically rejected / challenged the Decree of the Nagari Sungai Patai Customary Density Number: 17 / KAN / SP-2016, dated 19 December 2016, concerning the Determination of the Substitute Title for Sako Datuak Rajo Malano, the Caniago Nagari Tribe, Sungai Patai, Sungayang District as evidenced by the said P-9;

Considering that the aforementioned matters are also strengthened by the statements of Witness DEDI PUTRA and Witness ENDRIZAL which in essence have explained that the Plaintiffs' problem is related to the issue of Sako Dt. Rajo Malano between the Plaintiffs and WENDRI;

Considering, that after considering the legal facts and description above, the substance of this case does not lie in differences of opinion regarding the application of the law on the issuance of the decision on the object of dispute, but rather in determining who is entitled to the title Sako or Soko Dt. Rajo Malano. Whether the Plaintiffs or WENDRI are entitled to inherit the title Sako Dt. The Rajo Malano? In addition, because in determining the title of Sako it is based on certain custom indicators such as the Ranji which shows hereditary history and other custom indicators it is also necessary to first test the customary indicators for their validity, thus in this case the criteria from the aspect of the nature of the dispute , whether this dispute arises in the field of State Administration becomes unfulfilled,

Considering, that in connection with the issue of the title of sako, it is necessary to refer to the Regional Regulation of the Province of West Sumatra Number 9 of 2000 concerning Basic Provisions for Nagari Government, in Chapter VIII of the Sako and Pusako Dispute Resolution Article 19 it has regulated:

- 1) The Nagari Customary Institution has the function of resolving sako and pusako disputes according to the provisions in accordance with the prevailing customs in Nagari, in the form of Peace Decisions.
- 2) If the settlement as referred to in paragraph (1) of this Article is not reached, the parties concerned can forward their case to the District Court.

Considering, whereas according to the Panel of Judges, the provisions stipulate that the disputes of sako and pusako must first be resolved at the Nagari Traditional Institution. In the Chapter of the General provisions of Article 1 Number 13 of the Regional Regulation, it is explained that the Nagari Customary Institution (LAN) or other name is the density institution of Ninik Mamak which has existed and been inherited from generation to generation throughout adat and functions to maintain sustainability and resolve Sako and Pusako disputes in Nagari. . If no settlement is reached, the disputing parties can take legal remedies to the District Court;

Considering, that later a new regulation related to Nagari was issued, namely the Regional Regulation of West Sumatra Province Number 2 of 2007 concerning the Principles of Nagari Government, however, the Regional Regulation does not regulate how to resolve the sako and pusako disputes;

Considering, that even though a new regulation was issued, the Panel of Judges was of the opinion that the provisions of Article 19 of the Regional Regulation of West Sumatra Province Number 9 of 2000 concerning Basic Provisions for Nagari Government could still be used as a reference for solving the sako and pusako problems considering the Closing Provisions of Article 38 of the Provincial Regulations West Sumatra Number 2 of 2007 concerning Nagari Government Principles revokes and declares invalid only if the Regional Regulation of the Province of West Sumatra Number 9 of 2000 concerning Basic Provisions for Nagari Governance contradicts the said Regional Regulation;

Considering, that from the description of the legal considerations above, the Panel of Judges concluded that because the first criterion concerning the nature of the dispute was not fulfilled in this case, it is no longer relevant to consider further criteria. Thus the Padang State Administrative Court is not authorized to examine, decide and settle this case, because the dispute in this case did not arise in the field of State administration, so that the Plaintiff's claim must be declared unacceptable;

Provisions regarding status whether including State Administrative Bodies / officials have not been discussed because the elements regarding the type of dispute have been previously accepted, the Panel of Judges at the Padang State Administrative Court guided by the criteria / types of State Administrative disputes must be fulfilled as follows:

1. The dispute arises in the field of State Administration (nature of the dispute);
2. The dispute arises between a person or civil legal entity with the State Administration Agency or Officer (the legal subject in dispute);
3. The dispute arises as a result of the issuance of a State Administrative Decree (object of the dispute);

In the decision of the Padang State Administrative Court Number 3 / G / 2017 / PTUN.PDG, the position of KAN as a State Administration Agency / Officer is not seen or not, because in the Defendant's exception (Kerapatan Adat Nagari Sungai Patai has been received in advance by the Panel of Court Judges Padang State Administration so as to make the Plaintiff's Lawsuit unacceptable (*Niet ontvankelijke Verklaard*)).

This decision is unfair to say that the position of KAN is not a State Administration Agency / Officer because the consideration of KAN's position as a State Administration Agency / Officer has not been considered because the Panel of Judges first sees the types of disputes categorized as customary disputes. Even though this decision has permanent legal force, the main case has not been examined by the Kamim Council, only the formal requirements have not been fulfilled so that a lawsuit against this can still be filed again does not apply the principle of *Nebis in Idem*.

