

RESEARCH ARTICLE

## Dynamics of the Positivization of the Philosophy of Adat Basandi Syara', Syara' Basandi Kitabullah: From Customary Philosophy to Positive Law and Minority Community Rejection

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### Abstract

This article was written in response to the discourse on changing the name of West Sumatra Province to the Special Region of Minangkabau, which surfaced in 2014. In 2022, the discourse was revisited when Law Number 17 of 2022 concerning West Sumatra Province was passed by the President and the Indonesian House of Representatives. Although it has become a valid law, people who feel that their constitutional rights have been violated have filed a formal and material judicial review petition with the Constitutional Court. This article uses a qualitative descriptive research method through a statute approach, a conceptual approach, a historical approach, and a political approach. This paper provides the results of a study that the success of the positivization of the philosophy of adat basandi syara' syara' basandi Kitabullah through a long historical dynamic is inseparable from the role of the hegemony of Islamic political actors and Minangkabau customs that dominate the population of West Sumatra, which has succeeded in producing a harmonious acculturation of adat and Islamic values. This success was not immediately accepted by the entire community of West Sumatra, however, as some members of the Mentawai tribe felt discriminated against and filed a judicial review of the law. Although the Constitutional Court ruled that the review was inadmissible, the West Sumatra Provincial Government must immediately develop efforts to moderate culture and religion and promote communication across tribes, customs, cultures, and religions to neutralize this rejection.

**Keyword:** Hegemony, Politics, Religion, Customary, Islam, Minangkabau, Mentawai.

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## INTRODUCTION

On July 25, 2022, the President of the Republic of Indonesia, Joko Widodo, ratified Law Number 17 of 2022 concerning the Province of West Sumatra. With the enactment of this Law, the previous Law, namely Law Number 61 of 1958 concerning the stipulation of Emergency Law Number 19 of 1957 concerning the Establishment of First Level Autonomous Regions of West

Sumatra, Jambi, and Riau (State Gazette of 1957 Number 75) as Law (State Gazette of 1958 Number 112, additional State Gazette Number 1646) is hereby revoked and no longer in effect.

At first glance, this law is not very different from other laws governing other provinces in Indonesia. In general, laws related to provinces are formed as an umbrella law and one of the sources of law for the formation of "lex specialist" regional regulations that will be enforced in the province. The existence of these laws is intended to support programs for the formation of autonomous regions in order to accelerate the realization of the state's objectives in protecting the entire Indonesian nation and all of Indonesia's bloodshed, as well as to accelerate regional equality in receiving and developing Central Government programs.

However, during the discussion and dissemination of Law Number 17 of 2022 concerning West Sumatra Province in the House of Representatives, until the law was passed, there were numerous criticisms and corrections to this law, both from academics, politicians, legal and human rights activists, and especially the indigenous Mentawai tribe. The most highlighted article in the law is Article 5 Letter c, which reads, "The province of West Sumatra has characteristics, namely Minangkabau customs and culture based on philosophical values, *customs based on sharia, syara' basandi kitabullah* in accordance with the applicable *salingka nagari* customs, as well as the rich history, language, arts, traditional villages/nagari, rituals, traditional ceremonies, cultural sites, and local wisdom that demonstrate the religious character and high customs of the people of West Sumatra."

In the explanation of Article 5 Letter C of the law, it is explained that the implementation of philosophical values, *adat basandi syara', syara' basandi kitabullah* is based on the values of Pancasila and within the framework of the Unitary State of the Republic of Indonesia. What is meant by *adat salingka nagari* is the customs that apply in a nagari in accordance with the principles of customs that apply in general and are inherited from generation to generation in Minangkabau, as well as being a means of mediation for resolving problems among indigenous people in the nagari.

Considering the political turmoil resulting from the enactment of this law, the author will focus on discussing the pros and cons of the political dynamics that have developed in society with the enactment of this law, particularly its assessment from the perspective of the political hegemony of Islam and Minangkabau customs in West Sumatra, which led to the enactment of this law and the successful positivization of the philosophy of *adat basandi syara', syara' basandi kitabullah* in this law, as well as from the perspective of the politics of diversity and pluralism of minority religions and ethnic groups, which some academics, politicians, and legal and human rights activists believe have been discriminated against by the enactment of this law and could undermine the political

aspirations of minority groups other than Islam, and outside the Minangkabau ethnic group, which is also a community living in West Sumatra Province.

## RESEARCH METHODS

This study employs a qualitative descriptive research design that integrates four complementary approaches to achieve a comprehensive analysis of Law Number 17 of 2022 concerning the Province of West Sumatra. First, the statute approach is used to examine the legal text of the law itself and to analyze its direct implications for governance and minority rights within the province. By closely reviewing the statute, the research identifies the intended legal changes and their potential societal impact. Second, the conceptual approach explores the underlying ideas of hegemony, domination, customs, and religion that shape the law. This approach clarifies how these concepts inform the legal framework and influence social dynamics, thereby contextualizing the law within broader theoretical debates.

Third, the historical approach investigates the origins and development of the Minangkabau indigenous community and the spread of Islam in Indonesia. By tracing the historical evolution leading to the emergence of the *adat basandi syara'*, *syara' basandi kitabullah* philosophy, this approach provides essential background for understanding the cultural and religious factors embedded in the law. Finally, the political approach analyzes the roles played by political elites, indigenous leaders, and Islamic religious institutions during the legislative process. This perspective uncovers how various actors and their institutional interests contributed to the political climate and influenced the ratification of the law.

Together, these methodological approaches enable a nuanced understanding of both the formation and the impact of Law Number 17 of 2022. By combining legal analysis with conceptual, historical, and political perspectives, the research elucidates the mechanisms of legal change, the power dynamics at play, and the broader implications for pluralism and minority communities in West Sumatra.

