



ISSN Print 2615-5648
ISSN Online 2615-174X

Editorial Office: Faculty of Sharia, Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia, Jalan Jend. A. Yani No. 40 A Purwokerto Jawa Tengah 531226 Indonesia
Phone: +62281-635624 Fax: +62281- 636653
E-mail: volksgeist@uinsaizu.ac.id
Website: <http://ejournal.uinsaizu.ac.id/index.php/volksgeist>

Democratic Values in Nagari: An Analysis on Electoral System Shifts in One Province of Indonesia

Article	Abstract
<p>Author Meri Yarni[*], Adeb Davega Prasna¹, Yetniwati¹, Beny Saputra²</p> <p>¹ Faculty of Law, Universitas Jambi, Indonesia ² Central European University (CEU), Vienna, Austria</p> <p>Corresponding Author: [*]Meri Yarni, Email: meri_yarni@unja.ac.id</p> <p>Data: Received: Jul 25, 2024; Accepted: Dec 11, 2024; Published: Dec 13, 2024</p> <p>DOI: 10.24090/volksgeist.v7i2.12106</p>	<p>The Nagari system, a traditional form of regional government in Minangkabau, has historically employed a direct election method that empowers community members to elect their leaders. This model of participation aligns with the democratic values enshrined stated in the 1945 Constitution and the principles of human rights. However, a 2018 regulation altered this process, transitioning the selection of Nagari leaders from direct community engagement to an indirect election facilitated by the Nagari Traditional Council (KAN). This change was justified as a means to prevent the election of leaders who do not reflect the community's values. This article seeks to identify the most effective democratic framework for village communities, particularly Nagari societies. The primary issue at hand is the shift from direct democracy to representative democracy in the election of Nagari leaders, instigated by Regional Regulation Number 7 of 2018. Utilizing normative legal research methods, this study emphasizes that the new regulation risks undermining democratic values by restricting direct voter engagement. The findings suggest that these modifications to the electoral process weaken the foundational principles of democracy in Nagari by curtailing direct community participation, a vital aspect of local governance and social cohesion. Therefore, it is essential to reevaluate these regulations to safeguard the democratic rights and participatory traditions of the Nagari community, ensuring alignment with constitutional principles of direct democracy and comprehensive citizen involvement.</p> <p>Keywords: <i>Local democracy; representative; electoral regulation.</i></p>

©2024; This is an Open Access Research distributed under the term of the Creative Commons Attribution Licencee (<https://creativecommons.org/licenses/by/4.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works is properly cited.

INTRODUCTION

Indonesia is recognized as a democratic nation, as outlined in article 1, Paragraph (2) of the 1945 Constitution, which asserts that “supreme power resides with the people.” This reflects the essence of democracy articulated by Abraham Lincoln, who stated that democracy is “a government of the people, by the people, and for the people.”

According to political theorist Robert Dahl,¹ several criteria define a democratic process, ensuring that all members have equal rights to participate in policy decisions. These criteria include: 1) Effective Participation: All members should have equal and meaningful opportunities to express their views on proposed policies; 2) Equality of Votes: Each member must have an equal and effective opportunity to vote, with all votes counted equally; 3) Clear Understanding: Member should have sufficient time to study relevant alternative policy alternatives and their potential outcomes; 4) Agenda Control: Each member must have the opportunity to influence the agenda, determining which issues are discussed; 5) Inclusion of Adults: All, or at least a significant portion of the adult population, should possess full citizenship rights as indicated by the previous criteria.

A fundamental pillar of democracy is participation, particularly in electoral process for selecting leaders, including regional leaders. This principle is reinforced by the Regional Autonomy Law Number 32 of 2004, later amended by Law Number 23 of 2014 concerning Regional Government. This legislation aims to enhance community welfare, improve services, empower citizens, engage public participation, and boost regional competitiveness while adhering to democratic principles, especially in leader elections.

There are two legal principles of democracy: *First*, the recognition of citizens' participation in governance. In a democratic society, every citizen has the right to engage in the governmental process and to oversee the functioning of the government. This participation spans various areas, including politics, economics, education, society, and culture. *Second*, it is essential to acknowledge human dignity and rights. In a democratic nation, every citizen enjoys equal rights, and the government is responsible for safeguarding its citizens from threats, treating all individuals fairly without discrimination based on ethnicity, religion, race, and class.

In a democratic system, citizens possess the right to vote and freedom of expression, which extends to the election of leaders at all levels. This is emphasized by the right to free speech, a fundamental pillar of democracy. The first pillar emphasizes individual freedom to share ideas and creativity; the second is pluralism, which encompasses respect for religious beliefs and diversity; and the third pillar involves hierarchy and tolerance. Additionally, the freedom of opinion is a personal right that can be understood through various social, political, and cultural lenses. Any restrictions on this right to express opinions and share information are viewed as infringements on human rights and citizens' rights.

Article 28 of the 1945 Constitution serves as the legal foundation for democracy in Indonesia. Specifically, Article 28E. Paragraph 3 states that "everyone has the right to freedom of association, assembly, and expression of opinion." Unlike during times colonial, when public gatherings had to be held in secrecy and aspirations could not be voiced, the post-independence era has granted citizens the freedom to express their opinions and engage in group discussions.

Moreover, Article 22C of the 1945 Constitution specifies that general elections must be conducted directly, publicly, freely, secretly, honestly, and fairly.² This provision ensures that every

¹ M. Dian Hikmawan, "Consensual Democracy: A Challenge for Differentiated Citizenship," *International Journal of Innovation, Creativity and Change* 11, no. 2 (2020): 380–96.

