

Transformation Model of Institutional Arrangements of Indigenous People To Become Customary Villages: Experiences From Indonesia

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TRANSFORMATION MODEL OF INSTITUTIONAL ARRANGEMENTS OF INDIGENOUS PEOPLE TO BECOME CUSTOMARY VILLAGES: EXPERIENCES FROM INDONESIA

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ABSTRACT

Objective: this research is motivated by the problem of Law Number 6 of 2014 concerning Villages (Village Law), which forces indigenous people (MHA) to merge and refer to the nomenclature "Customary Village" if they want to be recognized by the state. It is feared that such an arrangement will fail to recognize MHA. This research aims first to analyze the transformation model of the institutional arrangements of the Baduy, Tengger, and Minangkabau indigenous peoples to become Customary Villages. Second, to analyze the Regional Government's policy strategy in creating an inclusive region for MHA.

Methods: the focus of this research will be studied using normative research methods and statutory and conceptual approaches.

Conclusions: this research concludes that first, the transformation model of the institutional arrangements of the Baduy, Tengger, and Nagari indigenous peoples to become Customary Villages varies in form due to having different philosophical, sociological, juridical, and political backgrounds. a) Baduy MHA is transformed into a hybrid form because it adopts the concept of a modern village and customary simultaneously; b) MHA Tengger is transforming into a modern village but is working again as a Customary Tourism Village. c) Minangkabau MHA has been fully transformed into a customary village. Second, the Regional Government's policy strategy in creating an inclusive region for MHA can be in the form of adjusting the needs and degree of recognition and protection desired by MHA. There are several alternative forms of various policies and different forms of recognition and protection materials.

Keywords: transformation, indigenous people, customary village.

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MODELO DE TRANSFORMAÇÃO DE ARRANJOS INSTITUCIONAIS DE POVOS INDÍGENAS PARA SE TORNAREM ALDEIAS HABITUAIS: EXPERIÊNCIAS DA INDONÉSIA

RESUMO

Objetivo: Esta pesquisa é motivada pelo problema da Lei Número 6 de 2014 relativa às Aldeias (Lei das Aldeias), que força os povos indígenas (MHA) a fundir-se e referir-se à nomenclatura "Aldeia Costeira" se eles querem ser reconhecidos pelo Estado. Receia-se que tal acordo não reconheça o MHA. Esta pesquisa tem como objetivo primeiro analisar o modelo de transformação dos arranjos institucionais dos povos indígenas Baduy, Tengger e Minangkabau para se tornarem Aldeias Habitacionais. Em segundo lugar, analisar a estratégia política do Governo Regional na criação de uma região inclusiva para a MHA.

Métodos: o foco desta pesquisa será estudado usando métodos de pesquisa normativa e abordagens estatutárias e conceituais.

Conclusões: esta pesquisa conclui que, em primeiro lugar, o modelo de transformação dos arranjos institucionais dos povos indígenas Baduy, Tengger e Nagari para se tornar Aldeias Personalizadas varia de forma devido a ter diferentes origens filosóficas, sociológicas, jurídicas e políticas. a) Baduy MHA é transformado em uma forma híbrida porque adota o conceito de uma aldeia moderna e habitual simultaneamente; b) MHA Tengger está se transformando em uma aldeia moderna, mas está trabalhando novamente como uma Aldeia de Turismo Personalizada. c) Minangkabau MHA foi totalmente transformado em uma aldeia habitual. Em segundo lugar, a estratégia política do Governo Regional para criar uma região inclusiva para a MHA pode assumir a forma de ajustar as necessidades e o grau de reconhecimento e proteção pretendidos pela MHA. Existem várias formas alternativas de várias políticas e diferentes formas de materiais de reconhecimento e proteção.

Palavras-chave: transformação, povos indígenas, aldeia costumeira.

1 INTRODUCTION

Through Law Number 6 of 2014 concerning Villages (Village Law), indigenous people (MHA) in Indonesia are forced to merge and refer to the nomenclature "Customary Village" if they want to be recognized by the state. It is feared that such an arrangement will fail to recognize MHA. Moreover, the actual regulation regarding "Villages," which is the main nomenclature of 'Customary Villages' is not explicitly mentioned in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).⁴(Huda, 2015) The substance of the regulation of Customary Villages as regulated in the Village Law tends to borrow the substance of existing regulations in the MHA globally as indigenous people. Provisions regarding Customary Village requirements, customary rights, customary village authority, customary village government institutions, and customary village regulations reflect MHA arrangements.(Asshiddiqie, 2008; Rudy, Putra M, 2022; Thontowi, 2013)



This policy can have two-sided meanings; **on the one hand**, recognition of Customary Villages, as stated in the Village Law, has constitutionality in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, recognition of MHA because Customary Villages originate from the influence of indigenous peoples. (Al-Arif, 2017) As mentioned by Bagir Manan, what is meant by customary law community is a indigenous people (*rechtsgemeenschap*) based on customary law or customs such as *desa* (Java, Bali), *marga* (Palembang), *nagari* (Padang), *gampong* (Aceh), *meunasah*, *huta*, *negori*. It differs from villages that do not come from a union of MHA but because they have their territory and legal community. Such as villages outside Java. (Bagir Manan, 2002; Didik Sukrino, 2010; Sutoro Eko, 2008) This meaning received historical legitimacy by M. Yamin, that villages are recognized in Article 18 of the 1945 Constitution which was long intended as a unitary customary law community. (M Yamin, 1992; Zayanti Mandasari, 2015) **But on the other hand**, MHA seems forced to transform according to the nomenclature of "Customary Villages" and its set of regulations. As explained at the beginning, it is feared that such a coercive policy will fail to recognize MHA.

Based on the description above, this research is very urgent because it wants to explain and analyze the transformation models of MHA institutional arrangements to become Customary Villages, the compatibility of the arrangements for transforming MHA into Customary Villages with the reality of MHA, as well as the Regional Government's legal strategy in creating an inclusive region for MHA. Thus, there is concern about the failure of recognition of MHA by the state, as happened during the New Order (Orde Baru). MHA was diverse, but the state instead reduced and standardized it through Law Number 5 of 1979 concerning Village Government, which resulted in the suspension of the existence of MHA, (Huda, 2015) which can be prevented and corrected.

This research focuses the object of study on three indigenous peoples: MHA Baduy, MHA Tengger, and MHA Minangkabau. The selection of study objects was carried out by choosing a representation of the unique indicators of the transformation of each MHA into a Customary Village: a) MHA Baduy represents a hybrid transformation indicator because it adopts the concepts of Modern Village and Customary Village at the same time; b) MHA Tengger represents an indicator of the transformation from a Modern Village to a Customary Village and the practice of state recognition of only a portion of the MHA; c) MHA Minangkabau represents an indicator of the compatibility of



arrangements for the transformation of MHA into a Customary Village because Nagari already has a strong foundation both philosophically, historically, sociologically and normatively in Regional Government in West Sumatra.

Even though various mechanisms have supported it, the fulfillment of MHA's rights still needs to be maximal, one of which is the regulation regarding the amalgamation of MHA into Customary Villages. Suppose we reflect on cases of MHA violations that were still occurring until this research was conducted (Alliance of Indigenous Peoples of the Archipelago, (Aliansi Masyarakat Adat Nusantara (AMAN), 2022) In that case, it can be concluded that there is still a paradigm of overriding MHA in development for various reasons, such as: a) MHA needs to catch up in development; b) MHA has customary law, which conflicts with positive law; b) the existing legal instruments still need to be improved to formulate the government's efforts and responsibilities towards MHA and other reasons. (Rudy, Putra M, 2022) At the same time, these reasons certainly cannot be used as justification for the state, especially the Regional Government, to stop efforts to fulfill the rights of MHA if Indonesia still aspires to realize a Welfare State.