## FINDINGS AND DISCUSSION

### ***The Early Entry of Islam and the Birth of the Philosophy of Adat Basandi Syara' Syara' Basandi Kitabullah***

Many historians and historical researchers are interested in discussing the relationship between Islam and Minangkabau customs in West Sumatra because the political history of Islam has spread widely and dominated West Sumatra to this day, eliminating the Buddhist and Hindu cultures and religions that had existed and developed earlier in the Pagaruyung and Malayapura

kingdoms, which had strong ties with the Majapahit Kingdom and were Hindu-Buddhist in character.

Minangkabau customs themselves originated from the land of Minangkabau. Etymologically, the word Minangkabau comes from two words, minang and kabau. The word Minang originally comes from the local language, which pronounces the word minang as manang, meaning victory, and the word kabau means buffalo. So, the word Minangkabau means victorious buffalo (Desman & Nurizzati, 2019). Minangkabau is the name of a village that was originally an open field located in the Sungayang District, Tanah Datar, West Sumatra. The name of the village originated from a buffalo (kabau) fight ordered by two kingdoms that were about to go to war, where the Pagaruyung Kingdom, which at that time was predominantly Hindu-Buddhist, wanted to attack the Majapahit Kingdom. They replaced the war with a buffalo fight to represent the two kingdoms. Because the Minang buffalo won the fight, the word minang kabau emerged and was later used as the name of the nagari or village. The residents of Pagaruyuang built a loteang (rangkiang) house with a roof shaped like a buffalo horn to commemorate this historic event. According to history, it is said that the house was built near the meeting point of the Majapahit kingdom's troops, who were welcomed by the beautiful women of Pagaruyuang (Pramono, 2009).

History records that Minangkabau customs are inseparable from the figure of King Adityawarman, who is said to have had close family ties with the Majapahit Kingdom's, especially during the reign of Queen Tribhuwana Wijayatunggadewi (1328-1350 AD). The existence of the Pagaruyung kingdom is marked by the discovery of the Pagaruyung inscription, which was recorded in 1347. According to Drakard's analysis, Adityawarman was a member of the Malay royal family who had kinship ties with the Majapahit kingdom because he spent his childhood in East Java. Meanwhile, according to Hamka, the existence of King Adityawarman as the maharaja in Minangkabau did indeed have close family ties with the Majapahit kingdom. This maharaja once ordered the creation of the Manju Shri (Manja Sari) statue, which means "the most holy," to commemorate his ancestors, the queen consort of the Majapahit king (Retnaningdyah, 2017).

When discussing the origins of Islam in the Minangkabau region, it is closely tied to the Islamization of the Pagaruyung Kingdom, which was in power at the time. Several experts, such as Buya Hamka, Mahmud Yunus, Azyumardi Azra, and others, have different opinions on this matter. Did Islam come to the Pagaruyung Kingdom first, or did it come through trade with coastal communities, either through Arab traders or Gujarat Indians? In his book Sejarah Umat Islam (History of the Muslim Community), Buya Hamka states that in 684 AD, there were already Arabs on the west coast of Sumatra. Meanwhile, in his work entitled Ayahku (My Father), Hamka states that Arab traders had been trading in Pariaman since the 7th century, but had not yet preached Islam

in a massive, structured manner. In contrast to Hamka, P.M. Holt argues that Islam entered Minangkabau from the coastal area of Pariaman, from the direction of Aceh, because Aceh already had an Islamic kingdom in the 14th century AD (Nur, 2022).

In 1960, *the Center for Minangkabau Studies*, LKAAM, and BKPU held a seminar and concluded that Islam had entered Minangkabau since the 7th or 8th century AD, marked by the trading activities of Arabs in the Malacca Strait region. M.D. Mansur also believes that Islam had entered Minangkabau in the 7th century, because at that time the Sumatran plains, such as Aceh, Kampar Riau, and Minangkabau (West Sumatra), were destinations for the spice trade, especially pepper, by Arab traders of the Umayyad Caliphate era and Chinese traders. It is said that during the reign of the Umayyad Caliphate, Caliph Walid bin Abdul Malik sent 36 merchant ships from Kufa, equipped with preachers, to trade for camphor, pepper, and gold in Minangkabau (Rohmatika, 2019).

However, Mahmud Yunus (1971) disagrees with the seminar's findings. He believes that Islam entered Minangkabau around the 12th century AD, based on the discovery of the tomb of Panglima Nizamuddin Al-Kamil in the Bangkinang area (on the banks of the Kampar River), which he claims is the oldest Islamic tomb in eastern Minangkabau (around 521 AH/1128 AD). However, in his other book, Mahmud Yunus (1983) argues that Burhanuddin Al-Kamil was the first to bring Islam to Minangkabau and was buried in Kuntu, dated 610 AH/1214 AD. He came with Abdullah Arif after studying in Arabia and Aceh. Abdullah Arif later settled in Aceh, while Burhanuddin went directly to Minangkabau, where he became known to the Minangkabau people as Syekh Burhanuddin Kuntu. This opinion is in line with that of M.O. Parlindungan, who mentions that a commander named Burhanuddin al-Kamil died and was buried in the village of Kuntu, on the banks of the Kampar River in 610 AH (1214 AD). If these two graves are used as the basis for estimating the arrival of Islam, it can be concluded that Islam had already entered the Minangkabau region in the early 13th century AD or perhaps some time before the 13th century AD. This differs from the opinion expressed at the seminar (Judrah, 2020).

The biography of Sheikh Burhanuddin Kuntu also varies. According to Asmal May in his journal, based on research and interviews with community leaders in Kuntur Kampar, he died in 610 AH/1191 AD. was born in Mecca in 530 AH/1111 AD, spread Islam for the first time in Batu Hampar, West Sumatra (Minangkabau) for 10 years, then 5 years in the Kumpulan area, then 15 years in Ulakan Pariaman, and finally lived in Kuntu Kampar for 20 years until his death (May et al., 2022).