² Khairani, Sri Arnetti, and Fikri Hasan, "The Implementation of Competency Development of State Civil Apparatus in the Framework of Fulfilling the Rights of Civil Servants in West Sumatera Province," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 176–95, <https://doi.org/10.29303/ius.v11i1.1210>. civil servants have the right to participate in the development so that their competence in providing public services can possibly be carried out in a professional and qualified manner. The results of this study are expected to contribute to local government policies in managing the ASN. Based on Article 70 of Law Number 5 of 2014 concerning State Civil Apparatus (UU ASN

Indonesian citizen has the right to vote, adhering to the LUBERJURDIL principle, as outlined in Law No. 7 of 2017 concerning Elections and Law No. 39 of 1999 concerning Human Rights. This clearly affirms that citizens have the direct right to elect their leaders, starting from the grassroots level.

Democracy in Indonesia has evolved through various stages, from the era of kingdoms to the present day, with villages representing some of the oldest governance structures in the nation. These villages have adapted and transformed from the colonial period to the era of independence. Villages existed long before Indonesia gained independent in 1945, having formed during the kingdom era and persisted through colonial rule to the current independence period. The concept of the village in Indonesia was first documented by Mr. Herman Warner Muntinghe, a Dutch official under the British colonial administration, who served as an assistant to the British governor-general when he arrived in Indonesia in 1811.

Based on the information presented, it can be concluded that the oldest form of government in Indonesia is the Village system. According to Hatta,³ the roots of democracy in Indonesia have been present for a long time. These democratic principles have long been evident in the lives of village communities throughout the archipelago, marked by three key elements: *First*, the enduring traditions of gatherings, which has been engrained in the hearts of the Indonesian people from ancient times to the present; These traditions remain alive and well. *Second*, there exists a tradition of protest, which allows the people to publicly challenge any state regulations they consider unjust. *Third*, there is a strong tradition of mutual assistance among community members.

In West Sumatera, the village government is referred to as “Nagari,”⁴ which operates under Minangkabau customs, granting it autonomy and locally sovereignty. Nagari functions as a microcosm akin to a small republic, encompassing executive, legislative, and judicial components that work together as a cohesive unit. This structure fosters strong bonds of kinship and functional relationship, reflecting a deep-rooted communal attachment based on lineage and tradition within the Minangkabau context.⁵

From an anthropological perspective, Nagari serves as the center of various social and cultural systems, where the strength of familial ties enhances the stability of this government model. The tradition of deliberation and consensus is a cornerstone of its administration,⁶ allowing decisions to be made in a spirit of togetherness and high tolerance. Additionally, Nagari, as an autonomous customary region, manages public facilities essential for the welfare of its citizens, such as roads, mosques, open spaces, and an agricultural-based economy. Within Nagari, there is a Nagari Customary Council (*Kerapatan Adat Nagari/ KAN*), which serves as the highest representative body in local governance. KAN holds the authority to oversee the Nagari government and appoint

³ Tripuro dan Supardal Widodo, *Pembaharuan Otonomi Daerah* (Yogyakarta: APMD Press, 2005).

⁴ Nagari is a customary law community unit genealogically and historically, has boundaries in a certain area, has its own assets, has the authority to elect its leaders through deliberation and regulates and manages the interests of the local community based on the philosophy it's customary law must be based on Islamic religious law, and/or based on the origins and local customs in the West Sumatera Province.

⁵ Wendra Yunalidi, *Nagari dan Negara: Perspektif Otentik Kesatuan Masyarakat Hukum Adat dalam Ketatanegaraan Indonesia*, by Wendra Yunalidi, *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, vol. 180, 2024, <https://doi.org/10.1163/22134379-18001008>.

⁶ Hilaire Tegnan, “Legal Pluralism and Land Administration in West Sumatera: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure,” *The Journal of Legal Pluralism and Unofficial Law* 47, no. 2 (May 4, 2015): 312–23, <https://doi.org/10.1080/07329113.2015.1072386>.

the Wali Nagari through deliberation and consensus, in accordance with West Sumatera Regional Regulation No. 7 of 2018.

However, the shift from direct election of the Village Head to a representative election process through KAN, as stipulated in Regional Regulation No. 7 of 2018, has sparked debate regarding the democratic model in use. Previously, Village Heads were elected directly by the community, reflecting a practice of direct democracy at the local level. Now, with KAN acting as a representative body, this transition toward representative democracy raises concerns about the erosion of the democratic rights of village residents to elect leaders directly.

The rights of citizens, as guaranteed by the Indonesian constitution, specifically in the 1945 Constitution and the election law, affirm that every citizen has the right to vote directly without the need for representation. Consequently, the recent change to a representative voting system is viewed as a limitation on citizens' freedom to elect their leaders. Direct community involvement in leadership elections is crucial for fostering a transparent and accountable government, as it ensures that decisions can be directly justified to the community.

Moreover, the theory of direct democracy, as articulated by democratic theorists, indicates that direct democracy is most effective in smaller areas with relatively small populations, such as villages. This contrasts with national or district/city elections, which, despite using a direct democratic system,⁷ covers much larger areas. Therefore, the shift to representative democracy in Nagari is seen as inconsistent with the long-established essence of direct democracy in Indonesian society, particularly in regions like West Sumatera that have a strong local democratic tradition.

This article aims to propose ideas for enhancing local democratic governance by revising Regional Regulation No. 7 of 2018 or reinstating the direct election system. This change is vital to ensure that the rights of Nagari residents to choose their leaders are upheld.