This research aims to analyze the transformation model of the institutional arrangements of the Baduy, Tengger, and Minangkabau indigenous peoples to become Customary Villages and, second, to formulate a Regional Government policy strategy to realize an inclusive and sustainable region for customary law communities.

2 LITERATURE REVIEW

There are at least 7 studies related to this research. 2 studies on the Baduy Tribe, 3 studies on the Tengger Tribe, and 2 studies on the Minangkabau Tribe. First, 2 studies on the Baduy Tribe, both in the form of dissertations, were written by Syukri Batubara and Ade Fartini. The research written by Syukri Batubara focuses on three problems, namely: a) analysis of the kinship structure and system in Baduy society; b) analysis of Baduy customary land law better known as ulayat land of the Baduy community and forest resources in the Baduy community; c) analysis of the implementation of Regional Regulations (Perda) regarding Baduy customary rights and what factors constitute obstacles in the implementation of Regional Regulations (Perda) for the Baduy Community (Syukri Batubara, 2010). Meanwhile, Ade Fartini focuses on two problems: a) analysis of the reasons why the rights to education and health regulated in the

constitution cannot yet be accessed; b) legal politics of fulfillment in efforts to fulfill the constitutional rights to education and health of Baduy women (Ade Fartini, 2020). These 2 studies have yet to analyze the transformation of indigenous peoples into customary villages and regional government policies related to this.

Second, 3 studies on the Tengger Tribe: a) Devi Novita Sari wrote a research that focused on analyzing the strategies of traditional institutions in developing tourism in the Ngadas Traditional Tourism Village (Sari, 2022); b) Robert W Hefner menulis Suku Tengger dari segi perubahan sosial dan politiknya dari zaman ke zaman (Hefner, 1999); and c) Ulfa Binada wrote about the construction of the communal identity of the Tengger Tribe indigenous people from the colonial era to post-reformation.(Ulfa Binada, 2019) These three articles still need to analyze the transformation of customary law communities into customary villages and regional government policies related to this.

Third, 3 studies on the Minangkabau Tribe: a) Musyair Zainuddin wrote about the implementation of the nagari government based on traditional origin rights. (Zainuddin, 2010); b) Research written by Franz and Keebet von Benda-Beckmann analyzes the Ambivalent Identities of Decentralization and Minangkabau Political Communities (Franz dan Keebet von Benda-Beckmann, 2014); and c) Research written by Zukri Said, Susmanto, and Budi Baik Siregar, who wrote about Returning to Nagari, Solok Regency, West Sumatra (Zukri Said, Susmanto, 2002). These three papers still need to analyze the transformation of traditional law communities into customary villages and regional government policies related to this.

3 METHOD

The research method used is normative research (Hasan, 2002). The data sources used in this research are secondary data sources consisting of primary legal materials and secondary legal materials (Suratman, 2015). This research uses 2 approach models consisting of a statutory approach and a conceptual approach (Peter Mahmud Marzuki, 2012). This legal research data processing was non-statistical, while the analysis was carried out descriptively.(Syamsudin, 2007).



4 RESULTS AND DISCUSSION

4.1 TRANSFORMATION MODEL OF INSTITUTIONAL ARRANGEMENTS IN INDIGENOUS PEOPLES

4.1.1 The Baduy tribe became a Kanekes Customary Village

The existence of the Baduy customary law community has been recorded in historical records long before Indonesia became independent until post-reformation Indonesia. (Ade Makmur K dan Adi Purwanto, 2002; N.J.C Geise, 1952) Moreover, N.J.C Geise and Judistira K Garna (Garna, 1988) have provided an overview of Baduy society and culture during post-independence Indonesia, namely the Old Order and continued during the New Order era in power (Ade Makmur Kartawinata, 2020). The history of the origins of the Baduy people was also summarized by Ade Makmur Kartawinata, who explained that there are two opinions regarding the origins of the Baduy people (Ade Makmur Kartawinata, 2020). *First*, the assumption is that they are descendants of the Padjadjaran Palace who fled south of Banten and were pushed back by the attacks of Sultan Hasanudin, who spread Islam in that area. (Choy, 1999). *Second*, the assumption is that they are local or South Banten people. Local people provide a clearer picture, primarily when it is related to elements of South Banten culture (Garna, 1973). The word Baduy has no connotation as a derogatory word and has nothing to do with the word Badwi, but the name Baduy comes from the word Cibaduy, the name of the river to the north of Kanekes Village. They also mentioned the names of villages or places where they lived, giving them an essential meaning. Therefore, it is not surprising that the term urang Kanekes is used by them by the name of the place or village where they live, emphasizing the nature and value of their culture. (Ade Makmur Kartawinata, 2020).

Baduy has two government institutions, Jaro Pamarentah as the Head of Kanekes Village, which will bridge the relationship between MHA and outside parties, and Puun as the Customary Leader of the Baduy Tribe, who makes customary decisions. (Syukri Batubara, 2010). Kanekes Village is led by three Puun, namely Puun Cikeusik, Puun Cibeo, and Puun Cikartawana. The orientation or activities of the Puun refer to the hustle and bustle of karuhun. Pikukuh is an absolute customary provision, while karuhun is the spirit of ancestors. (Furqon, 2021). Meanwhile, Jaro Pamarentah is the daily implementer of Kapuunan government affairs, liaising between government elements (District Head, Regent, etc.) and the Kanekes community (Ade Fartini, 2020).



Another fundamental role difference between the leaders called puun and those called jaro is in the responsibilities that deal with their activities because the puun deals with the unseen world. In contrast, the Jaro are tasked with solving worldly problems. In other words, the puun relates to the sacred world, and the jaro relates to the profane world. Therefore, the puun accepts the highest responsibility for regulating the harmonization of social and religious life so that the lives of its citizens can proceed in an orderly manner. In situations like this, community members are required to comply with the provisions of the pikukuh that the karukun has outlined. Violating pikukuh means you are ready to accept punishment by expulsion from the tangtu area. Or, for the community, violating these provisions means having to bear the obligation to work in huma puun, the duration of which is adjusted to the severity of the violation.(Ade Makmur K dan Adi Purwanto, 2002).

Jaro Pamarentah's appointment was based on approval by both parties, namely the Puun and the regional government. There are also two references, namely puun and sub-district head. Therefore, Jaro Pamarentah balances the two categories of leaders, who must be able to carry out everything wisely. The term of service of a Jaro Pamarentah depends on the length and extent to which he can carry out the countervailing policy in question. Jaro Pamarentah is assisted by at least three primary helpers, namely carik, the village clerk who always comes from outside Kanekes, and two pangiwa, Jaro Pamarentah's helpers, who come from Panamping. At the tangtu level, there are three puun, who are not only the highest religious and traditional leaders in the tangtu village but also for the entire Kanekes. All subordinate leaders must submit to them. Puun is assisted in carrying out his activities by several traditional and religious officials. The highest traditional and religious official who serves as an advisor is the tangkesan, also called the white shaman. He usually comes from and is domiciled in Cikopeng village. Apart from being under the supervision of pus, Shamans at the village level are also observed by tangkesan. (Ade Makmur K dan Adi Purwanto, 2002).