Meanwhile, based on the version of the *Muballigul Islam* manuscript, it is said that there was an Arab Muslim merchant named Sayyid Abdullah who was stranded on the west coast of West

Sumatra (Mingkabau) in 580 AH/1184 AD, and began teaching for the first time to families in several *huts* (pondok) near the durian tree, then continued to several families from the Pagaruyung Kingdom. However, it had not yet spread into the interior and the western coast due to the challenging terrain (Irhash A. Shamad & Danil M. Chaniago, 2022).

Therefore, according to Irhash A. Samad in his book, from the above theories, it can be generally concluded that the entry of Islam through the western or eastern coast via Arab traders is the theory closest to the truth because, logically, Islam originated from Arab lands and its arrival must have been through trade along river routes toward the Malacca Strait. This case is not limited to Minangkabau but applies to the entire Sumatran highlands, such as Aceh and its surroundings. Although the dates vary, the 12th-13th centuries CE are the closest approximations. However, it does not rule out the possibility of the findings of the 1960 seminar at the University of Indonesia which stated that Arab traders had come to Minangkabau in the 6th-7th centuries AD, because the western and eastern coastal areas of Minangkabau, around Kuntu/Kampar Riau, were already known as producers of pepper and spices since the 5th century AD (Irhash A. Shamad & Danil M. Chaniago, 2022).

Returning to Sheikh Buhanuddin, who became one of the most famous figures in spreading Islam in the history of the Islamization of Minangkabau. Many people mistakenly confuse Sheikh Burhanuddin Kuntu and Sheikh Burhanuddin Ulakan, because they are two different people. The one with the title Kuntu was an Islamic preacher who lived in the 11th-12th centuries AD and spread Islam in the areas of Kuntu Kampar Riau, Batu Hampar, then in Pariaman, and was buried in Kuntu Kampar Riau. Meanwhile, the one with the title ulakan was an Islamic preacher in the Aceh region and later in Minangkabau who lived in the 16th-17th centuries AD. He was the bearer of the Syathariyah order from Aceh and was buried in Ulakan Pariman.

Furthermore, the author wishes to focus the study on Sheikh Burhanuddin, who holds the title of ulakan, because he is said to be more famous and his spread of Islam in Minangkabau was more widespread. What is very interesting is that, according to several sources, the consensus on the philosophy of *adat basandi syara' syara' basandi Kitabullah* (*customs based on Islamic law, Islamic law based on the Holy Book*) is said to have originated when Syekh Burhanuddin visited the Pagaruyung kingdom to preach Islam. The term began to be heard when Syekh Burhanuddin spread Islam, leaving behind the oldest mosque in West Sumatra (Nazirman et al., 2021). The Minangkabau people still firmly uphold this philosophical value today, and it has even been internalized in several West Sumatra Regional Regulations, because it is said to be the result of the hard work of Syekh Burhanuddin Ulakan and his students in spreading Islam in harmony with traditional values (Arif, 2020).

Some historians say that Syekh Burhanuddin was not only an Islamic preacher but also a trader from Aceh, but the Minangkabau people know him better as one of the most influential scholars in the spread of Islam in Minangkabau. He was a student of the famous Acehnese scholar Syekh Abdurrauf al-Singkili, a Mursyid of the al-syarthariyah order. His method of spreading Islam focused on building suraus (a type of mosque) as centers for the education of the al-Syarthariyah order. The first surau was built in Tanjung Medan Ulakan, and at that time it became a famous center for the study of Islam in Minangkabau. Many people from outside the Minangkabau came and settled there to study Islam and the order (Hidayatullah et al., 2025).

The mosque built by Sheikh Burhanuddin was not actually something new to the Minangkabau people, because long before his arrival, the Minang people already knew mosques as places of worship built by their ancestors when they still embraced Hinduism and Buddhism. Around 1356, King Adityawarman had established a Buddhist mosque complex around Bukit Gombak. At that time, the surau was not only a place of ritual worship, but also served as a center for culture and customs, so it can be said that the surau was a cultural heritage building of the Minangkabau before the arrival of Islam. During the reign of King Adityawarman, suraus were usually built on the highest ground or at least higher than other buildings. The surau was a place for learning customs and traditions, deliberating, and discussing matters that could provide ideal solutions to social problems occurring in the community. Thus, it can be understood that before the arrival of Islam, the surau had an important social structure in Minangkabau society (Natsir & Hufad, 2019).

To this day, after the death of Sheikh Burhanuddin, his students, as successors of the al-syarthariyah order, have built small suraus to accommodate people from outside who want to visit his grave or learn about this order. Many of these suraus are even intended for elderly people who want to stay for a week or a month to learn about the order (Nofri Andy & N. Eka Rizal, 2020). However, when the Dutch came to colonize, they established modern secular educational institutions, so that the surau, which had been a center for Islamic education, began to be systematically marginalized as an effort by the colonizers to weaken the position of Islamic scholars and traditional leaders at that time. In 1882, the Dutch government even formed a special agency to oversee religious life and Islamic education called *Priesterraden*. However, when Indonesia gained independence, the surau was modernized and returned to its original function as a center for Islamic education and a place for traditional leaders to hold discussions, as seen in the return of the slogan "back to the surau" by Islamic scholars and traditional leaders, even after the reform when Law Number 22 of 1999 concerning Regional Autonomy and Regional Regulation Number 9 of 2000

concerning the Regional Government System, the slogan "back to the Surau" resurfaced and the Surau became the epicenter of Islamic civilization development to this day (Mawangir, 2015).

Returning to the philosophy of *adat basandi syara' syara' basandi kitabullah*, there is no definite source of the origin of this philosophy. From several sources found, there are at least several theories that have developed among the Minang community regarding the origin of this philosophy. First, according to Sutan Mahmud in the Singgalang Daily, this philosophy has existed since around the 16th century AD or around 1640 AD, as an agreement between Alim Ulama in the field of fiqh and Sufi tarekat because they often misunderstood the relationship between religion and customs. In contrast to Sutan Mahmud, Syafinir Abu Naim mentions in his article that this philosophy emerged during a movement to reform and purify sharia from customs that conflicted with sharia values, which was initiated by Tuanku Nan Tuo around 1720-1830 AD (Nasaruddin & Syarifuddin, 2018).