Several previous studies inform this research. First, Afdhal Prima's study⁸ titled "Nagari Government System (A Study in Nagari Padang Magek, Tanah Datar Regency)" explores the governmental structure within Nagari, particularly in Padang Magek. Second, Rusyda Fauzana's research,⁹ "The Meaning of Nagari as a Representation of the Decentralized System for the Minangkabau Community: An Ethnographic Study of Intercultural Communication in the Government System in the Minangkabau Community in Canduang District, Agam Regency," illustrates the relationship between Nagari and decentralization, emphasizing how autonomous regions help citizens understand their governance, particularly in Canduang District. Third, Heru Cahyono's research,¹⁰ "Directions of Democratic Development in Rural Areas Post-New Order," examines the trajectory of rural democratization following the New Order era, noting that strong democratization is influenced by the diverse social institutions present in each village. As such, a uniform democratic approach is impractical in Indonesia. The dynamics of village democracy in

⁷ Hariyanto et al., "The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 30, 2023): 200–221, <https://doi.org/10.19105/AL-LHKAM.V18I1.7403>.

⁸ Afdhal Prima et al., "SISTEM PEMERINTAHAN NAGARI (STUDI PADA NAGARI PADANG MAGEK KABUPATEN TANAH DATAR) Oleh," *Jom FISIP* 1, no. 2 (2014): 1.

⁹ Rusyda Fauzana, "Makna Nagari Sebagai Representasi Sistem Desentralisasi Bagi Masyarakat Minangkabau," *INA-Rxiv*, no. 32 (2019): 6–10.

¹⁰ Heru Cahyono, "Arah Perkembangan Demokrasi Di Perdesaan Pasca Orde Baru," *Masyarakat Indonesia* 38, no. 2 (2012): 351.

the post-New Order period heavily rely on the leadership of political elites, with the village head playing a crucial role in shaping political life and fostering community participation in program planning.

Based on this analysis, it is evident that previous studies have primarily concentrated on the general aspects of Nagari prior to the implementation of Regional Regulation No. 7 of 2018. Consequently, there has been little discussion regarding changes to the democratic model in Nagari. Furthermore, much of the existing literature has failed to adequately connect legal analysis with the evolving political and social dynamics, particularly concerning democracy in Nagari, which is a crucial element in the framework of a democratic legal state.

This study presents a fresh perspective by focusing on the democratic model in village governance, particularly one that prioritizes the democratic rights of the community. It combines conceptual and legislative approaches that have not been extensively explored in the existing literature. The originality of this research lies in its thorough examination of the ideal democratic model for Nagari governance, integrating it with current constitutional law studies to generate policy recommendations that are relevant and adaptable to contemporary political and social context. Therefore, this study not only contributes to the advancement of constitutional law theory but also offers practical solutions for policymakers aiming to enhance governance and improve the quality of democracy in Indonesia.

RESEARCH METHODS

This article employs a normative legal research methodology, beginning with assumptions and utilizing an interpretive or theoretical framework that informs the exploration of research problems related to the meaning that individuals or groups assign to a social issue in this case, Regional Regulation No. 7 of 2018 from West Sumatera Province concerning Nagari. To maintain focus, the author narrows the discussions to the democratic rights of Nagari residents following the enactment of this regulation, linking it to the theories of community participation and the right to express opinions, as guaranteed by the 1945 Constitution and Law No. 9 of 1999 concerning Human Rights.

ANALYSIS AND DISCUSSION

Democratic values within Nagari, characterized by its traditional government system in Minangkabau, are deeply embedded in local customs and religious beliefs. This system represents a distinctive fusion of democracy and customary values that has persisted over time. The democratic principles in Nagari are rooted in the Minangkabau customary governance structure, which predates the democratic framework established in the 1945 Constitution.¹¹ Despite facing challenges during the implementation of a uniform village government system under the 1979 Village Law,¹² Nagari has successfully preserved its autonomy based on local culture. This resilience is attributed to the democratic values of deliberation, consensus, mutual cooperation, communalism, and unity,

¹¹ Arsil, Fitra; Mohammad Novrizal, Ryan Muthiara Wasti; Yunani Abiyoso, "Praktik Demokrasi Modern dalam Pemerintahan Nagari di Minangkabau," *Arena Hukum* 15, no. 3 (2022): 610–29, <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2022.01503.8>.

¹² Valentina, Tengku Rika Valentina, Roni Ekha Putera, and Irawati Irawati, "Reversing Democracy: Examining the Nagari Institution in West Sumatera, Indonesia," *Bisnis & Birokrasi Journal* 26, no. 1 (2019), <https://doi.org/10.20476/jbb.v26i1.10084>.

which are integral to Minangkabau culture. These values emphasize moral character and active participation, ensuring that democracy aligns with the interests and sovereignty of the people.¹³ As a result, the democratic system in Nagari continues to thrive despite various challenges.

However, the long-standing democratic system in Nagari is currently facing threats and challenges, particularly with the introduction of Regional Regulation (Perda) Number 7 of 2018. There are at least two significant concerns regarding how this regulation jeopardizes the democratic values of Nagari, as outlined below.

The Shifting Election Systems in Nagari

Villages in Indonesia predate the country's independence in 1945, having been established long before that year. It is believed that these villages emerged during the era of kingdoms, continued through colonial rule, and have persisted into the present day. The concept of the village in Indonesia was first documented by Mr. Herman Warner Muntinghe, a Dutch official during the British colonial period, who served as an assistant to the British governor-general when he arrived in Indonesia in 1811.¹⁴

From this information, it can be concluded that the oldest form of government in Indonesia is the village system. According to Hatta,¹⁵ the roots of democracy in Indonesia have been present for a considerable time. These democratic principles are often reflected in the lives of village communities throughout the archipelago, marked by three key elements: first, the enduring traditions of gatherings that have been ingrained in the hearts of the Indonesian people from ancient times to the present; These traditions remain unbroken. Second, there exists a tradition of protest, which empowers the people to publicly challenge any state regulations they consider unjust. Third, there is a strong tradition of mutual assistance among community members.