Since the existence of Baduy, the Kanekes Village Government structure has adopted a hybrid government structure (Peraturan Daerah Kabupaten Lebak Nomor 13 Tahun 1990 Tentang Pembinaan Dan Pengembangan Lembaga Adat Masyarakat Baduy, 1990), on the one hand, it is by the Village Government with the provisions that formally apply, on the other hand, still recognizes the informal structure of the Baduy customary law community. First, the structure of the Jaro Government or Village Head is by



Permendagri Number 84/2015; Village Government SOTK consists of 1. Village Head
2. Village Apparatus: a) Village Secretary, in charge of 3 (three) affairs, namely: administration and general, finance, and planning; b) Regional Apparatus, which consists of several Hamlet Heads. c) Technical Implementation, which consists of 3 (three) sections, namely: Government, Well-being, and Service. Second, in addition to these structures, there are informal structures that work based on customary law, such as the term Jaro Government with its technical implementer Pangiwa, and the Village Consultative Body, which is played by the Kokolotan institution, which has a direct relationship with Jaro Tujuh/Jaro Adat dan Dependence Twelve. (Dinas Pemberdayaan Masyarakat dan Desa, 2017).

The Regional Government of Banten Province has issued Banten Province Regional Regulation Number 2 of 2022 concerning Institutional Structure, Filling Positions, and Term of Office for Customary Village Heads. This Regional Regulation is to implement the provisions of Article 109 of the Village Law. Banten Province Regional Regulation No. 2 of 2022 has guaranteed provisions regarding the institutional structure of customary village government, filling the position of the customary village head and the term of office of the customary village head. In the general explanation of the Regional Regulation, it is stated that the Regional Regulation aims to implement the customary legal community unity that already exists and exists in the Banten Province region, which has a unique government system, namely the Baduy Tribe in Kanekes Village, Leuwidamar District, Lebak Regency. In the explanation of the Regional Regulation, it is emphasized that the existence of the Baduy community has two government systems, namely the national system and the traditional (customary) system. The two systems are combined or acculturated so that no clash occurs. Nationally, the Kanekes population is led by the village head, Jaro Pamarentah, under the sub-district head. At the same time, traditionally they are subject to the highest Kanekes traditional leader, "puun". The Baduy government has a leadership system that includes several officials with their names. The orientation of each leader is towards the highest leader, the puun. They are considered a single supreme leadership unit to handle all aspects of life and have a relationship with Karuhun. In this pure unity, seniority is determined based on the flow of relatives for specific roles in the implementation of Sundanese Wiwitan customs and religion. (Peraturan Daerah Provinsi Banten Nomor 2 Tahun 2022 Tentang Susunan Kelembagaan, Pengisian Jabatan, Dan Masa Jabatan Kepala Desa Adat, 2022).



The recognition of the existence of the Baduy at the regional level above is not a form of initial recognition. Initial recognition at the regional level did not take the form of recognition of the existence of the Baduy customary government system but rather a recognition of the need for guidance and development of Baduy Community Customary Institutions. It is regulated in Lebak Regency [Regional Regulation Number 13 of 1990 concerning the Guidance and Development of Baduy Community Customary Institutions](#) (Lebak Regency Regional Regulation Number 32 of 2001). In this Regional Regulation, Baduy people are defined as those living in Kanekes Village, Leuwidamar District, Lebak Level II Regional Regency, with different cultural characteristics and customs from the general community. The customs of the Baduy community are the values, principles, and social beliefs of the Baduy community in Kanekes Village, which live and are maintained in the daily life of the Baduy community and do not conflict with Pancasila and the 1945 Constitution. Meanwhile, the Baduy Customary Institution is a customary institutions that exist and live and develop in the Baduy community in Kanekes Village, Leuwidamar District, Lebak Regional Level II Regency.

The aim of fostering and developing the Baduy Community Customs Institute is so that the Baduy community's customs can be preserved, so that they can support the development of Indonesian National Culture. The guidance and development of Baduy Community Traditional Institutions must be directed towards the establishment of solid national stability, both in the fields of ideology, politics, economics, society, culture, and religion, as well as national defense and security to smoothly carry out tasks in the fields of government, development, and society.(Syukri Batubara, 2010).

After adapting to the formal village government structure for a long time through hybrid policies, Kanekes Village was finally designated as a Customary village through Lebak Regent Regulation Number 38 of 2023 concerning implementing Kanekes Customary village Government (Lebak Regency Regulation No. 38/2023). The Regional Regulation has reaffirmed that the Baduy Traditional Law Community Unit inhabits the Kanekes Customary village. Meanwhile, the Baduy community is a community that lives in Kanekes Village, Leuwidamar District, Lebak Regency, which has cultural characteristics and customs that are different from those of the general public.

Article 10 of the Village Law regulates that the existence of Customary villages is complemented by regulations regarding the authority of Customary villages based on origin rights, which includes, among other things, the implementation of government



based on the original structure. The implementation of government based on the original structure has been embodied in the Lebak Regency Regulation No. 38/2023. In this regulation, government administration refers to the hybrid government structure running so far. Jaro Pamarintah, Village Secretary, and Village Apparatus implement customary village government institutions. Meanwhile, Jaro Tangtu and Jaro 7 (seven) implement the Decision Making Institution. Jaro Tangtu is a traditional apparatus in the Baduy region who functions as a puun representative regarding external affairs.

Meanwhile, Jaro 7 is a traditional regulator in the Customary village tasked with handling security and customary order issues throughout the customary village area. Lebak Regent Regulation No. 38/2023 also regulates that Jaro Pamarintah is appointed and elected directly by the Traditional Institutions, namely (Jaro Tangtu and Jaro 7 (Seven)). Meanwhile, the Traditional Institutions are tasked with implementing customary law policies and as supervisors of implementing customary village government. (Peraturan Bupati Lebak Nomor 38 Tahun 2023 Tentang Penyelenggaraan Pemerintahan Desa Adat Kanekes, 2023).

The change in status of Kanekes Village to Kanekes Customary village because the Baduy traditional law community inhabits it is by Government Regulation Number 43 of 2014 concerning Implementation of Law Number 6 of 2014 concerning Villages concerning Implementation Regulations of Law Number 6 of 2014 concerning Villages. In the case of changing the status of a village to become a Customary village, in this context, Kanekes Village becomes Kanekes Customary village, and the regional government of Lebak Regency has the authority to change the status of the village becoming a Customary village.

4.1.2 The Tengger Tribe became a Ngadas Customary Tourism Village

The Tengger tribe is a tribe that lives around Mount Bromo, East Java, occupying parts of Pasuruan, Lumajang, Probolinggo, and Malang Regencies. The Tengger Plateau is a vast mountain range that separates Central Java from the region known as the "eastern tip". (Hefner, 1999). There are various versions of the legend of the formation of the Tengger Tribe (Yuliati, 2011). Because the Tengger Tribe is spread across several regions (Ulfa Binada, 2019), Badan the National Legal Development Agency thinks that the Tengger Tribe community is generally divided into two traditional areas, namely Sabrang Kulon (represented by Tosari Village, Tosari District, Pasuruan Regency) and Sabrang



Wetan (represented by Ngadisari Village, Wanatara, Jetak, Sukapura District, Probolinggo Regency). (Noor M Aziz, 2011).

Social changes in the identity of the Tengger Tribe began to occur since the presence of the Dutch East India Company (Vereenigde Oost-Indische Compagnie/VOC) in Tengger land. This colonial presence was the initial momentum for social change in Tengger's identity. This conflict was caused by the VOC clearing forest land into coffee, cocoa, and clove plantations. However, what was worse, the VOC brought in workers from Madura who had different identities. The conflict between Java-Tengger and Java-Madura has occurred since the colonial era. At that time, Tengger's identity began to experience pressure from the Madurese. Tengger Land, which was previously the independent land of Mpu Sendok through the Muncang Inscription and strengthened by Hayam Wuruk through the Penanjakan Inscription, was referred to as Hila-Hila land after the VOC carried out this exploitation; the Tengger people began to lose their power in their own homes.(Ulfa Binada, 2019).