Another opinion states that this philosophy was born as a result of an agreement between Yang Dipertuan Pagaruyung and Syekh Burhanuddin together with the Penghulu 12 Ulakan in Tanah Rajo on Bukit Marapalam in the 16th century AD/1680 AD, but this opinion is not supported by strong evidence. Another version from Inyiak Canduangp, author of the book on customary peace and Syarak, states that this philosophy was born during the era of Syekh Burhanuddin in the dynamics of spreading his Syathariah tarekah, which gave birth to the Bukik Marapalam oath charter (Mariana, 2024). The next most popular opinion is that the location of the event was the same, at Bukit Marapalam, but the actors and the time were different, namely the agreement between religious scholars, traditional leaders, and Sharia purification activists who were fighting in a famous war, the Paderi War, in the 18th century AD (Rahmat, 2012). According to Azyumardi, at that time, the traditionalists offered the philosophy of *adat basandi syara'*, *syara' basandi adat* (custom is based on sharia, sharia is based on custom), but the Paderi Islamic purification movement rejected this philosophy, until finally, at the end of the war on Marapalam Hill in Tanah Datar Regency around the 18th century AD, a new philosophy was agreed upon, namely *Adat Basandi Syara', Syara' Basandi Kitabullah*, which means that customs are based on religion, and religion is based on the Holy Quran (Rahmat, 2012). There is also another opinion that says that before the Paderi war, even before the Minangkabau people knew Islam, the philosophy of adat known to the Minangkabau people was that adat was determined by rules and propriety or morals based only on truth (*Adat basandi alua jo patuik, alua jo patuik basandi bana, bana badiri sandirinyo*) (Aziz et al., 2020).

Thus, although there is still no unanimous agreement among experts and the West Sumatra regional government regarding the origins of this philosophy, they agree to make this philosophy a

way of life or *modus vivendi* (noble agreement) that is upheld as the ultimate *value* in the lives of the Minangkabau people who are Muslim (Bakti Setiawan & Oktarina, 2023). This is evidenced by the fact that this philosophy has been recognized as the most important philosophy of the Minangkabau people, as explicitly stated in Law Number 17 of 2022 concerning the Province of West Sumatra, Article 5 Letter c, which reads, "The province of West Sumatra has characteristics, namely Minangkabau customs and culture based on philosophical values, *adat basandi syara'*, *syara' basandi kitabullah* in accordance with the applicable *adat salingka nagari* rules, as well as the richness of history, language, arts, traditional villages/nagari, rituals, traditional ceremonies, cultural sites, and local wisdom that demonstrate the religious character and high customs of the people of West Sumatra."

### **The Hegemony and Dominance of Islam and Minangkabau Customs in West Sumatra**

Today, West Sumatra is inhabited by a majority of people who are Muslim and of Minangkabau ethnicity. This is evidence of the growth of the dominance and hegemony of one religion and custom on the island. Hegemony itself was first known from the ancient Greek word "eugemonia", a term that refers to the dominance of position and power claimed by city states known as "*polism*" or "*city states*" at that time over other small states, for example, as practiced by the states of Athens and Sparta over smaller states. According to Antonio Gramsci, a leading social and political researcher, hegemony is a power or dominance over the values, norms, culture, and even religion of a community, which ultimately becomes a doctrine for other communities that is consciously embraced by the dominant group. Groups that are dominated by other groups do not feel oppressed and consider this to be a normal thing to do (Muhammad Elmuava Sani & Effendi Hasan, 2017).

Gramsci, through his work, often emphasized the concept of hegemony, which he understood as a form of consensus organization. In his book Prison Notebooks, Gramsci used the word *direzione* (direction) interchangeably with *eugemonia* (hegemony) and in contrast to *demozasion* (domination). There are several sections in his Prison Notebooks where Gramsci uses hegemony in a general sense, namely domination between states, and even between cities and villages (Ali, 2017). Therefore, for Gramsci, the actors of hegemony are not limited to the state, but can also be found in smaller spheres such as cities and villages. Based on his definition, hegemonic actions are not viewed in terms of the broad scope of their consensus, but rather in terms of their influential actions, which ultimately lead groups outside their sphere to follow their control.

According to Gramsci, in order for the values and norms of the rulers to be obeyed by the ruled classes or groups, they must also give their consent to their subordination. In short, the spread

of the ruling class's domination and hegemony over other groups must be disseminated through the negotiation of ideological instruments. In essence, hegemony cannot be separated from the spread of ideology, through which the ruling class makes the groups it wants to control believe in and consider social and cultural issues within the framework of the ruling class's ideology. This type of hegemony is called cultural hegemony. Cultural hegemony occurs not only between the ruling and ruled classes, but also in social relations between social classes within a country. Cultural hegemony determines what is right, both morally and intellectually (Muhammad Elmuava Sani & Effendi Hasan, 2017).

For Gramsci, religion is also a force of hegemony, although according to him, religion is a paradox of metaphysical mythology that speaks of the world and the afterlife. Religion, in Gramsci's view, is the greatest effort ever made to reconcile, in mythological form, the real contradictions of the history of life. For him, religion also has a hegemonic power that teaches equality, brotherhood, and freedom in certain forms and specific ideologies. An example of religious hegemony for Gramsci is the intervention of the church, which successfully organized the democratic election mechanism of its intellectuals and collaborated with the authorities in helping to expand the rulers' power in the name of religion, God, and the church (Muhammad Elmuava Sani & Effendi Hasan, 2017).

Using Gramsci's theory of political hegemony above, we can see the rapid development of Islam in West Sumatra, which has been able to coexist harmoniously with the Minangkabau customs, as evidenced by the philosophy of "*adat basandi syara', syara' basandi kitabullah*" (ABS-SBK) in the midst of the lives of the Minangkabau indigenous community in West Sumatra. What is very interesting is that Minangkabau customs had developed in West Sumatra long before Islam arrived. In fact, according to history, Minangkabau customs, which were still influenced by animism, were first influenced by Hindu-Buddhist culture that came from India, similar to other customs on the island of Java.