In the Minangkabau region of West Sumatera, the village concept is referred to as Nagari. Nagari is a customary law community unit with defined territorial boundaries,¹⁶ empowered to govern and manage the interests of local residents according to Minangkabau traditional philosophy and local customs.¹⁷ Nagari comprises several Jorong, which share similar goals. The governance of Nagari is led by a Wali Nagari, who is responsible for overseeing and managing community interests.¹⁸

According to Mochtar Naim,¹⁹ the Nagari concept serves as a microcosm of a larger macrocosmic order. It embodies a system that fulfills the fundamental requirements of a "state"

¹³ Yunaldi Wendra, "Democracy 'Character' Local Wisdom Building Democratic Political Awareness of Character 'Akal Budi' Autentik Indonesia: A Study From Experience of Governance System of Republic of Nagari in West Sumatera," *UNTAG Law Review* 2, no. 2 (2018): 156–68, <https://doi.org/http://dx.doi.org/10.56444/ulrev.v2i2.922>.

¹⁴ MIPI, "Masyarakat Ilmu Pemerintahan Indonesia," n.d. Diakses pada 5 April 2024 pukul 16.05 WIB

¹⁵ Triputro Widodo and Supardal, *Pembaharuan Otonomi Daerah* (Yogyakarta: AMD Press, 2005).

¹⁶ Afdhal Afdhal, "An Examination of Traditional Customs in Minangkabau Leadership Tradition: Continuity and Changes in the Modern Era," *Publicus: Jurnal Administrasi Publik* 1, no. 2 (2023): 119–34, <https://doi.org/10.30598/publicusvol1iss2p119-134>.

¹⁷ Idrus Dt. Rajo Penghulu Hakimy, *Rangkaian Mustika Adat Basandi Syarak Di Minangkabau* (Bandung: Remaja Rosdakarya, 2004).

¹⁸ J A C Vel and A W Bedner, "Decentralisation and Village Governance in Indonesia: The Return to the Nagari and the 2014 Village Law," *The Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (September 2015): 493–507, <https://doi.org/10.1080/07329113.2015.1109379>.

¹⁹ Mochtar Naim, *Nagari versus Desa: Sebuah Kerancuan Struktural* (Padang: Genta Budaya, 1990).

in miniature form, which is why some foreign scholars refer to the Nagari system as a “small republic” that is independent, autonomous, and self-sustaining. The Nagari structure encompasses the three primary elements of government: legislative, executive, and judicial, forming a cohesive unit that integrates various socio-cultural components. Historically, the ties within Nagari were not only based on primordial and kinship connections, but also structural-functional relationships that facilitated effective governance.²⁰

From an anthropological perspective, Nagari functions as a unifying entity for various social and cultural orders. In ancient times, the relationship within Nagari were primarily based on kinship and blood ties, fostering a strong sense of tribal and familial connection.²¹ This autonomous governance system, bolstered by kinship ties, made the Nagari government one of the most powerful systems of its time, instilling fear particularly among the Dutch colonizers. Decision-making within the Nagari government relies on deliberation and consensus, as exemplified by the saying “*Bulek aia dek pambuluah, bulek kato dek mufakaik*,”²² which underscores the unity and harmony inherent in this governance model.

As a customary autonomous region, Nagari requires essential infrastructure to serve its community effectively. This includes roads, public baths, mosques, traditional meeting places, community houses, cemeteries, and open spaces for public use. Additionally, to ensure the functionality of a Nagari, it must possess economic resources such as rice fields, agricultural land, forests, and markets.²³ These material resources reinforce the spirit of autonomy in the economic sector, supporting the governance of Nagari.

The Nagari government is composed of the Wali Nagari and the Nagari Apparatus (including the Nagari Secretary, Nagari Treasurer, and other officials) who form the Executive Body. There is also a Nagari Consultative Body and the Nagari Customary Council (KAN), which carry out legislative functions by enacting joint Nagari Regulations. This body accommodates community aspirations and oversees the activities of the Wali Nagari.

Furthermore, Article 6 of West Sumatera Province Regional Regulation Number 7 of 2018 concerning Nagari establishes that the Nagari Customary Meeting (*Kerapatan Adat Nagari*, or KAN) serves as the highest representative body for deliberation in the governance of Nagari. Article 7, paragraph (1) of this regulation outlines the responsibilities of KAN, which include supervising the execution of the Nagari Government by the Wali Nagari, collaboratively drafting Nagari regulations, and discussing and approving the Nagari Budget. Additionally, Article 7, paragraph (2) grants KAN the authority to select and appoint the Wali Nagari through deliberation and consensus, channel community aspirations, oversee the implementation of Nagari customs and culture, and hold the Wali accountable for the governance of Nagari, all while preserving traditional and cultural values in accordance with local customs.

²⁰ Avid Leonardo Sari and Ali Anwar Yusuf, “Cultural Navigation and Multiple Roles: Study of Adaptation of Minangkabau People in Overseas Land in the Perspective of the Proverb ‘Nan Sakuduang Jadi Saruik, Nan Salapeh Jadi Kambang,’” *Influence: International Journal of Science Review* 5, no. 2 (2023): 419–25, <https://doi.org/10.54783/influencejournal.v5i2.170>.