Through several of its policies, the presence of the New Order regime was the second momentum that exacerbated the damage to the identity of the Tengger Tribe. During the New Order, there was the worst pressure; the Tengger people were forced to convert to Hinduism and Buddhism (partly Islam). Through Presidential Regulation Number 1 of 1965 and Law Number 5 of 1969, the government forces all Indonesian people to be registered with 5 (five) formal religions (Islam, Christianity, Catholicism, Hinduism, and Buddhism). Meanwhile, Tengger is a group of people who believe in Sang Hyang Widi Wasa and Sang Hyang Dewa Brahma. Due to this pressure, the Tengger people tried to get around this by separating religion and custom. From this acculturation, the Tengger people do not recognize caste or corpse burning/cremation, and there are religious institutions and traditional institutions in their social structure. The New Order era also leveled villages by eliminating communal autonomy and customary rights of village communities. This repressive movement through Village Law no. 5 of 1979. This law was intended to neutralize village communities who were members of the PKI movement. Apart from that, the enactment of this law has eliminated Hila-Hila's land autonomy rights from the royal era. The Tengger people, as an indigenous people, no longer feel the presence of the state in their socio-cultural dimensions. The state took repressive measures against the Tengger people because they were considered PKI sympathizers. Also, construction in the New Order era included religion in the KTP



column. The Tengger people, followers of the Shiva Sugata, which is not recognized in the law, are forced to convert to Hinduism and Buddhism, some to Islam.(Ulfa Binada, 2019).

Apart from the aspect of identity, the Tengger Tribe inhabits an area that has its natural attractions along with unique customs, so the government designated the Bromo Tengger Semeru National Park (TNBTS) as a national park and nature conservation area through the Decree of the Minister of Agriculture Number 198/Kpts/Um/1981 concerning the Establishment of the Bromo Tengger Semeru National Park. The decision was dated March 13, 1981, issued by the Central Government. It was then reinforced by Article 1 numbers 13 and 14 of Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and Their Ecosystems. BTS is one of 9 (nine) areas on the island of Java designated as a national park. As a National Park Area, TNBTS is considered a natural conservation area that has a native ecosystem, managed with a zoning system that is used for research, science, education, supporting cultivation, tourism, and recreation purposes. Apart from that, TNBTS is also included in the Nature Conservation Area (KPA).(Noor M Aziz, 2011).

The determination of the TNBTS, on the other hand, had the negative impact of splitting the struggle of the Tengger people from a communal struggle for the Hila-Hila area into a regional struggle. It is due to the capitalization of Tengger land through TNBTS tourism. TNBTS, under the Ministry of Environment and Forestry, is considered to be narrowing the Tengger Tribe's space for movement on their customary land. So, the Tengger community can only manage the villages around the national park to support village income. Thus, every village in Tengger tries to continue to compete with other Tengger villages to increase village income.(Ulfa Binada, 2019).

In 2017, Ngadas Village was designated as a tourist village that supports the National Tourism and Culture Park tourist destination based on the Decree of the Malang Regency Tourism and Culture Office No. 556/01/35.07.108/2017 concerning Ngadas Village, which has been designated as a Traditional Tourism Village (S, 2021). 9 (nine) factors influence the development of Traditional Tourism Villages: (1) potential for tourism, arts, and distinctive culture (2) location including tourism development areas (3) available managers, trainers, tourism, arts, and distinctive culture practitioners (4) accessibility and infrastructure to and within customary villages (5) security for tourists



(6) traditional groups (7) traditional government institutions (8) traditional assets and objects (9) traditional legal norms. (Maulidya, 2018).

As in other Tengger Tribe communities, the land control and ownership system is regulated by customary rules that state prohibitions or taboos on land sales outside the Tengger Tribe community. Whatever the reason, sales of land or inherited land can only be done between members of the Tengger Tribe community; usually, sales of land or inherited land are prioritized by immediate family. (Noor M Aziz, 2011) The same applies to the Tengger Indigenous People in Ngadas Village, who still preserve their culture daily. (Damayanti, 2016) In customary law, between the legal community as a unit and the land it occupies, there is a very close relationship that originates from a religious-magical view. This close and religious relationship causes the legal community to obtain the right to control the land, use the land, harvest the fruits of the plants on the land, and also hunt the animals that live there. (Muhammad, 2013). The government has also provided legal protection to the Tengger Tribe indigenous community, as evidenced by the submission of communal property rights certificates. This certificate cannot be bought and sold to fellow Tengger Tribe people. (Yoenianto, 2019).

These customary rights apply outward and inward. It applies externally because non-citizens of the legal community are, in principle, not permitted to take part in owning/cultivating land, which is the jurisdiction of the association in question. It applies internally because a partnership is a partnership, which means that all members of the partnership together as one whole carry out the customary rights in question by reaping the fruits of the land along with all the plants and other animals that live on it. (Muhammad, 2013). This partnership right limits the freedom of business or freedom of movement of members of the partnership as individuals; this restriction is carried out for the benefit of the partnership. As is the case with the Tengger Indigenous Community in Ngadas Village, which applies inwardly and outwardly. What is meant is that all Tengger indigenous people are allowed to control, utilize, and take the results of the plants that live on the land. Applies externally, all Tengger indigenous people in Ngadas Village are not permitted to sell and buy their land to anyone other than fellow residents of Ngadas Village. If non-Ngadas residents are only allowed to rent, and the term is only 5 (five) years, if you want to extend it, you must have the approval of the Village Head. (Damayanti, 2016).



The Tengger people can still maintain the customs passed down from their ancestors from the Majapahit era. The key figure for the survival of the Tengger Tribe is the Tengger Shaman. They call shamans shaman pandita. Shamans in Tengger society are not the same as shamans in Javanese society, who are more attached to supernatural things. Shamans in Tengger are closer to matters of religion and belief, not supernatural matters. Shamans play a role in all customary implementation, whether regarding marriage, inheritance, death, or other activities. The Tengger people place the figure of the ritual leader as a very honorable and respected figure. They would rather not have a head of village government than not have a ritual leader.(Noor M Aziz, 2011). A traditional head leads each village inhabited by most of the Tengger Tribe. Thus, the boundaries of a traditional shaman's work area are the traditional territory and the community in the village where he or she serves as a traditional shaman. Each district has a regional coordinating shaman whose job is to coordinate traditional shamans in their area.(Noor M Aziz, 2011).

In the democratic process, shamans confirm the position of village head and traditional head. The role of shamans is also clearly visible during the decision-making deliberation process, but it needs to be emphasized that shamans are not involved in politics.(Dilla Maulida, Hana Sausan, 2023). Traditional shamans have spiritual and social functions. The spiritual function of traditional shamans is to lead traditional ceremonies. Meanwhile, its social function is as a mediator between society and government-related affairs. Traditional shamans also have specific authority in making decisions, rules, sanctions, or social fines for violators of customary regulations and laws. For example, the traditional shaman's authority in making decisions is that when a disaster occurs, the traditional shaman has the right to determine when the community should evacuate or remain in the village.(Noor M Aziz, 2011).

The Tengger Tribe community does not recognize dualism in leadership, even though there is such a thing as a Traditional Shaman. But formally, government and custom. The Tengger tribe is led by a village head (a high-ranking official also the traditional head). Meanwhile, Shamans are positioned as leaders of traditional rituals/ceremonies. The process of selecting a high-ranking official is carried out by direct election by the community, through the process of selecting high-ranking officials. Meanwhile, the selection of Shamans is carried out through several stages (concerning the Shaman candidate's self), which will ultimately be tested through the Mulunen exam

(a spell pronunciation test that must not be interrupted or forgotten), which is timed at the Kasada Ceremony at Poten Mount Bromo.(Noor M Aziz, 2011).