The theory of hegemony and domination in West Sumatra is difficult to ignore, given that two entities, Islam and Minangkabau customs, can coexist harmoniously and spread so rapidly in West Sumatra. This proves that the form of domination that has developed in society comes in various forms, including religious and belief domination, cultural customs, ideology, and even philosophy. However, whether consciously or not, hegemony and domination have negative impacts, giving rise to value disorientation, disregard for the existence of minority religions, cultures, and customs, alienation, a single culture that kills pluralism, and the destruction of minority cultures.

According to Giddens (1986), citing Marx's theory of domination, there will always be disadvantages for the minority class when the dominant class in society develops and takes over forms of ideology (both religious and traditional/cultural) that legitimize its domination. At the same time, the dominant class has control over the means of intellectual production, so that in general, the ideas of those who do not have intellectual means of production are accommodated by those means. Ultimately, consciousness in society is determined by the dominant class. According to Gramsci, the domination of one social group over another, such as the ruling class over all other classes. The ruling class here is not only defined in terms of a democratic system, but more broadly as the majority religion and the majority customs. Gramsci argues that the ideas of the ruling class will be seen as the norm by minority groups or oppressed groups, and they are viewed as a universal ideology, considered to benefit all groups, but in reality only benefit the ruling class (Wahyuddin Bakri, 2020).

Based on the theory of domination explained above, the power of domination can come from anyone, including political elites, intellectual academics, traditional leaders, and religious leaders, who can mobilize public awareness to unite in agreeing on and implementing ideas and values that are considered correct. This was also the case in West Sumatra, where we see the political domination of kings who converted to Islam, and eventually the people they ruled also accepted the religion chosen by their king. Islam, which was initially only considered a complement to identity in order to facilitate trade, actually developed widely and harmoniously with Minangkabau customs, which also dominated the customs and tribes in West Sumatra.

During the Dutch colonial period, after independence, and after the reform, the teachings of the philosophy of *adat basandi syara'*, *syara' basandi Kitabullah* (custom based on law, law based on the Holy Book) had not yet been compiled and recorded in official customary institutional documents approved jointly by the Minangkabau community. Subsequently, many political figures from the political, religious, and customary elites have made efforts to formalize the philosophy of *adat basandi syara'*, *syara' basandi Kitabullah*, so that it would be properly documented. One such effort was made by the Minangkabau Customary Council through the Decree of the Ninth Grand Council of LKAAM West Sumatra Number TAP-10/MUBES/ IX LKAAM/SB/VI/2005 dated June 5, 2005, concerning the Application of *Adat Basandi Syarak Syarak Basandi Kitabullah*. The Minangkabau Customary Council or LKAAM is a highly authoritative customary institution, well known and established by the West Sumatra Provincial Government. This institution has a hierarchical structure similar to other non-governmental institutions from the provincial to the sub-district level. At the village/nagari level, LKAAM is called the Nagari Customary Council. This

institution is very important because it has great authority in determining customary and cultural issues in Minangkabau society (Kurnia & Nurman, 2020).

In political hegemony theory, religious institutions play a very important role in influencing the political dynamics of a population, especially when the religion embraced by the institution is the largest religion believed in by the majority of the population. Similarly, the province of West Sumatra has historically been dominated by the Minangkabau indigenous community, the majority of whom are Muslim, so that most of the customs and values of Minangkabau have also been internalized with Islamic values. This reality is clearly interesting, because it is different from other regions where the customs and beliefs of the community sometimes conflict with the majority religion in the region.

Before discussing the community institutions that have a hegemonic political influence, it is only natural that Sharia Regional Regulations and Law Number 17 of 2022 successfully include the philosophical value of *Adat Basandi Syarak Syarak Basandi Kitabullah*, because the entire Minangkabau indigenous community living in West Sumatra is predominantly Muslim. According to the Directorate General of Population and Civil Registration (Dukcapil) of the Ministry of Home Affairs, West Sumatra has a population of 5.6 million. Of this number, 5.46 million (97.6%) or the majority of the population of Ranah Minang are Muslim. Furthermore, 83,830 people (1.5%) of the population of West Sumatra are Christian, 46,820 people (0.84%) are Catholic, and 3,470 people (0.84%) are Buddhist. There are also residents of West Sumatra who are Hindu, totaling 102 people (0.0%), 5 people who are Confucian, and 274 people (0.0%) who adhere to other beliefs out of the total population (Kusnawan & Rustandi, 2021).

Before the enactment of Law No. 17 of 2022, which mentions *Adat Basandi Syarak Syarak Basandi Kitabullah* as the philosophical value of the Minangkabau indigenous community, West Sumatra became one of the regions in Indonesia that became fertile ground for the emergence of sharia regional regulations at the regional legislative level, which have been issued by both the provincial and regency/city levels in regional regulations. These Sharia local regulations have largely incorporated the philosophical value of *Adat Basandi Syarak Syarak Basandi Kitabullah* in the philosophical basis of the considerations of these local regulations. One example is West Sumatra Provincial Regulation Number 3 of 2007 concerning Al-Qur'an Education.

Why can the philosophical values of *Adat Basandi Syarak Syarak Basandi Kitabullah* be included in Sharia Regional Regulations in West Sumatra and in Law Number 17 of 2022 concerning the Province of West Sumatra? Apart from the genealogical factor of Minangkabau customary values that have accepted and internalized Islamic values, there is certainly the factor of political hegemony that supports all of this. In this case, according to the author, it is the DPRD

institutions at the regency/city, provincial and central levels, the executive institutions in power from the central to the nagari/village levels, as well as community institutions/organizations, both religious and customary.