²¹ Welhendri Azwar et al., “The Models of Nagari Indigenous Governments in West Sumatera,” *Jurnal Bina Praja* 12, no. 1 (2020): 33–42, <https://doi.org/10.21787/jbp.12.2020.33-42>.

²² That the Minangkabau philosophy “*Bulek Aia Dek Pambuluah Bulek Kato Dek Mufakaik*” contains the meaning that the word of agreement is essentially obtained from the results of negotiations in deliberation. (M.S. Dt. Rajo Penghulu, *Bahasa Orang Cerdik Pandai Minangkabau* (Padang: Koperasi Bung Hatta Offset, 1991)).

²³ Azwar et al., “The Models of Nagari Indigenous Governments in West Sumatera.”

Previously, the selection process for the Wali Nagari in Sumatera involved direct elections by the residents of the Nagari community, as specified in Article 7 of West Sumatera Province Regional Regulation Number 2 of 2007 and earlier in Regional Regulation Number 9 of 2000. However, Article 12 of Regional Regulation Number 7 of 2018 states that the Nagari Kapalo is chosen or appointed by the Nagari Traditional Council (KAN) through consensus deliberation, moving away from direct community elections.

Under Regional Regulation Number 2 of 2007, the election of the Wali Nagari was conducted directly by the community, allowing residents to participate actively by expressing their opinions or casting votes. This direct involvement ensured that political authority rested firmly with the community, aligning with the democratic principles articulated by Abraham Lincoln. In contrast, the election process outlined in Regional Regulation Number 7 of 2018 delegates the election of the Wali Nagari to the Nagari Traditional Council (KAN), thereby removing direct community participation and replacing it with representation through this council, which will decide the elected Wali of Nagari.

As a result, there has been a significant shift in the democratic model for electing Wali/Kapalo Nagari, moving from a direct democracy to a representative democracy. This raises important questions about whether this change signifies a decline in democratic process at the community level in rural areas, such as Nagari, or if it represents a new alternative approach to democracy that has been implemented.

Upon closer examination, this issue arises from the lack of specific regulations governing the election of Village Heads (including Nagari) in Indonesia. Unlike general elections and regional head elections, the election process for Village Heads is not explicitly outlined in dedicated laws.²⁴ Currently, the legal foundation for village head elections, known as Pilkades, is established by Law No. 6 of 2014 concerning Villages and the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning the Election of Village Heads, which was last amended by Regulation Number 72 of 2020s. Additionally, each region has its own regulations, including Perda Sumatera No. 7 of 2018.²⁵ This legal framework does not align village head elections with the more formal election processes that are governed by specific laws. Law No. 6 of 2014 does not specifically address Pilkades; Instead, it provides a general overview of the status of villages, resulting in a gap that allows regions to implement village head elections using different models, such as in Nagari.

This situation is certainly anomalous, as the election regime is governed by Law No. 7 of 2017 concerning General Elections, in accordance with Article 22E of the 1945 Constitution of the Republic of Indonesia. Similarly, the regime for regional head elections is explicitly regulated by Law No. 10 of 2016, which states Law No. 1 of 2015, concerning the election of governors, regents, and mayors. This is further reinforced by Article 18, Paragraph (4) of the 1945 Constitution.²⁶ However, the election of village heads does not fall under a specific legal framework.

²⁴ Muhammad Mutawalli Mukhlis et al., "Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasah," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 30, 2024): 505–26, <https://doi.org/10.29240/JHI.V9I2.9709>.

²⁵ Liberthin Palullungan, Lisma Lumentut, and Zainal Amin Ayub, "Reconstruction of The Vice Regent's Position in Optimization of Regional Autonomy: Realizing Democratic and Justice Values," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 282–91, <https://doi.org/http://dx.doi.org/10.29303/ius.v11i2.1235>.

²⁶ Sirajuddin Sirajuddin, Febriansyah Ramadhan, and Ilham Dwi Rafiqi, "Urgensi Pemisahan Penyelenggaraan Pemilihan Umum Serentak Nasional Dan Lokal," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 221–32, <https://doi.org/10.24090/volksgeist.v4i2.5232>.

Consequently, due to the absence of standardized regulations for village leader elections, the West Sumatera Provincial Government has established its own provisions for electing Nagari Heads, shifting the democratic system from direct democracy to indirect democracy. Furthermore, the West Sumatera Government has not provided explanations for the rationale behind this change in the democratic system for Nagari. In reality, the use of direct democracy at the village level is appropriate, as the normative theory underlying the direct democracy emphasizes popular sovereignty, freedom, and political equality. Jean-Jacques Rousseau, a prominent theorist, supports this theory as the foundation for creating a republican constitution that prioritizes the will of the people.

Moreover, given the relatively small geographical area of village or Nagari, the implementation of direct democracy in leader selection should be optimized. The debate over the use of a direct election system or representative elections is more relevant in the context of electing a head of state in Indonesia, which has a vast territory and a large population. In contrast, a direct election system is well-suited for village democracy and should not be disturbed. However, the lack of clear and specific regulations on this matter has allowed local governments to exploit loopholes, ultimately harming village communities.

Therefore, it is essential to establish special regulations for village head elections within a more robust legal framework.²⁷ These regulations are necessary to strengthen the legitimacy and implementation of village head elections. There are two potential approaches to achieving this: *First*, create a separate law specifically addressing village head elections or similar legislations. This would provide a solid foundation for conducting these elections and prevent the creation of varied election models, such as those currently found in Nagari. *Second*, incorporate village head elections into a comprehensive law on general elections in the future. This would result in three types of election regimes within Indonesian law: the election regime (as outlined in Article 22E of the 1945 Constitution), the regional head election regime (per Article 18, Paragraph (4) of the 1945 Constitution), and the village head election regime (as specified in Article 18Bn Paragraph (2) of the 1945 Constitution).