In fact, in the existence of the Tengger tribe, especially in Ngadas Village, the Village Government structure adheres to a government structure that is similar to the Baduy Tribe, namely that, on the one hand, it is by the Village Government with the provisions that formally apply, on the other hand, it still recognizes the informal structure of the Tengger customary law community. First, the structure of the Traditional Head or Village Head is by Minister of Home Affairs Regulation Number 84/2015, SOTK for Village Government. Second, in addition to these structures, informal structures work based on customary law, such as the terms Dukun or Pandita. Shamans and Pandita indirectly have an essential role for the Tengger Tribe in Ngadas Village.(Dinas Pemberdayaan Masyarakat dan Desa, 2017). The difference is that the Regional Government needs to recognize the informal structures in Ngadas Village.

The original government structure in Ngadas Village, which the Tengger Tribe inhabits, has finally shifted to no longer practicing the original structure but adopting a modern village concept. The shaman or pandita is not the absolute decider or decision maker practiced by the Puun in the Baduy Tribe. However, it has been handed over to the Village Head, also considered the Traditional Head. The practice of state recognition is also different when compared between state and local government recognition of the Baduy Tribe and the Tengger Tribe. Because the Baduy tribe is geographically focused and only lives in one place, Kanekes Village, it is easy to provide recognition from the state and local government. Meanwhile, the Tengger Tribe is not only focused and only lives in one place, namely not just Ngadas Village, but is spread to other villages in the Bromo-Tengger-Semeru highlands, such as Tosari Village in Pasuruan Regency and Ngadisari Village in Probolinggo Regency and other villages. Other. The Tengger tribe is spread across several areas, as previously explained.

Several differences exist in the degree of recognition between traditional tourists and customary villages. First, in terms of legal basis, customary villages have a constitutional basis as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and the Village Law, which essentially recognizes and respects traditional law communities, while traditional tourism villages still refer to Law Number 10 of the Year 2009 concerning Tourism. Hence, the issue focuses on tourism matters whose authority is owned by the Central Government or Regional Government. Second,

differences in authority: if a village is determined to be a customary village, then the village, as regulated in Article 10 of the Village Law, can have original authority. *Third*, there are differences in recognition of the original government structure; if a village is determined to be a customary village, then it is allowed to adopt the original government structure, while traditional tourist villages must follow the uniformity as regulated by the Minister of Home Affairs Regulation Number 84/2015, SOTK for Village Government. *Fourth*, differences in recognition of customary law; if a village is determined to be a customary village, it is permitted to apply customary law that lives and is carried out by indigenous people, while traditional tourist villages follow the provisions of national laws and regulations. *Fifth*, differences in recognition of customary land ownership. Suppose a village is designated as a customary village. In that case, the customary law community is recognized as having ownership of its customary land, while traditional tourism villages do not recognize ownership of customary land. An interesting thing happened in Ngadas Village because even though it has the status of a traditional tourist village, not a customary village, the government has also provided legal protection by handing over communal property rights certificates. This certificate cannot be bought and sold to fellow Ngadas Village residents

4.1.3 The Minangkabau Tribe Became a Nagari Customary Village

In West Sumatra, Nagari is a "small republic" that has its government autonomously and is based on a community (self-governing community). As a "small republic," Nagari has a democratic government apparatus: legislative, executive, and judicial elements. (Sutoro Eko, 2008). Nagari, anthropologically, is a holistic unity for various sets of socio-cultural orders. Nagari ties in Minangkabau, in the past, were not only primordial-consanguineal (blood ties and traditional kinship) in Nature but also structurally functional in the sense of effective territorial governance. Therefore, Nagari has an upward link to Luhak and Nature, and the lateral links between fellow Nagari are primarily emotional. This kind of autonomous system is a characteristic of tribal societies in the interests of self-defense and preserving the values of each Nagari, the focus of which is diversity. The bond between Luhak and Nature is a totemic and cosmological bond that unites the Nagari and binds them into spiritual and emotional unity. Therefore, the Minang people consciously differentiate between territorial-consanguineal unity in the form of a nagari-nagari republic and totemic-cosmological unity. (Sutoro Eko, 2008).

³ Nagari is a customary law community unit with an original structure based on special rights of origin. It means that Nagari is a form of government based on Minangkabau customs with an original structure and structure, namely Minangkabau customs, in addition to implementing general government (general government) within the Unitary State of the Republic of Indonesia.(Zainuddin, 2010). The Minangkabau tradition has a matrilineal kinship system, namely the lineage drawn from the mother's (female) line and structured with a tribal government system with family members and their assets, both physical and non-physical and systemized in a democratic form of government, which is symbolized by the word -customary words: Nagari bakaampek tribe, babuahparuik tribe (Nagari with four tribes, the tribe has descendants from the mother's line). A collection of these tribes forms a Nagari, which in Mamang adat is Nagari bakaampek suku (Nagari with 4 tribes), meaning that at least a Nagari consists of 4 (four) tribes. This means that the original structure based on special rights of origin shows that a Nagari will have genealogical characteristics (lineage) and a clear territory/territory that is special in Nature and has its government so that the Nagari community (anak Nagari) is wholly divided into existing tribes.(Zainuddin, 2010).

Nagari in Minangkabau has two inherent positions, namely as a unit of customary law community and, simultaneously, as the lowest government unit. As a customary law community unit, Nagari is structured based on the principles of matrilineal and territorial kinship systems. Based on this system, the kinship groups that inhabit the Nagari consist of paruik or jurai, clans and tribes. Paruik or jurai are a matrilineal group who live in a Rumah Gadang. A group of several paruik is called a tribe led by a tribal leader or penghulu andiko, the next level is called a tribe.(Hermayulis, 2011). Nagari in Minangkabau has two inherent positions as a unit. Within the tribe, several groups are gathered, led by the tribal leader. The final level is Nagari. In the Nagari, several tribes are gathered, which are led by a Kerapatan Adat (Customary Council).(Suryanef & Al Rafni, 2005).

As an autonomous government unit, each Nagari is an institution that exercises government power through the Customary Council, which functions simultaneously as an executive, legislative, and judicial body. Apart from that, the Customary Council also represents the interests of the Nagari towards other Nagari or higher power structures.(Suryanef & Al Rafni, 2005) In the Customary Council, the Ninik mamak who represent their people gather and, by deliberation, reach a consensus, carry out the



election of the Nagari Mayor, carry out justice over its members, and establish regulations in the interests of the Nagari children. A democratic and egalitarian atmosphere always colors the leader's relationship with the community in administering government and customary law matters.(Sutoro Eko, 2008).

Initially, the Nagari government in Minangkabau could be considered a traditional government that started from tribal governments and accumulated into the Nagari government. In the colonial era, the Nagari government, apart from running like a traditional government, was also influenced by the colonialists to preserve their interests. The colonial authorities tried to exert their influence. They tried to take advantage of the Nagari government to gain profits from the colony so that significant changes occurred to the traditional government that had previously existed.

Government intervention in Nagari continued in the post-independence era of modern Indonesia. The peak was the issuance of Law No. 5 of 1979 concerning the Village Government, which changed the Nagari government to the village government. With the disappearance of the Nagari as the lowest government unit, the principle of integration of traditional and formal government units, which has been the hallmark of the Nagari government so far, has also disappeared. Apart from that, the choice of Jorong to be a village and not a Nagari turned out to have created additional problems with multiple impacts because the considerations that were put forward at that time were more about calculating profit and loss in an economic sense - because the number of jorongs was many times greater than the number of Nagari, and then the income from financial aid. From the center to the regions for the villages, the government has also increased many times but does not consider socio-cultural aspects.(Sutoro Eko, 2008).