One example of political power hegemony is the results of the open plenary meeting of the General Election Commission (KPU), which has determined the elected members of the West Sumatra Provincial Regional Representative Council (DPRD) for the 2019-2024 period. namely 9 of the 16 political parties participating in the 2019 General Election (Pemilu) won 65 seats, with the most seats going to the Gerindra Party, PKS, PAN and Democrat Party. The Gerindra Party won the most seats with 14 seats. Meanwhile, PKS, PAN and Democrat Party each won 10 seats. Meanwhile, the Golkar Party won 8 seats, the PPP won 4 seats, and the PKB, PDIP, and Nasdem Party each won 3 seats. If we look at the profiles of all DPRD members, all of them are Muslim, except for one DPRD member from the PDIP Party who is Christian. It is interesting to note that if we read the profiles of all DPRD members, 62 seats are occupied by DPRD members who are Muslim, and 1 seat is occupied by a DPRD member who is Christian. Of course, from the perspective of their religious beliefs, this will greatly influence their political stance to always support Sharia based legislation.

The executive branch is also similar. For three consecutive terms (for the last 15 years) from 2010 to 2025, the position of governor has always been won by candidates nominated by religious-nationalist parties, such as the Prosperous Justice Party, the Gerindra Party, and the United Development Party. Meanwhile, the community organization that is very dominant and influential in formalizing the philosophical values of *Adat Basandi Syarak Syarak Basandi Kitabullah* into legislative products is the Indonesian Ulema Council of West Sumatra, which is indeed the main supporter of the Sharia Regional Regulations in West Sumatra. This cannot be separated from the existence of the MUI, which has a very strong influence in West Sumatra compared to other Islamic organizations. In West Sumatra itself, apart from the MUI, other Islamic organizations such as Muhammadiyah, the Islamic Education Association (Perti), and Nahdlatul Ulama (NU) also support the enactment of Sharia based local regulations that incorporate the philosophical values of *Adat Basandi Syarak Syarak Basandi Kitabullah* (Guyanie & Tamtowi, 2022).

Apart from the Indonesian Ulema Council, customary institutions such as the Minangkabau Customary Council (LKAAM), an institution that has great authority in determining customary and cultural issues in Minangkabau society, also has a major influence and contribution in promoting the philosophical values of *Adat Basandi Syarak Syarak Basandi Kitabullah* to be adopted in the Sharia Regional Regulations in West Sumatra and in Law Number 17 of 2022. In addition, there is also a community organization founded by several community groups, including traditional leaders,

religious leaders, political elites, and academics, namely the Minangkabau Special Region Preparatory Agency (BP2DIM), which was formed in 2014 but faded into obscurity before reemerging in 2021. by proposing a change in the name of the Province of West Sumatra to the Special Region of Minangkabau. This body has even submitted an academic paper to the Central House of Representatives and the Central Government, in this case the Ministry of Home Affairs, but to date it has not been included in the national legislation program, and in fact in 2022 it is certain that the name of the Province of West Sumatra has not changed with the issuance of Law Number 17 of 2022 concerning the Province of West Sumatra.

Considering the reality of the Minangkabau indigenous community, which is able to live harmoniously and even internalize Islamic values, it is no longer just an ordinary indigenous community, but has succeeded in incorporating its philosophical values into political products at both the regional and central levels. This further proves the existence of Islam, which not only regulates the relationship between creatures and the Creator, but is also a very comprehensive (Kaffah) religion that regulates matters such as the law, government, state administration, and politics, which in fiqh terminology is often referred to as *al-qanun wa al-siyasah*.

### **From Philosophical Values to Positive Law**

Seeing the influence of Islamic political elites both through political parties, religious organizations, and customary institutions above, it is increasingly evident that their role greatly determines the success of the hegemony of Islamic values and customary through this philosophy can continue to be maintained, not only as a historical fact, but even as a positive law. The cohesiveness of two actors from the Islamic religious sector and the Minangkabau tradition in maintaining this philosophy further adds to the success of Islamic records in building civilization in the population. As Ahmad Syalabi argues, that the hegemony of Islamic civilization has a structured and moral leadership identity, (Latif, 2019). where the Umara/caliph who is in power is always accompanied by Alim Ulama so that the values of morality and Islamic law in the Quran and Sunnah remain always the foundation that strengthens every policy he takes. Similarly, the Islamic kings in the Kingdom of Pagaruyung and the traditional rulers of Minangkabu who walked hand in hand with the religious scholars, as the story above, there was a form of negotiation between Sheikh Burhanuddin and the kingdom of Pagaruyung, the negotiation of the fighters of the Islamic purification priest movement with the traditional and royal stakeholders which finally gave birth to a very beautiful acculturation of philosophical values, between customs and sharia.

The Minangkabau Special Region is a developing discourse in which there is a proposal to change the province of West Sumatra into the Minangkabau Special Region (DIM). The discourse

on the Minangkabau Special Region first surfaced in 2014, but has recently resurfaced in the public sphere. The change in the name of the region is contained in the Minister of Home Affairs Regulation No. 30 of 2012. In this regard, the working team of the Minangkabau Special Region Preparatory Agency (BP2DIM) has completed its academic paper. The discourse has gained momentum with the passing of Law No. 17 of 2022 on the Province of West Sumatra. Although the name West Sumatra has not been explicitly changed to the Special Region of Minangkabau, many members of the House of Representatives and political observers have stated that with the passing of this law, the change in identity is increasingly likely.

In the academic draft of the Bill on the Province of West Sumatra dated March 11, 2021, in its philosophical considerations, it is explained that the philosophical value of *adat basandi syara'*, *syara' basandi kitabullah* (customary law based on religious law, religious law based on the Holy Book) is already well known and has been applied in village administrations, or what the Minangkabau people call the Nagari government, as a requirement of reform that delegates authority from the central government to regional governments through a system of centralization to decentralization. Philosophically, West Sumatra has long implemented a village/nagari government system that applies these traditional philosophical values, thus aligning with the post amendment Constitution, which recognizes and respects customary law communities and their traditional rights. Before Law Number 6 of 2014 concerning Villages was enacted, West Sumatra, through the Nagari government system, had already implemented its customary values. Therefore, with the enactment of the Village Law, West Sumatra only needs to continue and develop the provisions of the law which mandate the government that the formation of government in villages and regions must not threaten, let alone eliminate, the existence of customary law communities. including the formation of Customary Villages based on the original rights of customary law communities, which are administered according to local customs as the Nagari government is administered according to Nagari customs, based on the ABS-SBK philosophy. However, if there are government affairs that are not regulated in customary law, the provisions of the Law shall apply.