Community Rights After the Enactment of Regional Regulation No. 7 of 2018 in the Election of Wali Nagari

According to the rights of citizens outlined in the 1945 Constitution of the Republic of Indonesia, Article 1, paragraph (2) states that supreme sovereignty rests with the people. This means that all state power originates from the people's sovereignty, as the state has no authority without the consent of the governed. The Indonesian Constitution emphasizes the importance of popular values within the political system,²⁸ prioritizing the interests of the people over those of their leaders.²⁹ Leaders are entrusted only with the authority to implement decisions made by the populace.

²⁷ Ahmad Yani, "Penataan Pemilihan Kepala Desa dalam Sistem Ketatanegaraan di Indonesia," *Jurnal Konstitusi* 19, no. 2 (2022): 456, <https://doi.org/10.31078/jk1929>.

²⁸ Hariyanto Hariyanto, "Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia," *Volksggeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (December 29, 2020): 99–115, <https://doi.org/10.24090/VOLKSGEIST.V3I2.4184>.

²⁹ Muhammad Mutawalli Mukhlis et al., "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices," *Jurnal Media Hukum* 31, no. 2 (July 8, 2024): 186–205, <https://doi.org/10.18196/JMH.V31I2.21703>.

Furthermore, Article 28 of the 1945 Constitution affirms that Indonesian citizens have the right to assemble and express their ideas and opinions, whether verbally, in writing, or through other means. This provision is designed to facilitate public access to government and state development. The freedom to express opinions is also aimed at enhancing Indonesia by allowing for the acceptance of public criticism and subsequent improvements.

According to Article 1, paragraph (1) of Law No. 7 of 2017 concerning General Elections (Pemilihan Umum; PEMILU), “Elections are a means of popular sovereignty to elect the President and Vice President, conducted directly, publicly, freely, confidentially, honestly, and fairly in accordance with the principles of LUBERJURDIL.” This establishes that citizens have the right to directly elect their leaders without the need for representation, in line with LUBERJURDIL principle. This right is further supported by Article 19, paragraph (1) and Article 6a, paragraph (1), which guarantees every Indonesian citizen the right to vote. These provisions highlight all legislative and legal frameworks governing general elections should maximize opportunities for citizens to exercise their voting rights.³⁰

Additionally, Law Number 39 of 1999 concerning Human Rights reinforces this concept. Article 43, paragraph (1) states that “every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest, and fair voting (LUBERJURDIL) as stipulated in the laws and regulations.” This means every citizen enjoys equal rights to participate in elections via direct voting without the involvement of representatives.

From a normative legal perspective, this underscores the full right of the people to choose their leaders and emphasizes their freedom to do so without a representative system or reliance on representative democracy.³¹ Therefore, it is evident that citizens' rights are not being fulfilled under Regional Regulation No. 7 of 2018 concerning Nagari elections, as it employs an indirect democratic election system, limiting the people's freedom to elect their leaders.

Furthermore, according to the theory of community participation and direct democracy, citizens should directly engage in the election of their leaders, expressing their aspirations through opinions or votes.³² Each individual represents themselves in choosing policies, thereby placing political power directly in the hands of the people.³³ Community participation is crucial in all decision-making processes, influencing government policies and ensuring transparency in government activities, as these are conducted directly by the community.³⁴ In contrast, under a representative democracy, the community does not directly participate in electing leaders. Instead, they are represented by institutions, which means that citizens' rights in choosing their leaders are not fully realized.

³⁰ Robertus Robet, Meila Riskia Fitri, and Marista Christina Shally Kabelen, “The State and Human Rights under Joko Widodo’s Indonesia,” *Cogent Social Sciences* 9, no. 2 (2023), <https://doi.org/10.1080/23311886.2023.2286041>.

³¹ Kharisatul Janah, Siti Fatimah, and Hajar Salamah Salsabila Hariz, “The Role of Aceh Local Parties in The 2024 General Election in Realizing Democratization,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 2023): 33–47, <https://doi.org/10.24090/volksgeist.v6i1.7532>.

³² Imam Asmarudin et al., “Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia,” *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 19, 2024): 208–26, <https://doi.org/10.29303/IUS.V12I2.1390>.

³³ Dirk Helbing et al., “Democracy by Design: Perspectives for Digitally Assisted, Participatory Upgrades of Society,” *Journal of Computational Science* 71, no. March (2023): 102061, <https://doi.org/10.1016/j.jocs.2023.102061>.

³⁴ Muhammad Mutawalli Mukhlis et al., “Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 139–55, <https://doi.org/10.24090/volksgeist.v7i1.10830>.

The author examines the empirical aspects of modern democracy, referencing Mohammat Hatta and supported by Roesseau's perspective that direct democracy is most effective in regions with smaller populations and limited geographic scope.³⁵ In contrast, representative democracy is suited for larger areas with more citizens. In Indonesia, the election of the President and regional heads for regencies and cities, which have broad coverage, is conducted through direct democracy. However, the election of Wali Nagari, which involves a smaller community, occurs indirectly through representation by the Nagari Traditional Council (KAN). This creates a disparity between the state and Nagari, as Wali Nagari should ideally be elected directly by the community given their smaller area.