Law No. 5 of 1979 weakened the position of the adat because, according to the adat, the Nagari is the most important political unit. To a certain extent, political status was restored within the Nagari when traditional leaders were allowed to form the Customary Council to handle matters that crossed village boundaries. These include communal land management and water distribution for rice field irrigation. This institution, whose membership can only be filled by traditional leaders, can insist on handling local disputes before justice seekers submit them to the district court.(Biezeveld, 2010).

When the New Order government ended in 1998, the reform government issued a decentralization policy through Law No. 22 of 1999 concerning the Regional

Government. The birth of this law has encouraged the rise of local identity in the regions because, during the New Order, political identity was destroyed by a Javanese village-style uniformization project. West Sumatra found new momentum while responding most quickly to decentralization. One of the central themes of the revival of decentralization in West Sumatra is "returning to Nagari," namely, to decentralized and democratic local political identities and communities. (Sutoro Eko, 2008) The experience of "returning to Nagari" in West Sumatra is a local experiment in building village autonomy (Sutoro Eko, 2008). One of the reasons for returning to the Nagari was because there were many interconnected relationships between villages, especially at the tribal level, and the existence of village assets that extended beyond village boundaries. The village government currently consists of a village head elected by residents, a BPD who is also elected, and a Nagari Traditional Advisory Council (DPAN) consisting of traditional leaders, religious leaders, 'smart clever,' and women. Moreover, the Nagari Customary Institution (LAN), has also been institutionalized, whose main task is to mediate disputes regarding tribal property and to protect customs in general. (Biezeveld, 2010).

After the reform to strengthen the determination to "return to Nagari" the West Sumatra Provincial government promulgated Regional Regulation No. 9 of 2000 concerning Basic Provisions of the Nagari Government. The enactment of Regional Regulation No. 9 of 2000 was the starting point for the return of Minangkabau customary affairs to the government in general, namely into the Nagari Government, where previously the Village Government and the regulation/management of Minangkabau customs were separated by the Nagari Customary Council (KAN), where the KAN area was the Nagari. The village government area is the village (Jorong/Korong from the previous Nagari). The preamble to Regional Regulation No. 9 of 2000 states firmly that the Nagari government system is seen as effective in creating religious and cultural resilience based on the traditions and socio-culture of the people of West Sumatra, which is democratic and aspirational and in order to achieve community independence, participation, and creativity, which has so far been marginalized and ignored. (Zukri Said, Susmanto, 2002).

The Nagari government structure consists of a Nagari Mayor resulting from the general election, his staff, and a legislative body resulting from the general election. The Wali Nagari represents the Nagari internally and externally and is responsible to the Nagari parliament, which discusses and enforces the Nagari regulations and the Nagari

budget and controls their implementation. According to Regional Regulation No. 9 of 2000, the Nagari parliament consists of members elected by the Nagari population in general and in free elections. Regency regulations require the Nagari parliament to represent essential categories of people throughout the Nagari, including the three classic categories, namely traditional elders (nirik mamak), religious leaders (alim ulama), and intellectuals, as well as indigenous women (bundo biological) and young people. (Franz dan Keebet von Benda-Beckmann, 2014). The Wali Nagari and parliament together form the official Nagari government. In addition, two other institutions were awarded. A religious and customary consultative council advises the Wali Nagari and the Nagari parliament on customary issues. It mediates disputes involving tribal property and general protection of customs, which is not part of the Nagari government. (Franz dan Keebet von Benda-Beckmann, 2014). By choosing the term LAN instead of KAN, provincial parliament members wanted to emphasize their intention to separate this institution from the KAN of Suharto's New Order era. However, districts and Nagari cannot choose another name, and five of the eight district regulations have reverted to the term KAN. KAN and LAN have an unclear position in the government structure of the new Nagari. It is not an official Nagari government institution, but it is regulated, and its functions are officially regulated in great detail.

The West Sumatra Provincial Government emphasized that villages must return to Nagari territorial units before introducing the village system. Fusion and splitting of Nagari are not ruled out. A Nagari can be divided after consultation with the customary law community and deliberation between KAN and other social leaders. If consensus is reached, the decision is submitted to the district government and must be confirmed by the decision of the regional head district head. This regulation also allows the formation of a new Nagari with its government while remaining under the parent Nagari KAN. (Franz dan Keebet von Benda-Beckmann, 2014).

Democracy in Nagari uses dialogue and consensus as a means. The manifestation of participation is shown by giving authority and delegating aspirations to link mamak in Kerapatan Nagari. This pattern differs between Nagari, always giving place to local initiatives and institutional improvisation. In Minangkabau, it is known as Adaik Salingka Nagari (meaning that the procedures for internal Nagari democracy only apply within the Nagari, not always applicable in other Nagari). So in Minangkabau, Nagari stands alone,



are independent, and have the authority to regulate themselves. This Nagari phenomenon is similar to federation in Western democratic terminology. (Zukri Said, Susmanto, 2002).

Based on West Sumatra Province Regional Regulation No. 9 of 2000, each district, namely 8 districts (except Mentawai District), starting in early 2001, has established a Regional Regulation on Nagari Government. (Zainuddin, 2010) The material depends on the aspirations of the people of the district concerned to organize their respective Nagari.

There are several positive assessments of the success of West Sumatra Province in returning to Nagari. First, nagari is the Minangkabau people's primary identity and basis of life. Minang people are always proud to call themselves "sons of Nagari." Second, returning to Nagari is supported by social movements and public policy. Third, the movement to return to Nagari is supported and dynamic because of substantial social capital (cooperation and networks). Fourth, the success story of returning to Nagari must be distinct from the regional government's response. (Sutoro Eko, 2008). Recognition and restructuring of Nagari through West Sumatra Provincial Regulation Number 9 of 2000 have shown the Nagari's acceptance of modern government bureaucracy by once again recognizing the existence of the Nagari guardian as the sole leader of the government in the Nagari.

During its journey, West Sumatra Province Regional Regulation No. 9 of 2000 with West Sumatra Province Regional Regulation Number 2 of 2007 concerning the Principles of Nagari Government, this Regional Regulation considers that the old Regional Regulation has not accommodated the realities that apply in the Nagari customary law community. In this Regional Regulation, the Nagari Government comprises the Nagari Guardian and the Nagari Consultative Body. Meanwhile, KAN is positioned as the highest existing representative institution for the deliberation of indigenous peoples. Therefore, the unclear position of KAN results in a weak function of KAN in making every policy in Nagari. Another problem is related to the implementation of a Western-style democratic system into the Nagari Government system. As happened in Nagari Limbanang 50 Koto, several KAN members were appointed through appointment. It sparked conflict; some people wanted a democratic system implemented through voting, while others argued that the voting system was not an original habit of the Minang people; they preferred appointment through a consensus deliberation process by original traditions in Minangkabau customs.



Juridically, the Village Law places the village as not just the government or village head (walinagari), but the presence of the walinagari occupies the most critical position in Nagari life. Because the walinagari is not just an extension of the government, but is a leader of the community in the nagari. It means that walinagari must be rooted and close to the community while protecting, nurturing, and serving community members.(Nurus Shalihin, Aulia Rahmat, 2017). On the other hand, KAN, which consists of traditional leaders, feels that it has its responsibility towards the nagari, not just limited to authority in the legislative process or the Nagari Musrenbang alone. This triggers disharmony in the relationship between the two. Cases like this do not only occur in one Nagari but occur in many Nagari with elected walinagari who do not have close kinship and emotional relationships with traditional leaders.(Rahmat, 2023).