In the explanatory notes of the academic draft bill for the Province of West Sumatra, from a sociological perspective, this philosophy is worthy of being ratified through this law because, in fact, the majority of the population of West Sumatra is of Minangkabau ethnicity and Muslim. Although the Minangkabau indigenous community does not only live in the province of West Sumatra but is spread across other provinces and even abroad, such as Malaysia. However, as in other provinces, ethnic diversity still exists in West Sumatra, albeit in small numbers, such as Javanese transmigrants living in the Sitiung, Lunang Silaut, and Padang Gelugur areas, the

Mandailing tribe in Pasaman, the Mentawai tribe in the Mentawai Islands, and the Chinese ethnic group in several scattered locations.

According to Fitri Eriyanti, sociologically speaking, the emergence of the Village Law is a breath of fresh air for village governments in West Sumatra in relation to the traditional villages of Nagari in West Sumatra (Eriyanti, 2015). The definition of traditional village contained in the Village Law reinforces the essence of nagari in West Sumatra. Nagari is a traditional village of the Minangkabau customary law community which has its own customary law rules that are different from those of village governments in general. The Nagari system existed before Indonesia's independence, so there are several reasons for the urgency of applying the principle of recognition to nagari through this bill. *First*, nagari has distinctive characteristics as a traditional village with customary law that is different from other legal entities called regions. *Second*, nagari is an entity that existed before Indonesia's independence, which independently had its own original structure and brought with it its original rights. *Third*, nagari are unique and special examples of Indonesia's diversity or multiculturalism, which cannot be simply standardized with villages in general. *Fourth*, the constitution mandates the state to recognize and respect customary villages such as nagari as part of customary law communities along with their traditional rights.

Meanwhile, from a legal basis perspective, Law Number 17 of 2022 concerning the Province of West Sumatra was passed because the previous law was outdated. Law Number 61 of 1958 concerning the Stipulation of Emergency Law Number 19 of 1957 concerning the Establishment of Level I Autonomous Regions of West Sumatra, Jambi and Riau was generally no longer relevant to the current geographical conditions and legal developments. For example, the coverage of the West Sumatra Province, which originally had 14 second level autonomous regions, now consists of 12 (twelve) regencies and 7 cities. Furthermore, the number of DPRD members, which previously numbered 28, is now based on Law Number 7 of 2017 concerning General Elections, which stipulates that the Provincial DPRD shall have a minimum of 35 and a maximum of 120 members. Furthermore, Law No. 61 of 1958 was enacted before the enactment of Law No. 12 of 2011 on the Formation of Legislation, which means that the mechanism for drafting laws must inevitably be changed to comply with the mechanism for drafting laws in Law No. 12 of 2011.

In addition to legal issues in the form of outdated regulations, another legal problem related to the implementation of this philosophy and nagari is the content regarding Nagari, which is still regulated in local regulations that are lower in hierarchy than laws. There are several matters in Local Regulation No. 7 of 2018 that should be regulated in the form of a law to strengthen the existence of the nagari. First, the matter of affirming that the nagari is not only a territorial unit that is the foremost administrative unit in West Sumatra Province, but also a customary law community

that is closely linked genealogically and historically. Second, there needs to be institutional strengthening of the nagari, which is very different from other villages in Indonesia, such as the Kerapatan Adat Nagari (Customary Council of the Nagari), the Nagari Government, and the Nagari Customary Court, as a distinguishing feature of the nagari form of government from the general form of village government. However, legally, the nagari government system cannot be applied in the Mentawai Islands Regency, even though it is part of the same province, because the people of the Mentawai Islands Regency are not of Minangkabau descent, so they are also given the freedom to organize village level government in accordance with the values that exist in their community.

### **Rejection by Minority Religions and Customs Leading to *Judicial Review***

The political dynamics of democracy and decentralization in Indonesia are inevitably accompanied by both support and opposition from both majority and minority groups. As a logical consequence of the practice of political hegemony based on the religion and ethnicity of the majority over political decisions in a region, it will certainly have an impact on minority groups whose political aspirations based on their religious, cultural, and traditional values are not fully accommodated. In this case, the rejection of Law Number 17 of 2022 concerning the Province of West Sumatra came from several Mentawai ethnic groups who felt discriminated against because the law only mentions the Minangkabau ethnic group and culture with its philosophical values as the characteristics of the Province of West Sumatra. Even in the explanation of this article, other ethnic groups and customs such as the Mentawai ethnic group in the Province of West Sumatra are not mentioned. This is in contrast to Law Number 18 of 2022 concerning the Province of Jambi, in which the explanation of Article 5 letter c regarding the ethnic and cultural characteristics of the Province of Jambi consists of the Jambi Malay tribe, the Batin tribe, the Penghulu tribe, the Kerinci tribe, the Anak Dalam/Kubu/Orang Rimba tribe, the Bajau tribe, the Ulu tribe, the Minang tribe, and immigrant tribes.

On September 19, 2022, several members of the Mentawai ethnic group from West Sumatra Province filed a request for a judicial review (judicial review) of the Formal and Material Review of Law Number 17 of 2022 concerning the Province of West Sumatra, which has been registered with the Constitutional Court Registry under Case Number 97/PUU-XX/2022. This petition was filed by Dedi Juliasman (Petitioner I), Wahyu Setiadi (Petitioner II), Dicky Christopher (Petitioner III), and Basilius Naijiu (Petitioner IV).