Considering these aspects, it is evident that, according to Article 12 of West Sumatera Regional Regulation Number 7 of 2018, the rights of citizens regarding the direct election of leaders—particularly Wali Nagari—are not being fulfilled. The community does not participate directly in the election of the Wali Nagari, they are represented by KAN, which undermines the community's freedom in this electoral process. The theory of democracy articulated in the 1945 Constitution further emphasizes this point: Article 1, Paragraph (2) states that “supreme sovereignty resides with the people,” while Article 28E, Paragraph (3) asserts that “everyone has the right to freedom of association, assembly, and expression of opinion.” This highlights the necessity for citizens to have the full right to elect their leaders without relying on a representative system, reinforcing the importance of direct democracy in Indonesia to uphold citizens' rights.

To safeguard the voting rights of rural residents and prevent any decline in democracy within these areas, West Sumatera Regional Regulation Number 7 of 2018 concerning Nagari should be revised or repealed. Given the small population of rural residents and the limited potential for social conflict, enforcing a representative democracy concept would erode citizens' rights, particularly in today's modern context.

From the discussion above, it is clear that the implementation of the Wali Nagari election as outlined in Regional Regulation Number 7 of 2018 has led to a decline in democratic values within the village. The existing direct democratic system is the most appropriate approach, and shifting to a representative democracy threatens to undermine the rights of village residents.

CONCLUSION

The transition from direct democracy to representative democracy in the election of Nagari leaders in West Sumatera represents a complex and contentious shift away from the established participatory model. Traditionally, the Nagari system has emphasized the direct involvement of community members in selecting their leaders, aligning with the democratic principles outlined in the 1945 Constitution of Indonesia. However, with the introduction of Regional Regulation No. 7 of 2018, this process has moved to indirect elections facilitated by the Nagari Customary Meeting (KAN). This change has weakened local democracy, potentially undermining community cohesion and accountability in governance. Furthermore, the implementation of a representative democracy in this context diminishes the community's right to actively participate in choosing their leaders. This article identifies a legal gap in the governance of village elections in Indonesia, particularly

³⁵ Yunaldi, Wendra, *Nagari Dan Negara: Perspektif Otentik Kesatuan Masyarakat Hukum Adat Dalam Ketatanegaraan Indonesia*

concerning the need for a consistent democratic model that enables citizens to vote directly at the village level. It is recommended that Regional Regulation No. 7 of 2018 be revised promptly to prioritize the voting rights of village communities. Additionally, there is a need for the legislative body to establish a specific law governing the direct election of village leaders, ensuring that all regulations related to village elections, including those in West Sumatera, adhere to this new law.

REFERENCES

- Afdhal, Afdhal. "An Examination of Traditional Customs in Minangkabau Leadership Tradition: Continuity and Changes in the Modern Era." *Publicus : Jurnal Administrasi Publik* 1, no. 2 (2023): 119–34. <https://doi.org/10.30598/publicusvol1iss2p119-134>.
- Arsil, Fitra; Mohammad Novrizal, Ryan Muthiara Wasti; Yunani Abiyoso, Ali Abdillah. "Praktik Demokrasi Modern Dalam Pemerintahan Nagari Di Minangkabau." *Arena Hukum* 15, no. 3 (2022): 610–29. <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2022.01503.8>.
- Asmarudin, Imam, Mohammad Fauzan, Abdul Aziz Nasihuddin, Riris Ardhanariswari, Hariyanto Hariyanto, and Bhanu Prakash Nunna. "Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia." *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 19, 2024): 208–26. <https://doi.org/10.29303/IUS.V12I2.1390>.
- Azwar, Welhendri, Hasanuddin Hasanuddin, Muliono Muliono, Yuli Permatasari, Mufti Ulil Amri, and Yurisman Yurisman. "The Models of Nagari Indigenous Governments in West Sumatra." *Jurnal Bina Praja* 12, no. 1 (2020): 33–42. <https://doi.org/10.21787/jbp.12.2020.33-42>.
- Cahyono, Heru. "Arah Perkembangan Demokrasi Di Perdesaan Pasca Orde Baru." *Masyarakat Indonesia* 38, no. 2 (2012): 351.
- Fauzana, Rusyda. "Makna Nagari Sebagai Representasi Sistem Desentralisasi Bagi Masyarakat Minangkabau." *INA-Rxiv*, no. 32 (2019): 6–10.
- Hakimy, Idrus Dt. Rajo Penghulu. *Rangkaian Mustika Adat Basandi Syarak Di Minangkabau*. Bandung: Remaja Rosdakarya, 2004.
- Hariyanto, Hanif Fudin, Muhammad Fauzan, Kadar Pamuji, and Tedi Sudrajat. "The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 30, 2023): 200–221. <https://doi.org/10.19105/AL-LHKAM.V18I1.7403>.
- Hariyanto, Hariyanto. "Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (December 29, 2020): 99–115. <https://doi.org/10.24090/VOLKSGEIST.V3I2.4184>.
- Helbing, Dirk, Sachit Mahajan, Regula Hänggli Fricker, Andrea Musso, Carina I. Hausladen, Cesare Carissimo, Dino Carpentras, et al. "Democracy by Design: Perspectives for Digitally Assisted, Participatory Upgrades of Society." *Journal of Computational Science* 71, no. March (2023): 102061. <https://doi.org/10.1016/j.jocs.2023.102061>.
- Hikmawan, M. Dian. "Consensual Democracy: A Challenge for Differentiated Citizenship." *International Journal of Innovation, Creativity and Change* 11, no. 2 (2020): 380–96.