As a response to overcoming various fundamental problems and also to implement the provisions of Article 96 of Law Number 6 of 2014 concerning Villages, the choice taken by the West Sumatra Provincial Government was to reorganize the Nagari so that it could ultimately be designated as a customary village. The use of the term customary village in the provisions of Article 1 point 1 of Law no. 6 of 2014 concerning Villages is basically not appropriate for representing Nagari as a customary law community unit. The provisions of Article 19 Letter A and Article 103 regarding authority between villages and customary villages indicate that customary villages do not have administrative authority for organizational governance and government economics. Placing Nagari as customary villages in the Village Law has actually distorted the constitutional meaning of Nagari.(Wendra Yunaldi, 2021). This debate has the potential to slow down efforts to reorganize Nagari into customary villages in West Sumatra. However, the West Sumatra Provincial Government has established Technical Guidelines for Determining Customary villages and appointed pilot Nagari as a follow-up to Regional Regulation Number 7 of 2018 concerning Nagari.

4.2 REGIONAL GOVERNMENT POLICY STRATEGY

4.2.1 The Role of Regional Government in Determining the Degree of Recognition and Respect

Since 1998, the spirit of reform has had a positive impact on the bargaining position of indigenous communities. For this reason, the Congress of the Association of Indigenous Peoples of the Archipelago does not agree and does not agree to equate



indigenous peoples with isolated communities or illegal loggers. According to them, indigenous peoples are groups of people who have ancestral origins (from generation to generation) in a specific geographical area and have their own value system, ideology, economy, politics, culture, society, and territory.(Grogory L Acciaioli, 2014). The tendencies of indigenous peoples, as stated in the KMN resolution, emerged as significant changes in the decentralized regional government power system.(Thontowi, 2013). The influence of the AMAN Congress was proven positive during the amendment process to the 1945 Constitution of 2002-2004 by PAH I MPR RI, as evidenced by the inclusion of the position of customary law communities in relation to the regional model, which had this original structure. Recognition of areas that have an original structure uses the principle of recognition. Suppose the principle of decentralization is based on the principle of handing over governmental authority by the government to autonomous regions to regulate and manage government affairs. In that case, the principle of recognition is the state's recognition and respect for customary law units and their traditional rights (community autonomy).(Thontowi, 2013).

Regional Governments, as representatives of the state in the regions, play an essential role in providing recognition and respect to Indigenous Peoples (MHA) residing in their government areas. Regulations by the Regional Government regarding MHA greatly influence the degree and model of state recognition and respect for MHA. This argument is strengthened by the practice of MHA regulation in the three regions, as previously explained. MHA Baduy, MHA Tengger, and MHA Nagari have different degrees and models of recognition and respect depending on the regional policies adopted.

First, the Baduy MHA has a relatively strong degree of recognition and respect by the state when compared to the other 2 MHA. This is because MHA Baduy already has a legal umbrella at the regional level through Banten Province Regional Regulation No. 2 of 2022 concerning Institutional Structure, Filling Positions, and Term of Office for Customary Village Heads. Apart from that, MHA Baduy is also officially recognized as a Kanekes Customary village through Lebak Regent Regulation Number 38 of 2023 concerning the Administration of Kanekes Customary village Government. However, the Baduy government still needs to fully implement government based on the original structure because it still accommodates modern government even under the name Jaro



Pamarintah. Puun led the original Baduy government. Thus, the form of transformation from MHA to Customary village takes the form of a hybrid transformation.

Second, MHA Tengger has the weakest degree of recognition and respect by the state when compared to the other 2 MHA. This is because MHA Tengger does not have a legal umbrella either at the regional level of East Java Province or at the individual district level as the Tengger MHA is spread out. It is made worse by the fact that the state actually needs to understand the recognition and respect for MHA Tengger by giving recognition in the form of a Traditional Tourism Village because it is included in the Bromo-Tengger-Semeru National Park (TNBTS) area. Such policies resulted in the capitalization of MHA Tengger land in the tourism sector and centralization by the Central Government. Thus, the form of transformation from MHA to a Traditional Tourism Village is in the form of a false (pseudo) transformation.

Third, MHA Nagari has the most robust degree of recognition and respect by the state when compared to the other 2 MHA. This is because MHA Nagari has a legal umbrella at the regional level through West Sumatra [Province Regional Regulation Number 7 of 2018 concerning Nagari](#) and at the level of each district as MHA Nagari is spread. The difference between MHA Nagari and MHA Baduy means that MHA Nagari has the most robust state recognition and respect because it needs to accommodate modern government. The Nagari government structure is implemented based on the original structure, although it changes according to arrangements by the Provincial Government. Thus, the transformation from MHA to a Traditional Tourism Village takes the form of a complete transformation.

Several factors inhibit the implementation of the recognition of the protection of the fundamental rights of indigenous peoples: a) The prominence of symbolism, especially in the political arena of traditional institutions, ceremonies, clothing and traditional titles, dominates the symbols of indigenous peoples; b) Conflict resolution regarding demands for the return of customary lands cannot be carried out because the group demanding it cannot yet be designated as a customary law community; c) Regional governments do not confirm ulayat land and customary law communities because they need to allocate a separate budget. The elimination of this budget was deliberate because of fear of the risk of being criticized, questioned, and even sued by community groups; and (4) for some governments, recognition and protection of indigenous peoples is connoted as a secession movement.(Simarmata, 2007).

Additional inhibiting factors that also need to be considered after the Village Law is implemented: (1) the maximum recognition given by the state is not as a separate legal subject entity for customary communities, but rather customary law communities are forced to merge and transform into village-level autonomous areas. This forum is the only way that Indigenous Law Communities can take if they want to be fully recognized by the state (the various forms of recognition and respect for MHA by the state will be explained in the following subchapter with fundamental differences in degree). It will not only make things difficult for customary law communities who live and are spread across more than 1 (one) village but will also break ties and relationships within 1 (one) customary law community. It can be seen, for example, in the Tengger traditional law community. (2) The pendulum of state recognition and respect has actually been handed over its affairs and authority to the Provincial and Regency/City regional governments before/after the Village Law. Granting recognition really depends on the political will of the region and the influence of the existence of customary law communities on the regional government. (3) The false solution from the Regional Government by providing recognition in a form that is different from the nature and existence of customary law communities will make customary law communities lose their identity and constitutional rights due to differences in degrees of recognition. This practice is clearly seen in the recognition of the Tengger traditional law community in Kanekes Village, which is recognized as a traditional tourist village. (4) The Provincial Regional Government needs to be given more far-reaching authority in determining the Institutional Composition, Filling of Positions, and Term of Office for Customary village Heads. Meanwhile, no mechanism guarantees that these regulations genuinely represent the reality of customary law communities. This can be seen, for example, in the Nagari Customary law community.

4.2.2 Alternative Model for Recognition and Respect for MHA by the State

Apart from the significant role of local governments in recognizing and respecting customary law communities through customary villages, several other schemes are partial to customary villages but have a lower degree of recognition. (Fauzani, 2020, 2023) The scheme that was formed was not something planned but rather an excess of sectoral egoism. This excess is suspected to be due to the MHA regulation, which is not holistic but partial. Some laws and regulations only regulate customary laws or institutions, and

others regulate the rights of MHA. Only now, the proposal to establish a separate law for customary law communities to end this partialism is still a dead end. (Abdurrahman, 2015; Ricardo Simarmata, 2006).

Several indicators can be used to identify variations in recognition schemes. (Abdurrahman, 2015; Wibowo, 2015). The first indicator is the form of legal product for the confirmation or determination of the existence of the MHA; there are at least 2 groups of statutory regulations: (i) the group that determines the confirmation or determination of the existence of the MHA with regional regulations. Examples of this are the Village Law, Forestry Law and Plantation Law. Apart from legislative products, MK Decision 35/PUUX/2012 confirms the provisions for confirmation of the Regional Regulation; (ii) the group that determines that the inauguration is carried out by the Decree of the Regional Head (Regent/Mayor). Examples include Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities (Permendagri No. 52 of 2014) and Minister of Agrarian and Spatial Planning Regulations/Head of the National Land Agency Number 10 of 2016 concerning Procedures for Determining Communal Rights on Community Land Customary Law and Communities in Certain Areas (Agrarian et al. No. 10 of 2016).