In their petition for *judicial* review, the petitioners requested the Constitutional Court to declare that Article 5 letter c of Law Number 17 of 2022 concerning the Province of West Sumatra is contrary to Article 18B paragraph (2), Article 28D paragraph (1) and Article 28I paragraph (2)

and paragraph (3) of the 1945 Constitution conditionally and does not have binding legal force as long as it does not meet the following conditions: "exempted for the Mentawai Islands Regency, which has customs, philosophical values, historical wealth, language, arts, traditional villages, rituals, ceremonies, customs, cultural sites, and local wisdom that are different in character from the 11 regencies and 7 cities within the province of West Sumatra."

In the statement of claim, according to the Petitioners, the substance of Article 5 letter c of Law 17/2022 is discriminatory against the Mentawai tribe, which is currently the second largest tribe after the Minangkabau tribe in West Sumatra, because the article explicitly only regulates the characteristics of customs, philosophy, and historical wealth of the Minangkabau people. In fact, in the Explanation of the Law *a quo*, there is no reference to the characteristics of customs, philosophy, and historical wealth of the Mentawai tribe, the majority of whom live in the Mentawai Islands Regency. Furthermore, the enactment of this article will open up the potential for the emergence of local regulations based on Islamic sharia as derivative rules or implementing regulations of Law 17/2022. An example of this is the implementation of sharia dress codes in accordance with the philosophy of *adat basandi syara'*, *syara' basandi kitabullah* (customs based on sharia, sharia based on the Holy Book), which was experienced by Mentawai women who are Christians and believe in the Arat Sabulungan customs.

This request for a judicial review was then declared inadmissible by the Constitutional Court, because the petitioners were deemed to lack strong *legal standing* and did not have the legal position to represent the interests of their local government, because based on the consistency of Constitutional Court Decisions Number 3/PUU-XVIII/2020 and 54/PUU-XIX/2021, those who can file a petition for review on behalf of the interests of the regional government, *in this case* the interests of the Mentawai Islands Regency, are the Regional Government of the Mentawai Islands Regency, which consists of the Mentawai Islands Regency DPRD and the Regent of the Mentawai Islands Regency. The Constitutional Court also found no evidence that the Petitioners were legitimate representatives of the customary law community as referred to in the provisions *a quo*, but rather only individual Indonesian citizens who were concerned with the customs, management, and preservation of the culture that characterizes Mentawai. The Constitutional Court also assessed that the Petitioners were unable to explain in a specific manner the *causal relationship* regarding the application of Article 5 letter c of Law 17/2022, which was considered to have harmed the constitutional rights of the Petitioners. At the very least, within the bounds of reasonable reasoning, the Petitioners were unable to explain the potential for the infringement of constitutional rights experienced with the enactment of Article 5 letter c of Law 17/2022, which was requested to be reviewed.

The Mentawai indigenous community is indeed part of West Sumatra Province, living in the Mentawai Islands Regency, which consists of 40 large and small islands, with several large inhabited islands, namely Siberut, Sipora, North Pagai, and South Pagai. As the second largest tribe in West Sumatra, they are indeed very different from the Minangkabau tribe. The Mentawai indigenous community has a traditional belief called Arat Sabulangun, which is a belief that everything in nature has a spirit. In addition, the majority of them are Christians, with traditional ceremony leaders/traditional spiritual leaders called Sikerei. They also have unique traditional houses called Uma, and the majority of their bodies are covered with tattoos and decorations as sacred symbols of the balance between the inhabitants of the forest and nature on their bodies.

Although the request for a judicial review was declared inadmissible, the Constitutional Court has not actually examined the substance of the case, because it considered the request to be formally flawed as the petitioners did not have *legal standing*. However, it should be noted that the existence of this judicial review petition illustrates the rejection of the minority community, even though it only comes from the Mentawai ethnic group and not from the official Mentawai customary institutions or the Mentawai Islands Regency Government. Therefore, the West Sumatra Provincial Government must pay attention to this and begin to build political communication, cross cultural and customary communication, and cross religious communication with relevant interests.

## CONCLUSION

Based on the above discussion, it can be concluded that the birth of the philosophy of *adat basandi syara'-syara' basandi kitabullah* did not just appear out of nowhere but through the dynamics of tribal, customary, religious, and ideological political struggles and wars, aided by a hegemonic movement dominated by customary elites, religious scholars, and the government, which resulted in the successful negotiation, acculturation, and internalization of customary values and Islamic values.

The *ratio of decedendi* stipulated in Law No. 17 of 2022 does indeed take into consideration why the philosophy of *adat basandi syara'-syara' basandi kitabullah* (customary law based on Islamic law based on the Holy Book) of the Minangkabau indigenous community, which is indeed the largest tribe in West Sumatra, is mentioned and stipulated in Article 5 of the law. because the West Sumatra Provincial Government successfully won negotiations between the central and regional levels in considering Article 18A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which regulates the relationship between the central government and provincial, regency, and city governments, or provinces and regencies and cities, regulated by law with due regard to the specificity and diversity of regions, in this case the Province of West Sumatra. Likewise, Article

18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "*The state recognizes and respects customary law communities and their traditional rights as long as they exist and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law*".

In examining the dynamics of the positivization of this philosophy in Law 17 of 2022 concerning the Province of West Sumatra, the author acknowledges the long historical reality of the political hegemony of the West Sumatra Provincial Government. This government is currently dominated by the Minangkabau indigenous community, who are predominantly Muslim. However, the author emphasizes that what should be of concern is the minority groups who perceive themselves as subordinated by the regulations issued. This has indeed been the case with the judicial review of the law by one of the tribes in West Sumatra. The province of West Sumatra must not allow this situation to persist, be ignored, or be considered a normal customary conflict. This is particularly important given that the Constitutional Court did not accept the judicial review. The current sparks and friction, where the Mentawai tribe feels discriminated against due to a perceived lack of recognition and accommodation in the law, must be immediately addressed and neutralized. This can be achieved through moderation of intercultural and interreligious relations through political communication, intercultural and customary communication, and interreligious communication. These efforts must be immediately established.

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