But when the function of KAN is linked in Perda No. 9 of 2000 concerning Basic Provisions for Nagari Government in Article 19 paragraph (1) and paragraph (2) it is stated that the function of LAN or KAN is

"Serves to settle sako and pusako disputes according to the provisions as long as the prevailing customs in Nagari are in the form of a peaceful decision" and "If the settlement as referred to in paragraph (1) of this Article is not reached, the parties concerned can forward their case to the District Court"

Meanwhile, in Perda no. 2 of 2007 regarding the Principles of Nagari Government, it is not clearly stated that the function or task of KAN is just mentioned in Article 17 paragraph (2) before the Nagari Regulation is established the Nagari Government conducts consultation / coordination with KAN, even in this Perda the cooperation of the Nagari Government in carrying out its functions is not together with KAN again but a new organization was formed, namely the Nagari Consultative Body (BAMUS).

With these two Regional Regulations which are taken into consideration by the Panel of Judges at the Padang Administrative Court, although the position of KAN has not been discussed further, but based on the two regulations, KAN is not a State Administrative Body / Officer. Judging from the consideration of the Panel of Judges in this case, it can be said that there is no gap to make this lawsuit granted because it is seen from the type of dispute that belongs to the type of customary dispute and is guided by the two regional regulations, KAN is not a State Administration Agency / Officer, especially after the author has examined it. During the 2000s, the Padang State Administrative Court found this case only in the archives of the Padang State Administrative Court.

D. Differences in Decision No.327 K / TUN / 1996 and Decision No.3 / G / 2017 / PTUN. PDG Regarding the Position of Nagari Customary Density.

Regarding the difference in the position of KAN in Decision No. 327 K / TUN / 1996 with Decision No. 3 / G / 2017 / PTUN.PDG can be seen, namely:

1. Supreme Court Panel No. 327 K / TUN / 1996 with the following considerations:

Supreme Court Panel No. 327 K / TUN / 1996 which has taken over the consideration of the Panel of Judges of PTUN Padang considering KAN is a State Administration Agency / Officer KAN is domiciled as a State Administration Agency / Officer because KAN has the authority to take care of government affairs for the public interest and KAN comes from an unwritten law as source of law and written law as referred to in Perda No. 13 of 1983 so that his position as Defendant or State Administration Agency / Officer can be fulfilled, because KAN originates from unwritten law and is recognized in written regulations. The Panel of Judges in this case also discussed the criteria / types of cases submitted by the Parties,

Then the appointment of the Plaintiff as a leader when viewed from Perda 13/1983 and West Sumatra Governor Instruction No. 04 / Inst / GSB / 1994 has actually been fulfilled and this can be seen by the State Administrative Judge through the evidence submitted by the Plaintiff even though it is for material evidence that the panel of judges is not authorized to assess and investigate it because it is the authority of a civil (customary) judge, but in terms of formal procedures based on the Decree of the Governor of West Sumatra No. 08/1994 explains that

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**Position of Nagari Customary Density as a Customary Institution
In the event of a State Administrative Dispute in West Sumatra**

every decision made by KAN must contain a summary of the lawsuit, denial, letters of evidence and adequate considerations from KAN and the verdict that is supported by the KAN Council Considerations and the decision is signed by the chairperson and members with minimum meeting 3 elements, namely: Ninik Mamak,

2. The Panel of Judges at the Padang State Administrative Court Case No. 3 / G / 2017 / PTUN / PDG with the following considerations:

The Panel of Judges at the Padang State Administrative Court Case No. 3 / G / 2017 / PTUN / PDG did not consider the position of KAN as a Defendant or State Administration Agency / Official whether it could be said to be a State Administration Agency / Official or not because it did not discuss this matter, the panel of judges only discussed elements regarding the criteria for disputes between the Plaintiffs and the Defendant who is more inclined towards customary civilization because the Plaintiff objected to the results of the KAN verdict which folded because there were objections from the same people so that the panel of judges had the view that who was entitled to customary civil matters so that administrative elements were not fulfilled with the injunction that the verdict of the Lawsuit cannot be accepted (NO).

Even though in this matter the object of dispute is KAN Decree No.01 / KAN-SP / I / 2017, dated January 24, 2017 which has issued a decision that contradicts the previous KAN decision due to the issuance of a Decree that was detrimental to the Plaintiffs. The panel of judges also did not consider whether the administration was in accordance with the procedures in KAN or not, immediately looked at the criteria / type of problem, even though the administrative procedure had to be examined first in making a decision issued by KAN, both identity, consideration in line with the decision or the decision had been signed, handled by the chairman of KAN and other KAN Council whether it can be classified under administrative law or not.

The difference between the panel of judges at the Supreme Court No. 327 K / TUN / 1996 which took over the Padang Administrative Court Decision in 1995 and Padang Administrative Court Decision 2017 Case No. 3 / G / 2017 / PTUN.PDG regarding the types of cases can be reviewed using the theory of legal certainty according to Van Apeldoorn. Van Apeldoorn stated that a decision made by a judge must be able to determine the resolution of the problem by providing real, concrete considerations and having a measurable basis for consideration, so that the litigants can already know from the beginning what provisions will be used in its settlement. .