The second indicator is differences in recognized authority or rights. Variations due to differences in these matters can be divided into two, namely: (i) legal regulations governing the recognition of rights to natural resources. Examples are the 2014 Joint Regulation, Minister of Agrarian and Spatial Planning Regulation no. 9/2015 and Minister of Environment and Forestry Regulation No. 31/2015 concerning Private Forests; and (ii) laws and regulations that regulate the recognition of the MHA as a self-governing community and thus its authority to carry out government affairs is recognized. An example is the Village Law, which recognizes customary villages. Apart from these two indicators, schemes can also be identified by the types of rights recognized. (Abdurrahman, 2015). The 2014 Joint Regulation provides an opportunity for the recognition of individual land rights, while Agrarian Ministerial Regulation No. 10 of 2016 regulates the recognition of collective rights and communal rights.

Table 1- Forms of Legal Products and Forms of Recognition and Protection

Legal Basis	Forms of Legal Products	Forms of Recognition and Protection
3 Village Law (Undang-Undang Nomor 6 Tahun 2014 Tentang Desa, 2016)	Regional Regulation	Customary Villages, original institutional structure, authority, customary rights/assets of villages, customary law and dispute resolution, customary justice
Forestry Law (Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan, 1999)	Regional Regulation	Customary forest management
Plantation Law (Undang-Undang Nomor 39 Tahun 2014 Tentang Perkebunan, 2014)	Regional Regulation	Customary land rights
Permendagri No. 52 of 2014 (Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014 Tentang Pedoman Pengakuan Dan Perlindungan Masyarakat Hukum Adat, 2014)	Decision of the Regional Head (Regent/Mayor)	4 Recognition and Protection of Customary Law Communities
Permen Agraria No. 10 of 2016 (Peraturan Menteri Agraria Dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 10 Tahun 2016 Tentang Tata Cara Penetapan Hak Komunal Atas Tanah Masyarakat Hukum Adat Dan Masyarakat Yang Berada Dalam Kawasan Tertentu, 2016)	Decision of the Regional Head (Governor or Regent/Mayor)	Communal Rights to Land

(Sources: Primary Data Processed, 2023)

1 The stages of MHA recognition can be broadly divided into two: (i) confirmation or determination of existence and (ii) recognition of rights or authority. Confirmation or determination of existence is basically a process for checking the fulfillment of MHA criteria by a community. The criteria for checking existence are required by the provisions in the constitution and other laws and regulations that require 'still alive' to recognize MHA. Thus, the state of being alive is measured by a number of criteria. The end of the confirmation or existence determination stage is the clarity of the social unit that will act as a legal subject. By clarifying the social units that will become legal subjects, this stage prepares the way for the second stage: the recognition of authority and rights. The second stage requires clarity on the subjects whose rights to natural resources or other traditional rights or authority to administer government affairs will be recognized. As previously explained, there are 3 (three) variations in legal regulations regarding the form of legal products to confirm or determine the existence of the MHA. The majority of laws and regulations determine regional regulations as legislative instruments for confirming or determining existence. Ministerial Decree No. 52/2014 departs from the mainstream by only requiring a Regional Head Decree. Before being changed into Agrarian Ministerial

Regulation No. 10 of 2016, further steps were taken by the Minister of Agrarian & Spatial Planning/Head of BPN Regulation No.9/2015, which gives authority to the Land Control, Ownership, Use and Utilization Inventory Team (IP4T) to decide or conclude the fulfillment of existence criteria.(Abdurrahman, 2015).

The latest legal regulations that regulate the form of legal products for confirmation or determination of existence are Minister of Environment and Forestry Regulation No. 32/2015. This regulation expands legal products that can be used to confirm or establish existence to regional legal products. In accordance with the provisions of Minister of Home Affairs Regulation no. 1/2014, regional legal products include regional regulations or other names, regional head regulations, joint regional head regulations, DPRD regulations, and decisions. The decisions themselves include Regional Head Decisions, DPRD Decisions, DPRD Leadership Decisions, and DPRD Honorary Board Decisions. Apart from differences in the form of legal products, the stages of confirmation or determination of existence can also be differentiated based on how they are linked to the second stage. Minister of Home Affairs Regulation No. 52/2014 does not link confirmation or determination of existence with the stages of recognition of authority. It is different from the Minister of Agrarian & Spatial Planning/Head of BPN Regulation No. 9/2015, which places confirmation or determination of existence as a condition for recognizing communal rights to land.

As previously mentioned, the stage of recognizing authority or rights is carried out after there is clarity regarding who the legal subject will have the authority or rights. Subjects who will receive recognition of authority or rights are those who have been confirmed or designated as MHA. The term recognition of authority refers to the administration of government affairs as regulated in the Village Law and its implementing regulations. This recognition of authority specifically refers to authority based on origin. The Village Law is one of the statutory regulations that directly links recognition of authority with confirmation or determination of its existence by making the latter a condition for recognition of authority. By determining that customary villages are the owners of assets such as customary rights, forests and water springs belonging to the village, the Village Law also recognizes the rights of public legal entities. The term recognition of rights refers to rights to land, other natural resources, and other traditional rights. In the current legislative framework, recognition of rights refers to the recognition of communal rights (Regulation of the Minister of Agrarian Affairs & Spatial



Planning/Head of BPN No. 9/2015) and of customary forests (Perber 2014; Minister of Environment and Forestry Regulation No. 32/2015). These rights include individual rights (Perber 2014) and communal rights (Regulation of the Minister of Agrarian Affairs & Spatial Planning/Head of BPN No. 9/2015). In accordance with the Regulation of the Minister of Agriculture & Spatial Planning/Head of BPN No. 9/2015, the rights recognition stage also includes registration of land rights to issue a land rights certificate. Meanwhile, the 2014 Berber Regulation and Minister of Environment and Forestry Regulation No. 32/2015 does not specify that recognition of land rights previously located in forest areas ends with registration of land rights.

5 CONCLUSION

Based on the discussion outlined above, this research concludes that: First, the transformation model of the institutional arrangements of the Baduy, Tengger and Nagari indigenous peoples to become Customary Villages varies in form due to having different philosophical, sociological, juridical and political backgrounds, a) MHA Baduy is transforming into a hybrid form because it adopts the concept of Modern Village and Customary Village at the same time; b) MHA Tengger has transformed by adopting a Modern Village but is returning to the form of a Customary village. The state actually misinterprets the recognition and respect for MHA Tengger by giving recognition in the form of a Customary Tourism Village because it is included in the national tourist area. C) MHA Minangkabau is fully transformed due to the compatibility of the arrangements for the transformation of MHA into a Customary Village because Nagari already has a strong foundation both philosophically, historically, sociologically and normatively in Regional Government in West Sumatra.

Second, the Regional Government's policy strategy in creating an inclusive region for MHA can be in the form of the Regional Government adjusting the needs and degree of recognition and protection desired by MHA. There are several alternative forms of policy and different forms of recognition and protection materials. The form of the MHA protection recognition policy product can be in the form of a Regional Regulation or Regional Head Decree, depending on the material or form of recognition and protection such as recognition and protection of original institutional structure, authority, customary rights/customary village assets, customary law and customary dispute resolution, up to in



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customary courts or only limited to one of the MHA's rights, such as only recognition and protection of customary forest management/customary rights/communal rights to land.



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