

ABSTRAK

Langkah kebijakan Pemerintah Daerah Provinsi Sumatera Barat memasukkan Hukum Adat Minangkabau ke dalam Peraturan Daerah patut diapresiasi. Penegakan hukum tanah adat melalui Peradilan Adat Nagari yang semula dilaksanakan oleh Kerapatan Adat Nagari dialihkan kepada Peradilan Adat Nagari. Kebijakan tersebut tidak dapat diimplementasikan. Masyarakat nagari tetap mempergunakan Kerapatan Adat Nagari (KAN) sebagai forum untuk menyelesaikan sengketa-sengketa tanah adat. Kendalanya terutama karena tidak adanya kejelasan mengenai prosedur penyelenggaraan peradilan, kualifikasi perangkat peradilan, jangka waktu dan kekuatan mengikat keputusan penyelesaian perselisihan yang dihasilkan. Adapun pokok permasalahan yang dikaji difokuskan pada pengaturan tentang eksistensi Lembaga Peradilan Adat di Indonesia, kedudukan dan kewenangan Peradilan Adat Nagari dalam penyelesaian sengketa tanah adat di Sumatera Barat dan model ideal kedudukan dan kewenangan Peradilan Adat Nagari dalam penyelesaian sengketa tanah adat di Sumatera Barat. Penelitian yuridis empiris (non doktrinal) ini didukung dengan pendekatan peraturan perundang-undangan, pendekatan konseptual, pendekatan sejarah dan pendekatan kasus. Temuan baru penelitian menyimpulkan yakni bahwa pengaturan hukum tentang eksistensi lembaga Peradilan Adat di Indonesia diatur secara implisit dalam konstitusi, pada Pasal II Aturan Peralihan UUD NRI 1945, Pasal 18B ayat (2), Pasal 28I ayat (3) dan Pasal 24 ayat (3). Dalam ketentuan ini Peradilan Adat diatur sebagai peradilan yang berada diluar kekuasaan kehakiman. Kedudukan dan kewenangan Peradilan Adat Nagari dalam praktek penyelesaian sengketa tanah adat di Sumatera Barat dilaksanakan sesuai dengan Hukum Adat Minangkabau. Adapun model ideal kedudukan dan kewenangan Peradilan Adat Nagari dalam penyelesaian sengketa tanah adat di Sumatera Barat diarahkan dengan menghormati dan menerima hasil penyelesaian sengketa tanah adat pada seluruh Peradilan Adat Nagari yang diselenggarakan oleh KAN sebagai bagian dari sidang perdamaian Peradilan Desa Adat sebagaimana ditentukan Pasal 103 e UU Desa dan Peradilan Adat Nagari dalam Pasal 1 angka 8 Perda Nagari. Selaras dengan kesimpulan tersebut, maka bentuk Peradilan Adat Nagari sebagai quasi peradilan di Sumatera Barat perlu didukung dengan revisi UU Sumbar, serta menyempurnakan pengaturan Peradilan Adat Nagari dan mengintegrasikan hasil penyelesaian sengketa pada Peradilan Adat Nagari (sebagai penyelesaian non ajudikasi) dengan Pengadilan Negeri (sebagai badan peradilan negara yang ajudikatif). Tujuannya, untuk memperkuat kepastian hukum hasil penyelesaian sengketa tanah.

Kata-kata Kunci: Peradilan Adat Nagari, Tanah Adat, Hukum Adat.

ABSTRACT

The policy step of the West Sumatra Provincial Government to incorporate Minangkabau Customary Law into the Regional Regulation should be appreciated. The enforcement of customary land law through the Nagari Customary Court, which was originally carried out by the Nagari Customary Density, was transferred to the Nagari Customary Court. The policy could not be implemented. Nagari communities continue to use the Kerapatan Adat Nagari (KAN) as a forum to resolve customary land disputes. The obstacle is mainly due to the absence of clarity regarding the procedures for organizing the court, the qualifications of the judicial apparatus, the time period and the binding force of the resulting dispute resolution decision. The subject matter studied focused on the regulation of the existence of Customary Courts Institutions in Indonesia, the position and authority of the Nagari Customary Court in resolving customary land disputes in West Sumatra and the ideal model of the position and authority of the Nagari Customary Court in resolving customary land disputes in West Sumatra. This empirical juridical research (non-doctrinal) is supported by a legislative approach, conceptual approach, historical approach and case approach. The new findings of the research conclude that legal arrangements regarding the existence of Customary Courts in Indonesia are implicitly regulated in the constitution, in Article II of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia, Article 18B paragraph (2), Article 28I paragraph (3) and Article 24 paragraph (3). In this provision, Customary Courts are regulated as courts that are outside the judicial power. The position and authority of the Nagari Customary Court in the practice of resolving customary land disputes in West Sumatra is carried out in accordance with Minangkabau Customary Law. The ideal model of the position and authority of the Nagari Customary Court in the settlement of customary land disputes in West Sumatra is directed by respecting and accepting the results of the settlement of customary land disputes in all Nagari Customary Courts organized by KAN as part of the peace session of the Customary Village Court as stipulated in Article 103 e of the Village Law and the Nagari Customary Court in Article 1 number 8 of the Nagari Regional Regulation. In line with these conclusions, the form of Nagari Customary Court as a quasi-judiciary in West Sumatra needs to be supported by revising the West Sumatra Law, as well as improving the regulation of Nagari Customary Court and integrating the results of dispute resolution in Nagari Customary Court (as a non-adjudicative settlement) with the District Court (as an adjudicative state judicial body). The goal is to strengthen the legal certainty of the results of land dispute resolution.

Key Words: Nagari Customary Court, Customary Land, Customary Law.