Based on the theory of legal certainty according to Van Apeldoorn, the judge's decision which reflects the principle of legal certainty is contained in the verdict of the panel of judges in the case of the Indonesian Supreme Court No. 327 K / TUN / 1996. In addition to this decision, this includes the jurisprudence decision (law enforcement). Masfar Johan, to whom the SK in litis is addressing, is final, meaning that it is definitive and does not require approval from other parties, therefore it can be implemented and already has legal consequences so that this SK in litis fulfills Element Article 1 paragraph (3) of Law No. .

While the legal opinion of the panel of judges at the Padang State Administrative Court Case No. 3 / G / 2017 / PTUN.PDG does not fulfill the principle of legal certainty even though the case has not examined the subject matter legally, there is no definite law regarding the object of the dispute. The opinion of the Panel of Judges in this case which states that the type of dispute is a customary dispute, seeing from the process before the object of dispute is issued, namely the struggle for titles within the tribe so that it is included in customary disputes, there is no legal certainty here, the position of KAN as a State Administration Agency / Official should the judge see not on the process but after the SK issued by KAN, whether this type is administrative or not.

Conclusion

Based on the description above, the following conclusions can be drawn:

1. The authority of the Nagari Adat Density in appointing the leader is as the Committee for Appointment of the Pengulu to validate / legalize the title / sako of the chief who is appointed from the clan so that the title / sako of the head is recognized by the Nagari.
2. Place the Nagari Adat Density which was formed in West Sumatra Regional Regulation No. 13 of 1983 is a State Administration Agency / Officer, while nowadays the Nagari Adat is not a State Administration Agency / Officer.
3. Judges of Administrative Court considerations in examining & adjudicating the Nagari Adat Kerapatan decision letter in case No. 327 K / TUN / 1996 considerations to grant the Plaintiff's claim because Kerapatan Adat Nagari is classified as a State Administration Agency / Officer and the Panel of Judges considers the Decree (object of dispute) after being issued by Kerapatan Adat Nagari while in Case No. 3 / G / 2017 / PTUN.PDG in consideration of the Lawsuit was not accepted with a view to the (customary) process before the Decree was issued by Kerapatan Adat Nagari without further considering the position of Kerapatan Adat Nagari as a State Administrative Body / Officer.

References

1. Book's
 - Amir Syarifuddin, Adat Minangkabau Pattern and Life Purpose for Minang People, Mutiara Sumber Widya, Jakarta.
 - Amiruddin and Zainal Asikin, Op.Cit.
 - Datoek Toeh Payakumbuh, Tambo Alam Minangkabau., CV. Pustaka Indonesia, Bukittinggi, Without the Year of publication.
 - Kurnia Warman's dissertation "Regulating agrarian resources in the era of decentralization of government in West Sumatra", Faculty of Law, Gadjah Mada University, Yogyakarta, 2009.
 - Hilman Hadikusuma, Introduction to Indonesian Customary Law, Mondar Maju, Bandung, 199.
 - I Gede Yusa, et al., Post-Amendment of the 1945 Constitution, Setara Press, Malang, East Java, 2016.
 - Idrus Hakimy, Handling of the head of bundo kundang, and speech on alua pasambahan adat in Minangkabau, Remaja Karya, Bandung, 1984.
 - Indroharto, Efforts to Understand the Law on State Administrative Courts, Pustaka Sinar Harapan, Jakarta, 1993.
 - Iskandar Kemal "Nagari Government in Minangkabau & Its Development An Overview of Adat Density", second edition, Graha Ilmu, Yogyakarta, 2009.
 - Supreme Court No. 327 K / TUN / 1996, dated 6 November 1998.
 - Musyair Zainuddin, Awakening Batang Tarandam: Adat Salingka Nagari in Minangkabau, Ombak, Yogyakarta, 2011.
 - Zainuddin Ali, legal research methods, Sinar Graphika, Jakarta, 2009.
2. Regulations
 - West Sumatra Provincial Perda No. 13/1983 concerning Nagari as a customary law community unit in the province of West Sumatra.
3. Interview
 - Interview with Mr. Edi Warwan Angku ImamDt. Maharajo Lelo Chairperson of Nagari Solok Customary Density, September 7, 2020, 19.00 WIB.
 - Interview with Mr. H. Yunaldi Dt, Patih Secretary of Kerapatan Adat Nagari VIII Koto, on September 1, 2020, at 14.00 WIB and Interview with Mr. Edi Warwan Angku Imam Dt.

Maharajo Lelo Chairperson of Nagari Solok Customary Density, September 7, 2020, 19.00 WIB.

Interview with Mr. H. Yunaldi Dt, Patih Secretary of Kerapatan Adat Nagari VIII Koto, 01September 2020, 14.00 WIB.

Interview with Mr. H. Yunaldi Dt, Patih Secretary of Kerapatan Adat Nagari VIII Koto, on September 1, 2020, at 14.00 WIB and Interview with Mr. Edi Warwan Angku Imam Dt. Maharajo Lelo Chairperson of Nagari Solok Customary Density, September 7, 2020, 19.00 WIB.

4. Website

Website; http://www.academia.edu/3723907/Kedempat_Peradilan_Adat_dalam_Hukum_Hukum_Nasiona.id.Pdf, (last visited 21 August 2020 21:00).

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