- Janah, Kharisatul, Siti Fatimah, and Hajar Salamah Salsabila Hariz. "The Role of Aceh Local Parties in The 2024 General Election in Realizing Democratization." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 2023): 33–47. <https://doi.org/10.24090/volksgeist.v6i1.7532>.
- Khairani, Sri Arnetti, and Fikri Hasan. "The Implementation of Competency Development of State Civil Apparatus in the Framework of Fulfilling the Rights of Civil Servants in West Sumatra Province." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 176–95. <https://doi.org/10.29303/ius.v11i1.1210>.
- M.S. Dt. Rajo Penghulu. *Bahasa Orang Cerdik Pandai Minangkabau*. Padang: Koperasi Bung Hatta Offset, 1991.
- MIPI. "Masyarakat Ilmu Pemerintahan Indonesia," n.d.
- Mukhlis, Muhammad Mutawalli, Maskun Maskun, Muhammad Saleh Tajuddin, Jamal Aslan, Hariyanto Hariyanto, and Hotlan Samosir. "Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasa." *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 30, 2024): 505–26. <https://doi.org/10.29240/JHI.V9I2.9709>.
- Mukhlis, Muhammad Mutawalli, Achmad Ruslan, A. M. Yunus Wahid, Anshori Ilyas, and Harlida Abdul Wahab. "Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 139–55. <https://doi.org/10.24090/volksgeist.v7i1.10830>.
- Mukhlis, Muhammad Mutawalli, Harlida Abdul Wahab, Zuhilmi Paidi, Nila Sastrawaty, and Haslinda Hasan. "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices." *Jurnal Media Hukum* 31, no. 2 (July 8, 2024): 186–205. <https://doi.org/10.18196/JMH.V31I2.21703>.
- Naim, Mochtar. *Nagari versus Desa: Sebuah Kerancuan Struktural*. Padang: Genta Budaya, 1990.
- Palullungan, Liberthin, Lisma Lumentut, and Zainal Amin Ayub. "Reconstruction of The Vice Regent's Position in Optimization of Regional Autonomy: Realizing Democratic and Justice Values." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 282–91. <https://doi.org/http://dx.doi.org/10.29303/ius.v11i2.1235>.
- Prima, Afdhal, H SD Zaili Rusli, MSi Jurusan Ilmu Administrasi Negara, and Prodi Administrasi Negara. "SISTEM PEMERINTAHAN NAGARI (STUDI PADA NAGARI PADANG MAGEK KABUPATEN TANAH DATAR) Oleh." *Jom FISIP* 1, no. 2 (2014): 1.
- Robet, Robertus, Meila Riskia Fitri, and Marista Christina Shally Kabelen. "The State and Human Rights under Joko Widodo's Indonesia." *Cogent Social Sciences* 9, no. 2 (2023). <https://doi.org/10.1080/23311886.2023.2286041>.
- Sari, Avid Leonardo, and Ali Anwar Yusuf. "Cultural Navigation and Multiple Roles: Study of Adaptation of Minangkabau People in Overseas Land in the Perspective of the Proverb 'Nan Sakuduang Jadi Saruik, Nan Salapeh Jadi Kambang.'" *Influence: International Journal of Science Review* 5, no. 2 (2023): 419–25. <https://doi.org/10.54783/influencejournal.v5i2.170>.
- Sirajuddin, Sirajuddin, Febriansyah Ramadhan, and Ilham Dwi Rafiqi. "Urgensi Pemisahan Penyelenggaraan Pemilihan Umum Serentak Nasional Dan Lokal." *Volksgeist: Jurnal*

- Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 221–32. <https://doi.org/10.24090/volksgeist.v4i2.5232>.
- Tegnan, Hilaire. “Legal Pluralism and Land Administration in West Sumatra: The Implementation of the Regulations of Both Local and Nagari Governments on Communal Land Tenure.” *The Journal of Legal Pluralism and Unofficial Law* 47, no. 2 (May 2015): 312–23. <https://doi.org/10.1080/07329113.2015.1072386>.
- Tripuro Widodo and Supardal. *Pembaharuan Otonomi Daerah*. Yogyakarta: AMD Press, 2005.
- Valentina, Tengku Rika, Roni Ekha Putera, and Irawati Irawati. “Reversing Democracy: Examining the Nagari Institution in West Sumatra, Indonesia.” *Bisnis & Birokrasi Journal* 26, no. 1 (2019). <https://doi.org/10.20476/jbb.v26i1.10084>.
- Vel, J A C, and A W Bedner. “Decentralisation and Village Governance in Indonesia: The Return to the Nagari and the 2014 Village Law.” *The Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (September 2015): 493–507. <https://doi.org/10.1080/07329113.2015.1109379>.
- Wendra, Yunaldi. “Democracy ‘Character’ Local Wisdom Building Democratic Political Awareness of Character ‘Akali Budi’ Autentik Indonesia: A Study From Experience of Governance System of Republic of Nagari in West Sumatera.” *UNTAG Law Review* 2, no. 2 (2018): 156–68. <https://doi.org/http://dx.doi.org/10.56444/ulrev.v2i2.922>.
- Widodo, Tripuro dan Supardal. *Pembaharuan Otonomi Daerah*. Yogyakarta: APMD Press, 2005.
- Yani, Ahmad. “Penataan Pemilihan Kepala Desa Dalam Sistem Ketatanegaraan Di Indonesia.” *Jurnal Konstitusi* 19, no. 2 (2022): 456. <https://doi.org/10.31078/jk1929>.
- Yunaldi, Wendra. *Nagari Dan Negara: Perspektif Otentik Kesatuan Masyarakat Hukum Adat Dalam Ketatanegaraan Indonesia*, by Wendra Yunaldi. *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*. Vol. 180, 2024. <https://doi.org/10.1163/22134379-18001008>.